Appeal Decision

by [redacted]

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

Valuation Office Agency
[redacted]

e-mail: [redacted]@voa.gsi.gov.uk.

Appeal Ref: [redacted]

Address: [redacted]

Development: Variation of condition [redacted] (development in accordance with the approved drawings) of planning permission ref. [redacted] (which approved the demolition of all existing buildings. Erection of [redacted] buildings [redacted] to provide [redacted] residential units [redacted] The proposed amendments to the approved scheme include: alterations to the internal layout [redacted] Relocation of [redacted] with associated alterations to the elevations [redacted] and amendments to materials [redacted]

Planning permission details: Planning permission [redacted] was granted by [redacted] on [redacted] 2016.

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the development is to be assessed in the sum of £ [redacted] ([redacted] £ [redacted]).

Reasons

1. I have considered all the submissions made by [redacted] (the agent) on behalf of the appellant, [redacted] and the representations from the Collecting Authority (CA) [redacted].

2. Planning permission was granted under Section 73 (s.73) of the Town and Country Planning Act 1990 (TCPA 1990) (**Determination of applications to develop land without compliance with conditions previously attached**) on [redacted] 2016 by [redacted]. The permission was for 'Variation of condition [redacted] (development in accordance with the approved drawings) of planning permission ref. [redacted] dated [redacted] (which approved the demolition of all existing buildings. Erection of [redacted] buildings [redacted] to provide [redacted] residential units [redacted] The proposed amendments to the approved scheme include: [redacted] - alterations to the internal layout [redacted] Relocation of [redacted] with associated alterations to the elevations. [redacted] and amendments to materials [redacted] (**the S.73 permission**).

3. On the evidence submitted the relevant planning history prior to the granting of the S.73 planning permission which is the subject of this appeal, is essentially as follows:-

   Planning permission was granted on [redacted] 2012 by [redacted] for 'Demolition of all existing buildings. Erection of [redacted] buildings [redacted] to provide [redacted] residential units [redacted] (**the original planning permission**).

4. On [redacted] 2016 the CA issued a Regulation 65 Liability Notice (LN) based on a net chargeable area of [redacted] square metres (sqm) in the sum of £[redacted]. There was no breakdown as to how this figure was arrived at other than as follows:-

[redacted]

5. The agent requested a Review under Regulation 113 on the [redacted] 2016 on the ground that the Gross Internal Area (GIA) of the chargeable development had been calculated incorrectly and it should be [redacted] sqm rather than [redacted] sqm calculated by the CA.

6. The CA issued their decision on the Regulation 113 Review request on [redacted] 2015 confirming the CIL charge as set out in the Liability Notice. The reasons for the decision can be summarised as follows:-

   i) The GIA areas have been taken from the approved plans because these form part of the S.73 planning permission and 'the chargeable development is the development for which planning permission has been granted'.

   ii) The plans submitted in respect of the request for a Regulation 113 Review were not the approved plans as listed in the Decision Notice dated [redacted] 2016, but were those showing the housing tenure mix that formed part of the S.106 Deed of Variation.

   iii) A number of discrepancies between the two sets of plans were highlighted to explain differences in the areas.

   iv) The measurements were taken adopting the Adobe Pro measuring tool with each measurement being annotated and cross checked with the resulting floor space schedule.

   v) Comparisons of the architect's measurements and the Council's measurements where the drawings tally in terms of floor space included in the GIA showed a high degree of accuracy.

   The CA provided part of the calculations they carried out as follows:-

   [redacted]

   Calculation under Regulation 9(7)

   Chargeable development [redacted] sqm
   Demolished floor space [redacted] sqm
   Net additional area [redacted] sqm

   CIL charge - £[redacted]

[redacted]

Calculation under Regulation 128A

X calculation

Chargeable development [redacted] sqm
Demolished floor space [redacted] sqm
Net additional area [redacted] sqm

X = £[redacted]

Y calculation

Chargeable development [redacted] sqm
Demolished floor space [redacted] sqm
Net additional area [redacted] sqm

Y = £[redacted]

CIL charge (X – Y) = £[redacted]

7. The agent submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing the CIL charge should be reduced to £[redacted] as follows:-

[redacted] CIL - £[redacted]
[redacted] CIL - £[redacted]

The full grounds of the appeal as submitted by the agent on behalf of the appellant are as follows:-

1. Indexation

   The Council has not applied the Regulations correctly in respect of indexation of the appellant's Section 73 planning permission. The method adopted by the Council would result in:

   - Indexation applying to S73 permissions even where they do not affect floor space area;
   - Indexation applied to the whole development;
   - and A retrospective CIL tax for a period when CIL was not chargeable.

2. Chargeable Floor space Area

   The Council has applied an inaccurate floor space figure in their CIL calculations.

3. Demolition Floor space Area

   The Council has not applied the correct floor space figure of the in-use buildings to be demolished.

1. INDEXATION

1.1 Section 73 planning applications – in the original CIL regime section 73 planning permissions posed a major problem because they are a separate planning application for the purposes of the CIL regime. This meant that the section 73 planning permission would trigger a CIL charge with no relief in respect of the earlier planning permission ("the parent permission"). That parent permission could have been granted prior to the introduction of CIL in the area and so the development authorised by that parent permission would not be subject to CIL. In such a case a full CIL charge would arise as a result of the section 73 permission when previously there was no CIL liability in relation to the development. Alternatively, the parent permission could have been granted after the introduction of CIL in the area and so have been subject to a charge to CIL. The section 73 permission would then result in a second full CIL charge.

1.2 This was particularly unfair if the section 73 permission only made a minor change such as a small change to the external appearance of the building or a change to the opening hours of a retail unit. Such a change would have no significance in the context of CIL but would result in a further fresh CIL charge. Even if the change increased the internal floor space of the development the fresh CIL charge would not be by reference to that increase in area but instead be by reference to the whole GIA of the development. Such double charging was self-evidently unfair.

1.3 2012 Regulations – in order to remedy this problem amendments were introduced by the Community Infrastructure Levy (Amendments) Regulations 2012 (the 2012 Regulations") which had the intention of removing this unfairness. In the debate relating to the draft of these Regulations which took place before the Second Delegated Legislation Committee on 12th November 2012 the Parliamentary Under-Secretary of State for Community and Local Government (Mr. N. Boles) stated:

"Section 73 consents are regularly used for very minor changes, such as a small change to a building appearance or a change to the opening hours of a retail unit. These amending regulations are quite clear that when the change does not alter the liability to CIL, only the original consent will be liable. They will ensure that when planning permission is granted under section 73 that introduces a more substantial change, such as by adding floor space to the building, the developer will pay CIL only on the permission that is actually implemented. The regulations also allow payments made in relation to a previous planning permission to be offset against the liability on the section 73 permission. In transitional cases when the original planning permission was granted prior to a CIL charge being brought in, but when the section 73 application is granted following the introduction of CIL, the section 73 consent will trigger CIL only for any additional liability it introduces to the development. These changes ensure CIL works fairly and does not hold back development when conditions have changed."**1**

1.4 The statement made by Mr. Boles is echoed in the Planning Practice Guide (Community Infrastructure Levy para. 007 ref 25-007-20140612).**2** At the time that the 2012 Regulations were being introduced it was publicised that a spokesman for the DCLG had stated "Our intention is that, where a developer has obtained consent for a change to its plans, it should pay only for any additional CIL liability created."**3** These statements emphasise that the amendments are intended to result in an increase in CIL if there is an increase in floorspace but if there is no such increase then there will be no additional CIL.

1.5 Parent permission not subject to CIL – if the parent permission is granted before a CIL charging schedule is introduced in the area then it is not subject to CIL (reg. 128(1)). This is regardless of when the development is commenced or when the development is first permitted under the permission. If this parent permission is changed then the operation of reg. 128A is triggered.

1.6 Reg. 128A - When there is a section 73 permission relating to such a parent permission reg. 128A of the Regulations will apply (introduced by reg.9(1) of the 2012 Regulations). It provides that:

"(1) Where all the criteria set out in paragraph (2) are satisfied by a development, paragraphs (3) to (6) shall apply.

(2) The criteria are—

(a) on the day planning permission (A) is granted in relation to the development, the development is situated in an area in which a charging authority has no charging schedule in effect;
(b) a new planning permission (B) is later granted in relation to the development under section 73 of TCPA 1990; and

(c) on the day B is granted, the development is situated in an area in which that charging authority has a charging schedule in effect.

(3) Liability to CIL shall arise in respect of the development, and the amount of CIL payable ("chargeable amount") shall be:

X – Y

where—

X = the chargeable amount for the development for which B was granted, calculated
in accordance with regulation 40; and

Y = the amount, calculated in accordance with regulation 40, that would have been
the chargeable amount for the development for which A was granted, if A first permitted development on the same day as B.

(4) For the purpose of calculating Y, for the definition of "relevant charging schedules" in regulation 40(11) substitute—

"relevant charging schedules" means the charging schedules which are in effect—

(i) at the time B was granted, and
(ii) in the area in which the development will be situated;"

(5) If Y is greater than or equal to X, the chargeable amount is deemed to be zero.

(6) Part 11 of these Regulations (planning obligations) shall not apply in relation to that development."

1.7 This provision seeks to achieve fairness by setting against the CIL charge arising from the section 73 permission (X) the hypothetical CIL chargeable amount if the parent permission first permitted development on the same day as the section 73 permission (Y). It is the excess over that hypothetical chargeable amount (Y) which is the CIL liability which will arise from the section 73 permission.

1.8 Regulation 40 calculation – the amounts which are figures X and Y in the formula in reg. 128A are to be calculated in accordance with reg. 40 save as regards Y it is the hypothetical chargeable amount for the development for which the parent permission was granted treated as if it first permitted development on the same day as the section 73 permission. The intention is to set off against the CIL chargeable amount arising from the section 73 permission the hypothetical CIL chargeable amount that would have been charged on the parent permission in the equivalent circumstances as the section 73 permission. By setting off like against like it will mean that the CIL liability in respect of the section 73 permission is the excess rather than as previously the full amount.

1.9 To achieve like for like calculation - in order to achieve this objective of only charging the additional CIL liability it is necessary to calculate both X and Y by reference to the same date so that like is being set off against like. It is only by this that it will arrive at the true differences between the two amounts.

1.10 This is achieved in part by treating the parent permission as first permitting the development authorised by that permission on the same day as the section 73 permission. This will ensure that notwithstanding the difference in the actual dates of the permissions the same CIL charging rates are applied to the two developments and the same deductions are made as regards matters such as demolition or retention of existing buildings. The applicable CIL rate is determined by the Charging Schedule in force at the date of the grant of the planning permission (reg. 40(4) and (11)). In this respect reg. 128A(4) makes it clear that the date of the grant of the section 73 permission is the important date.

1.11 Similarly as regards the deductions permitted by reg. 40(7) those which would have been applicable had the parent permission being chargeable to CIL (such as the deduction of the internal area of buildings in existence at the date of the grant of the parent permission which are to be demolished during the course of the development) are excluded save as to the extent that they are available in respect of the section 73 permission. This is achieved by taking the date that the parent permission first permits development to be the same date as that for the section 73 permission. It is this date which determines the availability of deductions (see definition of "relevant building" in reg. 40(11)).

1.12 Treating the date at which the parent permission first permits development as the same date as for the section 73 permission will not by itself cause the parent permission to be treated as chargeable to CIL. That is determined by the date of the planning permission (reg. 128(1)). To be treated as chargeable to CIL the parent permission must be treated as having been granted after the introduction of the CIL Charging Schedule in the area and to treat like with like the date of that grant must be the same as that for the section 73 permission.

1.13 Indexation – this is material to the indexation provided for in reg. 40. This is provided for in reg. 40(5)

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

(R x A x Ip) / Ic

where—

A = the deemed net area chargeable at rate R, calculated in accordance with paragraph (7);

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

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

(6) In this regulation the index figure for a given year is—

(a) the figure for 1st November for the preceding year in the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors; or

(b) if the All-in Tender Price Index ceases to be published, the figure for 1st November for the preceding year in the retail prices index."

1.14 Council's approach – in this matter when calculating the chargeable amount arising from the parent permission (Y) in accordance with reg. 40 the Council has taken the index figure for the year in which the parent permission was granted for Ip which is a figure of [redacted]. The grant of the parent permission occurred a month before the introduction of the Council's Charging Schedule and so Ic is also the same figure. This means that when calculating Y there is no increase in the CIL amount due to indexation when multiplying the net chargeable area of the development by the CIL rate in accordance with reg. 40(5).

1.15 In contrast with the calculation of the chargeable amount in respect of the section 73 permission (X) in this matter the Council has used an index figure for Ip of [redacted]. When applied to the whole of the net chargeable area it results in an increase of CIL by approximately [redacted]%.

1.16 This inevitably increases the CIL liability under reg. 128A so that it bears no relationship to the increase in the GIA of the development authorised by the section 73 permission as compared to the parent permission. By applying the indexation figure to the whole of the next net chargeable area it means that when the parent permission and the section 73 permission are granted in different years X (the chargeable amount in respect of the section 73 permission) will almost inevitably be greater than Y (the chargeable amount in respect of the parent permission) purely because the indexation figure will be greater for the section 73 permission and will have been applied to the whole of the net chargeable area.

1.17 Such an approach is wrong and undermines the purpose of reg. 128A. In order to give effect to reg. 128A it is necessary that the indexation figure used when calculating the hypothetical CIL liability in respect of the parent permission (Y) should be the same as for calculating the CIL chargeable amount in respect of the section 73 permission (X). It is only by adopting such an approach that there will be the set off of like against like and the true CIL difference determined.

1.18 Ip for parent permission same as for section 73 permission – such an approach is the correct one in the context of the calculation in accordance with reg. 128A for the following reasons:-

1.19 The parent permission is not subject to CIL (reg. 128(2)). The figure Ip in reg. 40(5) must have been intended to apply only to permissions granted after the introduction of CIL Charging Schedules and not to grants before. Indexation is only engaged when the planning permission is subject to CIL.

1.20 To treat the parent permission as first permitting development at the date of the grant of the section 73 permission does not by itself treat the parent permission as subject to CIL. There has to be more if the parent permission is to be treated as subject to CIL so that it is then possible to calculate the hypothetical CIL liability in accordance with reg. 40.

1.21 The date when a planning permission first permits development is the date when the permission is granted (reg. 8(2)) subject to exceptions in that reg. 8 (reg. 8(3)). If the parent permission is to be treated as subject to CIL then the date on which it is granted must be later than its actual date of grant and should be the date when it first permits development which will be the same date as that of the section 73 permission. For the purposes of the CIL regime a planning permission will only first permit a development if it is a planning permission subject to the CIL charging provisions (that is one granted after the introduction of the CIL Charging Schedules into the area by the authority).

1.22 If the Council's approach is correct it means that even though the section 73 permission is limited to a minor change such as a change to external appearance or opening hours there can be a very significant CIL liability under reg. 128A and only because the indexation figure has moved above 1 between the dates of the two permissions and because that indexation figure is then applied to the whole of the net chargeable area of the development.

1.23 In such circumstances the clear intention is that there should be no CIL liability at all. The section 73 permission has made no change to the development authorised by the parent permission which affects the CIL position. However, if the Council's approach regarding indexation is correct there is the possibility and in most cases the probability that there will be a substantial CIL charge if the size of the development is significant even though the section 73 permission has only made a minor change. This is solely due to indexation and the application of indexation to the whole of the net chargeable area. Neither has anything to do with the changes contained in the section 73 permission.

1.24 The amendments in the 2012 Regulations to reg. 9 of the 2010 Regulations in relation to cases in which the parent permission is subject to CIL make it clear that if the CIL liability is not changed by the section 73 permission then the development subject to the CIL regime will be the development authorised by the parent permission and not the one authorised by the section 73 permission. For convenience reg. 9 provides:-

"(1) The chargeable development is the development for which planning permission is granted.

(2) Paragraph (1) is subject to the following provisions of this regulation.

(3) Where planning permission is granted by way of a general consent, the chargeable development is the development identified in a notice of chargeable development submitted to the collecting authority in accordance with regulation 64[, or prepared by the collecting authority in accordance with regulation 64A].

(4) In the case of a grant of [phased planning permission], each phase of the development is a separate chargeable development.

(5) In Wales, where the effect of a planning permission granted under section 73 of TCPA 1990 is only to change a condition subject to which a previous planning permission was granted by extending the time within which development must be commenced, the chargeable development is the development for which permission was granted by the previous permission as if that development was commenced.

(6) Where the effect of a planning permission granted under section 73 of TCPA 1990 is to change a condition subject to which a previous planning permission was granted so that the amount of CIL payable calculated under regulation 40 (as modified by paragraph (8)) would not change, the chargeable development is the development for which planning permission was granted by the previous permission as if that development was commenced.

(7) Where the effect of the planning permission granted under section 73 of TCPA 1990 is to change a condition subject to which a previous planning permission was granted so that the amount of CIL payable under regulation 40 (as modified by paragraph (8)) would change, the chargeable development is the most recently commenced or re-commenced chargeable development.

(8) For the purposes of paragraphs (6) and (7), the liability to CIL under regulation 40 should be calculated in relation to an application made under section 73 of TCPA 1990 as if the date on which the planning permission granted under that application first permits development was the same as that for the application for planning permission to which the application under section 73 of TCPA 1990 relates.

(9) For the purposes of paragraph (7), chargeable development is re-commenced where—

(a) the chargeable development ("the earlier development") was commenced;
(b) work on the earlier development was halted and a different chargeable development ("the later development") that was granted planning permission under section 73 of TCPA 1990 was commenced on the relevant land; and
(c) the later development was subsequently halted and the earlier development is continued."

1.25 Reg. 9(6) emphasises the point that if the section 73 permission does not cause the CIL position to change then there will be no additional CIL liability. The provision is seeking to cover cases in which there has been no change to the parent permission which affects the CIL position. It is not intended that that should be determined by something which is independent of the section 73 permission and in particular not by reason of the application of the indexation provision to the whole of the net chargeable area.

1.26 If this is the case with parent permissions subject to the CIL regime it is to be expected that the same outcome should result when the parent permission is outside the CIL regime because it was granted before the introduction of CIL in the relevant area.

1.27 The effect of the approach to indexation adopted by the Council is to retrospectively charge to CIL parts of a development which are outside the CIL regime. In this case the increase in chargeable internal area is small in comparison to the internal area of the development authorised by the parent permission yet the Council's calculation of the CIL liability arising in respect of the section 73 permission is attributable to the area comprised in the original development.

1.28 Part of the development authorised by the parent permission may have been built prior to the section 73 permission. The increase in CIL resulting from the Council's approach will be attributable to that part of the development as well as the remaining as yet unconstructed parts. The construction could even have taken place prior to the introduction of the CIL Charging Schedules by the relevant authority. There is a presumption in statutory construction against retrospective taxation and that supports the contention that the Council's approach with regard to indexation is wrong.

1.29 By treating the date at which the development authorised by the parent permission is first permitted as being the same as the date in relation to the section 73 permission the net chargeable area of that development authorised by the parent permission is artificially increased in the context of CIL because it excludes any demolition deduction in relation to buildings in existence when the parent permission was granted but demolished prior to the date at which the section 73 permission first permits development. The Council's approach with regard to indexation consequently increases the CIL liability because the indexation is applied to the whole of the net chargeable area. This heightens the retrospective element of the charge. If such demolition deductions are to be excluded as regards the parent permission by treating the date on which it first permits development as being the same as for the section 73 permission then it must follow that the indexation is by reference to the date of the section 73 permission otherwise the CIL liability arising from the section 73 permission is being artificially increased.

1.30 The purpose of the amendments in the 2012 Regulations introducing reg. 128A and the changes to reg. 9 are to restrict the CIL charge on a section 73 permission. It is the increase in CIL relating to the change in the development authorised originally by the parent permission which is to be charged to CIL in respect of the section 73 permission. It is not intended that the section 73 permission should also bear the increase in CIL resulting from an application of indexation which uses figures which inevitably mean that the CIL liability applicable to the section 73 permission is higher than that applicable to the parent permission and which is applied to the whole of the chargeable net area and not just the increase in the area resulting from the section 73 permission.

1.31 Using a date prior to the introduction of the CIL Charging Schedules to operate the indexation provisions in reg. 40 does not accord with the CIL regime and does not undertake the exercise required by reg. 128A. It does not establish the increase, if any, in CIL liability attributable to the changes in the section 73 permission. On the contrary the Council's approach of using the actual date of the parent permission undermines reg. 128A. It is necessary for the purposes of reg. 128A to treat the indexation for calculating both X and Y to be the same. This follows from reg. 128A treating the date on which each permission first permits development as the same day.

2. CHARGEABLE FLOOR SPACE AREA

2.1 Regulation 9(1) states that "the chargeable development is the development for which planning permission is granted".

2.2 Condition 15 of the Section 73 permission (Doc 3) requires that the "development shall be carried out in accordance with the approved drawings".

2.3 Therefore the chargeable development is the total GIA floor space of the approved drawings. 8

2.4 The approved drawings were prepared by the appellant's architects [redacted]

2.5 It is stated on the approved drawings "this drawing should not be used to calculate areas for the purposes of valuation. Do not scale this drawing."

2.6 The reason for this statement is that the drawings have been converted from original vector drawings to PDF documents which now form the approved drawings.

2.7 Calculating floor space from the PDF versions of the drawings will result in a margin of inaccuracy. Whereas measuring from the original vector drawings will not allow for inaccuracy.

2.8 In the Council's Review Decision dated [redacted] 2016 (Doc [redacted]), [redacted] the Council state that the drawings used by [redacted] to demonstrate the GIA floor space inaccuracies are not the approved plans. The Council state that the drawings used are from a Section 106 Deed of Variation. [redacted] prepared both the drawings which are the approved plans and the drawings in the Section 106 Deed of Variation. [redacted] used the Section 106 Deed of Variation drawings for the following reason: "these drawings are derived from the same CAD drawings and therefore have the same vector co-ordinates as the approved plans.

We have used this set of drawings to demonstrate the CIL area calculation to reduce the number of drawings submitted, as all of the blocks can be seen on these sheets".

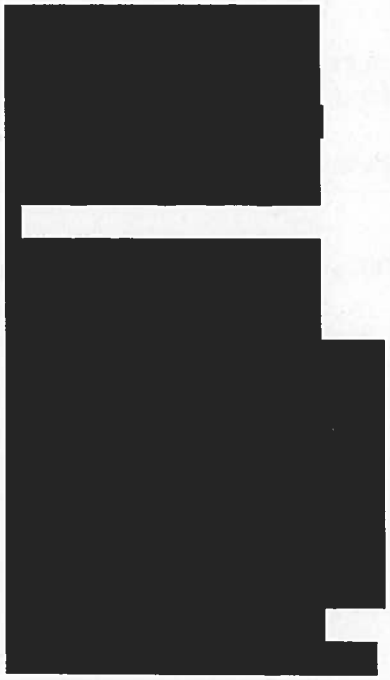
2.9 While the drawings used are not the approved plans in name, they are the same drawings. The use of the Section 106 Deed of Variation drawings was simply for convenience.

2.10 The Council has used the PDF versions of the drawings to calculate the GIA floor space.

2.11 At [redacted] of the Review Decision the Council state that comparison between [redacted] and the Council's measurements shows a high degree of accuracy. The Council then provides examples of this.

2.12 [redacted] has analysed the percentage difference between their measurements of the original vector drawings and the Council's measurements. In example a. [redacted], where the Council has stated their measurement of a drawing is 33.36 square metres compared to [redacted] measurement of 34 square metres, the result is a percentage error of 98.11764%. The percentage error creates a percentage tolerance of + and - the range of the percentage error. If this percentage error is applied to the Council's total chargeable development amount of [redacted] sqm, the result is a potential range between [redacted] sqm and [redacted] sqm of chargeable development floor space.

2.13 This example does not apply across all the drawings but identifies that there is potential for a range of error within the Council's calculation. [redacted] has determined that the following drawings have not been scaled correctly:



2.14 Examples are provided of the PDF drawings having been analysed by the Council whereby the scale is not deemed to be accurate (Docs [redacted]). The issue is that the Council are using drawings which should not be scaled from and this is why the Council's scale bar (shown in red) is giving a different figure.

2.15 [redacted] set out the floor space figures in Doc [redacted] as part of the application for a review of the Liability Notice. Since then there has been discussion among the Council, [redacted] and [redacted] to determine which floor space areas can be counted as chargeable development.

2.16 At point 9 of Doc [redacted] the Council give examples where it believes the floor space area has been calculated incorrectly by [redacted]. The response to these points is listed in Doc [redacted].

2.17 [redacted] has accepted some of the errors identified by the Council but others are not accepted (Doc [redacted]). Having taken into account the accepted measurement errors, [redacted] provide a total GIA floor space of [redacted] square metres (Doc [redacted]). This is [redacted] square metres less from the Council's stated total GIA floor space of [redacted] square metres.

2.18 For the purposes of Regulation 9(1) and figure 'G' of the calculation within Regulation 40(7), the figure of [redacted] square metres has been used as the GIA chargeable development in calculating the appellant's proposed chargeable amount.

3. DEMOLITION FLOOR SPACE AREA

3.1 The planning permission for the appellant's site is for one large development of mainly residential buildings. However, in practice the site forms 3 phases of development.

3.2 Development has progressed significantly under the parent permission affecting phase 1. During the course of development the appellant required to amend the parent permission resulting in the Section 73 permission. The Section 73 permission amends phases 2 and 3 of the site. No development of phases 2 or 3 has commenced.

3.3 When the parent planning permission was issued there were existing buildings to be demolished on all phases of the site.

3.4 In calculating A, the deemed net area chargeable at rate R, Regulation 40(7) allows deduction of the floor space of in-use buildings which are to be demolished before completion of the chargeable development.

3.5 The appellant had commissioned topographical surveys of the existing building locations and size. This provided the external envelope dimensions of the buildings.

3.6 As the existing buildings were being demolished, no surveys of the internal layout were commissioned.

3.7 The external dimensions of the buildings were used to estimate the existing floor space. The figure of [redacted] square metres was calculated, being a percentage of the Gross External Area. This figure was provided to the Council in respect of [redacted] CIL liability.

3.8 Drawings of the existing buildings from the [redacted]'s have been scaled to the size of the recent topographic survey. As such, the external walls of the earlier drawings now align with the perimeter of the topographic survey.

3.9 This has resulted in a more accurate representation of the GIA floor space of the existing in-use buildings, shown in Doc [redacted].

3.10 It has since been discussed with the Council, and agreed, that items [redacted] are not capable of being counted as in-use buildings because they are substations.

3.11 As such, the total floorspace area of in-use buildings to be demolished is [redacted] square metres.

3.12 However, as mentioned previously the site is split into 3 phases and only phases 2 and 3 are still to be demolished for the purposes of the Section 73 permission calculation. The aggregate of phases 2 and 3 of the in-use buildings to be demolished is [redacted] square metres. This is the amount used as figure E in calculating the appellant's proposed chargeable amount for the Section 73 permission.

The appellant submits that the CIL Liability Notice is incorrect and the liable amount should be calculated as follows:

Regulation 128A applies whereby the hypothetical CIL liable amount of the original planning permission should be deducted from the CIL liable amount of the Section 73 permission. This is set out in Regulation 128A as X - Y.

To calculate X (the Section 73 permission), two calculations must be undertaken, first under Regulation 40(7) and then secondly Regulation 40(5):

Regulation 40(7)

A = GR - KR - ((GR x E)/G)

Doc [redacted] sets out the floor space breakdown provided by [redacted].

Considering the total amounts of the Non-Residential GIA and the Substation GIA, the remaining chargeable development GIA at rate R is [redacted] square metres.

A = [redacted] – [redacted] – ([redacted] x [redacted]) / [redacted])
A = [redacted]

Regulation 40(5)

Chargeable amount = (R x A x IP) / IC
Chargeable amount = (£[redacted] x [redacted] x [redacted]) / [redacted]
Chargeable amount (X) = £[redacted]

The same calculations must be applied to calculate the hypothetical CIL liability for the parent permission.

A = [redacted] – [redacted] – ([redacted] x [redacted]) / [redacted]
A = [redacted]

Under section 1 of this submission the IP figure which should be used is [redacted]:
Chargeable amount = (£[redacted] x [redacted] x [redacted]) / [redacted]

Chargeable amount (Y) = £[redacted]
X – Y = £[redacted]

The amount liable for the Council's CIL should be £[redacted] which corresponds proportionately with the amount of floor space increase as a result of the Section 73 permission.

The Mayoral CIL liability does not undergo the same X - Y formula of Regulation 128A. A new Liability Notice is issued which supersedes the original Liability Notice of the parent planning permission. However, the figures used to calculate the Mayoral CIL are incorrect as per the chargeable development and demolition floor space amounts.

A = [redacted] – [redacted] – ([redacted] x [redacted]) / [redacted])
A = [redacted]

Chargeable amount = (£[redacted] x [redacted] x [redacted]) / [redacted]
Chargeable amount = £[redacted]

The appellant submits that the liabilities are as follows:
[redacted] CIL: £[redacted]
Mayoral CIL: £[redacted]

Both amounts still being capable of further reduction from the reliefs allowed under the Regulations.

The footnotes are as follows:-

1http://www.parliament.uk/business/publications/hansard/commons/this-weeks-public-bill-general-committeedebates/read/?date=2012-11-12&itemId=175 accessed

11/11/2016 2 http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/ accessed 11/11/2016

3http://www.out-law.com/en/articles/2012/june/developers-will-not-be-charged-cil-for-amendments-to-applications-says-dclg-/ accessed 11/11/2016

In addition to the grounds of appeal the agent submitted twenty five supporting documents as follows:-

Doc [redacted] – Planning permission [redacted] dated [redacted] (the parent permission)
Doc [redacted] – Mayoral CIL Demand Notice dated [redacted]
Doc [redacted] – Planning permission [redacted] dated [redacted] (the Section 73 permission)
Doc [redacted] – Liability Notice dated [redacted] 2016
Doc [redacted] – Site location plan
Doc [redacted] – [redacted] floorspace plans enclosed in review request
Doc [redacted] – [redacted] floorspace breakdown enclosed in review request
Doc [redacted] - Letter to [redacted] Council dated [redacted] 2016 requesting CIL review
Doc [redacted] – example of Council scaling 1
Doc [redacted] – example of Council scaling 2
Doc [redacted] – example of Council scaling 3
Doc [redacted] – [redacted] Liability Notice Review Decision dated [redacted] 2016
Doc [redacted] - Appendix A of the Review Decision
Doc [redacted] - Appendix B of the Review Decision
Doc [redacted] - Appendix C of the Review Decision
Doc [redacted] - Appendix D of the Review Decision
Doc [redacted] – [redacted] response to Review Decision
Doc [redacted] – [redacted] updated plans
Doc [redacted] – [redacted] updated floor space breakdown
Doc [redacted] - Notes on [redacted] review of existing floor space
Doc [redacted] – [redacted] plan of existing floor space
Doc [redacted] – [redacted] breakdown of existing floor space
Doc [redacted] – [redacted] breakdown of existing floor space plan
Doc [redacted] – [redacted] existing floor space plan comparison
Doc [redacted] – [redacted] existing floor space plan

It should be noted that Doc [redacted] referred to in the grounds of the appeal was not provided.

8. The CA submitted representations on [redacted] and a summary of the main representations are set out below:-

Indexation

i) For the purpose of the application of Regulation 40(5) in the Y calculation, the planning permission, and the relevant date, referred to in the definition of 'Ip' is planning permission A, i.e. that is the original pre-CIL planning permission. As such, the index figure used for Y is the figure for the actual year of permission A and not that for permission B.

ii) There is no deeming provision stating that, for the purposes of the Y calculation, the index year for the relevant planning permission should be the year of planning permission B rather than A. As there is an express deeming provision in Regulation 128A in relation to when, for the purposes of Y, planning permission A is to be taken as first permitting development, it may reasonably be expected that the draftsmen would have included a similar deeming provision in respect of the year planning permission A was granted, had it been the intention that it should be deemed to be the same year as permission B. No such deeming provision is included and it is difficult to justify the implication of such a provision in such circumstances. This construction is a direct consequence of the express language used within Regulations 40 and 128A. To achieve an alternative result requires reading words into Regulation 128A which are absent.

iii) The Council have sought advice from [redacted] and for the Council to act in a way that is contrary to the express wording of the CIL Regulations or to seek to import words into the CIL Regulations would go beyond its powers as a collecting authority and would be unlawful.

iv) The date of planning permission used in Ip is defined in accordance with Regulation 2 in the meaning of 'planning permission' and is defined differently from the 'Time at which planning permission first permits development' which is found in Regulation 8. It is within Regulation 40(7) that the 'day planning permission first permits the chargeable development' is relevant, as it is one of the criteria used to determine what GIA should be included within the value of either K_R or E.

v) The appellant accepts that applying the deeming provision within Regulation 128A that 'if A first permitted development on the same day as B' is relevant to the deductions provided for within Regulation 40(7). What is not 'deemed' by either Regulation 128A, Regulation 40 or any other regulation is that permission A is to be taken as being 'granted' on the same day as permission B in the CIL calculation in general or the application of indexation in particular.

vi) The appellant's argument that their interpretation must have been the draftsman's intention is not accepted by the CA. It is a matter of statutory construction and the proper construction of the express language used within the Regulations supports the CA's position. The appellant's approach cannot be supported without substantial re-writing of the Regulations, or insertion of words into them, which is not justified. It is not the role of the Council, or the appointed person, when construing the Regulations, to carry out a re-drafting exercise.

vii) The Secretary of State's words as set out in the grounds of appeal should be highlighted where he says '....In transitional cases.....the Section 73 consent will trigger CIL only for additional liability it introduces to the development.....'. He refers to 'additional liability' but does not refer to additional floor space created. The spokesman for DCLG quoted in the grounds of appeal also refers to 'any additional CIL liability created' and does not refer to 'additional floor space'.

viii) In calculating the area of the chargeable development the CA the developer may provide copies of the approved drawings with annotations displaying the measurements taken, and an area schedule. Where the CA is not provided with this information, it carries out a measuring exercise to determine the GIA using Adobe Professional software.

ix) The appellant confirms in the grounds of appeal that the drawings they have used to determine the GIA are not the approved drawings. The CA identified differences between these drawings and the approved drawings in its review decision and this has been acknowledged by the appellant. The CA maintain that using drawings other than those approved by the planning permission introduces errors as they have demonstrated. Therefore, the CA maintain that the GIA of the chargeable development remains as it was in their Review decision.

x) The appellant has provided further information relating to the GIA of buildings that were on the site when the original planning permission was granted and improved the accuracy of the GIA measurements. The appellant has included the GIA of additional buildings into the demolished floor space figures as part of his appeal. These buildings have not been referred to before this appeal and as the appellant as not provided any information relating to lawful use the CA have deemed the GIA to be zero in accordance with Regulation 40(10). Having reviewed the information supplied by the appellant, the CA have calculated the total GIA of in-use buildings to be demolished as [redacted] sqm.

The CA included revised calculations for the CIL charge for [redacted] as follows:-

[redacted]

Regulation 40(7): To determine value of A
Gr-Kr-(Gr x E)
G
G GIA of the chargeable development
Gr GIA of the part of the chargeable development chargeable at rate R
Kr GIA of retained floor space charged at rate R
E demolished floor space

Permission A/Y
[redacted] - [redacted]
G [redacted]
Gr [redacted]
Kr [redacted]
E [redacted]
A = [redacted]

Permission B/X
[redacted] - [redacted]
G [redacted]
Gr [redacted]
Kr [redacted]
E [redacted]
A = [redacted]

Regulation 40(5)
R x A x Ip
Ic
where:
R = relevant rate
A = the deemed net area chargeable at that rate
Ip = index figure for the year the planning permission was granted
Ic = index figure for the year the charging schedule came into effect

Permission A/Y
[redacted] - [redacted] Residential
R £[redacted]
A [redacted]
Ip [redacted]
Ic [redacted]
CIL amount £[redacted]

Permission B/X
[redacted] - [redacted] Residential
R £[redacted]
A [redacted]
Ip [redacted]
Ic [redacted]
CIL amount £[redacted]

X - Y = Chargeable amount
X = £[redacted]
Y = £[redacted]
CIL Chargeable amount £[redacted]

Mayor [redacted]

Regulation 40(7): To determine value of A
Gr-Kr-(Gr x E)
G
G GIA of the chargeable development
Gr GIA of the part of the chargeable development chargeable at rate R
Kr GIA of retained floorspace charged at rate R
E demolished floorspace

[redacted] - Mayor [redacted]
G [redacted]
Gr [redacted]
Kr [redacted]
E [redacted]
A = [redacted]

Regulation 40(5)
R x A x Ip
Ic
where:
R = relevant rate
A = the deemed net area chargeable at that rate
Ip = index figure for the year the planning permission was granted
Ic = index figure for the year the charging schedule came into effect

[redacted] - Mayor [redacted]
R £[redacted]
A [redacted]
Ip [redacted]
Ic [redacted]

CIL Chargeable amount £[redacted]

9. The agent on behalf of the appellant submitted a further copy of the approved drawings in PDF format together with comments on the CA's representations on [redacted] and a summary of the main comments are set out below:-

Indexation

The agent has provided a copy of a Counsel's opinion dated [redacted]. The main points in this Opinion can be briefly summarised as follows:-

i) The CA representations fail to address at all the issues raised in the Grounds of Appeal regarding the statutory construction of the indexation provisions adopted by the CA and the role of Regulation 40.

ii) The CA have had no regard to the mischief that Regulation 128A was meant to remedy.

iii) The statements made prior to Regulation 128A being introduced did not make reference to any additional liability, but to that additional CIL liability which is introduced by the S.73 permission; in this case only the additional liability flowing from the small increase in the internal area.

iv) The wording in the statements was not limited to floor area increases because additional liability could result from a change of use which may increase the liability so it would have been wrong to only refer to floor space increases.

v) Regulation 40 prior to Regulation 128A being introduced only applied to planning permissions granted after the introduction of CIL in the area where the chargeable development was located. Therefore, the indexation calculation in Regulation 40(5) is limited at all times to the change in the national All-in Tender Price Index (the Index) occurring after the introduction of CIL in the area.

vi) The CA's construction means that changes in the Index from the date of the grant of the planning permission to the introduction of CIL will be taken into account even though the CIL regime does not operate in the area.

vii) If the parent planning permission is treated as first permitting development at the date of the S.73 planning permission it is because it is to be treated as granted at the date of the grant of the S.73 permission.

viii) The most obvious example of the unintended consequence of the CA's construction is that a change which has no CIL consequences such as a change in the external appearance may result in a CIL charge based on the application of indexation to the whole of the floor space authorised by the parent permission.

Chargeable Floor Space

i) The drawings submitted as part of the appeal are the same as the approved S.73 drawings. The discrepancies at paragraph 9 of the CA's Review decision arise from determination issues over exactly which areas are to included or excluded within the floor space figure for the calculation of CIL.

ii) The use of the Section 106 drawings was purely for convenience. The architects have calculated the floor space measurements for both sets of drawings and they are identical.

iii) The measurements have been taken from the vector drawings to ensure accuracy as measuring from the PDF format produces errors.

10. Having fully considered the representations made by the appellant and the CA, I would make the following observations on the representations and the grounds of the appeal:-

The Regulations

11. I can confirm that the correct Regulations have been applied by both parties in respect of calculating the Mayor [redacted] CIL under Regulation 9(7) and the [redacted] CIL under Regulation 128A as the planning permission granted on [redacted] 2016 was granted under S.73 of the TCPA 1990.

Regulation 9

(7) Where the effect of the planning permission granted under section 73 of TCPA 1990 is to change a condition subject to which a previous planning permission was granted so that the amount of CIL payable under regulation 40 (as modified by paragraph (8)) would change, the chargeable development is the most recently commenced or re-commenced chargeable development.

Regulation 128A

(1) Where all the criteria set out in paragraph (2) are satisfied by a development, paragraphs (3) to (6) shall apply.

(2) The criteria are—

(a) on the day planning permission (A) is granted in relation to the development, the development is situated in an area in which a charging authority has no charging schedule in effect;
(b) a new planning permission (B) is later granted in relation to the development under section 73 of TCPA 1990; and
(c) on the day B is granted, the development is situated in an area in which that charging authority has a charging schedule in effect.

(3) Liability to CIL shall arise in respect of the development, and the amount of CIL payable ("chargeable amount") shall be—

$$X - Y$$

where—

X = the chargeable amount for the development for which B was granted, calculated in accordance with regulation 40; and

Y = the amount, calculated in accordance with regulation 40, that would have been the chargeable amount for the development for which A was granted, if A first permitted development on the same day as B.

(4) For the purposes of calculating Y, for regulation 40(4) substitute—

"(4) For the purpose of calculating Y, for the definition of "relevant charging schedules" in regulation 40(11) substitute—

relevant charging schedules" means the charging schedules which are in effect—

(i) at the time B was granted, and
(ii) in the area in which the development will be situated"

(5) If Y is greater than or equal to X, the chargeable amount is deemed to be zero.

(6) Part 11 of these Regulations (planning obligations) shall not apply in relation to that development."

Regulation 40(5)

5) 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 area chargeable at rate R, calculated in accordance with paragraph (7);

I_p = the index figure for the year in which planning permission was granted; and

I_c = the index figure for the year in which the charging schedule containing rate R took effect.

Indexation

12. The main issue in this appeal relates to the calculation of the charge under regulation 128A and the application of regulation 40, in particular the indexation adjustment reflected in the formula in regulation 40(5). The CA argue that when calculating the figure for 'Y' in regulation 128A(3), 'Ip' in the formula in regulation 40(5) should be taken as being the index figure for the year in which planning permission A was granted. If so, then the application of regulation 128A(3) and regulation 40 is that the chargeable amount for planning permission B will reflect an addition for indexation which includes not only any increase in the period between the year in which the charging schedule took effect and the year in which planning permission B was granted but also any increase in the index figure before the relevant charging schedule even took effect. In my opinion this could not have been intended and I therefore favour the arguments put forward on behalf of the appellant that a purposive construction should be adopted when applying regulation 40 in the context of a calculation of 'Y' under regulation 128A(3).

13. Regulation 128A(3) does not require any assumption to be made regarding the date on which planning permission A was granted and regulation 40(5) only refers to 'Ip' being the index figure 'for the year in which planning permission was granted' (i.e. it does not specifically say whether that is the year of planning permission A or planning permission B). In the context of a calculation of a charge under regulation 128A(3), when two planning permissions have been granted, in my opinion, when calculating the figure for Y, it would be appropriate to take 'Ip' to be the index figure for the year in which planning permission B was granted. The effect of this is that the chargeable amount for planning permission B does not reflect any indexation increase as 'Ip' in regulation 40(5) will be the same in the calculation of the figures for both 'X' and 'Y'.

Chargeable Floor space

14. There are two main areas of dispute with regard to the area of the chargeable development. Firstly, the overall accuracy of the measurements and areas, and secondly what should be included in the GIA.

15. The CA provided a complete copy of the plans that formed part of the planning application annotated and with measurements as part of their Review Decision, clearly showing the areas they had included and shown on a floor by floor basis and subdivided further where appropriate and between different uses and shown on the plans as well as being tabulated. They also clearly indicated how they had dealt with common parts where they were used in connection with different adjoining uses (these areas being apportioned having regard to the floor areas of the different uses in that part of the development).

16. The appellant provided a copy of the plans which were part of the Section 106 agreement attached to the S.73 permission as part of their grounds of appeal and appear to have coloured the areas they have included and cross referenced these to a table showing the areas they have adopted for each use on a floor by floor basis and between the different plots. However, they have not provided any measurements or areas on the plans.

    These plans were challenged by the CA as not being the approved plans; a similarly coloured set of approved drawings were subsequently submitted with the appellant's comments on the CA's representations. The appellant has said that whichever plans are used, the areas have been derived from the original CAD vector drawings as this is the most accurate method to calculate the area, but they have not provided any drawings with linear or area measurements on them to support this approach.

17. I am in agreement with the CA that the appropriate plans from which to calculate the floor areas of the chargeable development are those approved as part of the S.73 permission as the chargeable development is the 'development for which planning permission has been granted'. In addition, I agree with the CA that the S.106 drawings are not the same as the approved drawings as there are differences including some of the internal layouts of the buildings. As a result and because of the absence of any measured plans from the appellant enabling me to verify their areas, on balance I am prima facie accepting the measurements submitted by the CA and the areas of the different uses.

    The appellant has challenged the CA's areas on their accuracy by comparing their respective areas for certain parts of the development and also querying the accuracy of the CA's scaling. However, in the absence of any similar measured plans from the appellant I see no reason to alter my view. Although the approved plans indicate they should not be scaled they do include scale bars and in the absence of any alternative plans it is reasonable to use these plans to calculate the GIA. In addition, I have taken a number of check measurements from the approved plans and these indicate that the CA's areas are reasonable.

18. Gross Internal Area (GIA) is not defined in the Community Infrastructure Levy Regulations 2010. The generally accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6th edition);

GIA is the area of a building measured to the internal face of the perimeter walls at each floor;

Including

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors 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
- Pavement vaults
- Garages
- Conservatories

Excluding

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fires
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stored, and the like in residential property

19. As the CIL Regulations do not define Gross Internal Area it is necessary to adopt a definition of Gross Internal Area. The definition of Gross Internal Area provided in the RICS Code of Measuring Practice (6th edition) is the generally accepted method of calculation and I have applied this definition.

20. The CA in their Review Decision referred to a number of areas in the development where they thought the appellant had excluded floorspace which should have been included in the GIA. The appellant accepted a number of these items in the documents attached to their Appeal so I will address only those items that are still in dispute.

21. The CA considered that on the [redacted] floor of [redacted] a room had been excluded as well as the cores. The appellant said the missing room was the bottom of a ground floor core going down to the basement and to include the basement would be double counting. However, as no area had been included by the CA at ground floor level I consider the LG area which clearly forms part of the building should be included. As the cores are at LG level, and from the plans appear to form part of the building, on balance I consider that these should be included within the GIA.

22. The CA did not agree that the risers and meters on the floors of [redacted] should be excluded. The appellant considered that as they project on to external space they are external projections so do not come within the RICS definition of GIA. On balance having regard to the plans I consider that the riser and meter areas are enclosed parts of the buildings and are not external projections so should be included within the GIA.

23. The CA did not agree that a corridor on the [redacted] floor of [redacted] should be excluded. The appellant indicated that it was an external corridor and should be excluded together with similar corridors on the [redacted] and [redacted] floors. As it is described as a corridor and not an open walkway or covered way giving access to three flats on each floor and appears to be enclosed from the plans I consider that it should be within the GIA.

24. The CA included an area for the bike store on the ground floor of [redacted] which the appellant excluded saying it was an external bike store. From the plan it would be appear to be enclosed on all sides and to have a roof. Therefore, I consider it would come within the definition of a building and its GIA should be included in the area of chargeable development.

25. The CA have included a staircase on the [redacted] floor of [redacted] to which the appellant has countered that all the cores are external. In my opinion the staircase appears to be an enclosed internal staircase so should be in the GIA.

26. I have noted that the appellant has excluded the area of the substations from the GIA of the chargeable development. However, from the plans these would not appear to be buildings in themselves, so I consider that they should be included in the chargeable development as Regulation 6(2) specifically refers to 'kinds of buildings' which should not be treated as development for the purposes of CIL.

Demolition Floor Space

27. The CA and appellant have now agreed that the total GIA of all the buildings existing on the site at the date of the original planning permission to be demolished is [redacted] sqm and I can accept this as being reasonable. However, in respect of the calculation of the CIL charge for the Mayor [redacted], there is a disagreement over whether [redacted] buildings, [redacted] were 'in use' for the purposes of Regulation 40 as at the date of the original planning permission. These buildings appear not to have been referred to when the original planning permission was granted and the CA are of the opinion that no evidence has been put forward to confirm that these were in in lawful use for a continuous period of 6 months within a 3 years prior to the grant of the original planning permission. I can concur that the appellant has provided no evidence as part of this appeal to support their contention that these buildings were in lawful use so I agree with the CA that they should be excluded to give a total area to be deducted from the area of the chargeable development of [redacted] sqm.

28. In respect of the CIL charge for [redacted], the date for considering the extent of in use buildings to be demolished is the date of the S.73 permission, [redacted]. The CA have now as part of their representations revised their area to [redacted] sqm compared to the appellant who has an area of [redacted] sqm. The CA have clearly indicated which buildings have been demolished and are still to be demolished on what appears to be an agreed schedule of buildings and areas between the parties and this supports their area. It is not clear how the appellant has arrived at a slightly higher figure, so on balance I will accept the area of [redacted] sqm put forward by the CA.

29. In terms of the calculation of the CIL charge for the Mayor [redacted] the appellant has excluded the area of the retail/office and community floorspace. However, although this is correct for [redacted] as there is a £[redacted] sqm charge in the area of the development for retail/office and other development, the Mayor's CIL Schedule includes all development excluding health and education within the CIL charge so a similar deduction is not appropriate.

30. On the evidence before me, having regard to the particular facts of this case, I conclude that the appropriate charge should be as follows:-

Mayor [redacted] – (Regulation 9)

Regulation 40

Net chargeable area ([redacted] – [redacted] = [redacted] sqm)
[redacted] sqm @ £[redacted] = £[redacted]

Plus indexation = £[redacted]

(Index 1 November [redacted] – [redacted])
(Index 1 November [redacted] – [redacted])

[redacted] – (Regulation 128A)

Net chargeable area - X ([redacted] – ([redacted] X [redacted]))
[redacted]

[redacted] sqm @ £[redacted] = £[redacted]

Plus indexation = £[redacted]

(Index 1 November [redacted] – [redacted])
(Index 1 November [redacted] – [redacted])

Net chargeable area - Y ([redacted] – ([redacted] X [redacted]))
[redacted]

[redacted] sqm @ £[redacted] = £[redacted]

Plus indexation = £[redacted]

(Index 1 November [redacted] – [redacted])
(Index 1 November [redacted] – [redacted])

X – Y = £[redacted] - £[redacted] = £[redacted]

Total Charge

[redacted]

Total = £[redacted]

[redacted]
Valuation Office Agency
[redacted] 2017