

Appeal Decision

by [REDACTED] BEM BSc (Hons) MRICS

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

Valuation Office
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [REDACTED]@hmrc.gov.uk

Appeal Ref: 1878567

Address: [REDACTED]

Proposed Development: [REDACTED] reserved matters (appearance, landscaping, layout and scale) pursuant to outline permission [REDACTED]

Planning permission: Outline Permission [REDACTED] granted by appeal on [REDACTED] for the erection of up to 46 residential dwellings including 35% affordable housing. All matters are reserved except for access.

Decision

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

Background

1. I have considered all of the submissions made by [REDACTED] on behalf of [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:-
 - a. The Appeal Decision ([REDACTED]) issued by The Planning Inspectorate in respect of outline permission [REDACTED] on [REDACTED].
 - b. The Decision Notice issued by [REDACTED] for the Reserved Matters Permission [REDACTED] granted on [REDACTED].
 - b. The CIL Liability Notice (reference [REDACTED]) issued by the CA on [REDACTED].

- c. The Appellant's request to the CA for a Regulation 113 review dated [REDACTED].
 - d. The CA's Regulation 113 decision e-mailed to the Appellant on [REDACTED].
 - e. The CIL Appeal form dated [REDACTED] submitted on behalf of the Appellant under Regulation 114, grounds of appeal, together with documents and correspondence attached thereto.
 - f. The CA's representations to the Regulation 114 Appeal dated [REDACTED], which included supporting evidence.
 - h. The Appellant's comments on the CA's representations received by the Valuation Office (VO) on [REDACTED].
 - i. The Appellant's application for costs dated [REDACTED].
 - j. The CA's cost rebuttal dated [REDACTED].
2. Outline permission [REDACTED] was granted on [REDACTED] via the Planning Inspectorate for the erection of up to 46 residential dwellings including 35% affordable housing. All matters reserved apart from access. This permission did not provide for phasing of the development and from the submissions provided, I understand that a Reserved Matters Approval was granted [REDACTED] ([REDACTED]) pertaining to the appearance, landscaping, layout & scale of the Outline Planning Permission.
 3. I have not been provided with any earlier CIL Liability Notices issued. The relevant Liability Notice (CA's reference [REDACTED]) was issued by [REDACTED] on [REDACTED] and is the subject of this appeal. This notice states a CIL liability of £[REDACTED] ([REDACTED]).
 4. On the liability notice there was no information detailing how this amount has been arrived at. However, the CA confirmed on the [REDACTED] the CIL charge was calculated as follows:

$$\begin{array}{l} \text{[REDACTED] sqm} \times \text{£ [REDACTED]} \text{ (lower charging band)} \times \text{[REDACTED]} / \\ = \text{£ [REDACTED]} \end{array}$$
 4. On [REDACTED], the Appellant wrote to the CA requesting a review of the calculation of the chargeable amount pursuant to Regulation 113 of the CIL Regulations. The letter sets out the Appellant's view that the IP index date was incorrect and that it should have been the date of the outline planning permission used to inform IP rather than the date of the approval of the reserved matters application.
 5. The CA issued their Regulation 113 decision on [REDACTED], maintaining that their calculation of the CIL liability was correct and providing an explanation to justify their approach.
 6. Consequently, on [REDACTED], the Appellant submitted a Regulation 114 (chargeable amount) appeal to the VO for determination.

Grounds of Appeal

7. The grounds of the appeal are that the chargeable amount set out in the liability notice dated [REDACTED] has been calculated incorrectly. The Appellant opines that the indexation factor IP applied in the calculation is

incorrect. The Appellant considers the correct value of IP should be [REDACTED] and not [REDACTED] as the CA has used, which is an indexation figure based on the date on which the reserved matters application was approved.

8. There are no disputes concerning the adopted rates for the charging rate, Gross Internal Area (GIA) or indexation for the calendar year in which the charging schedule took effect.
9. The appeal turns on whether the value for IP should be that for the year when the outline permission was granted as opined by the Appellant, or that for the year when the reserved matters application was approved as argued by the CA.
10. Both parties have advanced to me evidence in support of their respective viewpoints.

Reasoning

11. The relevant regulations are set out below:-

Regulation 5 – Meaning of Planning Permission

(1) For the purposes of Part 11 of PA (Planning Act) 2008, “**planning permission**” means –

- a) Planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA1990(a);

Regulation 8 – Time at which planning permission first permits development

- (1) This regulation has the effect for determining the time at which planning permission is treated as first permitting development for the purposes of Part 11 of PA 2008.
- (2) Planning permission first permits development on the day that planning permission is **granted** for that development.
- (3) In the case of a grant of outline planning permission which is not phased planning permission, planning permission first permits development on the day of the final approval of the last reserved matter associated with the permission.

Regulation 9 – Meaning of Chargeable Development

(1) The **chargeable development** is the development for which planning permission is **granted**.

Schedule 1 Regulations 40 and 50 – Chargeable amount standard cases

- (4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula-

$$\frac{R \times A \times IP}{IC}$$

Where –

A= the deemed net chargeable area at rate R, calculated in accordance with subparagraph (6);

IP = the index figure for the calendar year in which planning permission was **granted**;

and

IC = the index figure for the calendar year in which the charging schedule R took effect.

- (5) In this paragraph the index figure for a given calendar year is—

(a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;

(c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(d) if the national All-in Tender Price Index is not so published, the figure for 1st November for the preceding calendar year in the retail prices index.

12. **Costs (Regulation 121)** – Regulation 121 confers a discretionary power on the Appointed Person to make orders as to costs. That discretion must be exercised sparingly and only where a party has acted unreasonably, such that the other party has been put to unnecessary expense. The mere fact that an appeal succeeds, or that a Liability Notice is withdrawn, does not of itself justify an award of costs.

13. The Appellant has sought a legal opinion by No. [REDACTED] dated [REDACTED], which has been included within the Appellant's Grounds of Appeal. A further legal opinion was received in response to the CA's submissions dated [REDACTED].

14. The Appellant's initial legal advice contends that the CIL Regulations 2010 draw a clear and deliberate distinction between the grant of planning permission and the time at which planning permission first permits development. For the purposes of calculating the CIL chargeable amount, Schedule 1 of the Regulations requires application of the index figure for the calendar year in which planning permission was granted. An outline planning permission is, in law, a grant of planning permission under section 70 of the

Town and Country Planning Act 1990, notwithstanding that certain matters are reserved for later approval. In their view, the subsequent approval of reserved matters does not constitute the grant of a new planning permission but represents the discharge of conditions attached to the outline permission.

15. The advice further clarifies that Regulation 8 of the CIL Regulations, which governs when development is first permitted, serves a different function within the statutory scheme. In particular, it is relevant to the timing of the issue of a Liability Notice and reflects the practical reality that, in outline permissions, the precise quantum of development is often unknown until reserved matters are approved. However, this does not alter the meaning of “planning permission granted” for indexation purposes, nor does it justify substituting the reserved matters approval date for the outline permission grant date when calculating indexation.
16. The Appellant’s advice contends that the CA’s approach is therefore founded on a misinterpretation of the Regulations, conflating the date planning permission was granted with the date development first became capable of implementation. This interpretation is inconsistent with the wording of Schedule 1, the structure of the CIL Regulations as a whole, and national planning practice guidance, which confirms that where outline permission is granted prior to reserved matters approval, the charging schedule and indexation applicable at the time of the outline permission should be applied. The advice also notes that this interpretation has been confirmed by a recent CIL appeal decision (referred to in submissions), in which a similar approach adopted by another collecting authority was found to be incorrect.
17. The conclusion reached by the Appellant is that the correct indexation year for the development is [REDACTED], being the year in which the outline planning permission was granted. The use of [REDACTED] as the indexation year results in an overcharge of CIL.
18. The CA contends that the statutory framework must be read purposively and in context, and that under such an approach the relevant index year for an outline planning permission is the year in which the permission first permits development, i.e. the date of approval of the final reserved matter. This, they say, aligns the indexation mechanism with the point at which the development becomes lawfully capable of implementation, allows CIL liability to reflect the real-world timing of development, and ensures that CIL funds track the actual and expected costs of infrastructure at the time it will be required.
19. At the heart of the CA’s submissions is a detailed reliance on the statutory purpose established by the Planning Act 2008, which emphasises that the CIL regime exists to secure funding for infrastructure necessary to support development. The CA highlights that both the 2008 Act and Regulation 14 of the CIL Regulations repeatedly require charging schedules to reflect actual and expected infrastructure costs. This, in their view, provides the essential context within which Schedule 1 must be interpreted. They argue that because CIL liability can only meaningfully be calculated once the development is defined, the statutory design intentionally ties liability, timing and calculation to the date when planning permission first permits development. This ensures

that indexation reflects the costs prevailing when the development is genuinely capable of proceeding.

20. The CA then focuses on the operation of the CIL Regulations themselves, particularly Regulations 8 and 65. For outline permissions, Regulation 8(4) provides that planning permission first permits development only upon approval of the final reserved matters. In their view, it is only at this point that the collecting authority must issue a Liability Notice and only at this point that the extent of the chargeable development—particularly the approved floorspace—is known. The CA emphasises that because CIL is calculated by applying a rate to approved floorspace, liability cannot crystallise earlier. They maintain that the statutory scheme deliberately synchronises

(1) the crystallisation of liability

(2) the administrative step of issuing the Liability Notice, and

(3) the definition of the development itself.

It would therefore be incoherent, they argue, for indexation to be anchored to a year prior to this legally meaningful moment.

21. The CA also relies heavily on section 208(6) of the Planning Act 2008, which states that CIL liability is calculated “by reference to the time when planning permission first permits the development.” They argue that the Appellant’s approach—which ties indexation to the year of the outline decision—creates a structural mismatch, because the calculated liability would relate to a time entirely disconnected from when permission first permits development. In their view, this produces an illogical result: a time-indexed charge would be anchored to an earlier period when the extent of the development was unknown and incapable of being calculated. The CA argues that such an outcome cannot be what Parliament intended, and that the purposive approach demanded by modern authorities avoids this inconsistency.

22. The CA also respond at length to the Appellant’s reliance on the literal wording of Schedule 1 and associated definitions. The CA asserts that even a literal reading must be undertaken in context, and that the interpretation advanced by the Appellant wrongly isolates the expression “planning permission was granted” from the wider statutory scheme. They argue that, for outline permissions, “grant” operates in two stages: the initial outline decision and the subsequent approval of reserved matters, which is what makes the permission legally operative. Indexation should therefore attach to the stage at which the permission becomes capable of authorising development, not at the earlier, incomplete outline stage. The CA emphasise that statutory interpretation must avoid absurd or impracticable results and must give coherent effect to the legislative purpose.

23. The CA strengthens its argument by illustrating real-world consequences. Using RICS index figures and hypothetical schemes, in their opinion it demonstrates that fixing indexation to the outline year (often granted years before reserved matters are determined) results in materially lower CIL liabilities because indexation fails to keep pace with rising infrastructure costs.

They argue that for large or multi-phase schemes—whose delivery often spans many years—the Appellant’s interpretation would create systemic under-recovery of infrastructure funding. Adopting the Appellant’s view, they argue, would render the CIL system unfit for purpose.

24. Finally, the CA rejects the Appellant’s reliance on Planning Practice Guidance and earlier VO appeal decisions (VO reference 1860756), emphasising that such materials are not binding and cannot override the proper interpretation of legislation. In this case, they argue, neither the PPG nor the cited VOA decision addresses the statutory purpose, nor the implications of indexation for the operation of the CIL regime.
25. The Appellant’s response to the CA’s representations is reaffirming the deliberate statutory distinction between (1) the grant of planning permission, defined in Regulation 5, and (2) the date a permission first permits development, defined separately in Regulation 8. They opine both definitions appear within the group of provisions titled “Definition of Key Terms,” demonstrating that they are intended to perform different functions within the CIL framework. The Appellant stresses that while the “first permits development” date is relevant to certain procedural triggers—such as the issuing of Liability Notices—this concept has no role in determining Ip. The CA’s attempt to substitute one definition for the other is inconsistent with the structure of the Regulations and ignores their explicit drafting.
26. To reinforce this, the Appellant argues that the wording of the CIL Regulations is neither ambiguous nor silent: the term “planning permission” has a defined meaning, and the statutory scheme repeatedly treats “grant” and “first permits development” as distinct, mutually exclusive concepts.
27. The Appellant also highlights the internal inconsistency that would flow from the CA’s interpretation. Across Schedule 1—covering standard cases, revised charging schedules, and s73 permissions—the CIL Regulations consistently tie Ip to the year of grant, not the date the permission first permits development. In several scenarios, including where a charging schedule is revised after grant but before reserved matters are approved, the CA’s reading would render statutory provisions ineffective or meaningless. These contradictions demonstrate that the CA’s approach is structurally incompatible with the Regulations as a whole and would require the term “granted” to be given different meanings in different parts of the same legislative scheme.
28. Finally, the Appellant rejects the CA’s argument that using the outline planning year produces an “absurdity” by misaligning the CIL liability with infrastructure cost at the time development commences. Both forms of permission may be implemented years after a Liability Notice is issued, and any supposed misalignment between indexation and infrastructure cost applies equally to detailed permissions. Therefore, the Appellant opines there is no policy-based justification for departing from the express statutory language.
29. The Appellant concludes that the natural and ordinary meaning of the CIL Regulations must prevail. Ip must be based on the year in which the planning permission was granted, which in this case is [REDACTED]. The CA’s method is inconsistent with the Regulations’ wording, structure, and purpose.

Accordingly, the Appellant maintains that the CIL has been miscalculated and that the appeal should be upheld.

Decision

30. I agree with the Appellant, an outline permission falls under S. 70 (1A) Town and Country Planning Act 1990 and does fulfil the definition within Regulation 5. Therefore, the **chargeable development** is the development granted consent by the **outline permission** in accordance with **Regulation 9**.
31. In accordance with **Regulation 8**, as this case involves an outline permission that is not phased, the date planning permission **first permits** the development will be the [REDACTED] when the reserved matters were approved.
32. Having fully considered the representations made by the Appellant and the CA it is my decision that the Regulations at **Schedule 1 Part 1. (5)** clearly state that IP is to be the index figure for the year in which planning permission was **granted**, which in respect of this **chargeable development** will be the date of the **outline consent**, [REDACTED].
33. In my view, the regulations clearly use the words grant and permit for different purposes and the use of these is intentional. There have been numerous occasions since 2010 when the definition of IP could have been amended if a different policy intent was desired and that has not happened.
34. I do not agree with the CA view that adopting the date of the outline consent would frustrate the purpose of the CIL regime. The CA state that a literal reading disregards the statutory purpose of aligning contributions paid to the actual and expected costs of delivering the infrastructure.
35. The CA suggest that a purposive approach to the statute is necessary, as per the case law they have quoted. However, as explained above, I consider that a literal reading of the meaning of IP does conflict with the intentions of Parliament and, therefore, a purposive interpretation is not required.
36. The CA disagree with the reasoning provided for within the previous CIL decision 1860756 as it does not take into account the effect of section 208(6) of the Planning Act 2008 and Regulation 8 in the Regulations on the timing of CIL liability and calculation. In my opinion, Regulation 8 has its own purpose, that is not connected to the determination of IP.
37. Schedule 1 Part 1. (5) states that, "in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;" Having checked this index, I conclude that indexation of [REDACTED] should be adopted for IP. In terms of IC, both parties agree that indexation of [REDACTED] should be adopted.
38. This is a chargeable amount appeal and as such is calculated in accordance with Schedule 1. The amount determined is prior to the application of any

reliefs and that remains a matter between the appellant and CA, falling outside the scope of this appeal.

39. On the evidence before me, having regard to the particular facts of this case, I conclude that the Schedule 1 chargeable amount calculation should be carried adopting the following values:

R = £ [REDACTED]
A = [REDACTED] sq. m.
IP = [REDACTED]
IC = [REDACTED]

$$\underline{\pounds [REDACTED] \times [REDACTED] \times [REDACTED] = \pounds [REDACTED]}$$

40. I have had regard to the Appellant's application for costs under Regulation 121 and the CA's response. An award of costs is a discretionary matter and may only be made where a party has behaved unreasonably and that behaviour has caused the other party to incur unnecessary or wasted expense. The Appellant argues that the CA acted unreasonably in refusing to accept the Appellant's interpretation of indexation and by not following Counsel's advice or a previous VO decision. The CA maintains that it acted reasonably in advancing and defending its position on a live and material issue of statutory interpretation. I note that parties are entitled to put forward and test their case, and that a difference of opinion on matters of interpretation does not, in itself, amount to unreasonable behaviour. I am not satisfied that the CA's conduct was unreasonable, nor that the costs claimed were incurred as a result of any such behaviour. Accordingly, the application for costs fails.

41. I determine the chargeable amount to be £ [REDACTED] ([REDACTED]) and uphold this appeal. While Regulation 121 of the Regulations provides a power to make an award of costs, I find no basis to do so in this case. Accordingly, no order for costs is made.

[REDACTED]

[REDACTED] **BEM MRICS**
RICS Registered Valuer
Valuation Office
26 March 2026