Appeal Decision

by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency

[redacted]

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

Appeal Ref: [redacted]

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

Location: [redacted]

Development: Demolition of the [redacted]***, change of use of offices and ancillary buildings to*** [redacted] ***apartments/dwellings, erection of*** [redacted]***. dwellings, constructions of*** [redacted] ***and*** [redacted]***.***

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] 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 submitted documents:-

a. The application for planning permission dated [redacted] together with associated plans, drawings and documents.
b. The Decision Notice issued by [redacted] on [redacted].
c. The CIL Liability Notice issued by the CA on [redacted].
d. The request for review made to the CA by the appellant on [redacted].
e. The Chargeable Amount Review Decision and the revised CIL Liability Notice issued by the CA on [redacted].
e. The CIL Appeal form received by the VOA on [redacted] and submitted by the appellant under Regulation 114, together with documents attached thereto.
f. The CA's representations to the Regulation 114 Appeal dated [redacted].

g. Further comments on the CA's response made by the appellant on [redacted].

Background

2. The CIL Liability Notice in respect of the proposed development originally issued by the CA on [redacted] stated a chargeable amount totalling £[redacted].

3. Resultant from the appellant's request for a review the CA issued a revised Liability Notice on [redacted]. This superseded the first liability notice and was for a sum of £[redacted].

4. The appellant has submitted an appeal to the Valuation Office Agency under Regulation 114 (chargeable amount appeal) stating that in his opinion the calculation of the amount of CIL payable should be £[redacted].

5. The chargeable amount calculations undertaken by both parties have been based on a GIA of the chargeable development as follows:

	Appellant GIA (sq m)	CA (revised Liability Notice) GIA (sq m)
Plots [redacted]		
Gatehouse		
Stables		
Cottage/Restaurant/ changing facility		
[redacted]		
[redacted]		
[redacted]		
Total		

These areas exclude a greenhouse and Granary building which remain unchanged as part of the development.

6. Both parties have deducted the GIA floor area of existing 'in use' parts as follows in order to arrive at the net chargeable area:

	Appellant 'in use' GIA (sq m)	CA 'in use' GIA (sq m)
[redacted]		
[redacted]		
Stables		
Cottage/Restaurant/ changing facility		
Walled Garden Building [redacted]		
Walled Garden Building [redacted]		
Total		
Net Chargeable Area		

7. The grounds of the appeal revolve around a disagreement over the following matters which I will address below:

- How to measure the GIA of a residential development
- What constitutes 'a building'
- The extent of the 'in-use' buildings

Measurement of the GIA of a residential development

8. The appellant notes that the CIL Regulations do not define or reference a definition of 'gross internal area' but both parties accept that the RICS Code of Measurement Practice 6th Edition (May 2015) is the principle source of guidance for the measurement of buildings. The definition of GIA is provided within the Code as follows:

> *GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.*
>
> *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 stores, and the like in residential property.*

9. However since the chargeable development in this case is residential in nature the appellant is of the view that a modified version of GIA known as Net Sales Area (NSA) is the

correct application of the RICS guidance in relation to the CIL chargeable amount calculation. This is set out in App 8 and App 21 of the Code and the definition for App 8 is as follows:

'App 8 New Homes Valuation – modified version of GIA is an accepted basis of measurement for the valuation and marketing of residential dwellings, particularly in new developments (see NSA of page 30).'

Net Sales Area (NSA) is later defined as follows:

Net Sales Area is the GIA of a new or existing residential dwelling, subject to the following conditions

Including

- *Basements*
- *Mezzanines*
- *Galleries*
- *Hallways*

Excluding

- *Areas with headroom less than 1.5m where the dwelling does not have usable space vertically above*
- *Garages*
- *Conservatories (state separately)*
- *External open-sided balconies*
- *Greenhouses, garden stores, fuel stores and the like in residential property*
- *Terraces*

10. An important modification of GIA under the definition of NSA therefore lies in the exclusion of areas with headroom less than 1.5m and garages. The appellant has calculated the GIA of the chargeable development excluding these areas since he considers NSA to be the correct application of the RICS guidance and that it would not be logical to apply a CIL charge to areas that have minimal or no end value. To include them would discourage the development of enclosed garaging in his opinion.

11. The CA considers that the modified version (NSA) is only applicable to the valuation of new homes and that CIL is not a valuation of property. The CA has adopted the unmodified version of GIA (as defined above) since in its opinion it is applicable to all uses, not just commercial, and is adopted as a standard approach for CIL purposes nationwide.

12. In addition the appellant has calculated the chargeable area based on the sum of the NSA's of the individual residential units whereas the CA has measured the GIA of entire blocks or units if detached. For terraced units and flats this will mean that the CA are including internal dividing walls between units and communal space within their calculation whereas the appellant has excluded them.

13. In support of his approach the appellant has quoted references to analyses on a per unit basis within the Council's published Viability Study [redacted] and references to individual unit sizes within the CIL Zones Charging Schedule – Potential for Additional CIL Charging Zones [redacted]. In the appellant's opinion these unit sizes are the minimum prescribed by DCLG and cannot therefore include communal areas or garaging. He also refers to the CIL [redacted] Preliminary Draft Charging Schedule Public Consultation report whereby potential CIL receipts have been calculated using individual units based on minimum space standards. The appellant has also referred to the Planning Inspector's CIL

Examiners Report whereby the inspector confirms that he has relied on the documents already mentioned and confirms that on this basis 'the Charging Schedule is robust proportionate and appropriate'.

14. Whilst I note the appellant's references to the CA's CIL testing reports, I must have regard to the provisions of the CIL Regulations 2010 (as amended) in relation to this appeal and cannot consider viability issues. Having reviewed the evidence and opinion provided by both parties in respect of the measurement of the chargeable development I am of the opinion that it is appropriate, for CIL purposes, to calculate the gross internal area based upon the core definition of GIA as defined in the RICS Code of Measuring Practice (6th Edition). The CIL regulations refer to 'gross internal area' and not any modifications to it that are contained within the RICS Code of Measurement Practice as applications for specific property types or purposes. NSA is a modification to GIA used for valuation and marketing of new build residential properties and I do not consider it applicable for CIL purposes. I therefore consider it appropriate to include the garages and any areas below 1.5 m in height within the calculation of the chargeable area.

15. As already mentioned, the RICS Code of Measuring Practice sets out the method of calculating GIA but it does not give guidance on what has to be measured for CIL purposes. However Regulation 40 of the CIL Regulations 2010 (as amended) refers to the GIA of "the chargeable development" and this would in my opinion seem to point to calculating the GIA of the whole development, treating blocks of units as one building, and thus including communal areas and treating party walls as an internal partition, to be measured through for GIA purposes.

16. The CA have submitted a spreadsheet that demonstrates for the majority of newbuild units, the CA's calculated area is very similar to the appellant's once the area of the garages are added in. The appellant has not submitted any reasoning behind the reason for the differential in the few units that do show an unexplained difference but it is likely due to the appellant's exclusion of internal walls and communal areas. For the newbuild plots [redacted] I therefore consider that the measurement method adopted by the CA to be correct and a GIA of [redacted] sq m should be adopted as the area of chargeable development for these units.

17. In relation to the GIA of the other buildings forming part of the chargeable development I comment as follows:

- The Gatehouse: there is a negligible difference between the appellant and the CA in their calculation of the GIA. I have adopted [redacted] sq m.
- Stables: The difference in GIA is [redacted] sq m. I have examined the proposed plans and the difference would appear to relate to the exclusion of internal walls by the appellant. I have adopted the CA area of [redacted] sq m.
- Cottage, restaurant and changing facility: The difference in GIA is [redacted] sq m. The appellant has measured on a unit by unit basis whilst the CA has measured as a block. I have examined the proposed plans and the difference appears to relate to internal walls and an area on the ground floor which is not included in any of the units. I have adopted the CA area of [redacted] sq m.
- [redacted]: The difference in GIA is [redacted] sq m. I have examined the proposed plans and note that these state communal areas to total some [redacted] sq m, all of which have been excluded by the appellant measuring on a unit by unit basis, plus there is further basement accommodation and internal walls that appear to have been excluded by the appellant. I have therefore adopted the CA area of [redacted] sq m.
- [redacted]: The difference in GIA is [redacted] sq m. I have scaled the plans submitted and have measured the [redacted] as [redacted] sq m which I have adopted within my calculation.
- [redacted]: The difference in GIA is [redacted] sq m. I have scaled the plans and broadly agree with the appellants areas although I have added the stairwells

and cupboards that project into the eaves on the first floor. It appears that the CA has included areas within the roof void. I have adopted an area of [redacted] sq m.

18. The area of the chargeable development that I have adopted is [redacted] sq m (excluding garden buildings).

What constitutes a building and the extent of 'in-use' buildings

19. Disagreement surrounding these issues has resulted because of the effect of Regulation 40(7) of the CIL Regulations 2010 (as amended) which, within a calculation of the *net* chargeable area of a development, provides for the deduction of the gross internal area of in use buildings that are to be demolished as part of the development as well as certain retained parts. The retained part areas to be deducted must be either (i) retained parts of in-use building or (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.

20. Regulation 40(11) provides that an 'in-use building' means a building which 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.

21. 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" and 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".

22. Both parties agree that to qualify as an 'in use building' part of the building must have been in lawful use for at least six months between [redacted] and [redacted]. The existing buildings that qualify as 'in-use' areas for deduction, as calculated by each party, are shown in paragraph 6 above.

23. As part of the appellant's appeal submission some of the detail on the history of the site has been made available to the CA for the first time. In particular the fact that a sale and leaseback arrangement was entered into with the former owners of the site on [redacted]. Under this arrangement the former owners hold a lease of the [redacted], restaurant, and changing facilities together with [redacted] car spaces which they continue to lawfully use as offices and [redacted] accommodation. A copy of the lease has been provided along with an e-mail from the tenant confirming occupation and service charge documentation.

24. The CA has not commented on this additional information since it was provided after its review which resulted in the amended Liability Notice. In the CA's opinion it did not have sufficient information when undertaking the review to determine that the buildings were in-use and it therefore correctly determined the area for deduction within the chargeable area calculation as zero in relation to the [redacted], restaurant and changing rooms. The evidence now provided to me suggests that there has been a lawful use of these buildings during the qualifying period. I am of the opinion that I should consider all of the information submitted in relation to the appeal, not just that that was available at the time of the CA review. The plans for the proposed development show the pavilions are to be demolished but the majority of the restaurant, cottage and changing rooms are to be retained. I have therefore included the GIA of the [redacted], cottage, restaurant and changing rooms as a deduction within my

calculations. The CA has stated the GIA of the pavilions to be [redacted] sq m but the appellant has not separately stated this area within its appeal submission. The reason for this is covered in paragraph 26 below. I have no reason not to adopt the GIA of the [redacted] as stated by the CA.

25. There is some dispute as to whether the cottage has been in use during the qualifying period with the CA noting that it was unused at the time of planning officer visits during the 3 year period and was also advertised by the landowner as being available for let but the appellant has produced a statement from an employee stating that between [redacted] to [redacted] the cottage was in continuous office use. However since the cottage is within the same building as the restaurant and changing rooms, which have been shown to be in use, then the whole building can be considered to have been 'in use' and the GIA of the whole building can be deducted within the net chargeable area calculation. The areas calculated by each party are very similar at [redacted] sq m (appellant) and [redacted] sq m (CA). I have taken the rounded [redacted] sq m as a reasonable deduction making a total deduction of [redacted] sq m to include the [redacted].

26. The [redacted] are linked to the [redacted] by a first floor bridge whilst the [redacted] is linked to the [redacted] by an open sided (on one side) covered walkway. The appellant is of the opinion that the [redacted] and [redacted] should be considered as one building (and hence has not provided a separate area for the [redacted]). This being so would result in the entire building being classed as an 'in use' building for the purposes of CIL. The CA are of the opinion that the [redacted] and the [redacted] are separate buildings, meaning that three separate in-use tests must be considered; one for the [redacted], one for the [redacted] and one for the [redacted] and [redacted]. There is no definition of a building given within the CIL regulations and whilst there are physical links between the buildings in this case, one open and one enclosed, I consider that they are just that; links between separate buildings and do not mean that two structures become one. The CA has referred to the planning approval for the [redacted] which references them as buildings and whilst the [redacted] is known as a [redacted], the absence of a more integral connection leads me to decide that this should also be considered as a separate building for CIL purposes.

27. Further evidence for the 'in use' test in relation to the [redacted] and [redacted] has been provided by the appellant in the form of statements from two employees, one is a [redacted] who works across a range of sites including [redacted] and the other is the handyperson who has worked at [redacted] on a full time basis since [redacted]. Both confirm that the [redacted] has been in continuous office use 5 days a week by the [redacted] company since [redacted] (exactly six months prior to the decision date). The handyperson confirms that he has been based at [redacted] on a full time basis and was responsible for setting up an office in the [redacted] which has been used by staff, sub-contractors, consultants and planning officers who have all had access to the office as well as a kitchen and toilets. The [redacted] confirms that the [redacted] has been used as a meeting room space, for interviews and site inductions. No evidence has been provided in respect of the [redacted]. I do not consider that the occasional use by a handyperson working across the site and use of an office for meetings by other staff and visitors temporarily visiting the site is sufficient to prove a continuous use over the period. No evidence has been provided as to the frequency of use during the relevant six month period or any payment of business rates or utility bills. Therefore I have not deducted the area of the [redacted], [redacted] or [redacted] within my calculations to arrive at the net chargeable area. I have however, followed the CA by deducting a retained area within the basement where its use is remaining unchanged. The CA have deducted the entirety of the basement but plans suggest that part will be converted to form part of a residential unit. According to my scaled plans and calculations, the remaining portion totals [redacted] sq m which I have deducted within my calculation of the net chargeable area.

28. Both parties agree that the area of The Gatehouse should be deducted within the calculation at [redacted] sq m as a retained part with no change of use whilst the Stables does not qualify as an in-use building deduction.

29. Walled Garden [redacted] ([redacted]) – Both parties agree that this building has an existing lawful use but the difference lies in the calculation of the existing area resultant from the appellant including the loft floor within its GIA calculation. Photographs submitted show that this has a boarded floor and electricity supply although the CA have commented that this floor is not included on existing plans, has no natural light and the extent of the boarded area is not determinable. Existing access is shown to be via fixed wooden ladder steps. The loft floor is not part of the proposed development as the proposed unit is shown as being single storey on plans. On the balance of the evidence presented and owing to a combination of the features of this loft, not least the temporary ladder access that the CA has commented appears modern and may not have the requisite listed building consent, I do not consider that the loft qualifies as a floor level within the definition of GIA. I have therefore adopted the CA area of [redacted] sq m in relation to the ground floor only as a deduction.

30. Walled Garden [redacted] – Both parties agree to this building qualifying as an in use deduction at [redacted] sq m.

31. My decision is therefore based upon the chargeable area of the development as follows:

	GIA (sq m)
Plots [redacted]	[redacted]
Gatehouse	[redacted]
Stables	[redacted]
Cottage/Restaurant/ changing facility	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
Total	[redacted]

From this I have made deductions for demolished and retained parts as follows:

(NB. I have not differentiated between retained parts and demolished areas here as there is only one charging rate to be applied and therefore the split between the two is not pertinent to the CIL charge calculated.)

	Demolished/retained parts GIA (sq m)
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
Gatehouse	[redacted]
Stables	[redacted]
Cottage/Restaurant/ changing facility	[redacted]
Walled Garden Building [redacted]	[redacted]
Walled Garden Building [redacted]	[redacted]
Total	[redacted]

The net chargeable area I have adopted is therefore [redacted] sq m (i.e. [redacted] sq m – [redacted] sq m).

32. Both parties have used a residential CIL rate of £[redacted] per sq m taken from [redacted] Charging Schedule and indexation of [redacted] ([redacted]) following the CA's indexation guidance note. I have used the same rate and indexation to calculate the CIL charge as follows:

[redacted] x [redacted] x [redacted] = £[redacted]

33. Based on the facts of this case, the evidence before me and having considered all of the information submitted in respect of this matter, I therefore determine a CIL charge of £[redacted].

[redacted] BSc(Hons) MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]