

# Appeal Decision

by [REDACTED] MRICS

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended



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**Appeal Ref:** [REDACTED]

**Address:** [REDACTED]

**Planning Permission ref:** [REDACTED] granted by [REDACTED]

**Development:** Conversion of barns to provide [REDACTED] six [REDACTED] cottages, construction of car port and parking spaces.

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## Decision:

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED].

## Reasons:

1. I have considered all the submissions made on behalf of [REDACTED] (the appellant) by [REDACTED] (the appellant's agent) and those made by [REDACTED] (the Collecting Authority) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
  - a. The decision in respect of an application for planning permission and Listed Building consent dated [REDACTED] together with associated plans and drawings.
  - b. The CIL Liability Notice issued by the Collecting Authority (CA) on [REDACTED].
  - c. A copy of the CA's Review of the Liability Notice as requested by the appellant. This document is undated but was I understand sent to the appellant on [REDACTED].
  - d. The CIL Appeal Form dated [REDACTED] requesting that I determine the CIL liability at £[REDACTED] under regulation 114 of the CIL Regulations 2010 (as amended).
  - e. A letter from the CA dated [REDACTED] detailing their representations on the appeal.
  - f. A letter from the appellant's agent dated [REDACTED] detailing their comments on the CA's representations.

I have also had reference to the CIL Charging Schedule adopted by [REDACTED] and their published CIL Guidance, in particular Note 1.

2. The CA, consider that under the Charging Schedule the proposed development should be liable to a CIL charge of £[REDACTED]. This is based on a net chargeable area of [REDACTED] square metres of additional 'residential' floor space at the rate of £[REDACTED] per square metre. The net chargeable area has been calculated based on rounded figures of [REDACTED] square metres of proposed development less [REDACTED] square metres of existing buildings. The existing buildings being those deemed by the CA to be "substantial [REDACTED] barns".
3. The appellant's agent contends that the calculation of the net additional area should include the Gross Internal Area (GIA) of some additional existing buildings that have been excluded from the CA's calculation. The appellant's agent maintains that if these additional buildings are deducted from the area of the proposed development the CIL charge should be £[REDACTED] as the area of the existing buildings (measured to GIA) exceeds that of the proposed development.
4. In support of their view that the charge should be £[REDACTED] the appellant's agent contends that the structures excluded by the CA, are buildings and measurable under the RICS Code of Measuring Practice to GIA. These 'buildings' were described by both parties as:-
  - Corrugated iron roof lean-to (within the barn complex)
  - Cart stores (within the barn complex)
  - Cart stores and open arcade (within the barn complex)
  - Pole Barn (outside the barn complex and to be demolished)

The descriptions above are for identification purposes only.

The GIA of these additional 'buildings' is claimed to amount to a total of [REDACTED] square metres. The appellant's agent also contends that as the CA had included the open fronted car port building within the GIA of the proposed development, it was not consistent for them to exclude the additional buildings, as detailed above, from the existing GIA because they were open-fronted. The appellant's agent further contends that the repair and condition of the buildings excluded is irrelevant to this issue. Although in poor repair, the buildings have according to the appellant been in regular use for over 40 years. If the additional existing buildings were to be excluded from the CIL calculation then the appellant's agent contends that the new car port building should be excluded from the GIA of the proposed development.

5. The CA contends that the elements of the barn complex that they had excluded from the CIL calculation were either areas under the slate roof where in their view there was not a GIA (where the roof acted like a canopy over any storage or access way to doors underneath) or external areas within the brick and tile barn complex which were covered by a corrugated iron canopy. The CA contends that the Pole Barn was not a permanent substantial building with a measurable GIA because of the nature of its construction (corrugated iron, scaffolding polls etc) with only partial walls. They further contend that the proposed car port is a substantial permanent building that can be measured to GIA and therefore constitutes a building that should be considered for CIL purposes. The CA contend that as GIA is the area of a building measured to the internal face of the perimeter walls, if there is no perimeter wall on one or more of the elevations then it cannot be included in the GIA. However, GIAs for the disputed buildings (presumably based on measuring to supporting pillars where there is no perimeter wall) are encapsulated in the CIL Review document issued by the CA and appear not to be in dispute.

6. It is my view that the crux of this matter lies in the differing interpretations of GIA and the definition of 'buildings' for the purposes of CIL.
7. The generally accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6<sup>th</sup> 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

The CIL Regulations do not define Gross Internal Area so it is necessary to adopt a definition. The definition of Gross Internal Area provided in the RICS Code of Measuring Practice is the generally accepted method of calculation and I have applied this definition in considering the extent of the net additional floor space in this case.

8. The RICS Code Of Measuring Practice does not specifically exclude any open sided buildings. The definition includes 'internal open sided balconies, walkways and the like'. 'Loading bays' are also included in GIA and the example in the Code (Diagram D) illustrates a calculation based on measuring to a supporting pillar on one side of the bay. An area is excluded from GIA if it can be described as simply being a 'canopy' or a 'covered way'. From the photographic evidence provided it would appear that all the structures in question do, to some degree, have perimeter walls on at least three sides and a roof. All the structures were used and are in my view capable of measurement to GIA under the RICS Code of Measuring Practice. It is therefore my opinion that if those structures can be defined as 'buildings' for the purpose of CIL, then they must be included in the calculations of the existing GIA as defined. The lean-to type structures were used for the purpose of storage of farm materials and equipment as well as livestock and foodstuffs, they cannot in my view be described as an access area or simply canopies. The pole barn is a stand alone structure but is in similar use to the lean to and cart stores, there are some perimeter walls to parts of the structure and in my view the building is measurable to GIA.
9. The Oxford English Dictionary defines 'building' as "a structure with walls and a roof". All the disputed structures have a roof and partial or complete perimeter walls and are therefore, in my opinion properly described as buildings. I agree with the appellant that the condition of the structures in this case is not relevant to whether they can be defined as 'buildings' for the purpose of CIL.
10. I have considered the appellant's agent's contention that the proposed car port GIA should be excluded from the GIA of the development and the CA's counter contention that the area should be included as it is capable of measurement to GIA. The CA's argument being that the structure has at least partial walls on four sides, supported by a published VOA decision on a separate CIL Appeal. It is my opinion that the GIA of the proposed open fronted car ports in this case should be included in the GIA of the proposed development as the structure is a building and measurable to GIA under the RICS Code of Measuring Practice.
11. On the evidence before me I am of the opinion that the all the structures described in paragraph 4 of this report are buildings capable of measurement to GIA (as defined in the RICS Code of Measuring Practice) and therefore should be included in the GIA of the existing buildings to be netted off against the GIA of the proposed development, which should include the GIA of the proposed car ports. This will result in a negative net additional area and therefore the CIL charge in this case should be £[REDACTED].

[REDACTED] MRICS  
RICS Registered Valuer  
District Valuer  
[REDACTED]