

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: 1882181

Planning Application Reference: [REDACTED]

Proposal: "Demolition of dwelling and construction of a replacement dwelling' without compliance of conditions 2 and 3 of decision [REDACTED] dated [REDACTED]."

Address: [REDACTED]

Decision: The appeal is dismissed for the reasons set out below.

Reasons

1. I have considered all of the relevant submissions made by [REDACTED] [the Appellant] and [REDACTED] - the Collecting Authority [CA] in respect of this matter. In particular, I have considered the information and opinions which are pertinent to this Regulation 114 appeal presented in the following documents:

1. Planning Inspectorate – Appeal Decision for Appeal reference [REDACTED] / [REDACTED]. The Application reference is [REDACTED].
2. CIL Liability Notice: [REDACTED] dated [REDACTED], for £ [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].

3. The CA issued Liability Notice [REDACTED], dated [REDACTED], based on:
 - Chargeable area: [REDACTED] sqm
 - CIL rate: £[REDACTED]/sqm
 - Indexation: [REDACTED]
4. The Appellant did not agree with the CA that there was a CIL liability. On [REDACTED], the Appellant requested a Regulation 113 Review.
5. On [REDACTED], the CA issued its review decision which was that the review found the liability had been correctly calculated and therefore the CIL liability notice remained as issued.
6. On [REDACTED], the VOA received a Regulation 114 appeal disputing the CA's Regulation 113 Review decision on the basis that the CA had erred in its application of the Regulations and that there should be no CIL chargeable.
7. Planning permission [REDACTED] authorised a dwelling subject to conditions which did not permit the lower ground floor as constructed. The subsequent Section 73 permission [REDACTED] was required to regularise development carried out otherwise than in accordance with those conditions. For CIL purposes, floorspace can only be attributed to, or offset against, development authorised by a relevant planning permission. As the lower ground floor **was not authorised by** [REDACTED], it cannot be treated as development permitted under that pre-CIL consent, nor offset against liability arising from [REDACTED].

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

8. The [REDACTED] sqm lower ground floor was **physically commenced and constructed in** [REDACTED] under [REDACTED], evidenced by building inspection and enforcement records.
9. Because the works had already commenced prior to [REDACTED], that S73 permission did **not "first permit"** the lower ground floor for CIL purposes.
10. Under **Schedule 1 Part 4**, a post-CIL S73 permission generates liability only for **new, undeveloped floorspace**.
11. Since the lower ground floor was undeveloped, no additional chargeable development was introduced and therefore the chargeable amount should be **£0.00**.
12. Regulation 7 provisions determine **when** development is deemed commenced, but do not expand **what** constitutes the chargeable development under Regulation 9 or Schedule 1.
13. Chargeability is linked to **physical commencement**, not lawfulness or the requirement for retrospective regularisation.

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

14. CIL applies to [REDACTED] because Section 73 permissions fall within the definition of "planning permission" under Regulation 5 [Meaning of "planning permission"].

15. Under the transitional provisions, development permitted by pre-CIL permission [REDACTED] is not chargeable, but any additional floorspace permitted by an in-CIL S73 permission is chargeable.
16. The CA determined that [REDACTED] sqm represented additional floorspace introduced by [REDACTED], and therefore the floorspace fell within chargeable development.
17. The CA stated that where retrospective permissions are granted after physical works have taken place, Regulation 7(5) deems development to have commenced on the day that permission is **granted**.
18. The CA therefore treated [REDACTED] as the permission that first permitted the [REDACTED] sqm for CIL purposes, regardless of when physical works occurred.
19. The CA's representations cites multiple VOA appeal decisions supporting the proposition that retrospective permissions can still generate CIL liability.

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

20. The CA misapplied Regulation 7 by using it to expand what is "chargeable development," rather than limiting it to determining **timing** of commencement.
21. Regulation 9 and Schedule 1 must be applied **strictly** and require identification of development **actually commenced**.
22. If [REDACTED] is treated as the permission that "first permits" development even when the works were already physically commenced, Schedule 1 Part 4 becomes ineffective.
23. The Appellant distinguishes the CA's cited VOA appeal decisions and maintains that chargeability depends on whether the S73 permission **introduced the floorspace**, not on the retrospective nature of the application.
24. The lower ground floor was **not introduced** by [REDACTED], it already existed.

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

25. 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.
26. Both parties proceed on the agreed basis that [REDACTED] is a Section 73 permission within the meaning of Regulation 5 of the CIL Regulations. Whether the application also has retrospective characteristics does not alter its status for CIL purposes. The relevant question is whether the Section 73 permission first permits development not previously authorised, to which Schedule 1 Part 4 applies.
27. The pivotal issue for determination is whether the CA has correctly determined the chargeable amount, applying Regulations 5, 7, 9, 40, and Schedule 1 Part 4.
28. The Appellant does **not** dispute the **Gross Internal Area** ([REDACTED] sqm) used for calculation. The sole issue is whether this floorspace constitutes **chargeable development** introduced by the Section 73 permission [REDACTED].

29. [REDACTED] was granted before CIL came into effect in [REDACTED] (pre-CIL permission).
30. [REDACTED], a Section 73 permission, was granted after CIL adoption and is therefore subject to **Schedule 1 Part 4**, which governs amendments to pre-CIL permissions.
31. CIL liability arises only in relation to **additional chargeable development** introduced by the S73 permission.
32. **Regulation 9** defines the chargeable development as the development for which planning permission is granted.
33. **Regulation 7** governs commencement and includes deeming provisions.
34. The Appellant provides evidence (building inspection and enforcement documentation) indicating that the lower ground floor was already physically constructed in [REDACTED], with its existence confirmed during a [REDACTED] enforcement inspection.
35. The CA does not dispute that works had physically occurred but relies on Regulation 7 deeming provisions and on past VOA appeal decisions to assert that retrospective permissions can still trigger liability.
36. The evidence indicates that while physical works to form the lower ground floor took place in [REDACTED], those works were not authorised by [REDACTED] and were not completed in accordance with that permission. The existence of physical works alone does not establish that the floorspace was lawfully permitted under the original consent for CIL purposes.
37. The critical issue is not when the lower ground floor space was physically constructed, but whether it was authorised by a planning permission. The lower ground floor was not authorised by [REDACTED]. It is first authorised by [REDACTED], and Regulation 9 identifies the chargeable development by reference to the development for which planning permission is granted. Accordingly, [REDACTED] is the permission that first permits the [REDACTED] **square metres** of floorspace, rendering it chargeable development for CIL purposes.
38. The Appellant argues the [REDACTED] **sqm** lower ground floor area was physically constructed under [REDACTED] and therefore not first permitted by [REDACTED]. However, the Regulations require identification of chargeable development by reference to what the **planning permission** authorises. The earlier permission did not authorise the lower ground floorspace.
39. Schedule 1 Part 4 applies where a Section 73 permission introduces development not previously authorised. [REDACTED] is the first permission authorising the [REDACTED] **sqm**. Physical timing of construction does not alter this.
40. The Appellant submits that Regulation 7 governs **timing**, not **identification** of chargeable development, which is governed by Regulation 9 and Schedule 1.
41. The CA, submits that Regulation 7(5) applies where permission is **granted after commencement**, thereby fixing the deemed commencement date at the **grant** of the later permission.

42. Regulation 7 fixes the deemed commencement date but does not define chargeable development. **Identification** of the authorised development is governed by Regulations 5 and 9 and Schedule 1.
43. As [REDACTED] first permits the [REDACTED] sqm, Schedule 1 Part 4 [Pre-CIL permissions 'amended' when CIL is in effect] applies.
44. Although the **chargeable area** is only [REDACTED] square metres, CIL is still payable because the minor-development exemption in Regulation 42 does not apply where the development comprises one or more new dwellings, meaning the 100-square-metre threshold is not engaged in this case
45. The development had commenced before the section 73 permission was granted, and those works were not authorised by the original (pre-CIL charging schedule) planning permission [REDACTED].
46. The Regulations determine that the section 73 permission constitutes a new and independent planning permission and, because it post-dates the charging schedule, it effectively creates a separate chargeable development.
47. No deductions or reliefs are available. The Regulations require eligibility for any deduction - including the in use building deduction - and any relief, including Regulation 128A, ["Transitional provision: section 73 of TCPA 1990 applications"] to be established at the date the section 73 permission first permits development - at that statutory point, the works already undertaken were unauthorised and the physical circumstances necessary to support a deduction were no longer present. The statutory criteria are therefore not met.
48. Accordingly, the earlier (pre-CIL) [REDACTED] permission cannot be factored in and the Regulations determine the CIL liability triggered by the section 73 permission [REDACTED] is valid, meaning the CA's identification of CIL liability and associated calculation in the subject circumstances is correct.
49. Although the **chargeable area** is only [REDACTED] square metres, CIL is still payable because the minor-development exemption in Regulation 42 [Exemption for minor development] does not apply where the development comprises one or more new dwellings, meaning the 100 square metre threshold is not engaged in this case.
50. Therefore, for the reasons set out above, the appeal is dismissed.

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Valuation Office Agency
23 February 2026