

Appeal Decision

by [REDACTED]

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

[REDACTED]

Email: [REDACTED]@voa.gsi.gov.uk

Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED] granted by [REDACTED]

Location: [REDACTED]
[REDACTED]

**Development: Redevelopment of site including demolition of [REDACTED]
[REDACTED] and construction of two [REDACTED]**

Decision

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

Reasons

1. I have considered all the submissions made by [REDACTED] for [REDACTED] [REDACTED] (the appellant) and [REDACTED], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted or referred to documents:-

- a. The planning application dated [REDACTED] together with approved plans, drawings and associated documents as displayed on [REDACTED] website to include a CIL Additional Information Requirement form.
- b. The Decision Notice issued by [REDACTED] on [REDACTED].
- c. The CIL Liability Notice issued by the CA on [REDACTED].
- d. The appellant's request for a Regulation 113 review dated [REDACTED].
- e. The letter from the CA dated [REDACTED] in response to the appellant's request for a review.

- f. The CIL Appeal form dated [REDACTED] submitted by the appellant, under Regulation 114, together with documents, plans and correspondence attached thereto.
- g. The CA's representations to the Regulation 114 Appeal dated [REDACTED].
- h. Further comments on the CA's representations prepared by the appellant and received by the Valuation Office on [REDACTED].
- i. Appeal Decisions issued by the Planning Inspectorate on [REDACTED] under references [REDACTED], [REDACTED] and [REDACTED].

2. The CA have calculated that the appellant is liable to pay £[REDACTED] of CIL. This calculation has been based on a chargeable area of [REDACTED] sq m at a rate of £[REDACTED] per sq m. In establishing the chargeable area the CA has adopted the gross internal area (GIA) of the proposed development at [REDACTED] sq m as completed in the CIL Additional Information but has not made any deduction for an existing building which is due to be demolished.

3. The grounds of the appeal can be summarised as follows:

- i) The CA has incorrectly calculated the chargeable amount. In accordance with regulation 40 "calculation of the chargeable amount", the net developable area is -[REDACTED] sqm.
- ii) The CA has failed to review the CIL Liability Notice in accordance with regulation 113(5).
- iii) The CA has artificially created a lack of clarity by failing to attend the site.
- iv) The CA has refused to comply with the site Bio Security Management plan.
- v) The CA has failed to use available resources (drone mounted cameras) to inspect the site.

4. Neither the GIA of the chargeable development or the rate adopted appears to be disputed as both parties have provided calculations using a GIA of the chargeable development of [REDACTED] sq m and a rate of £[REDACTED] per sq m. The issue is therefore whether the existing building should be deducted from this GIA to arrive at the chargeable area.

5. Regulation 40(7) of the CIL regulations 2010 (as amended) details a formula by which the deemed net chargeable area must be calculated. This formula provides for the deduction of 'the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development' from the 'gross internal area of the chargeable development'.

6. Regulation 40(7) states the value of A (the deemed net chargeable area at rate R) must be calculated by applying the following formula—

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

where—

G = the gross internal area of the chargeable development;

G_R = the gross internal area of the part of the chargeable development chargeable at rate R;

K_R = the aggregate of the gross internal areas of the following—

- (i) retained parts of in-use buildings, and
- (ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;

E = the aggregate of the following—

- (i) the gross internal areas 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 E_x (as determined under paragraph (8)), unless E_x is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

7. Regulation 40(11) of the provides that 'in-use building' means a building which, is a relevant building, and contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

8. Regulation 40(9) states that 'where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building'. Regulation 40(10) states that where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish – a) whether part of a building falls within a description in the relevant definition or b) the gross internal area of any part of a building falling within such a description, 'it may deem the gross internal area of the part in question to be zero'.

9. In undertaking the review the CA has detailed its case worker's file note in relation to officers' efforts to ascertain the use of the building when undertaking the original CIL calculation and evidence in the form of an enforcement notice in relation to an unlawful use of the building being upheld at appeal. The CA therefore concluded that the evidence available to it was not sufficient, or of a sufficient quality, for it to establish that the building was an in-use building and has therefore deemed the existing building not to be an in-use building.

10. The existing building is described within the planning decision as an [REDACTED] [REDACTED]. The design statement details that the site contains a large (approximately [REDACTED] sq m) single storey industrial building containing [REDACTED], [REDACTED]. The site also contains [REDACTED] that are due to be removed and sundry road and storage areas.

11. The relevant period for assessing the lawful use is the 3 years ending on the decision date, i.e. [REDACTED]. The appellant claims that the building was used for [REDACTED] and activities ancillary to [REDACTED] from [REDACTED] to [REDACTED]. Evidence submitted by the appellant in respect of the lawful use of the building includes photographs of the tanks taken in [REDACTED] and similar photographs said to have been taken by a Planning Officer on [REDACTED], prior to the period in question. The quality of the photographs is generally poor but it is apparent from the appellant's photographs that the tanks were still in existence in [REDACTED], albeit the majority appear to be empty but with one large tank having water at a very low level. The photographs dating from [REDACTED] are particularly dark and any use of the building cannot be assessed. There is, to my mind, little doubt as to the existence of these tanks within the building but it whether the building (and its tanks) have been in actual use that is at issue and I do not consider that the photographs of largely empty tanks, dated after the qualifying period, to be sufficient to establish that the building has been an 'in use building'.

12. Further evidence has been submitted by the appellant in the form of an Aquatic Animal Holding certificate issued by DEFRA and CEFAS and dated [REDACTED]. This certifies that [REDACTED] is registered as an Operator of an Aquaculture Holding. The aquatic holding is stated to comprise Pond 1, Pond C and Tanks 1, 2, 3, 4, 5, 6, 7 and 8. There is no plan identifying said ponds and tanks but it would appear that these relate to the external holding tanks rather than the breeding tanks within the building. I am of the opinion that this certificate relates to the wider site and, similarly to the photographs, does not serve as evidence that the relevant building was 'in use'.

13. In the CA's review letter the officer has referred to evidence of unlawful use of the building over the past three years (reference enforcement appeal relating to residential use: enforcement notice upheld by PINS Refs [REDACTED]; [REDACTED] & [REDACTED]. This Appeal Decision has not been submitted as evidence but in the circumstances of this case where there is limited information in respect of lawful use of the building I consider it reasonable to look at information publically available to help me in reaching my decision. I have therefore had regard to the decision issued by [REDACTED] on [REDACTED]. The Inspector made a site visit on [REDACTED] and paragraph 14 of the Decision confirms that [REDACTED] was living at the site. In paragraph 19 the Inspector also notes that there is a continuing presence of fish stock in the outside tanks. The Inspector dismissed the appeal against the enforcement notice and allowed [REDACTED] months from [REDACTED] to look for alternate accommodation. There is therefore evidence that the building had an 'unlawful use', at least until [REDACTED]. The appellant claims that he vacated the building 2 days after the Inspector's visit on [REDACTED] and has provided evidence (an accommodation statement) that he was housed elsewhere from [REDACTED] to [REDACTED]. There is, however, no evidence submitted in respect of the building returning to its lawful use as opposed to being vacant and unused.

14. Within copy correspondence that has been provided to me, mention has been made by the appellant of part of the building, a WC, being in use for the entire period of his ownership. In my conclusions as the Appointed Person, I do not consider this use to be of sufficient scale to qualify as part of the building being in use.

15. The necessity of an inspection by the CA of the building in question and the arrangements for doing so appear to have been a matter in contention between the two parties. Whilst an inspection would have been useful to add to the evidence in relation to the building being in lawful use or not, I consider that an inspection by the CA on a single day would still not necessarily be sufficient in itself to prove use for the qualifying period.

16. In considering the totality of the evidence in this particular case and on the balance of probabilities in view of there being, in my opinion, no conclusive evidence from either party, I have concluded that the evidence available is not sufficient, nor of a sufficient quality, to establish that the building was an in-use building and I therefore consider that the CA have correctly deemed the existing building not to be an in-use building.

17. In respect of the applicant's other grounds (ii to v above) these relate to the CA's procedure and conduct in arriving at the decision and in their consideration of the CIL Review. As the Appointed Person under the Community Infrastructure Regulations 2010 (as amended) it is my responsibility to consider the calculation of the chargeable amount under Regulation 114 but it is not for me to consider or make comment on the conduct of the CA in relation to its activity prior to issuing the Liability Notice or in undertaking its review. Therefore, other than my comments made in 15 above in relation to the possible limited benefit of the CA's inspection of the site, I do not consider it appropriate for me to consider these matters.

18. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore confirm a CIL charge of £[REDACTED] as stated in the Liability Notice dated [REDACTED].

[REDACTED]
RICS Registered Valuer

[REDACTED]