Appeal Decision

by [redacted] BSc FRICS

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

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

[The Valuation Office Agency is now part of HM Revenue and Customs. Please note Durham is our national postal centre, contact by digital channels is preferred.]

e-mail: [redacted]@hmrc.gov.uk

Appeal Ref: 1888718

Planning Application Reference: [redacted]

Proposal: "Erection of 1no replacement dwelling (part retrospective)"

Address: [redacted]

Decision: Appeal dismissed.

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 Ref [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 LN [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 multiplier: [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 subject CIL liability notice had 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 replacement of an existing 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.

8. The retrospective permission was submitted to regularise the development following enforcement proceedings and did not introduce a new build development.

9. The Appellant contends that, under Regulation 40(7), the Gross Internal Area (GIA) of the original dwelling should be deducted from the CIL chargeable amount, on the basis that the property was in lawful use for a continuous period of at least six months within the preceding 36 months. In support, the Appellant submits Council Tax records and utility bills (gas, electricity, and water), which are said to demonstrate lawful occupation up to the commencement of renovation works.

10. The Appellant explains that during underpinning works the existing structure became unstable, and, following structural engineer advice, parts of the building were dismantled and reconstructed on the existing foundations. It is asserted that the original bungalow was not wholly demolished, with photographic evidence provided to support the retention of elements of the original structure.

11. The Appellant states that they were advised to withdraw the original planning permission and submit a new application for a replacement dwelling, which they did under protest. They indicate that this course of action was presented as a quicker alternative to appeal and that the new application was substantially the same as the previously approved scheme, with only minor changes.

12. The Appellant also refers to financial pressures arising from mortgage repayments and development loans, as well as delays in the planning process. They further describe alleged external influences, including a social media campaign and local political pressure, which they believe contributed to enforcement action and delays in determination. The Appellant notes that the application was ultimately approved by the planning committee.

13. The Appellant submits that the Schedule 1 Part 1 para 1(6) lawful-use test is satisfied and that the original floorspace should be deductible.

14. On this basis, the Appellant requests that the CA applies Regulation 40(7) and credits the GIA of the original dwelling against the CIL calculation, resulting in a net increase in chargeable floorspace of [redacted] sqm and that the correct CIL liability is £[redacted].

15. The Appellant does not dispute The CIL Rate of Indexation.

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

16. The CA contends that the CIL chargeable amount has been calculated correctly and that no deduction for existing GIA is applicable.

17. The CA explains that planning permission was ultimately granted for a replacement dwelling (part retrospective), which constitutes chargeable development. The CIL liability was calculated in accordance with Schedule 1, Part 1 of the Regulations, based on the approved plans, resulting in a chargeable area of [redacted] sqm and a corresponding liability.

18. In response to the Appellant's claim for a GIA deduction, the CA states that such a deduction is only available where there is a "relevant building" that meets the continuous lawful use test and exists on the relevant date ([redacted]).

19. The CA submits that the extent of demolition was such that the original dwelling no longer functioned as a building and did not exist as a "relevant building" on the relevant date.

20. This conclusion is supported by planning officer confirmation and photographic evidence from a site visit ([redacted]) showing substantial demolition and rebuild works.

21. The CA further states that, although the Appellant has provided utility bills and Council Tax records to indicate prior occupation, these do not establish the existence of a qualifying building for the purposes of GIA deduction at the relevant date.

22. The CA concludes that no floorspace qualifies for deduction under the Regulations and that the full GIA of the replacement dwelling is chargeable. The CA therefore requests that the appeal be dismissed.

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

23. The Appellant maintains that the CIL charge has been calculated incorrectly, on the basis that it should reflect the net increase in floorspace rather than the full GIA of the new dwelling. The Appellant states that the original dwelling comprised approximately

[redacted] sqm and the approved development approximately [redacted] sqm, resulting in a net increase of around [redacted] sqm.

24. The Appellant disputes the CA's characterisation of the development as a new build on a cleared site. They assert that the site was not cleared, but instead comprised an existing bungalow undergoing construction works. They explain that partial dismantling occurred during underpinning works, following structural engineer advice, and that elements of the original structure were retained throughout the process.

25. The Appellant submits that the development evolved during ongoing construction and was not a separate demolition and rebuild. They state that the replacement dwelling application arose due to enforcement concerns regarding the extent of works, rather than an intention to entirely redevelop the site, and that the scheme remained broadly consistent with the earlier approved plans.

26. The Appellant reiterates that the property was in lawful use prior to commencement, supported by evidence previously submitted, and refers to the principle that actual use is relevant when considering lawful use.

27. In response to the CA's position regarding the absence of a roof, the Appellant contends that this reflects a temporary stage in ongoing construction rather than the absence of a building. They further submit that the Regulations do not provide a statutory definition of a "building" and that assessment should consider the overall context and permanence of the structure, rather than solely the presence of a roof.

28. The Appellant also queries the CA's assertions regarding advice given on CIL procedures, including the Residential Extension Exemption and prior notifications of CIL implications, stating that they do not recall receiving such information and requesting evidence of its provision.

29. On this basis, the Appellant submits that the development should not be treated as a wholly new chargeable building, and requests that the CIL calculation be reassessed to reflect only the net increase in floorspace.

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

30. The Appellant's grounds of appeal also raises a number of additional matters. It is important to note that the role of the appointed person in a Regulation 114 appeal is limited to determining whether the chargeable amount has been calculated correctly in accordance with the Community Infrastructure Levy Regulations 2010 (as amended). While I have had regard to the Appellant's submissions as a whole, any matters falling outside that statutory remit do not bear on the calculation of the levy and therefore cannot influence the outcome of this appeal.

31. This Regulation 114 appeal concerns whether the CA has correctly applied Schedule 1 Part 1 in calculating CIL liability for a retrospective permission for a replacement dwelling.

32. Regulation 9 of the CIL Regulations 2010 (as amended), defines "chargeable development" as development for which planning permission is granted.

33. In this case, the retrospective planning permission for the erection of the replacement dwelling constitutes the chargeable development within the meaning of that provision and the day that planning permission first permitted the chargeable development was [redacted].

34. The implication for this appeal is that the existence of any earlier permission does not of itself affect the subject development within 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. Consistent with this, when existing GIA may be deducted – Schedule 1 permits the deduction of existing floorspace only 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 and certain use criteria are satisfied.

40. The regulation in Schedule 1 pertaining to the deduction of “retained parts” specifically is:

    “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;”

    Under Schedule 1 Part 1 paragraph 1(10) 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;”.

    Therefore for either of the KR deductions to apply there must be a “relevant building” on the site. A relevant building is defined as “a building which is situated on the relevant land on the day planning permission first permits the chargeable development”.

41. The Appellant's case is that the existing dwelling was a relevant building in lawful use prior to the works and that its floorspace should therefore be deducted under Schedule 1, Part 1, paragraph 1(6), as a retained part of an "in-use building" (KR(i)).

42. The subject planning permission [redacted] was granted on [redacted] to permit a replacement dwelling which regularised development carried out and which differed from that previously permitted.

43. Against that background, the relevant question is whether any part of the existing structure on the site on [redacted] constituted a "relevant building" capable of forming part of the Schedule 1 calculation on the relevant date.

44. For the purposes of Schedule 1, a "relevant building" must first constitute a building in a meaningful sense. There is no definition of a building in the CIL regulations, other than a building does not include:

    (i) a building into which people do not normally go;

    (ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or

    (iii) a building for which planning permission was granted for a limited period;
    The Appellant submits that elements of the original structure remained during the course of works and that the absence of a roof reflected only a temporary stage. I have considered those submissions. However, on the evidence before me, including the extent of demolition and reconstruction shown in the photographic record, as at the date of the permission the structure in place did not comprise a building capable of functioning as such. What remained was a partial structure within ongoing construction works, rather than a building in existence for the purposes of the Regulations.

45. The planning permission for a replacement dwelling and the requirement for retrospective planning permission are consistent with that position. However, for the purposes of this appeal, the critical issue is the physical state of the structure on the relevant date.

46. On the evidence before me, including the extent of demolition and reconstruction, I am not satisfied that the structure present on the land constituted a "relevant building" within the meaning of Schedule 1. It follows that the conditions necessary for any deduction under KR(i) or KR(ii) are not met.

47. Any evidence of prior occupation does not alter that conclusion, as the existence of a "relevant building" is a necessary precondition to the application of the lawful-use provisions within Schedule 1.

48. In any event, even if the structure on the land were capable of being regarded as a building, I am not satisfied that it would qualify for deduction under KR(i). A deduction under KR(i) applies only to "retained parts" of an "in-use building". A retained part is defined in the regulations as being "part of a building which will be:

    (i) on the relevant land on completion of the chargeable development (excluding new build),

    (ii) part of the chargeable development on completion, and

    (iii) chargeable at rate R.

    In this case, the planning permission is for a replacement dwelling. On the evidence before me, the works undertaken went beyond the retention of any identifiable part of the

original building such that it could properly be regarded as a retained part rather than new build. Accordingly, no retained part falls to be included within KR(i).

49. 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.

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

51. 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 sub-paragraph (6). The GIA of [redacted] sqm is disputed by the Appellant, who suggests a figure of approximately [redacted] sqm. I have reviewed the approved plans and undertaken check measurements in accordance with the RICS Code of Measuring Practice (6th Edition). On that basis, I concur with the CA's GIA of [redacted] sqm.

    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] / sqm), indices Ip (not stated) and Ic (not stated) are ultimately not disputed between the Parties. Although the Liability Notice does not expressly state the index figures (Ip and Ic), 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,

52. 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 there is a net increase in chargeable GIA of [redacted] sqm when the existing building is offset. For the reasons set out above, the extant structure referred to as the existing building does not qualify as a relevant building for the purposes of Schedule 1. Accordingly, no floorspace falls to be included within KR.

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

53. 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
17 June 2026