Appeal Decision

by ```redacted``` **BSc FRICS**

an Appointed Person under the Community Infrastructure Levy Regulations 2010 as Amended

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VOA Appeal Ref: 1877560

Planning Application Reference: ```redacted```

Proposal: "Demolition of existing buildings and structures and construction of 248 residential homes, playing pitches, allotments, areas of open space, upgrading of existing play area, sustainable drainage infrastructure, internal roads, paths and parking areas, lan"[sic]

Address: ```redacted```

Decision: Appeal allowed. I determine the correct revised chargeable amount to be **£```redacted```** (```redacted```).

Reasons

1. I have considered all of the relevant submissions made by ```redacted``` as ```redacted``` on behalf of ```redacted``` (```redacted```) [the Appellant] and ```redacted``` - the Collecting Authority [CA] in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:

    1. Planning decision notices references ```redacted``` & ```redacted```.

    2. CIL Liability Notice: ```redacted``` Phase 3, dated ```redacted``` for £```redacted``` - £```redacted``` (Social Housing Relief) = £```redacted```.

    3. CIL Appeal form dated ```redacted```, along with supporting documents referred to as attached.

    4. Representations from the Appellant.

    5. Representations from the CA.

6. Comments from the Appellant on the CA's Representations.

2. Planning Permission reference ```redacted``` was granted as detailed ```redacted``` and Reserved Matters reference ```redacted``` approved ```redacted```.

3. The CA issued Liability Notice ```redacted``` **Phase 3**, dated ```redacted```, based on:

   - Chargeable area: ```redacted``` **sqm**
   - CIL rate: **£**```redacted```**/sqm**
   - Index **Ip** (year planning permission granted): ```redacted``` (as applied by the CA)
   - Index **Ic** (charging schedule year): ```redacted```

4. The Appellant did not agree with the CA's calculation. On ```redacted```, the Appellant requested a Regulation 113 Review.

5. On ```redacted```, the CA issued its review decision and re-issued a revised Liability Notice (still dated ```redacted```) correcting only the CIL rate to **£**```redacted```**/sqm**.

6. On ```redacted```, the VOA received a Regulation 114 appeal disputing the CA's Regulation 113 Review decision on the basis that the CA used the incorrect Ip index figure.

The Appellant's grounds of appeal can be summarised as follows:

7. Outline permission ```redacted``` was granted on ```redacted``` for up to 261 dwellings and related works. Condition 4 required a phasing plan, which was approved on ```redacted``` (```redacted```). The Appellant confirms the development is phased, and this is undisputed.

8. Reserved Matters for all phases were submitted on ```redacted``` and amended on ```redacted```, with approval issued on ```redacted```. The Appellant submitted the required CIL forms for Phase 3 on ```redacted```. A Liability Notice was issued on ```redacted``` and later revised.

9. The Appellant submits the CA used the wrong index figure, applying ```redacted``` (2024), the year Reserved Matters were approved, instead of ```redacted```, being the All-in Price Index for the year of the outline permission (```redacted```). The Appellant also challenged the original use of the £```redacted```/sqm rate, which the CA ultimately accepted and corrected to **£**```redacted```**/sqm**.

   The Appellant argues that:

   - The approval of reserved matters is not the grant of planning permission.
   - Only the outline permission is the planning permission for the purposes of Schedule 1.
   - Therefore, Ip must be taken from ```redacted```, not ```redacted```.
   - This position is supported by Fulford Parish Council v York CC [2019] EWCA Civ 1359.

- A recent Regulation 114 decision (ref. 1860756) reached the same conclusion.

10. The Appellant maintains that while each phase is a separate chargeable development (Regulation 9(4)), each phase still arises from the same outline permission, and therefore the year of outline permission governs **Ip**.

11. The Appellant further submits that treating Reserved Matters approval as the "grant" of planning permission would contradict statute and case law, and would improperly equate "granting" permission with "first permitting development" under Regulation 8—two distinct concepts.

12. They argue that applying Reserved Matters approval dates for Ip would lead to inconsistent and anomalous results between phased and non-phased outline permissions.

13. The Appellant ultimately concludes by stating that the Chargeable Amount specified in the Liability Notice should be **£**```redacted```, before application of any social housing relief (which is not within the scope of this appeal).

The CA has submitted representations which I have summarised as follows:

14. The CA submits Reg. 40 (Calculation of chargeable amount) must be read as a whole and highlights that Regulation 40(1) states that CIL is payable in respect of a 'chargeable development', the definition of Chargeable development is set out in Regulation 9:

    1. 9.— Meaning of "chargeable development"
        i. (1) The chargeable development is the development for which planning permission is granted.

    2. (2) Paragraph (1) is subject to the following provisions of this regulation.

    3. (3) Where planning permission is granted by way of a general consent, the chargeable development is the development identified in a notice of chargeable development submitted to the collecting authority in accordance with regulation 64...

    4. (4) In the case of a grant of phased planning permission, each phase of the development is a separate chargeable development.

    Therefore, the CA submits that the outline part of the planning permission does not become 'chargeable development' until each phase of the outline permission has received reserved matters consent.

15. The CA submits that outline planning permission establishes the principle of a development on a site, focusing on the general concept rather than detailed specifications - it allows for defined "reserved matters" to be deferred until the submission of one or more detailed planning applications, which if successful will essentially award the planning permission.

16. The CA submits Regulation 8 (3a ,4 and 5) states:

    1. (3)a: for any phase of an outline planning permission which is granted in outline;

    2. (i) on the day of final approval of the last reserved matter associated with that phase

3. (4) In the case of a grant of outline planning permission, planning permission first permits development on the day of the final approval of the last reserved matter associated with the permission.

4. (5) But where the outline planning permission permits development to be implemented in phases, planning permission first permits a phase of the development on the day of the final approval of the last reserved matter associated with that phase.

17. Accordingly, the CA submits that the outline planning permission does not create a chargeable development until the relevant phase receives reserved matters approval. They therefore argue that the date of reserved matters approval is determinative for calculating the index year.

18. The CA explains that outline permission establishes only the principle of development and defers key details to later submissions. They argue that because the outline description states “up to 261 dwellings”, it cannot be treated as the final, fixed development parameters for CIL purposes. In their view, reserved matters approval establishes the detailed, phase-specific development that becomes the actual chargeable development.

19. The CA cites Regulation 8 provisions and maintains that planning permission first permits development on the date of the final approval of reserved matters. The CA therefore asserts that the index figure for the year of reserved matters approval must be used, and that indexation should be calculated individually for each phase.

20. The CA states that outline permission ```redacted``` includes only high-level detail and does not specify the final number of dwellings for CIL calculation purposes. They maintain that the reserved matters (```redacted```) contain the detailed development description, including “Demolition of existing buildings and structures and construction of 248 residential homes, playing pitches, allotments…” (full quote retained). The CA argues this approval represents the relevant “grant” for identifying the correct indexation year.

21. The CA concludes that their application of the ```redacted``` index (```redacted```) is consistent with Regulation 8 and that each phase’s CIL should be indexed using the year its reserved matters were approved. They also refer to appeal decision 1873247 (Phase 2) as support, submitting that this reinforces their interpretation that the outline permission alone cannot be treated as the chargeable development for a phased scheme.

The Appellant submitted comments on the CA’s representations which I summarise as follows:

22. The Appellant accepts that the Chargeable Amount must be calculated in accordance with paragraph 1 of Schedule 1 to the Regulations and that each phase constitutes a separate Chargeable Development under Regulation 9(4). However, the Appellant disputes the CA’s position that reserved matters constitute the planning permission for each phase, submitting instead that the operative planning permission is the outline consent granted on ```redacted```.

23. The Appellant agrees that the net area (A) and rate (R) can only be determined once reserved matters are approved, but maintains that this does not change the date of the planning permission for the purposes of identifying Ip. They argue that the CA’s approach

incorrectly treats reserved matters approval as if it were a new grant of planning permission.

24. The Appellant refers to the Court of Appeal's judgment in R (Fulford Parish Council) v City of York Council [2019] EWCA Civ 1359, where Lewison LJ stated at paragraph 24:

    "In the light of the provisions of the Act and the case law, I accept that the approval of reserved matters is not, itself, a planning permission and that an application for such approval is not, itself, an application for planning permission."

    and at paragraph 28:

    "…the conditional approval of reserved matters is itself a condition subject to which the planning permission has been granted."

    The Appellant submits this confirmed, following extensive earlier case law, that approval of reserved matters is not a planning permission. The Appellant states the CA did not consider this case in its appeal representations.

25. The Appellant also states that the CA did not engage with Regulation 114 decision 1860756, in which the appointed person determined that a reserved matters application is not a planning permission but merely permits the chargeable development, and that the correct index year is always the year of the outline planning permission. The Appellant notes that the CA has neither challenged that decision nor explained why a different approach should apply to a phased outline permission in this case.

26. The Appellant argues that Regulations 8(3A)(a)(i) and 8(4) both specify that planning permission "first permits development" on approval of the last reserved matter, whether phased or non-phased. They submit that this trigger is relevant only for identifying the applicable charging schedule and not for identifying the year of the planning permission for Ip. They further note that the wording of Regulation 8 cited by the CA is outdated, as Regulation 8(5) was revoked in 2014.

27. "Planning permission" under Regulation 5 includes both full and outline permissions, because Regulation 5(1)(a) refers to permissions granted under section 70 of the Town and Country Planning Act 1990. Section 70 allows authorities to grant permission subject to conditions, and section 92 explicitly defines outline planning permission. Accordingly, outline consent granted under section 70 is a planning permission for CIL purposes.

28. The Appellant submits that Regulation 9(4) does not treat reserved matters as planning permission for each phase; rather it identifies each phase as a separate chargeable development arising from the same outline permission. They argue that if the Regulations intended reserved matters approval to serve as the relevant "grant" for Ip, this would have been explicitly stated — but it is not.

29. The Appellant states that the CA's approach improperly conflates the grant of planning permission with the permitting of development. They submit that long-established case law, as well as the recent Regulation 114 decision referred to above, confirms the distinction.

30. They also submit that the outline permission must be treated consistently regardless of whether the development is phased or non-phased, reserved matters approval remains the discharge of a condition, not a planning permission.

31. The Appellant concludes that the CA's continued reliance on reserved matters approval as the operative date for Ip is unsupported by statute, case law, or previous VOA decisions, and has resulted in the Chargeable Amount being incorrectly calculated.

Having fully considered the representations made by the Parties, I make the following observations regarding the grounds of the appeal:

32. A Regulation 114 appeal concerns only the calculation of the chargeable amount as defined in Schedule 1 of the Regulations before any reliefs or exemptions are applied. Reliefs - such as social housing relief in this case - are governed by separate provisions and, where disputed, fall to be considered under the dedicated relief appeal mechanisms, not Regulation 114. The appointed person's role under Regulation 114 is therefore confined to determining whether the chargeable amount of CIL has been correctly calculated, independently of any subsequent reliefs or deductions.

33. Both Parties refer to previous VOA CIL appeal decisions, but these cannot determine the outcome of the present case. Each CIL appeal must be assessed on its own facts and merits, and earlier VOA decisions, whether related or unrelated, do not create binding precedent. They may be informative where similar issues arise, but they are not determinative.

34. The pivotal issue in dispute is whether Index **Ip** should be taken from the calendar year of the outline planning permission (```redacted```) or from the year in which reserved matters were approved for this phase (```redacted```).

35. Under Schedule 1, paragraph 1(4) of the CIL Regulations,

    "**Ip** = the index figure for the calendar year in which planning permission was granted".

36. The words must be given their natural and ordinary meaning, consistent with established principles of statutory interpretation, including Gardiner v Hertsmere BC [2022] EWCA Civ 1162 at s. 48–49.

37. The meaning of **Ip** is unambiguous. It relates to the year in which planning permission was granted, whether the permission is full or outline, and whether or not the permission is phased. It expressly states that **Ip** does not mean the date on which planning permission is "treated as first permitting development" in Regulation 8.

38. Fulford Parish Council v York CC [2020] PTSR 152 further supports that outline planning permission is itself the planning permission, whereas the approval of reserved matters is not a planning permission.

39. In this case, outline planning permission (```redacted```) was granted in ```redacted``` for a phased residential development. Reserved matters for this phase were approved in ```redacted```.

40. To recap, the Appellant's position is that **Ip** should be from ```redacted```, the year of the outline planning permission as opposed to the CA's position that **Ip** should be from ```redacted```, the year reserved matters were approved for the relevant phase.

41. I agree that the meaning of **Ip** is fixed by the Regulations and that it is helpful to focus on the difference in meaning between grant of planning permission and permitting of development.

42. This appeal concerns a phased development. Regulation 9(4) provides that each phase is treated as a separate chargeable development, but this does not alter the identity or date of the planning permission itself.

43. Approval of reserved matters does not grant planning permission and therefore cannot dictate the year in which planning permission was granted for **Ip** purposes.

44. The CA's approach conflates the identification of R and A (which may depend on reserved matters approval) with the identification of **Ip**, which does not.

45. Regulation 40 - Calculation of chargeable amount - of the Community Infrastructure Levy Regulations 2010 (as amended) now contained in Schedule 1 Part 1 of the Community Infrastructure Regulations (amendment)(England) (No.2) 2019 details the formula to be used in the calculation of chargeable amount – this is effectively the same as the equation detailed in the "We calculated this figure from the following information:" section of the subject CIL Liability Notice.

46. The subject Liability Notice states at "How we calculated this figure":

    "We calculated this figure from the following information:

    £```redacted``` x ```redacted```sqm x ```redacted``` / ```redacted```= £```redacted```…"

    using the formula below as set out in regulation 40 of the CIL Regulations 2010 (as amended) (R x A x **Ip**)÷ Ic"

    "Where:
    • R is the CIL rate in £/sqm
    • A is the net increase in gross internal floor area (sqm)
    • **Ip** is the All-in Price Index for the year in which planning permission was granted
    • Ic is the All-in Price Index for the year in which the charging schedule started operation"

    Or put more simply, CIL Total Area Charge = Chargeable Area (A) x Rate (R) x Index (I).

    The CIL Charging Schedule Rate "Rate" (```redacted```) and associated indexation "Index" (Ic) (```redacted```) are not disputed between the Parties.

    I agree that the planning permission for the purposes of Schedule 1 is the outline planning permission granted in ```redacted```. Accordingly, the correct index figure Ip is the index figure for ```redacted``` (```redacted```), not ```redacted``` (```redacted```). This correction has the following effect on the CIL Total Area Charge:

    £```redacted``` x ```redacted``` sqm x ```redacted``` / ```redacted``` = £```redacted```.

47. I therefore allow this appeal of the grounds set out above and determine the correct revised chargeable amount to be ```redacted``` (```redacted```).

    ```redacted``` BSc FRICS
    Valuation Office Agency
    5 February 2026
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