

# 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:** [REDACTED]

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

**Location:** [REDACTED]

**Development: Retention of building to form 3 holiday lets (not in accordance with approved plans)**

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## 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] of [REDACTED] on behalf of [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 documents:-

- a. The Decision Notice issued by [REDACTED] on [REDACTED].
- b. The CIL Liability Notice issued by the CA on [REDACTED].
- c. The appellant's request for a Regulation 113 review dated [REDACTED].
- d. The letter from the CA dated [REDACTED] in response to the appellant's request for a review.
- e. The CIL Appeal form dated [REDACTED] submitted on behalf of the appellant, under Regulation 114, together with documents and correspondence attached thereto.
- f. The CA's representations to the Regulation 114 Appeal dated [REDACTED].

g. Further comments on the CA's representations sent on behalf of the appellant in an email dated [redacted].

2. Planning permission for the above development was granted by [redacted] on [redacted].

3. Prior to the grant of this planning permission I understand that previous approvals on the same site were as follows:-

- [redacted] - Planning permission granted on [redacted] for a single storey display, sale and storage building, removal of one polytunnel and reversion of one poly tunnel to agricultural use.
- [redacted] - Planning permission granted on [redacted] for removal of condition 2 of planning permission [redacted] (to allow storage use).
- [redacted] - Planning permission granted on [redacted] for three holiday lets following removal of polytunnel.

It is not disputed that development permitted under [redacted] was not built in accordance with the plans (as was a condition of the planning permission) and hence did not have the benefit of planning permission. It therefore required a retrospective application ([redacted]) to regularise the development.

4. Following the grant of the retrospective planning permission the CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted]. This was based on a chargeable area of [redacted] square metres @ £[redacted] per square metre (sq m).

5. On [redacted] the appellant requested a review of the CIL charge under regulation 113 of the CIL Regulations 2010 (as amended). The request for a review was made since the appellant considers that the floorspace of the original polytunnel ([redacted] sq m) should be offset within the chargeable area calculation. The appellant has detailed why he considers the polytunnel is a building and also detailed the regulations (Regulations 40(7) and 40(11)) which defines and allows for the deduction of floorspace for relevant 'in-use' buildings from the gross internal area of the chargeable development to arrive at a net chargeable area upon which CIL liability is based. The appellant considers that the development was first permitted on [redacted] (i.e. the date of the original application for 3 holiday lets) and at that time the polytunnel satisfied the definition of an 'in-use' building and hence the floorspace should be offset within the chargeable area calculation and the CIL payment should be £[redacted].

6. On [redacted] the CA completed a review of the CIL charge and did not revise its calculation. The CA explained that it does not consider the polytunnel to be a building but notwithstanding this, the polytunnel would in any event fail to pass the 'in-use' criteria in the relevant legislation. The CA explains that it is as a result of the retrospective permission ([redacted]) that was granted on [redacted] that the chargeable amount arises. As the development had already commenced by this date the polytunnel in question was not situated on the land on the day that planning permission was granted for the chargeable development and so cannot be considered a 'relevant building' to be offset.

7. On [redacted] the appellant submitted an appeal made under Regulation 114 (a) chargeable amount appeal) to the Valuation Office Agency contending that the CIL charge should be £[redacted] and attached copies of relevant documents to include his original request for a review and reasoning made to the CA under Regulation 113.

8. On [REDACTED] the CA submitted its representations explaining the reasons behind the calculation of a CIL charge of £[REDACTED] which are essentially the same as contained within its review as detailed in paragraph 6. above.

9. The appellant submitted comments on the CA's representations on [REDACTED] clarifying that on the day permission was granted for replacement of the polytunnel with a new building ([REDACTED]) the polytunnel was in situ and had been in use for the requisite period. In accordance with the CIL Regulations in the appellant's view the polytunnel was "a building which is situated on the relevant land on the day planning permission first permits the chargeable development." The appellant also notes that no CIL Liability Notice was issued by the authority pursuant to the [REDACTED] permission but also admits that no commencement notice was sent to the authority at the time.

10. The Authority implemented its CIL Charging Schedule on [REDACTED] and all planning permissions granted on or after that date are potentially liable to a CIL charge.

11. Regulation 40(7) of the CIL Regulations 2010 (as amended) allows for the deduction of floorspace of relevant 'in-use' buildings from the gross internal area of the chargeable development to arrive at a net chargeable area upon which the CIL liability is based. Regulation 40(11) of the CIL Regulations defines an 'in use' building as 'a building which (i) is a relevant building, and (ii) 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 the planning permission first permits the chargeable development'. Regulation 40(11) further states that a 'relevant building' means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

12. Regulation 9 of the CIL Regulations 2010 (as amended) states that chargeable development means the development for which planning permission is granted. The CIL liability under appeal therefore relates to the development allowed by the planning permission [REDACTED] which is for the 'retention of building to form three holiday lets'. The fact that an earlier planning permission exists for three holiday lets is not relevant since the development was not built in accordance with approved plans and hence the retrospective permission was required and it is the retention of the building to form three holiday lets that is the chargeable development and the subject of this appeal. The date that planning permission first permitted the chargeable development is therefore [REDACTED].

13. Whilst there is a dispute as to whether the polytunnel qualifies as a building this is not of consequence since there is no dispute that the polytunnel was demolished by [REDACTED] and it therefore cannot be considered as a 'relevant building' under the definition in Regulation 40(11).

14. The CA have based their calculations of the CIL liability on floor areas submitted on behalf of the appellant in the Planning Application Additional Requirement form. The gross internal area of the proposed development is stated as being [REDACTED] sq m. There would appear to be no dispute in the calculation of this area nor the rate of £[REDACTED] per sq m applied.

15. 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  
Valuation Office Agency  
[REDACTED]

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