Appeal Decision

by [redacted] BSc FRICS

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

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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.

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Appeal Ref: 1896718

Planning Application Reference: [redacted]

Proposal: "Corrected Description - Erection of 1 No. dwelling with basement level with associated works including lightwell and glass balustrade."

Address: [redacted]

Decision: Appeal allowed in part. In accordance with Regulation 114(6), I determine the revised CIL chargeable amount to be £[redacted] [[redacted]].

Reasons

1. I have considered all relevant submissions made by [redacted] of [redacted], on behalf of [redacted] and [redacted] [the Appellant], and by the Collecting Authority, [redacted] [the CA]. In particular, I have considered the information and opinions contained in the following documents:

    a. Planning decision notice reference [redacted], dated [redacted].

    b. CIL Liability Notice Ref [redacted] dated [redacted].

    c. CIL Appeal Form dated [redacted], the accompanying Statement of Grounds and supporting documents.

    d. Representations from the Appellant.

    e. Representations from the CA.

    f. The Appellant's comments in reply to the CA's representations and subsequent supporting submissions.

2. Planning Permission reference [redacted] was granted on [redacted].

3. The CA issued Liability Notice [redacted], dated [redacted], based on:

    - Chargeable area: [redacted] square metres (sqm)
    - CIL rate: £[redacted]/sqm
    - Index Ip (year planning permission granted): Not explicitly stated.
    - Index Ic (charging schedule year): Not explicitly stated.
    - Index [redacted]
    - Retained-floor-area deduction: 0.00 sqm
    - Demolished-floor-area deduction: 0.00 sqm
    - Total CIL Liability: £[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, confirming that it considered the chargeable amount stated in Liability Notice [redacted] to have been calculated correctly.

6. On [redacted], the VO received a Regulation 114 chargeable amount appeal. The CIL Appeal form contains limited narrative submissions. The Appellant describes the development as a retrospective application for a new basement level and states that, whilst planning permission [redacted] was issued using a whole-dwelling description, the signed application related only to basement works and no replacement description was agreed. In response to the section requesting the Appellant's calculation of the correct CIL charge, no alternative numerical calculation is provided; instead, the Appellant refers to the accompanying Regulation 114 Statement of Grounds dated [redacted], which is identified as setting out the substantive basis of the appeal. The Appeal form has nevertheless been considered as part of the overall appeal documentation to ensure that no point raised by the Appellant has been overlooked.

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

7. The appeal concerns Liability Notice [redacted], dated [redacted], which assessed CIL of £[redacted] in respect of planning permission [redacted]. The Appellant advances one primary ground and two alternative grounds.

8. Ground 1: Identification of the chargeable development and Regulation 42 - The Appellant states that the signed planning application was submitted as a retrospective application for a new basement level. The Appellant contends that the subsequent description of the development as the erection of one dwelling with basement level and associated works was introduced by the CA without the agreement of the applicants or their agent.

9. The Appellant submits that the relevant development should therefore be identified as the basement and associated works only, rather than the whole dwelling. The basement is stated to have a GIA of [redacted] sqm, does not create an additional dwelling and falls below the 100 sqm threshold. On that basis, the Appellant contends that Regulation 42 applies and that the correct CIL charge is £0.00.

10. Ground 2: Gross Internal Area - Alternatively, if it is found the whole dwelling constitutes the chargeable development, the Appellant disputes the CA's adopted GIA of [redacted] sqm. The Appellant relies upon the areas stated on the submitted drawings:

Floor level	GIA sqm
Basement:	[redacted]
Ground Floor:	
Upper Ground Floor:	
Total:	[redacted]

11. The Appellant contends that the CA has overstated the GIA by [redacted] sqm and has not adequately explained why its measurements depart from the figures stated on the drawings. The Appellant requests independent verification of the approved plans and submits that the CIL charge should be recalculated using a total GIA of [redacted] sqm.

12. Ground 3: KR(ii) retained-parts deduction - As a further alternative, the Appellant contends that [redacted] sqm of above-ground accommodation should be deducted under Schedule 1 paragraph 1(6)(ii).

13. The Appellant relies upon planning permission [redacted], which previously authorised the above-ground dwelling. The Appellant states that this permission had commenced and that the above-ground accommodation was physically present and substantially complete before permission [redacted] was granted. The Appellant submits that only the basement represented additional development.

14. The Appellant therefore proposes a net chargeable area of [redacted] sqm, comprising the GIA of the chargeable development less [redacted] sqm of retained above-ground floorspace, producing an indicative CIL charge of approximately £[redacted].

15. In subsequent comments, the Appellant maintains all three grounds, disputes the CA's interpretation of the planning history and argues that the CA has not separately addressed whether the above-ground structure was a relevant building, whether the claimed accommodation constituted retained parts, and whether the intended residential use satisfied the KR(ii) test.

16. The Appellant accordingly seeks, in descending order, a determination that the correct CIL charge is £0.00, or alternatively a revised charge based upon the Appellant's lower GIA and/or the claimed KR(ii) deduction.

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

17. The CA submits that Liability Notice [redacted], dated [redacted], correctly calculated a CIL liability of £[redacted] and should be upheld.

18. The CA contends that planning permission [redacted] granted permission for the whole dwelling with basement level and associated works and that the chargeable amount has been correctly calculated in accordance with Regulation 40 and Schedule 1.

19. The CA relies upon the planning history of the site, including planning permission [redacted] for the erection of a dwelling following demolition of an agricultural building, the subsequent refusal of application [redacted], and the grant of the retrospective permission [redacted]. The CA states that the refusal of [redacted] demonstrated that the basement could not be treated as a standalone alteration to the previously approved scheme and required a separate planning permission.

20. In response to Ground 1, the CA submits that Regulation 9 requires the chargeable development to be identified by reference to the development for which planning permission was granted. The CA therefore relies upon the description contained within planning permission [redacted] and contends that the chargeable development comprises the whole dwelling with basement and associated works, rather than the basement in isolation. The CA further submits that disputes concerning the evolution of the planning application description, validation process and planning administration fall outside the scope of a Regulation 114 appeal.

21. In response to Ground 2, the CA disputes the Appellant's GIA measurement and maintains that its calculations were undertaken from the approved plans in accordance with the RICS Code of Measuring Practice (6th Edition) [CoMP]. The CA adopts the following floor areas:

Floor level	GIA sqm
Basement:	[redacted]
Ground Floor:	
Upper Ground Floor:	
Total:	[redacted]

22. The CA submits that the drawings relied upon by the Appellant either do not represent the approved plans or do not provide a sufficient basis for departing from the measurements used within the Liability Notice. The CA therefore maintains that the adopted GIA of [redacted] sqm is correct.

23. In response to Ground 3, the CA submits that no KR(ii) deduction is available. The CA states that the dwelling relied upon by the Appellant had not been constructed in accordance with planning permission [redacted] and therefore could not be treated as lawful immediately before planning permission [redacted] first permitted the chargeable development. The CA also notes that the agricultural building associated with the earlier permission had been demolished before the grant of [redacted] and could not therefore provide any offset or deduction under Schedule 1.

24. The CA accordingly maintains that the chargeable development is the whole development permitted by [redacted], the correct GIA is [redacted] sqm, no KR(ii) deduction arises and that the Liability Notice has been correctly calculated and should be upheld.

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

25. The Appellant maintains all grounds previously advanced and submits that the CA's representations do not resolve the issues raised within the appeal. The Appellant contends that the CA's response contains factual inaccuracies, particularly in relation to the planning history, approved plans and the treatment of certain drawings relied upon by the parties.

26. The Appellant first identifies a number of preliminary matters. The Appellant submits that the approved plans are secured by Condition 1, rather than Condition 2, of the decision notice; that the basement drawing reference contained within the decision notice contains a transcription error; and that drawing [redacted] remains relevant notwithstanding its status as a superseded drawing because it records the approved above-ground dwelling under [redacted] and its associated GIA.

27. In relation to Ground 1, the Appellant maintains that the application was submitted as a retrospective application for a new basement level and that the planning statement consistently described the proposal as the regularisation of basement accommodation beneath a previously approved dwelling.

28. The Appellant submits that the provision of whole-dwelling plans during the validation process should not be treated as agreement to a revised description of development and continues to contend that the relevant development should be characterised as the basement and associated works rather than the creation of a new dwelling. The Appellant further maintains that, if the basement-only description governs the identification of the chargeable development, Regulation 42 applies because the basement area is below 100 sqm and does not create an additional dwelling.

29. In relation to Ground 2, the Appellant submits that the floor-by-floor breakdown disclosed by the CA identifies precisely where the GIA dispute arises. The Appellant contends that the approved drawings record:

Floor level	GIA sqm
Basement:	[redacted]
Ground Floor:	
Upper Ground Floor:	
Total:	[redacted]

30. The Appellant notes that the CA's adopted GIA is [redacted] sqm, producing a total difference of [redacted] sqm. The Appellant argues that the CA's measurements exceed those shown on the approved drawings and that no satisfactory explanation has been provided for departing from the stated drawing areas. The Appellant therefore requests independent verification of the plans and maintains that the correct GIA is [redacted] sqm.

31. In relation to Ground 3, the Appellant submits that the CA has not properly distinguished between the concepts of a relevant building, a retained part and the KR(ii) lawful-use provisions. The Appellant relies upon planning permission [redacted], contending that the above-ground dwelling had already been authorised, that the permission had commenced, and that the above-ground accommodation was physically present and substantially complete prior to the grant of [redacted]. The Appellant submits that the CA proceeds directly from the existence of an unauthorised basement to the conclusion that no KR(ii) deduction can arise, without separately applying the statutory

tests contained within Schedule 1. The Appellant therefore requests an independent determination of whether a KR(ii) deduction should be allowed if the whole dwelling is treated as the chargeable development.

32. The Appellant further submits that drawing [redacted] remains relevant because it identifies the approved dwelling under [redacted], the planning baseline relied upon by the Appellant and the above-ground GIA of [redacted] sqm, which forms the basis of the claimed KR(ii) deduction.

33. The Appellant therefore maintains that disputes remain concerning the identification of the chargeable development, the correct GIA, the availability of a KR(ii) deduction and certain factual matters relating to the planning history and approved drawings.

34. The Appellant accordingly requests that Liability Notice [redacted] should not be upheld in its present form.

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

35. The Appellant refers to previous VO CIL 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.

36. This appeal falls to be determined under Regulation 114 of the Community Infrastructure Levy Regulations 2010 (as amended). My role is confined to determining whether the chargeable amount has been correctly calculated in accordance with Regulation 40 and Schedule 1. Whilst substantial submissions have been made regarding the planning history, processing of the application and amendment of the development description, I make findings only insofar as those matters are relevant to the calculation of the chargeable amount. Matters relating to the planning merits of the development, the administration of the planning process or the validity of the planning permission itself fall outside the scope of this appeal.

37. Ground 1 – Identification of the chargeable development and Regulation 42 - The Appellant contends that the chargeable development should be treated as the basement and associated works only, reflecting the original application description. The Appellant consequently relies upon Regulation 42, which provides an exemption for minor development where the gross internal area of new build is less than 100 sqm, subject to the provisions of that Regulation. I do not accept the Appellant's submission as to the identification of the chargeable development.

38. Regulation 9(1) provides that the chargeable development is the development for which planning permission is granted. Planning permission [redacted] was granted for "Erection of 1 No. dwelling with basement level with associated works including lightwell and glass balustrade."

39. That is the operative planning permission which first permitted the chargeable development. Although I have considered the Appellant's submissions concerning the original application description and subsequent correspondence, those matters do not alter the development for which planning permission was ultimately granted. It is not within my Regulation 114 jurisdiction to substitute a different description for that contained in the operative planning permission or to determine whether the CA followed the correct planning procedure when formulating that description.

40. I therefore determine that the chargeable development is the whole development authorised by [redacted] and not the basement in isolation.

41. Regulation 42(1) provides that liability to CIL does not arise where, on completion of the development, the GIA of new build on the relevant land will be less than 100 sqm. However, Regulation 42(2) provides that this exemption does not apply where the development comprises one or more dwellings. I have determined that the chargeable development is the whole development authorised by planning permission [redacted], comprising a dwelling with basement level and associated works, rather than the basement in isolation. The fact that part of the floorspace may qualify for a deduction when the chargeable amount is calculated under Schedule 1 does not alter the identification of the chargeable development or engage the Regulation 42 exemption. Accordingly, Ground 1 is not accepted.

42. Ground 2 – Gross Internal Area - The Parties disagree as to the correct Gross Internal Area of the development. The Appellant adopts a GIA of [redacted] sqm, whilst the CA adopts [redacted] sqm. As both figures are disputed, I have undertaken an independent measurement exercise using the approved plans and the RICS Code of Measuring Practice (6th Edition) [CoMP].

43. Gross Internal Area [GIA] is not defined in the Regulations. However, the CoMP provides the generally accepted basis for measuring GIA. The purpose of the Code is to "provide succinct, precise definitions to permit the accurate measurement of buildings and land, the calculation of the sizes (areas and volumes) and the description or specification of land and buildings on a common and consistent basis. This may be required for valuation, management, conveyancing, planning, taxation, sale, letting, or acquisition purposes."

44. The CoMP defines GIA as the area of a building measured to the internal face of the perimeter walls at each floor level. Of particular relevance to this appeal, GIA includes plant rooms, stairwells, voids over stairwells on upper floors and areas with restricted headroom. It excludes perimeter wall thicknesses, external projections and external open-sided balconies.

✓ **Including**	× **Excluding**
✓ Areas occupied by internal walls and partitions	× Perimeter wall thicknesses and external projections
✓ Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like	× External open-sided balconies, covered ways and fire escapes
✓ Atria and entrance halls, with clear height above, measured at base level only	× Canopies
✓ Internal open-sided balconies, walkways, and the like	× Voids over or under structural, raked or stepped floors
✓ Structural, raked or stepped floors are to be treated as a level floor measured horizontally	× Greenhouses, garden stores, fuel stores, and the like in residential property
✓ Horizontal floors, with permanent access, below structural, raked or stepped floors	

✓ Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)

✓ Mezzanine floor areas with permanent access

✓ Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level

✓ Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms, and the like

✓ Projection rooms

✓ Voids over stairwells and lift shafts on upper floors

✓ Loading bays

✓ Areas with a headroom of less than 1.5m (see APP 6)

✓ Pavement vaults

✓ Garages

✓ Conservatories

Note GIA 4 referenced above is a "how to use" note, clarifying: "Internal face – means the brick/block work or plaster coat applied to the brick/block work, not the surface of internal linings installed by the occupier."

45. My independent GIA measurements are:

Floor level	GIA sqm
Basement Ground Floor Upper Ground Floor	[redacted]
Total	[redacted]

46. In relation to the Basement, the approved drawing records a GIA of [redacted] sqm but separately identifies approximately [redacted] sqm within the Plant Room by reference to limited headroom. The CoMP includes plant rooms within GIA, and I identify no provision which supports excluding this area solely because it has restricted headroom. Including that area produces approximately [redacted] sqm, which closely aligns with my independently measured Basement GIA of [redacted] sqm.

47. In relation to the Ground Floor, I included the circulation and stairwell area attributable to the internal stair between the Ground Floor and Basement. The Code expressly includes

stairwells and voids above stairwells within GIA. This materially reduces the difference between the Parties' calculations.

48. Having independently reviewed the approved plans and reconciled the principal points of difference, I determine that the correct GIA is [redacted] sqm.

49. Ground 2 therefore succeeds in part. I conclude that the CA's adopted GIA of [redacted] sqm is overstated, although I do not accept the Appellant's lower figure of [redacted] sqm.

50. Ground 3 – Schedule 1 paragraph 1(6)(ii) (KR(ii)) - The Appellant contends that a KR(ii) deduction of [redacted] sqm should be allowed in respect of the above-ground accommodation authorised under planning permission [redacted].

51. Schedule 1 Part 1 provides the calculation applicable to standard cases. Under paragraph 1(4), the amount of CIL chargeable at a given relevant rate, R, is calculated using the following formula:

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

where:

R is the relevant CIL rate;

A is the deemed net area chargeable at rate R;

Ip is the index figure for the calendar year in which planning permission was granted; and

Ic is the index figure for the calendar year in which the charging schedule containing rate R took effect.

Paragraph 1(6) provides that A is calculated using the following formula:

$$G_R - K_R - \left(\frac{G_R \times E}{G}\right)$$

where:

G is the gross internal area of the chargeable development;

GR is the gross internal area of the part of the chargeable development chargeable at rate R;

52. KR is the aggregate of the GIA of:

(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 could lawfully and permanently

be carried on in that part, without further planning permission, on the day before planning permission first permits the chargeable development; and

53. E is the aggregate of:

(i) the GIA of parts of in-use buildings that are to be demolished before completion of the chargeable development; and

(ii) for the second and subsequent phases of a phased planning permission, the value Ex calculated in accordance with paragraph 1(7), unless Ex is negative, provided that no part of any building may be taken into account under both paragraphs (i) and (ii) above.

54. There is one relevant CIL rate in this appeal, £[redacted] per sqm, and the whole chargeable development is chargeable at that rate. I have determined under Ground 2 that the GIA of the chargeable development is [redacted] sqm. Accordingly:

G = [redacted] sqm

GR = [redacted] sqm

No qualifying demolished floorspace or relevant phased-development amount has been identified. Accordingly:

E = 0.00 sqm

It is therefore necessary to determine the appropriate value of KR.

55. KR includes the GIA of retained parts of in-use buildings under paragraph 1(6)(i). It also includes, under paragraph 1(6)(ii), retained parts of other relevant buildings where the intended use following completion of the chargeable development is a use that could lawfully and permanently be carried on in that part, without further planning permission, on the day before planning permission first permitted the chargeable development.

56. $KR(ii)$ must be considered separately from $KR(i)$. The six-month lawful-use requirement associated with the definition of an in-use building does not apply to $KR(ii)$. However, the accommodation must form part of a relevant building, satisfy the definition of a retained part and meet the intended-use requirement in paragraph 1(6)(ii).

57. A relevant building is a building situated on the relevant land on the day planning permission first permits the chargeable development. A retained part must remain on the relevant land on completion of the chargeable development, excluding new build; form part of the chargeable development on completion; and be chargeable at rate R.

58. The Appellant relies upon planning permission [redacted], which authorised the erection of a dwelling following demolition of an agricultural building. The Appellant also relies upon the fact that the above-ground accommodation had been physically constructed before planning permission [redacted] was granted and remained as part of the completed development.

59. Having considered the planning history, the approved plans and the physical relationship between the development authorised by [redacted] and that subsequently authorised by [redacted], I am satisfied that the above-ground accommodation was situated on the relevant land before planning permission [redacted] was granted and

remained on the relevant land as part of the completed chargeable development. It therefore forms part of a relevant building.

60. Planning permission [redacted] is a retrospective planning permission granted under section 73A of the Town and Country Planning Act 1990. The Schedule 1 definition of new build includes the part of the chargeable development which will comprise new buildings and enlargements to existing buildings. It makes specific provision for development built pursuant to a previous permission where the relevant permission was granted under section 73. [redacted] was not granted under section 73.

61. The above-ground accommodation already physically existed before planning permission [redacted] first permitted the chargeable development. In the circumstances of this appeal, I find that the accommodation does not constitute new build for the purposes of Schedule 1 and satisfies the requirements of the definition of a retained part.

62. The above-ground accommodation is derived from the dwelling previously authorised under planning permission [redacted]. I am also satisfied that the intended residential use following completion of the chargeable development was a use capable of being carried on lawfully and permanently in those retained parts, without further planning permission, on the day before planning permission [redacted] first permitted the chargeable development.

63. I therefore conclude that the qualifying above-ground accommodation falls within KR(ii). However, I do not adopt the Appellant's stated area of [redacted] sqm without independent verification.

64. I have measured the qualifying retained accommodation using the plans approved under [redacted]. Those plans represent the retained parts of the chargeable development in which the intended residential use could lawfully and permanently be carried on without further planning permission for the purposes of KR(ii). My measurements are:

Floor level	GIA sqm
Ground Floor First Floor	[redacted]
Total KR(ii)	[redacted]

65. The overall GIA of the chargeable development has separately been measured using the approved plans under [redacted] because those plans define the chargeable development for Regulation 40 and Schedule 1 purposes. The corresponding above-ground measurements under that permission are:

Floor level	GIA sqm
Ground Floor Upper Ground Floor	[redacted]
Above-ground total	[redacted]

66. The two measurement exercises therefore serve different statutory purposes. The principal difference arises at Ground Floor level because the plans approved under [redacted] incorporate basement-access circulation and stair arrangements which were not present in the scheme approved under [redacted]. The minor difference at First Floor level arises from separate measurements of different approved plan sets and is de minimis.

I determine that:

KR = [redacted] sqm

This differs from the Appellant's figure of [redacted] sqm but represents my independent measurement of the accommodation satisfying KR(ii). Ground 3 therefore succeeds.

67. Applying the paragraph 1(6) formula to calculate the value of A:

$$G_R - K_R - \left(\frac{G_R \times E}{G}\right)$$

A = [redacted] − [redacted] − ((([redacted] × 0.00) ÷ [redacted])

A = [redacted] sqm

Applying the paragraph 1(4) formula:

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

£[redacted] × [redacted] sqm × ([redacted] ÷ [redacted]) = £[redacted]

I therefore conclude that the Liability Notice overstates the chargeable amount.

68. I do not accept the Appellant's primary ground that the chargeable development should be treated as the basement works alone or the associated contention that Regulation 42 applies. Ground 1 is not accepted.

69. I accept in part the Appellant's challenge to the GIA. I determine that the GIA of the chargeable development is [redacted] sqm, rather than the [redacted] sqm adopted by the CA or the [redacted] sqm advanced by the Appellant. Ground 2 succeeds in part.

70. I accept that a retained-floor-area deduction is available under Schedule 1 paragraph 1(6)(ii) and determine that the correct deduction is [redacted] sqm. Ground 3 succeeds.

71. In accordance with Regulation 114(6), I therefore allow the appeal in part and determine the revised CIL chargeable amount to be:

£[redacted]

[redacted]

[redacted] BSc FRICS
Appointed Person

Valuation Office