

Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency



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Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED]

Proposal: Variation of Condition 2 of Previous Permission [REDACTED] – Revised House Design ([REDACTED])

Previous Permission Ref. [REDACTED]

Proposal: 1) Conversion of Existing Barn into 1 No Dwelling (including Demolition Works), 2) Demolition of Existing Bungalow, Hardstanding, Outbuildings (including Sports Hall, Swimming Pool, Greenhouses, Workshops & Aircraft Hanger) & Erection of 7 No Dwellings.

Location: [REDACTED]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]). This charge is the sum of six liability notices as follows:

Phase	Gross Chargeable Area	Area to be deducted	Net Chargeable Area	Total Payable
Phase B ([REDACTED])	[REDACTED]	[REDACTED]	[REDACTED]	£ [REDACTED]
Phase C ([REDACTED])	[REDACTED]	[REDACTED]	[REDACTED]	£ [REDACTED]
Phase D ([REDACTED])	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Phase E/F ([REDACTED])	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Phase G ([REDACTED])	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Phase H ([REDACTED])	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Total				£ [REDACTED]

Reasons

1. I have considered all of the submissions made by [REDACTED] of [REDACTED], acting as agents for [REDACTED] of [REDACTED] (the Appellant) and by [REDACTED], the Charging Authority (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
 - a) Planning decision ref [REDACTED] dated [REDACTED], previous decision ref [REDACTED] dated [REDACTED] and planning decision ref [REDACTED] dated [REDACTED].
 - b) Approved planning consent drawings, as referenced in planning decision notices;
 - c) CIL Liability Notices [REDACTED] (Phase B), [REDACTED] (Phase C), [REDACTED] (Phase D), [REDACTED] (Phase E & F), [REDACTED] (Phase G) and [REDACTED] (Phase H) dated [REDACTED];
 - d) CIL Appeal forms dated [REDACTED] for each phase, including grounds of appeal and appendices;
 - e) Representations from CA dated [REDACTED] including appendices; and
 - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for 1) Conversion of Existing Barn into 1 No Dwelling (including Demolition Works), 2) Demolition of Existing Bungalow, Hardstanding, Outbuildings (including Sports Hall, Swimming Pool, Greenhouses, Workshops & Aircraft Hanger) & Erection of 7 No Dwellings.
3. The planning permission was subsequently altered by two section 73 amendments. The first ([REDACTED] granted [REDACTED]) varied condition 4 to allow for the demolition of the buildings to be phased in accordance with the demolition phasing proposals. The second ([REDACTED] granted [REDACTED]) altered the design of [REDACTED]. This application included a phasing plan which resulted in the development being split into seven phases for the purposes of CIL payments, as per plan reference [REDACTED], which is shown as an approved plan within the decision notice.
4. The CA issued a CIL liability notice against application number [REDACTED] in the sum of £[REDACTED] against a total chargeable area of [REDACTED]m². CIL is charged at CIL Area Zone B rate, based on the 2018 index rate.
5. The Appellant supplied the CA with representations on [REDACTED], [REDACTED] and [REDACTED] to support a claim for a reduction in the chargeable area.
6. The CA issued seven CIL liability notices on [REDACTED] against application number [REDACTED] – "Variation of condition 2 of Previous Permission [REDACTED] – Revised House Design ([REDACTED])". We have not received an appeal against the notice for Phase A, which was included within the original liability notice. I understand that Phase A attracted self-build exemption and therefore no CIL is payable in relation to this phase. The remaining notices are summarised as follows:

CIL Ref No	Phase	Chargeable Area	Total Payable
[REDACTED]	Phase B ([REDACTED])	[REDACTED] m ²	£[REDACTED]
[REDACTED]	Phase C ([REDACTED])	[REDACTED] m ²	£[REDACTED]
[REDACTED]	Phase D (Plot 1 Kitchen Garden)	[REDACTED] m ²	£[REDACTED]
[REDACTED]	Phase E/F (Plots 2 and 3 Kitchen Garden)	[REDACTED] m ²	£[REDACTED]
[REDACTED]	Phase G (Plot 4 Kitchen Garden)	[REDACTED] m ²	£[REDACTED]
[REDACTED]	Phase H (Barn Conversion)	[REDACTED] m ²	£[REDACTED]
	Total	[REDACTED] m ²	£[REDACTED]

7. The CA issued revised CIL liability notices on [REDACTED] against application number [REDACTED] – “Variation of condition 2 of Previous Permission [REDACTED] – Revised House Design ([REDACTED])”. The revised liability notices apportioned a total deduction of [REDACTED]m² for the hangar/store area across all phases. The liability notices were as follows:

CIL Ref No	Phase	Net Chargeable Area	Total Payable
[REDACTED]	Phase B ([REDACTED])	[REDACTED] m ²	£ [REDACTED]
[REDACTED]	Phase C ([REDACTED])	[REDACTED] m ²	£ [REDACTED]
[REDACTED]	Phase D (Plot 1 Kitchen Garden)	[REDACTED] m ²	£ [REDACTED]
[REDACTED]	Phase E/F (Plots 2 and 3 Kitchen Garden)	[REDACTED] m ²	£ [REDACTED]
[REDACTED]	Phase G (Plot 4 Kitchen Garden)	[REDACTED] m ²	£ [REDACTED]
[REDACTED]	Phase H (Barn Conversion)	[REDACTED] m ²	£ [REDACTED]
	Total	[REDACTED] m ²	£ [REDACTED]

8. The Appellant requested a review of the revised CIL liability notices on [REDACTED]. The CA responded on [REDACTED] and had subsequent correspondence with the Appellant. On [REDACTED], the Valuation Office Agency received six CIL appeals made under regulation 114 (chargeable amount) contending that the CIL liability should be Nil. This report responds to all appeals simultaneously.

9. The appellants grounds of appeal can be summarised as follows:

- a) The CA has incorrectly calculated the chargeable amounts by failing to deduct all of the aggregate gross internal areas of in-use buildings which are to be demolished or converted as part of the chargeable development. Specifically:
 - i. The barn, stables, bungalow, hangar/store, glasshouses and potting sheds lie within the red line boundary of the application site;
 - ii. The sports complex, garages, garage workshops, swimming pool and ten pin bowling alley fall outside of the red line boundary but their demolition is specified within the planning consent. Therefore all are relevant buildings on relevant land; and
 - iii. All buildings referred to above were in lawful use.

10. The CA has submitted representations that can be summarised as follows:

- a) The relevant land is that identified by the red line on the site plan ref [REDACTED]. The sports hall, gym, bowling alley, swimming pool and workshops fall outside of this red line and so are not within the “relevant land” for CIL purposes. They cannot therefore be deducted from the chargeable area.
- b) The lawful use of the buildings was considered as follows:
 - i. The bungalow has not been used for its lawful purpose since [REDACTED], as per the CIL additional information form submitted.
 - ii. The greenhouses are dilapidated and not considered to be relevant and in-use buildings. The evidence supplied was not sufficient for the CA to deem the greenhouses in-use.

- iii. The gym was not located on the relevant land and there was insufficient evidence provided to show that the gym was in use. The gym was required to be demolished under listed building application [REDACTED] by [REDACTED]. The application has been implemented but the gym has not been demolished.
- iv. There is insufficient evidence that any of the buildings, with the exception of the hangar, have been in continuous lawful use for 6 months within the 3 year period prior to when planning permission was granted. The store/hangar building has been accepted as a relevant in-use building as it is located on the relevant land and has been in use for the storage of garden equipment in connection with the upkeep and maintenance of the Weston Hall ground.

11. The Appellant submitted an application for an award of costs on [REDACTED].
12. The CIL Regulations Part 5 Chargeable Amount, s 40 (7) define how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."
13. "In-use building" is defined in the Regulations as a relevant building that 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. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.
14. GIA is not defined within the Regulations but is defined in the RICS Code of Measuring Practice as "the area of a building measured to the internal face of the perimeter walls at each floor level." The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.
15. The liability notices are issued against planning permission reference [REDACTED] which is permission for "Variation of Condition 2 of Previous Permission [REDACTED] – Revised House Design [REDACTED]." This application included a phasing plan which resulted in the development being split into seven phases for the purposes of CIL payments, as per plan reference [REDACTED] which is shown as an approved plan within the decision notice. The regulations allow only for buildings that sit within the development area for each phase to be considered as relevant buildings. I therefore conclude that the sports complex, garages, garage workshops, swimming pool and ten pin bowling alley cannot be considered to be relevant buildings.
16. The second test to be satisfied is whether the buildings can be considered as "in-use" in accordance with the Regulations. I have considered each building in turn.
17. The glasshouses and potting sheds have a lawful use as ancillary to the main [REDACTED] building. A letter from [REDACTED], the groundsman of the estate, confirms that they are used as part of the estate management for storing and growing produce and plants from and for the garden and grounds. However, greenhouses and garden stores are excluded from the measurement of Gross Internal Area (GIA) of domestic buildings, as per the RICS Code of Measuring Practice. I therefore conclude that these cannot be deducted from the chargeable area.

18. The barn has a lawful use as a function room, ancillary to the main [REDACTED] building. A letter from [REDACTED], a director of [REDACTED] states that the barn is used for celebration parties by various family members and friends and that the [REDACTED] of the [REDACTED] hold its annual summer party at the estate. Photographs have been provided but they do not show the barn in use and no evidence has been supplied with regards to bookings for a summer party. The Appellant argues that as the building is ready and available to be used at any time, it follows that they have a lawful use. While I accept that the barn does not need to be used on a daily basis, I conclude that there is inconclusive evidence to support that the barn has been in use over the relevant period. I therefore conclude that this cannot be deducted from the chargeable area.
19. The appellant has provided a certificate of lawfulness for the stables and the bungalow, which allows for each to be used as a dwelling house without complying with the conditions in the original consent that restricted the occupation. The appellant has stated that the stables contain the supply of electricity to the estate including UKPN meters, standby generators and electricity distribution infrastructure and therefore they are in use. However, the permitted use is as a domestic property and I have been provided with no evidence to suggest that this use has been fulfilled. I therefore conclude that this cannot be deducted from the chargeable area.
20. The CA have accepted that the hangar building / store was in lawful use and that this area should be deducted from the chargeable area.
21. The Regulations Part 5 state how the chargeable amount must be calculated and allow for calculations of the deductible areas in each phase. The hangar building is located on the site of phase B and C. However, the CA have calculated the chargeable area by apportioning the area to be deducted across all phases as follows:

	Phase	Chargeable Area	% apportioned by CA
A	[REDACTED]	-	-
B	[REDACTED]	[REDACTED]	13.46%
C	[REDACTED]	[REDACTED]	13%
D	Plot 1 Kitchen Garden	[REDACTED]	10.24%
E&F	Plots 2 and 3 Kitchen Garden	[REDACTED]	18.74%
G	Plot 4 Kitchen Garden	[REDACTED]	9%
H	Barn Conversion	[REDACTED]	13.86%

22. I have calculated the CIL charges in accordance with the Regulations, by deducting the allowable area of [REDACTED] m² from Phase B and C only. I have apportioned the area between these two phases according to the GIA of the proposed development, which results in 50.86% allocated to Phase B and 49.14% to Phase C. I have used a rate of £[REDACTED] as per the CIL charging schedule, which includes the base rate of £[REDACTED]/m² for Zone B residential, plus indexation.

23. My calculations are as follows:

Phase	Gross Chargeable Area	Area to be deducted	Net Chargeable Area	Total Payable
Phase B ([REDACTED])	[REDACTED]	[REDACTED]	[REDACTED]	£ [REDACTED]
Phase C ([REDACTED])	[REDACTED]	[REDACTED]	[REDACTED]	£ [REDACTED]
Phase D (Plot 1 Kitchen Garden)	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Phase E/F (Plots 2 and 3 Kitchen Garden)	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Phase G (Plot 4 Kitchen Garden)	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Phase H (Barn Conversion)	[REDACTED]	-	[REDACTED]	£ [REDACTED]
Total				£ [REDACTED]

24. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]). This charge is the sum of six phases as shown above.

25. The appellant submitted an application for an award of costs on [REDACTED]. 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 part of the expense because of the manner in which a party has behaved in the process

26. I consider that the CA have acted reasonably in setting the CIL charge and acted to amend the Liability notices following information from the appellants. I do not consider they have acted unreasonably in setting or defending the charge and therefore an award of costs will not be made.

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