

# Appeal Decision

by ``redacted`` BSc FRICS

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

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**Appeal Ref:** 1889233

**Planning Application Reference:** ``redacted``

**Proposal:** "Change of use Barn to a Dwellinghouse and associated works (retrospective)"

**Address:** ``redacted``

**Decision:** Appeal dismissed.

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## Reasons

1. I have considered all of the relevant submissions made by ``redacted`` [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. Planning decision notice reference ``redacted``, dated ``redacted``.
  - b. CIL LN ``redacted`` for £``redacted``, dated ``redacted``.
  - c. CIL Appeal form dated ``redacted``, along with supporting documents referred to as attached.
  - d. Representations from the Appellant.
  - e. Representations from the CA.
  - f. 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"" per sqm
- Index Ip (year planning permission granted): Not explicitly stated.
- Index Ic (charging schedule year): Not explicitly stated.
- Index: £""redacted""
- Total: £""redacted""\*

\* Note: There is a de minimis difference when calculating manually due to rounding.

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.

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

7. The Appeal concerns the calculation of CIL liability for the conversion of an agricultural building to a dwellinghouse. The Appellant disputes the CA's application of Regulation 40 (now Schedule 1 of the CIL Regulations 2010 (as amended)), specifically its treatment of the retrospective planning permission ""redacted"" as the relevant permission for CIL purposes. The Appellant submits that there should be no CIL Liability chargeable on the development.

8. The Appellant submits the principle of development was first permitted under Class Q prior approval dated ""redacted"", Reference ""redacted"".

9. The retrospective permission was submitted to regularise the development following enforcement proceedings (quashed on appeal) and did not introduce a new form of development.

10. The Appellant submits that, if the historic Class Q approval is the point at which development was first permitted, that the building existed at that date; and the building had been in agricultural use within the relevant period. The Appellant therefore contends that the Schedule 1 Part 1 para 1(6) lawful-use test is satisfied and that the original floorspace should be deductible.

11. The Appellant further relies on the Planning Inspectorate decision, which found the works to constitute a conversion rather than a rebuild, to support the position that the original structure remained extant.

12. The Appellant submits the CA's approach is to have effectively "reset" the calculation of the chargeable amount under Schedule 1 by reference to the retrospective permission, which the Appellant considers inconsistent with the CIL Regulations.

13. The Appellant concludes that the original building floorspace should be deducted, there is no net increase in chargeable floorspace and that the correct CIL liability is £0.00.

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

14. The CA contends that the subject planning permission ""redacted"" gives rise to a chargeable CIL liability, calculated on the basis of a GIA of ""redacted"" sq. m with no offset for existing or demolished floorspace.
15. The CA maintains that the CIL liability has been correctly calculated on the basis that planning permission ""redacted"" is a standalone retrospective permission which must be assessed on its own merits, rather than by reference to earlier Class Q approval.
16. The CA submits that the development includes additional elements beyond those previously permitted (including extended residential curtilage and an ancillary outbuilding), and therefore constitutes a distinct scheme for CIL purposes.
17. The CA further relies on the submitted CIL Form 1, which at Section 7. Existing Buildings, it is stated the building was **last occupied for its lawful use** ""redacted"", which therefore confirms that the building had not been in lawful use for a continuous six-month period within the three years prior to the grant of permission
18. The CA concludes that the existing floorspace does not satisfy the Schedule 1 Part 1 para 1(6) lawful-use test and cannot be deducted.
19. The CA considers that the entire floorspace is chargeable, resulting in a CIL liability of approximately £""redacted"".

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

20. The Appellant responds by maintaining that the matters raised by the CA do not affect the correct application of Regulation 40(Schedule 1 Part 1 para 1(6)), and reiterates that CIL liability must be assessed by reference to chargeable Gross Internal Area [GIA] rather than the red line boundary or curtilage, which are stated to be irrelevant to the calculation.
21. The Appellant submits that the inclusion of additional land or ""redacted"" within the retrospective application does not form part of the chargeable floorspace and therefore does not justify treating the development as materially different.
22. The Appellant rejects the CA's position that the retrospective permission constitutes a standalone development, relying on the Planning Inspectorate's finding that the works comprise a conversion of an existing building rather than a rebuild, and therefore do not reset the chargeable amount calculation.
23. The Appellant further contends that the lawful-use test must be applied by reference to the earlier Class Q prior approval (""redacted""), at which time the building existed and was in agricultural use. Further, that the CIL Form submitted with the retrospective application does not alter this assessment.

24. The Appellant also refers to a comparable case where existing floorspace was taken into account despite retrospective permission, and concludes that the original building floorspace should be deducted, resulting in no chargeable CIL liability.

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

25. The Appellant refers to previous 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 VO decisions, whether related or unrelated, do not create binding precedent. They may be informative where similar issues arise, but they are not determinative.
26. This Regulation 114 appeal concerns whether the CA has correctly applied Schedule 1 Part 1 in calculating CIL liability for a retrospective permission for the conversion of an agricultural building to a dwelling.
27. The Appellant contends that development was first permitted under earlier Class Q prior approval (``redacted``), such that the existing building satisfied the lawful-use test and its floorspace should be deducted, resulting in a nil liability.
28. Regulation 9 of the CIL Regulations 2010 (as amended), defines “chargeable development” as development for which planning permission is granted.
29. In this case, the retrospective planning permission for the change of use of the building to a dwellinghouse constitutes the chargeable development within the meaning of that provision and the day that planning permission first permitted the chargeable development was ``redacted``.
30. The implication for this appeal is that the existence of an earlier permission, or the Appellant’s contention that development was first permitted under Class Q prior approval, does not of itself remove the development from the scope of CIL. Rather, those matters are relevant to the application of Schedule 1 Part 1 and, in particular, whether any existing floorspace may be deducted.
31. Accordingly, Regulation 9 establishes that the development is chargeable in principle, whereas the dispute in this appeal concerns the correct calculation of the chargeable amount under Regulation 40 and Schedule 1 Part 1.
32. The Appointed Person’s function in a Regulation 114 appeal is confined to determining whether the chargeable amount has been calculated in accordance with Schedule 1 of the Regulations.
33. 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.
34. 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.
35. Meaning of “in-use” and “relevant building” - Schedule 1 para 10 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.

36. However, this definition does not operate in isolation. The Regulations do not provide a freestanding 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. However, satisfying the 'in-use' definition is contingent upon the building first qualifying as a 'relevant building' within the scope of Schedule 1.
37. Consistent with this, 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.
38. The Appellant relies on a Schedule 1 Part 1 paragraph 1(6) KR(ii) deduction 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<sub>R</sub> = 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;"
39. To qualify under KR(ii) the existing building must be a relevant building for CIL purposes with a use that is able to be carried on lawfully and permanently without further planning permission on the day before planning permission first permits the chargeable development.
40. The subject Planning Permission ``redacted`` was required to regularise what had already been developed which differed from that previously permitted. The previous Class Q prior approval required development to be completed by ``redacted``. Therefore, on the facts of this case, the building did not have a use that could be carried on lawfully and permanently without further planning permission on the day before the planning permission.
41. I am not satisfied that, on the day before planning permission ``redacted`` first permitted the chargeable development, the building met the definition of a KR(ii) deduction for the purposes of Schedule 1. The evidence indicates that the development as carried out did not benefit from extant planning permission at that date, such that it cannot properly be treated as forming part of a lawful baseline capable of being taken into account within the statutory calculation for KR (i) or KR(ii) purposes.
42. The requirement for retrospective planning permission is consistent with that position and supports the conclusion that the development, as carried out, did not benefit from extant planning permission at the relevant date and any residential use within the 3 year period prior to the date of the permission cannot have been lawful.
43. 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.

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

45. 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:

$$R \times A \times I_P \div I_C$$

where -

A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6); The GIA of ``redacted`` sq. m is not disputed.

$I_P$  = 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 containing rate R took effect.../...The rate R (£``redacted`` / sq m), indices  $I_P$  (not stated) and  $I_C$  (not stated) are ultimately not disputed between the Parties. Although the Liability Notice does not expressly state the index figures ( $I_P$  and  $I_C$ ), the indexed rate applied and the resulting liability are not in dispute between the parties. I am satisfied, on the evidence available, that indexation has been correctly applied and does not affect the outcome of this appeal.

At paragraph (6):

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

$$G_R - K_R - (G_R \times E / G)$$

where -

G = the gross internal area of the chargeable development;

$G_R$  = the gross internal area of the part of the chargeable development chargeable at rate R;

$K_R$  = 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.

46. 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`` sq m).

$K_R$  (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 there is no net increase in chargeable GIA when the existing building is offset. For the reasons set out above, the building does not qualify as a relevant building for the purposes of Schedule 1. Accordingly, no floorspace falls to be included within  $K_R$ .

For the same reasons, no floorspace falls to be included within E.

47. For the reasons set out above, I am satisfied that no existing floorspace qualifies for deduction under Schedule 1. The chargeable amount has therefore been correctly calculated by reference to the full GIA of the chargeable development, and the appeal is dismissed.

``redacted`` BSc FRICS  
Appointed Person

Valuation Office  
3 June 2026