Appeal Decision

by [redacted] BSc FRICS

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

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Appeal Ref: 1886798

Planning Application Reference: [redacted]

Proposal: "Retention of the house as built with alterations to the elevations including the partial demolition and reconstruction of the upper walls and castellations to reduce the overall building height by 1.2 metres, removal of the ornamentation and statues, replacement of stone banding with brickwork and replacement of balustrades. Removal of the entrance staircase from south elevation, removal of the boiler room and removal of one annex. Internal reconfiguration of floorspace at ground and first floor level to create a 6-bedroom dwelling."

Address: [redacted].

Decision: Appeal dismissed. 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 Agent for [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 notice reference [redacted], dated [redacted].

    2. CIL LN Ref [redacted] for £[redacted], plus Surcharges of £[redacted], totalling £[redacted], dated [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**
- Index **Ip** (year planning permission granted): Not explicitly stated.
- Index **Ic** (charging schedule year): Not explicitly stated.
- "Adjustment for Inflation" [sic]: **£**[redacted]
- Deductions: £0.00
- Surcharges (totalling): £[redacted]
- Final **total**: **£**[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 explanation that the CIL liability notice issued on the [redacted] for **£**[redacted] has been correctly calculated.

6. On [redacted], the VO received a Regulation 114 appeal disputing the CA's Regulation 113 Review decision on the basis that no development has commenced, that all unauthorised works were carried out by a previous owner without service of CIL notices, and that the current owner has undertaken no works. It is asserted that the existing building is unauthorised and subject to an extant Enforcement Notice requiring demolition, and that planning permission [redacted] has not been implemented. On this basis, the Appellant submits that no Demand Notice should have been issued, that surcharges are not applicable, and that the proposed floorspace would be lower than the existing unauthorised structure.

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

7. This appeal concerns planning permission [redacted], granted by the CA on [redacted], for alterations to an existing residential dwelling at [redacted], including partial demolition and reconstruction of upper walls, reduction in overall building height, removal of external ornamentation, removal of ancillary structures, and internal reconfiguration to form a six-bedroom dwelling. The Appellant states that no works pursuant to this permission have commenced.

8. The Appellant explains that an earlier planning permission ([redacted]) was granted in [redacted], prior to the CA's adoption of CIL in [redacted], and that this earlier permission was implemented. It is asserted that this established an extant **Class C3 residential use** of the building. The Appellant notes that subsequent issues with compliance under the earlier permission led to planning enforcement action and ultimately to the submission of the [redacted] permission by a mortgagee in possession, prior to the sale of the property.

9. In relation to **CIL liability**, the Appellant contends that the [redacted] permission is **prospective rather than retrospective**, that it does not involve a change of use, and that the permitted works would result in a **reduction in Gross Internal Area (GIA)** compared with the existing as-built dwelling, due to the removal of a utility and porch. On this basis, the Appellant asserts that the **net chargeable area under Regulation 40 and Schedule 1 is negative or nil**, and that no CIL liability arises.

10. The Appellant further relies on **Schedule 1, Part 1 paragraph 1(6)** of the CIL Regulations, arguing that the retained parts of the building benefit from a lawful use that can be carried on permanently without further planning permission immediately before the planning permission first permitted the chargeable development. Reference is made to the **Giordano** Court of Appeal decision, which the Appellant considers supports the position that retained floorspace can be taken into account even where the earlier permission was not fully lawfully implemented, provided it remains capable of completion.

11. In respect of **commencement**, the Appellant disputes the CA's assertion that the commencement date should be deemed to be the date of grant of the permission. The Appellant maintains that no material operations have been carried out under the [redacted] permission and that, accordingly, the deemed commencement date and any resulting surcharges for failure to assume liability or submit a commencement notice are incorrect.

12. Overall, the Appellant's position is that the correct CIL chargeable amount for the development is **£0**, on the basis of there being no net chargeable development and no lawful commencement of the permission.

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

13. The CA contends that planning permission [redacted] gives rise to a chargeable CIL liability, calculated on the basis of a GIA of [redacted] **sqm** with no offset for existing or demolished floorspace.

14. The CA maintains that the structure built on site **does not benefit from a lawful planning permission**, is subject to an extant and unappealed enforcement notice requiring **demolition**, and therefore does not constitute a **relevant** or "in-use" building for the purposes of **Schedule 1 of the Regulations**. On that basis, the CA considers that no existing floorspace was present on the land on the day planning permission first permitted the chargeable development and that the chargeable amount should be calculated using the full GIA of the permitted development.

15. The CA further states that the development is **retrospective** in nature, relying on the description of development as "retention of the house as built", and considers that commencement should be deemed to have occurred on the date of grant of permission, with associated surcharges correctly applied.

16. The CA concludes that the Liability Notice dated [redacted], determining a total CIL liability of **£**[redacted], has been correctly calculated and issued.

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

17. The Appellant responds that planning permission [redacted] is a **prospective** permission which has not been commenced, and that the CA has incorrectly treated it as retrospective and as having commenced on the date of grant.

18. The Appellant maintains that the earlier [redacted] permission established an extant Class C3 residential use which was continuously occupied and is said to have become lawful through the passage of time, rendering the existing building eligible as relevant floorspace for offset under **Regulation 40** and **Schedule 1**.

19. It is contended that the approved drawings show a reduction in GIA through the removal of a porch and utility room, resulting in a nil or negative net chargeable area and therefore no CIL liability.

20. The Appellant relies on the **Giordano** Court of Appeal judgment in support of the position that retained floorspace can be taken into account where the intended use is capable of being lawfully carried on under an implementable earlier permission, regardless of whether works were completed or physically adapted.

21. The Appellant further disputes the deemed commencement date and associated surcharges, stating that no material operations have occurred and that any commencement and surcharge issues are subject to a separate appeal to the Planning Inspectorate.

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

22. Statutory framework - the calculation of the chargeable amount must be carried out in accordance with **Schedule 1** of the Regulations. For Regulation 114 appeals, the Appointed Person's role is confined to determining whether the chargeable amount has been calculated correctly under that Schedule. Therefore, matters raised which as Appointed Person I cannot determine and therefore make no findings on include whether development has commenced; whether a deemed commencement date has arisen; the validity or calculation of surcharges; or the merits or lawfulness of the enforcement action. These matters fall outside the scope of Regulation 114 and are not within my jurisdiction.

23. In standard cases, the "deemed net area chargeable" is calculated by reference to the **GIA of the chargeable development**, subject only to the specific deductions expressly provided for in **Schedule 1 Part 1**.

24. Schedule 1 Part 1 of the Regulations sets out the statutory method for calculating the chargeable amount. In summary, the deemed net chargeable area (A) is derived from the GIA of the chargeable development (G), subject only to the specific and limited deductions for retained or demolished floorspace (KR and E) expressly provided for in Schedule 1. Existing floorspace is therefore only relevant where it meets the statutory definitions and forms part of the development authorised by the planning permission.

25. Meaning of "**in-use**" and "**relevant building**" - Schedule 1 defines an **"in-use building"** as a **relevant building** which contains a part that has been in **lawful use** for a continuous period of at least six months within the three years ending on the day planning permission first permits the chargeable development.

26. However, this definition does not operate in isolation. The Regulations do **not** provide a free-standing credit for any in-use building on the planning unit. Rather, the definition is a gateway test which determines **whether existing floorspace may be taken into account at all** within the **Schedule 1** calculation.

27. **When existing GIA may be deducted -** Schedule 1 permits the deduction of existing floorspace only where that floorspace is **part of the development authorised by the planning permission**, typically where an existing building (or part of it) is demolished, or

retained and incorporated within the completed chargeable development, or subject to a change of use forming part of the chargeable development.

28. The Appellant relies on **Giordano Ltd v London Borough of Camden [2019] EWCA Civ 1544**, relying on Schedule 1 Part 1 paragraph 1(6)(ii) of the Regulations which permits offset where lawful use could be carried on under an implementable earlier permission, even where physical completion or occupation has not occurred. Specifically:

    "K_R = the aggregate of the gross internal areas of the following -

    (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;"

29. I accept that the Giordano judgment provides authoritative guidance on the interpretation of Schedule 1 Part 1 paragraph 1(6)(ii). However, that case proceeded on the agreed basis that the building in question was a relevant building for CIL purposes and was not subject to enforcement requiring its removal. In contrast, the issue in this appeal is whether the existing structure can be treated as a relevant building at all on the relevant date. As that threshold is not met on the facts of this case, Giordano does not assist the Appellant.

30. The Appellant further submits that residential use of the existing structure had become lawful through the passage of time. I do not find that this position can be reconciled with the existence of an extant and unappealed Enforcement Notice requiring demolition of the building. The presence of that notice demonstrates that the CA has not accepted the building or its use as lawful at the relevant date. Regardless of any asserted period of occupation, the enforcement position means the structure **cannot properly be treated as part of the lawful planning baseline** for the purposes of Schedule 1.

31. I find that, on the day before planning permission [redacted] first permitted the chargeable development, the existing structure could not properly be treated as a **relevant building** for the purposes of Schedule 1. The presence of an extant and unappealed Enforcement Notice requiring demolition means that the structure did not form part of the lawful planning baseline capable of being retained or relied upon for CIL offset purposes. This conclusion is reached without determining the merits or lawfulness of the enforcement action itself; it reflects only the factual planning status at the relevant date. Whether the enforcement notice was correctly issued is not a matter before me; its existence as an extant and unappealed notice is a matter of fact.

32. **Identification of relevant existing floorspace** - The calculation of the chargeable amount depends on identifying which elements of existing floorspace form part of the development authorised by the subject planning permission, either as retained floorspace (**K_R**) or demolished floorspace (**E**) within the meaning of Schedule 1.

33. Accordingly, I find that no existing floorspace qualifies for deduction as either retained (**KR**) or demolished (**E**) floorspace within the meaning of Schedule 1.

34. The CA calculates the GIA of the permitted development to be [redacted] **sqm**. The Appellant advances a lower figure of [redacted] **sqm**. Having reviewed the copy approved drawings, I agree with the CA that the difference in floor areas can be attributed to exclusion or inclusion of the floor area the CA described as "the area within the arches in the south-western corner of the ground floor, adjacent to the living room". I agree this floor area should be included within GIA, as it falls within the building line and is akin to

"internal open-sided balconies, walkways and the like" as defined at paragraph GIA 2.4 of the RICS Code of Measuring Practice (6th Edition).

35. My own measured GIA, undertaken as a check using the approved drawings, supports that of the CA and therefore, I adopt the CA's GIA of [redacted] **sqm** for the purposes of this decision.

36. **Schedule 1 Part 1** of the Regulations sets out the calculation at (4):

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

$\mathbf{R} \times \mathbf{A} \times \mathbf{I_P} \div \mathbf{I_C}$

where -
A = the deemed net area chargeable at rate **R**, calculated in accordance with sub-paragraph (6);
$\mathbf{I_P}$ = the index figure for the calendar year in which planning permission was granted; and
$\mathbf{I_C}$ = the index figure for the calendar year in which the charging schedule containing rate **R** took effect…/…The rate **R (£[redacted] / sqm)**, indices **Ip ([redacted])** and **Ic ([redacted])** are ultimately **not disputed** between the Parties.
At paragraph (6):

The value of **A** must be calculated by applying the following formula –

$\mathbf{G_R} - \mathbf{K_R} – (\mathbf{G_R} \times \mathbf{E} / \mathbf{G})$

where -
G = the gross internal area of the chargeable development;
$\mathbf{G_R}$ = the gross internal area of the part of the chargeable development chargeable at rate **R**;
$\mathbf{K_R}$ = the aggregate of the gross internal areas of the following:

(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;

E = the aggregate of the following:

- the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and

- for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative,

provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

37. Taking these in order as above:

G (the GIA of the chargeable development) and **G_R** = (the GIA of the part of the chargeable development chargeable at rate **R (£[redacted])**, both **(G and G_R both [redacted] sqm)**.

K_R (total GIA of retained parts of in-use buildings and other relevant buildings, where those parts can **lawfully** and permanently continue in-use without further planning permission as at the day before permission for the chargeable development is granted) – I note the appellant submits that [redacted] sqm in respect of the existing building should be offset. However, as explained above**,** the existing building is not lawful and therefore its GIA cannot be incorporated into the calculation because there is no statutory basis to offset its GIA against the proposed GIA, so I determine **K_R** should be **0.00 sqm**.

E (the GIA of in-use buildings to be demolished before completing the chargeable development) – as above, as an unlawful building, this should be **0.0 sqm.**

38. I therefore dismiss this appeal on the grounds set out above. I determine that no existing floorspace qualifies for deduction under **Schedule 1**; the chargeable amount must therefore be calculated by reference to the full GIA of the permitted development; and applying **Regulation 40** and **Schedule 1.**

39. I determine the correct revised chargeable amount to be **£**[redacted] ([redacted]).

[redacted] BSc FRICS
Appointed Person

Valuation Office
24 April 2026