

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency (DVS)
Wycliffe House
Green Lane
Durham
DH1 3UW

e-mail: [REDACTED]@voa.gov.uk.

Appeal Ref: 1882655

Address: [REDACTED]

Proposed Development: Retrospective application for demolition of existing bungalow and construction of new two storey house.

Planning Permission details: Granted by [REDACTED] on [REDACTED], under reference [REDACTED].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

Reasons

I have considered all the submissions made by [REDACTED] as appellant, and the submissions made by the Collecting Authority (CA), [REDACTED].

1. In particular, I have considered the information and opinions presented in the following documents:-
 - a) Appeal Form, Covering Letter.

- b) Appellant's Statement of Case and supporting evidence to include photographs and contractor invoices/receipts.
- c) CA's Decision Notices granting planning permission [REDACTED] (dated [REDACTED] and [REDACTED] (dated [REDACTED])).
- d) Existing and proposed plan (dated [REDACTED]).
- e) Liability Notice from the collecting authority dated [REDACTED] and subsequent Demand Notice dated [REDACTED].
- f) Regulation 113 Review Request ([REDACTED]) and review response (dated [REDACTED]).
- g) CA's Representations dated [REDACTED].
- h) Appellant's Response to the CA's Representations dated [REDACTED].

Background

2. Planning permission was granted for the development on [REDACTED], under reference [REDACTED]. The approved planning permission was:-

Proposed Two Storey Element to Existing Bungalow and Single Storey Rear Extension.

No CIL Liability Notice was issued by the CA.

3. A further application was made and granted on [REDACTED], under reference [REDACTED]. The approved planning permission was:-

Retrospective application for demolition of existing bungalow and construction of new two storey house.

The Appellant opines this application was submitted following advice provided by a planning officer for the CA following some works which had taken place and were not undertaken in accordance with the initial approval ([REDACTED]).

4. The CA issued a CIL Liability Notice dated [REDACTED] in the sum of £[REDACTED]. This was based on a net chargeable area of [REDACTED] m² @ £[REDACTED] per m² plus indexation for the proposed residential floorspace. No deductions were included in the deemed chargeable floorspace.
5. The Appellant requested a review of this charge under Regulation 113 of the CIL Regulations 2010 (as amended) on [REDACTED] and the CA issued their response dated [REDACTED] confirming the amount as set out in the Liability Notice.

6. On [REDACTED], the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) contending that the chargeable amount had been incorrectly calculated. The Appellant contends that the CIL payable should be £0 taking account what works had already taken place under the previous approval [REDACTED] or alternatively reflect only the net additional floorspace created by [REDACTED], excluding retained and previously approved elements. The Appellant contends that out of the [REDACTED] m², only [REDACTED] m² is the net additional floorspace for which the CIL liability should be calculated.

Grounds of Appeal

7. The Appellant argues that the CA has not applied sufficient retained use credit. They contend the CIL charge is incorrect because the development had lawfully commenced under an existing permission ([REDACTED]) and was not new development.
8. The Appellant opines following planning advice from a planning officer within the CA, a retrospective application ([REDACTED]) was submitted to regularise design changes during construction. This permission did not initiate a new development but formalised works already substantially completed. Consequently, the Appellant asserts CIL liability should not have been imposed on the whole development.
9. The Appellant contends the site and development footprint remained unchanged across both permissions, and no additional chargeable floorspace has been created. In their opinion, under CIL Regulations, the chargeable amount should reflect net additional floorspace, not a reclassification of the same structure.
10. The Appellant further states that elements of the original bungalow were retained and integrated into the new build, which is supported by structural surveys and photographic evidence confirming existing internal walls and foundations are present.
11. In representations dated [REDACTED], the CA states that under Schedule 1 of the CIL Regulations, the chargeable amount must exclude the floor area of in-use buildings that are retained or demolished before completion of the chargeable development reflecting the consent being considered and granted under Section 73A of the Town and Country Planning Act 1990. The CA cite Regulation 7(5)(a) of the CIL Regulations. Their view is that, where planning permission is granted retrospectively under S73A, it should be treated as commenced on the day that planning permission is granted, thus [REDACTED].

12. The CA's view is that, even if some internal walls were retained, the pre-existing bungalow on the site had been substantially demolished prior to the grant of planning permission on [REDACTED]. As a consequence, the building cannot be considered a relevant building and its floorspace was not deducted in calculating the chargeable floorspace.

13. In summary, I consider the issues before me are in relation to whether the works undertaken to date under the earlier consent ([REDACTED]) would be considered as an "in-use building" and consequently reduce the chargeable area created by the development.

14. There is no dispute around the charging rate or indexation adopted.

Decision

15. The core dispute between the parties in this case relates to the interrelated CIL Regulation concepts of 'relevant building' and lawful use in accordance with Schedule 1 Part 1 1. (6) of the CIL Regulations 2010 (as amended).

16. Under the CIL regulations 2010 (as amended) 7. (5)(a) the **Commencement of development** is recorded as follows:

(5) Development for which planning permission is—

- a) granted under section 73A of TCPA (planning permission for development already carried out) is to be treated as commencing on the day planning permission for that development is granted or modified (as the case may be).

In this case, the commencement of development is deemed as [REDACTED].

17. Schedule 1 (6). of the 2019 Regulations "KR" allows for the deduction of floorspace of certain existing buildings from the gross internal area (GIA) of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. The deductible floorspace of buildings that are to be retained includes;

- i. retained parts of '**in-use buildings**', and
- ii. for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

In this particular case “KR (i)” is the relevant part to consider.

18. Further clarification under Schedule 1 (10) is provided. An “**in-use building**” means a building which—

- (i) is a **relevant building**, and
- (ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

“**Relevant building**” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

Meaning of “**chargeable development**” is set out in Regulation 9.—(1) **The chargeable development is the development for which planning permission is granted.**

19. As per **Regulation 9(1)** of the CIL Regulations 2010 (as amended) ‘**the chargeable development is the development for which planning permission is granted**’. In this case the development for which planning permission is granted is “Retrospective application for demolition of existing bungalow and construction of new two storey house”.

20. The Appellant has submitted several photographs within the Grounds of Appeal Statement. These images appear to show original walls, evidenced by exposed brickwork beneath partially removed plaster and remnants of former electrical installations. The photographs, dated between [REDACTED] and [REDACTED], predate the approval granted on [REDACTED]. Earlier images depict the original walls in isolation, with new foundations abutting them. Later photographs show the integration of these walls with the new build structure. Some ceiling and floor joists are visible, but no roof covering is shown. I am satisfied that certain elements of the original building remain, limited to the walls only.

21. For consideration of KR (i) an “**in-use building**” (i), the Regulations require the building to be deemed the **relevant building** as well as containing a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

22. The evidence provided comprises **walls only, with no roof** at the relevant date. The absence of a roof means the structure does not function as a building in planning terms. It cannot provide shelter or be occupied in a manner consistent with lawful and permanent use. In addition, the RICS Code of Measuring Practice and CIL guidance assume a building has a covered structure for Gross Internal Area (GIA) measurement. A roofless shell cannot be measured as GIA and, therefore, cannot contribute to deduction calculations. There is no evidence that the structure was in lawful use for the required period or that it was capable of lawful and permanent use without further planning permission.
23. The supporting information provided by the Appellant demonstrates the walls were present, however, there is no roof covering in place and consequently does not provide sufficient evidence of a **relevant building** in place as at the relevant date, being [REDACTED]. In conclusion it lacks the essential characteristics of a building (roof and functional enclosure).
24. CIL is chargeable on the development granted by planning permission; the Regulations are clear on this matter. Therefore, I cannot have regard to the fact that there was an earlier permission on the site, only the development for which planning permission is granted in this particular case.
25. In my opinion, there was no relevant building on site on the date that planning permission was granted. Therefore, there can be no offset under "KR(i)". As such, I consider that the net chargeable area is the full GIA of the development of [REDACTED]. I, therefore, conclude that the amount contained within the Liability Notice dated [REDACTED] is correct.
26. In conclusion, on the basis of the evidence before me and having considered the information submitted to me in this case, I am of the opinion that, in terms of the CIL Regulations payable in this case these should be £ [REDACTED] ([REDACTED]) and I hereby dismiss this appeal.

[REDACTED]

[REDACTED] MRICS
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
Date: 30 December 2025