# Appeal Decision

## by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency

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

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***Appeal Ref:***

***Planning Permission Ref. granted by***

***Location: Land at the***

***Development: Demolition of structure and erection of a bungalow.***

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### Decision

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

### Reasons

1. I have considered all the submissions made by on behalf of (the appellant) and , the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

   a. The planning application form completed on together with approved plans, drawings and associated documents as displayed on website to include the Planning Statement completed on behalf of the appellant.
   b. The CIL Additional Information Requirement form completed on .
   c. The Decision Notice issued by on .
   d. The CIL Liability Notice issued by the CA on .
   e. The e-mail from the CA dated in response to the appellant's request for a review under S113 of the CIL Regulations.

f. The CIL Appeal form dated [redacted] submitted on behalf of the appellant, under Regulation 114 (Chargeable Amount Appeal), 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 on behalf of the appellant and dated [redacted] together with 3 signed statements from third parties.
i. Further comments from the CA regarding the third party signed statements in an email dated [redacted].

2. The CA have issued a CIL Liability Notice for the amount of £[redacted] in respect of the above development. Their calculation of the chargeable amount has been based on a chargeable area of the proposed development of [redacted] square metres (sq m) at a rate of £[redacted] per sq m plus indexation.

3. The ground of the appellant's appeal made under Regulation 114 (Chargeable Amount) is that the area of the existing [redacted] structure, which is due to be demolished as part of the development, should have been deducted from the area of the proposed development within the CIL calculation. The appellant has stated within his representations dated [redacted] that 'if an existing is vacant but has the benefit of full Planning Permission, to be demolished and replaced with a new building, then the floor area of the existing building should come to the equation for calculating CIL.' The appellant has calculated that the area of the existing building is [redacted] sq m and hence there is a net gain of [redacted] sq m and he considers the CIL payable should be [redacted] x £[redacted] = £[redacted].

4. Neither the GIA of the chargeable development or the rate adopted appear to be in dispute as both parties have provided calculations within their submissions using a GIA of the chargeable development at [redacted] sq m and a rate of £[redacted] per sq m. The issue is therefore whether the existing building should be deducted from this to arrive at a net 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) states that an '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'.

9. In support of its calculation, the CA has referred to information submitted on behalf of the appellant within the CIL Additional Information form that states the existing building has not been used since [redacted]. It has not therefore deducted the [redacted] sq m for the existing building within the CIL calculation since it appears that the existing building has not been used for six months in the last three years and does not therefore qualify as an 'in-use building' under the regulations. The CA has also submitted a photograph of the existing [redacted] taken from the Planning Officer's report which shows the [redacted] is overgrown both inside and out and the CA also refers to the lack of evidence provided within the planning application/CIL Additional Information Requirement form or as part of the CIL appeal to show that the [redacted] has been in lawful use as is required by the regulations.

10. Within further comments subsequent to the CA representations, the agent for the appellant has stated that the CIL form was incorrectly completed 'as a genuine mistake' and the [redacted] was in fact completed in [redacted] rather than this being the date that the use of the building ceased. The agent confirms that the building was constructed over an 18 month period from [redacted] when a planning approval was gained and it was then used by the appellant for the experiment of plants as a hobby with a friend until [redacted]. The agent considers that it is therefore reasonable to assume that the building was used until [redacted].

11. As evidence in support of the contention that the [redacted] was 'in-use' for the requisite period the agent for the appellant has submitted three signed statements, one by the appellant herself, one by a friend of the appellant and one by a gardener employed by the appellant. The appellant confirms that the [redacted] was in use from spring [redacted] to summer [redacted]. Her gardener confirms that it was in use from spring [redacted] until the winter of [redacted] when a decision was made not to heat it any longer and the friend, the Treasurer of the [redacted], confirms that the [redacted] was used from [redacted] until '[redacted] [redacted]'.

12. The appellant's agent has also referred to case law in respect of land that 'is or was used as a permanent structure' being considered as a building.

13. In response to the new evidence the CA has commented that none of the letters give a firm date or season when the building was last used and no business invoices, details of income, utility bills or any corroborating information has been submitted to support the revised claim. The CA remains of the opinion that there is nothing that clarifies beyond the balance of probabilities that the building has been used for 6 months within the last three years.

14. Firstly I do not consider that the case law referred to by the appellant is relevant to the appeal since the CIL Regulations clearly state that the existing building must have been 'in-use' in order to be deducted within the calculation of CIL and this is the issue under dispute rather than the [redacted] being considered as a building.

15. The relevant period for assessing the lawful use is the 3 years ending on the decision date, so in this instance the 6 months qualifying use would have had to have taken place between [redacted] and [redacted].

16. The CA has made its CIL calculation based on information submitted by the appellant in the CIL Additional Information form whereby it is clearly stated that the existing building has not been in use since [redacted], albeit the appellant now claims that this was incorrectly completed. This lack of any use for a long period of time appears to be corroborated by the Planning Design and Access Statement prepared in [redacted] wherein it is stated that planning permission for the original structure was granted in [redacted] but the building has not been used for 'many years'. The photograph submitted by the CA shows the existing building to be overgrown which adds weight to the likelihood of the building not being used for several years although it is not conclusive.

17. In considering the totality of the evidence in this case and on the balance of probabilities, in view of there being conflicting evidence provided by the appellant as time has progressed, I have concluded that the evidence that is 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 and are correct not to have deducted its area within the CIL calculation.

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] BSc(Hons) MRICS
RICS Registered Valuer

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