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: 1878855

Address: [redacted]

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

Planning permission: Outline Permission Ref [redacted], granted by appeal on [redacted] for the erection of up to 55 residential dwellings. All matters are reserved.

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: Outline Planning Permission (Appeal reference [redacted] in respect of planning application reference [redacted]) on [redacted]
   b) The Decision Notice issued by [redacted] for the Reserved Matters Permission [redacted]), granted on [redacted]
   c) Decision Notice: Non-Material Amendment Consent (reference [redacted]) dated [redacted]

d) The CIL Liability Notice (reference [redacted]) issued by the CA on [redacted]
e) Further CIL Liability Notice (reference [redacted]) issued by the CA on [redacted]
f) The Appellant's request to the CA for a Regulation 113 review dated [redacted].
g) The CA's Regulation 113 decision dated [redacted]
h) 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
i) The CA's representations to the Regulation 114 Appeal dated [redacted], which included supporting evidence
j) The Appellant's comments on the CA's representations received by the Valuation Office (VO) on [redacted]

2. Outline permission [redacted] was granted on [redacted] via the Planning Inspectorate for the erection of up to 55 residential dwellings. All matters reserved. This permission did not provide for phasing of the development and from the submissions provided, I understand that a reserved matters approval was granted on [redacted] ([redacted]), pertaining to the access, appearance, landscaping, layout and scale of the outline planning permission.

3. Following the grant of the reserved matters, the CA issued a CIL liability notice with reference [redacted] (the Original Liability Notice) dated [redacted]. At the time the Appellant disputed the chargeable amount and raised an enquiry on similar grounds to the subject appeal. It is understood there was a delay in receiving a response from the CA.

4. In the meantime, the Appellant then made an application for a non-material amendment (reference [redacted]) to vary the reserved matters, which was granted [redacted]. It is noted the non-material amendment varied the areas of floorspace pursuant to the reserved matters, subsequently a further Liability Notice was issued by the CA on [redacted].

5. 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]).

6. 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:

[redacted] sqm x £[redacted] x [redacted] / [redacted] = £[redacted]

7. 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 I_P index date was incorrect and that it should have been the date of the outline planning permission used to inform I_P rather than the date of the approval of the reserved matters application.

8. 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.

9. Consequently, on [redacted], the Appellant submitted a Regulation 114 (chargeable amount) appeal to the VOA for determination.

Grounds of Appeal

10. 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 I_P applied in the calculation is incorrect. They consider the value for I_P should be that for the year when the outline permission was granted not when the reserved matters application was approved as argued by the CA.

11. The Appellant considers the correct charging rate should be £[redacted]/sqm and not £[redacted]/ sqm as the CA has used, which is a chargeable rate based in an indexation figure for the date on which the reserved matters application was approved.

12. 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.

13. Both parties have advanced to me evidence in support of their respective viewpoints.

Reasoning

14. 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-

$$\frac{R \times A \times I_P}{I_C}$$

Where –
A= the deemed net chargeable area at rate R, calculated in accordance with subparagraph (6);
I_P = the index figure for the calendar year in which planning permission was **granted**;
and
I_C = 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.

15. Additional to the Appellant's Grounds of Appeal dated [redacted], they have further sought a legal opinion by [redacted] dated [redacted], which has been included within the Appellant's response to the CA's submissions dated [redacted].

16. The Appellant's initial legal advice contends that the CA has miscalculated the chargeable amount in the relevant Liability Notice by incorrectly applying indexation up to the calendar year in which reserved matters approval was granted, rather than the calendar year in which the outline planning permission was granted.

17. The Appellant's central submission is that the statutory framework governing CIL calculation is clear and unambiguous. They opine Regulation 40 of the CIL Regulations requires the CA to calculate the chargeable amount strictly in accordance with Schedule 1. In a standard case, paragraph 1(4) of Part 1 of Schedule 1 defines I_P as "the index figure for the calendar year in which planning permission was granted." The Appellant submits that this provision admits of no discretion and makes no reference to the date on which planning permission first permits development.

18. The Appellant emphasises that the meaning of "planning permission" for CIL purposes is exhaustively defined by Regulation 5 of the CIL Regulations. That definition includes outline planning permission granted under section 70 of the Town and Country Planning Act 1990, but does not include reserved matters approvals or the discharge of conditions. Accordingly, the Appellant submits that, as a matter of law, the outline permission granted in [redacted] is the relevant planning permission for the purposes of fixing the indexation year, and that indexation must therefore be applied only up to that year.

19. The Appellant further submits that the distinction drawn in the legislation between the concepts of "grant" and "permit" is deliberate and material. They opine that while Regulation 8 of the CIL Regulations defines when planning permission first permits development, it is their view that concept is relevant to the timing of liability notice service and the point at which liability crystallises, not to the operation of indexation under Schedule 1. The Appellant argues that, had Parliament intended indexation to run until the date when planning permission first permits development, it would have said so expressly in Schedule 1, as it has done elsewhere in the Regulations.

20. The Appellant rejects the CA's reliance on a purposive approach to statutory interpretation. It submits that such an approach is impermissible where the statutory wording is clear, and that an administrative body cannot strain or supplement the language of a taxing statute in order to achieve what it considers to be a desirable policy outcome. They refer to case law in support of this position, which emphasise the constitutional principle that tax liability must be imposed in clear terms by Parliament and cannot be expanded by administrative interpretation.

21. The Appellant places significant reliance on a previous Valuation Office appeal decision (reference 1860756, dated 9 May 2025), which concerned materially similar facts. The Appellant submits that this decision, while not formally binding, is highly persuasive and should have been given substantial weight by the CA.

22. On the Appellant's interpretation, the application of indexation to the year of reserved matters approval constitutes an error of law and results in an unlawful overcharge. The Appellant calculates that the correct chargeable amount, applying indexation only up to the year of the outline permission, is materially lower than the sum stated in the Liability Notice.

23. The CA submits that the CIL Liability Notice correctly applied indexation by reference to the calendar year in which planning permission first permitted development, which, for a non phased outline planning permission, is the date of

approval of the final reserved matters. It contends that this approach is required by the proper construction of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations"), when read as a coherent statutory scheme and interpreted purposively.

24. The CA's case is founded on the statutory linkage between

    (i) the point at which planning permission first permits development,
    (ii) the crystallisation of CIL liability, and
    (iii) the calculation of the chargeable amount.

    The CA opines Section 208(6) of the Planning Act 2008 provides that the amount of any CIL liability is to be calculated by reference to the time when planning permission first permits the development. Regulation 8 of the CIL Regulations defines when planning permission first permits development, and in the case of a non-phased outline permission, this occurs on the day of final approval of the last reserved matters. The CA submits that liability cannot crystallise, nor can the chargeable amount be calculated, until that point, because the extent of the approved floorspace is not fixed before reserved matters approval.

25. Within this framework, the CA argues that the phrase "the calendar year in which planning permission was granted" in Schedule 1 to the CIL Regulations (which defines the indexation variable I_P) must be construed consistently with section 208(6) and Regulation 8. For outline permissions, "planning permission" must be understood as the permission as it operates to permit development in law, namely upon reserved matters approval. The CA's view is that fixing indexation to the year of the outline consent would create an internal inconsistency within the statutory scheme by anchoring indexation to a date when development could not lawfully proceed and when liability was incapable of calculation.

26. The CA further submits that a strictly literal interpretation advanced by the Appellant would undermine the statutory purpose of the CIL regime. The Planning Act 2008 and the CIL Regulations repeatedly emphasise that charging schedules and CIL calculations are intended to reflect the actual and expected costs of infrastructure required to support development. Their view is that given there may be a significant time gap between outline permission and reserved matters approval, particularly on large or multi phase schemes, fixing indexation to the outline year would lead to systematic under recovery of infrastructure funding and frustrate the objectives of the legislation.

27. Relying on established principles of statutory interpretation, the CA contends that a purposive construction is both orthodox and necessary where competing interpretations exist. It submits that the courts favour interpretations that preserve coherence across a legislative scheme and avoid outcomes that are impracticable, anomalous, or inconsistent with legislative intent. In this context, the CA argues that the only construction that aligns liability, calculation, and indexation — and avoids structural under funding of infrastructure — is one that fixes I_P by reference to the year in which development is first permitted, namely the reserved matters approval year, in their view.

28. The CA rejects reliance on government guidance and previous non binding VO appeal decisions cited by the Appellant, noting that such materials do not have legal force and cannot override the correct interpretation of primary legislation and regulations. It also rejects allegations of procedural unfairness or unreasonable delay, maintaining that the appeal raises complex issues of statutory construction and that the Liability Notice was issued in accordance with the statutory requirements once the relevant development parameters were finalised.

29. In conclusion, the CA submits that the only live issue in the appeal is the correct year for I_P, and that, on a proper construction of the legislation, indexation must be applied by reference to the calendar year in which the final reserved matters were approved. On that basis, it maintains that the chargeable amount stated in the Liability Notice was correctly calculated and that the appeal should be dismissed.

30. On receiving the CA's representations and in response, the Appellant, via a legal opinion, maintains that the CA's interpretation of the CIL Regulations 2010 is incorrect and that indexation must be applied by reference to the calendar year in which planning permission was granted, rather than the year in which planning permission first permits development. The Appellant endorsed its original Grounds of Appeal and submits that the CA's reliance on purposive interpretation is misplaced.

31. The Appellant's primary submission is that the statutory wording governing indexation is clear and unambiguous. Schedule 1, Part 1, paragraph 1(4) defines I_P as "the index figure for the calendar year in which planning permission was granted." It is their view that concept is distinct from, and intentionally different to, the date when planning permission first permits development. They note for an outline planning permission, these are necessarily different dates. They opine relevant planning permission in this case is the grant of the outline permission in [redacted], which falls within the definition of "planning permission" in Regulation 5(1). Reserved matters approvals are not included within that definition and therefore cannot determine the indexation year.

32. The Appellant further submits that the internal structure of Schedule 1 confirms that the distinction between the "planning permission date" and the "first permits" date is deliberate. Within the same paragraph of Schedule 1, the regulations expressly refer to the "date planning permission first permits development" for other components of the calculation, notably in relation to the assessment of approved floorspace. The use of different terminology within the same provision is said to demonstrate that Parliament intentionally assigned different functions to these two dates. It is their view the planning permission date fixes the applicable indexed charging rate, while the first-permits date determines the quantum of chargeable floorspace.

33. In response to the CA's reliance on absurdity and statutory purpose, the Appellant submits that legislative drafting necessarily involves balancing competing considerations, including simplicity, certainty and cost reflection. They opine the fact that alternative drafting choices could have been made does not render the choices actually made by Parliament absurd. The Appellant contends that the CA's argument improperly elevates infrastructure cost

recovery above all other considerations, when the statutory scheme reflects a balance between certainty for developers and the desirability of indexation.

34. The Appellant also challenges the CA's assumption that indexation must align with the date when CIL becomes payable or with contemporaneous infrastructure costs. They submit that the legislation contains no such requirement. In their view, for full planning permissions, CIL indexation is fixed at the date of permission even though commencement, and payment of CIL, may lawfully occur several years later. They opine this inherent time lag is a deliberate feature of the statutory scheme and demonstrates that precise alignment between indexation and payment is not a statutory objective. The Appellant argues that there is no principled basis for treating outline permissions differently in this respect.

35. The Appellant concludes that the fixing of indexation by reference to the planning permission date applies consistently across full permissions, unphased outline permissions, and phased outline permissions. While Parliament could have adopted a more complex or differentiated approach, it chose not to do so. In their view that choice does not produce an absurd result and does not justify the reinterpretation of clear statutory language. On that basis, the Appellant submits that the appeal should be allowed and that indexation should be applied up to the date of grant of the outline planning permission.

Decision

36. 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**.

37. 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.

38. 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 I_P 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].

39. 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 I_P could have been amended if a different policy intent was desired and that has not happened.

40. 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.

41. 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 I_P does conflict with the intentions of Parliament and, therefore, a purposive interpretation is not required.

42. 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 I_P.

43. (5)(b) of Schedule 1 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 I_P. In terms of I_C, both parties agree that indexation of [redacted] should be adopted.

44. 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.

45. 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] sqm
I_P = [redacted]
I_C= [redacted]

£[redacted] x [redacted] x [redacted] = £[redacted]

46. I determine the chargeable amount to be £[redacted] ([redacted]) and uphold this appeal

[redacted]

[redacted] **BEM MRICS**
RICS Registered Valuer
Valuation Office
1 April 2026