CIL Indexation and variations of pre-CIL planning permissions

No CIL charge is raised on a planning permission granted before the introduction of CIL in the relevant area. However, a subsequent variation by means of a section 73 planning permission granted after the introduction of CIL in that area will be subject to CIL.

Under the original 2010 CIL Regulations the section 73 permission was a separate chargeable event and so although the parent pre-CIL permission did not give rise to a CIL charge the subsequent section 73 permission would and in full.

This was regarded as unfair and so amendments to the 2010 Regulations were introduced. A spokesman for the DCLG stated at the time that

"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."

Put at its simplest with a pre-CIL parent permission there should no CIL liability if the section 73 permission did not increase the internal floorspace ("GIA") but if the section 73 permission increases the development's GIA then CIL should be chargeable only on that increase in area and not the whole GIA.

However, that is not how the amended CIL provisions have been applied. CIL Liability Notices for substantial sums have been given. The reason is the manner in which the indexation element of the regulation 40 calculation has been applied. Although the notional CIL liability arising from the parent permission is to be charged as if it first permitted development on the same day as the section 73 permission in contrast indexation has been applied using the index figure at the date of the parent permission as the starting figure Ip.

Not only does this mean that for the CIL calculation the increase in the index figure from that date (prior to the introduction of CIL) up to the date of the section 73 permission is used but also that increase is applied to the whole of the GIA and not just to the increase in GIA. With larger projects this greatly increase the CIL liability notwithstanding no or only a small increase in GIA due to the section 73 permission.

One such case involved a substantial amount of CIL. The developer appealed under reg. 114 through its agent, Mr. W Roberts of Messrs Maclay Murray & Spens. It has been recently decided by the appointed person in favour of the developer (the redacted decision is on the VOA website).

Mr. Mitchell accepted that a purposive construction of the CIL provisions should be adopted so that Ip should be the index figure at the date of the section 73 permission and not the date of the parent permission. As a result of the appeal the local authority's CIL was substantially reduced.