

# Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency (SVT)



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Appeal Ref: [REDACTED]

Planning Permission Reference: [REDACTED]

Location: [REDACTED]

Development: The erection of up to [REDACTED] dwellings and associated parking following demolition of existing [REDACTED] buildings.

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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] (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. [REDACTED] Planning Application Decision Notice ref [REDACTED] issued by the CA on [REDACTED]
- b. [REDACTED] Planning Application Decision Notice ref [REDACTED] issued by the CA [REDACTED] granting reserved matters approval.
- c. [REDACTED] CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL liability.
- d. [REDACTED] CIL Liability [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL Liability.
- e. [REDACTED] CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL Liability.

- f. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents 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 dated [REDACTED].

2. Planning Consent reference [REDACTED] for the development was granted and issued by [REDACTED] on [REDACTED].
3. A CIL Liability Notice reference [REDACTED] was issued by the CA on [REDACTED] for the amount £ [REDACTED] ([REDACTED]) based on the CA's assessment of Gross Internal Area (GIA) for the proposed development of [REDACTED]m<sup>2</sup>. There was no existing building area deducted from this GIA.
4. The appellant requested a Regulation 113 Review of the Chargeable Amount on [REDACTED].
5. Following the Regulation 113 Review a revised CIL Liability Notice reference [REDACTED] was issued by the CA on [REDACTED] for the amount £ [REDACTED] ([REDACTED]) based on the CA's assessment of Gross Internal Area (GIA) for the proposed development of [REDACTED]m<sup>2</sup> with the GIA of [REDACTED] at [REDACTED]m<sup>2</sup> deducted as an existing building to give a Chargeable Development GIA of [REDACTED]m<sup>2</sup>.
6. A further amended CIL Liability Notice [REDACTED] was issued by the CA on [REDACTED] for the amount £ [REDACTED] ([REDACTED]) with the GIA of [REDACTED] at [REDACTED]m<sup>2</sup> also deducted as an existing building to give a Chargeable Development GIA of [REDACTED]m<sup>2</sup>.
7. On [REDACTED] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL charge should be £ [REDACTED] ([REDACTED]) based on a Chargeable Development GIA of [REDACTED]m<sup>2</sup>.
8. With regard to the main grounds of appeal relating to the level of CIL charge proposed by the appellant, they have raised four issues:-
  - i. The In-Use Point – the Appellant contends that [REDACTED] and [REDACTED] are relevant buildings and were in lawful use.
  - ii. The GIA Point – the Appellant's view is that the CA is wrong to assert that the GIA of [REDACTED] and [REDACTED] cannot be measured because they do not have two or more walls.
  - iii. The Not Properly Discounted Point – The Appellant is of the view that the CA has not properly offset existing lawfully used GIAs of parts of in-use buildings that are to be demolished in calculating the chargeable development.
  - iv. The Incorrect CIL Chargeable Point - The Appellant is of the view that the CIL Charge has not been calculated correctly.
9. With regard to i. The In-Use Point - The CA agrees that provided that the barns are "buildings" then they can be deductible. However, the CA view is that the photographs submitted by the Appellant only show that [REDACTED] and [REDACTED] are buildings, and therefore [REDACTED] and [REDACTED] are not buildings and cannot therefore be deducted from the CIL calculation.

10. The CA have accepted the Appellant's point that [REDACTED] and [REDACTED] were in lawful use for the appropriate period of time. This matter of what was in lawful use at the relevant date has therefore been addressed and resolved between the parties.
11. With regard to ii. The GIA Point – The CA contend that the CIL Regulations do not define a “building”, and purely exclude certain types of building, and that whether [REDACTED] and [REDACTED] fall into any of the three exclusions is irrelevant if they are not “buildings” from the outset. The CA comment that they have applied the Oxford English Dictionary definition of a “building” as “A structure with a roof and walls, such as a house or factory.”
12. The Appellant has provided legal opinion from [REDACTED], a planning barrister, as to the correct interpretation and scope of the term “building” in the context of the CIL regulations. [REDACTED] is of the view that the photographic evidence provided to the VOA in this appeal shows that [REDACTED] and [REDACTED] actually satisfy the definition of “building” as interpreted. This is the main issue of the Appellant's case, and will be dealt with in detail below.
13. With regard to iii. The Not Properly Discounted Point – The Appellant submits that the CA should deduct the areas of [REDACTED] and [REDACTED] from the GIA of the development to arrive at the Chargeable Development GIA as follows:-

Total Development	[REDACTED]	m2
Less Existing Buildings for Demolition		
[REDACTED]	-	[REDACTED] m2
[REDACTED]	-	[REDACTED] m2
[REDACTED]	-	[REDACTED] m2
[REDACTED]	-	[REDACTED] m2
Total		[REDACTED] m2 Chargeable Development

14. This refers to the “discounting” or off-set of the total GIA of the development by the total GIA of the existing buildings to arrive at the correct Chargeable Development GIA for CIL calculation purposes, and will be addressed as part of ii. The GIA Point in detail below.
15. With regard to iv. The Incorrect CIL Chargeable Point - The CA confirm that the calculation used under the appellant's scheme has been:-

$$\text{CIL Charge} = (\text{£} [REDACTED] / \text{m}^2 \times [REDACTED] \text{m}^2 \times [REDACTED]) / [REDACTED] = \text{£} [REDACTED]$$

Where:-

£ [REDACTED] / m<sup>2</sup> is the value of R  
at the index of [REDACTED] (the value of I<sub>c</sub>)  
a GIA of [REDACTED] sqm (the value of A)  
at the [REDACTED] interest of [REDACTED] (the value of I<sub>p</sub>)

16. The index figures used above have been confirmed in confidence, as this information is subject to copyright, however it has been revealed due to this CIL Appeal.
17. The CA have responded to the Appellant's request for clarification and confirmation of the CIL calculation. The Appellant has confirmed their acceptance of the indices applied, in particular I<sub>p</sub> and I<sub>c</sub> in the CIL calculation, in paragraph 4 of their Response to CA comments dated [REDACTED].
18. It therefore remains for the Appointed Person (AP) to consider ii. The GIA Point above, and what appropriate amount of GIA should be deducted to offset the existing buildings in the CIL calculation.

19. The appellant also refers to costs under para 12, but the CA reject this proposal as throughout the CIL process the appellant has been readily informed of what constitutes a building and why the council could not deduct [REDACTED] and [REDACTED]. The CA believe they have therefore not acted unreasonably at any stage, and in addition there is no person(s) named whom the appellant has appointed to carry out the Appeal on his behalf.
20. Considering ii. The GIA Point, 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.
21. The RICS Code of Measuring Practice 6th Edition (May 2015) defines GIA 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.*

22. Open-sided buildings and agricultural buildings are not specifically mentioned as being either to be included or excluded from GIA. The Code includes an example at Diagram D that illustrates how to calculate the GIA of a loading bay by measuring to the internal face of a supporting pillar. This loading bay has walls to three sides, however, and is only open sided to the front. This example does indicate however that it is possible to measure GIA to the inside face of a supporting pillar.

23. Both parties refer to CIL Regulation 40. However the CIL Regulations do not define what a "building" is, but do specifically exclude certain types of building – of which none of the exclusions apply to the subject structures.
24. In the absence of any clear guidance from either CIL Regulation 40 or The RICS Code of Measuring Practice as to what a "building" is, the only apparent option available is to refer to the dictionary for a clear definition as to what constitutes a "building", as both parties have done.
25. The CA refer to the Oxford English Dictionary a defining a "building" as "A structure with a roof and walls, such as a house or factory."
26. The Appellant's legal advisor refers to the Shorter Oxford English Dictionary, 6th Edition (SOED), which provides the definition of "**building**" as "*A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc.*"
27. The SOED further defines "**built**" as "*Constructed or constituted, especially in a specified way; having a specified build; composed of separately prepared parts.*", "**other**" as "*That remains from a specified or implied group of two or (later) more.*" and "**structure**" as "*A thing which is built or constructed; a building, an edifice. More widely, any framework or fabric of assembled material parts.*"
28. The legal advisor further comments that the definition "*A structure with a roof and walls, such as a house or factory*" does not appear in either the Pocket Oxford English Dictionary (POED) or the Shorter Oxford English Dictionary (SOED), and the Charging Authority appears to have relied on a definition from an internet web page Lexicon of "British and World English" and not either of the POED or the SOED.
29. [REDACTED] and [REDACTED] are each a "permanent" "fixed thing" "which is built" – ie "constructed" and "composed of separately prepared parts", and each constitute a "framework or fabric of assembled material parts".
30. From the recognised dictionary definition of the term "building", the POED and SOED would both indicate that a structure like [REDACTED] and [REDACTED] should indeed be classed as a "building".
31. This would also imply that a building would define some form of boundary, but as the legal advisor has noted, having an area within a boundary does not require walls but only a thing, things, or a structure of some kind, that can provide a recognisable form of "boundary". A boundary is not required to be a "wall". This would seem to be supported by example Diagram D in the RICS Code of Measuring Practice that illustrates how to calculate the GIA of a loading bay by measuring to the internal face of a supporting pillar.
32. From all the above, it is concluded that [REDACTED] and [REDACTED] are both "buildings", and that the GIA for each can be determined by measuring to the internal face of each supporting pillar.
33. It is therefore determined that the GIAs of all four barns should be off set from the total GIA of the development to arrive at the GIA of the Chargeable Development thus:-

Total Development	[REDACTED]	m2
<u>Less</u>		
Existing Buildings for Demolition		
[REDACTED]	–	[REDACTED] m2
[REDACTED]	–	[REDACTED] m2
[REDACTED]	–	[REDACTED] m2

$$\begin{array}{r} \blacksquare - \blacksquare \text{ m}^2 \\ \text{Total} \quad \blacksquare \text{ m}^2 \\ \\ = \quad \blacksquare \text{ m}^2 \text{ Chargeable Development} \end{array}$$

34. The CIL Liability will therefore be calculated thus:-

$$(\text{£} \blacksquare / \text{m}^2 \times \blacksquare \text{ m}^2 \times \blacksquare) / \blacksquare = \text{£} \blacksquare \text{ CIL Liability}$$

35. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £ $\blacksquare$  ( $\blacksquare$ ) to be appropriate.

36. With regards to any award of costs, Appendix 8 of the CIL Manual states: "Costs will normally be awarded where the following conditions have been met:-

- 1) a party has made a timely application for an award of costs
- 2) the party against whom the award is sought has acted unreasonably and
- 3) the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Secretary of State or appointed Inspector, or
- 4) part of the expense because of the manner in which a party has behaved in the process"

37. When each of the Liability Notices were issued, the CA acted upon the information available to them at the time, and acted quickly to update the Appellant and correct their CIL Liability Notices as required in the belief that at the date of issue of each Notice the correct CIL charge was being stated. Contrary to the Appellant's stated view, the only option available to the Appellant was to make the CIL Appeal, and this has resulted in an alteration to the CIL Charge calculation.

38. With regards to condition 1) whilst the Appellant has made a claim for an award of costs from the CA, they did not submit details of actual costs being applied before the VOA's CIL Appeal submission deadline, and the AP cannot therefore ascertain which matters the Appellant is claiming costs for.

39. As it would appear the CA did not act unreasonably, under all the above circumstances an award for costs will not be made.

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