

# Appeal Decision

by [REDACTED] BA (Hons) MRICS

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

Valuation Office Agency

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Email: [REDACTED]@voa.gsi.goc.uk

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**Appeal Ref:** [REDACTED]

**Address of property:** [REDACTED]

**Development:** Demolition of the properties at [REDACTED] and garages on [REDACTED] and [REDACTED], and re-development of the sites to provide 35 dwellings comprising of 29 dwellings on the [REDACTED] site, 3 on [REDACTED] site and 3 on [REDACTED] site, with associated infrastructure.

**Planning permission details:** Planning permission [REDACTED] granted by [REDACTED]

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £ [REDACTED] ([REDACTED]).

## Reasons

1. I have considered all the submissions made by the appellant and I have also considered the representations made by the Collecting Authority (CA) [REDACTED]. In particular, I have considered the information and opinions presented in the following documents:-

- (a) Planning permission decision letter dated [REDACTED]
- (b) The CA's Liability Notices dated [REDACTED] and [REDACTED]
- (c) The CA's Decision Notice on review of CIL chargeable amount dated [REDACTED]
- (d) Completed CIL Appeal form dated [REDACTED]
- (e) Additional supporting documents submitted with the CIL Appeal:-
  - (i) Site layout plan
  - (ii) Planning permission application
  - (iii) Scheme plans
  - (iv) S106 agreement dated [REDACTED]
  - (v) Planning committee report
  - (vi) Planning committee report update dated [REDACTED]
  - (vii) Regulation 113 review request

(f) The CA's representations contained within their appeal statement and received by this office on [REDACTED]

[REDACTED] Additional supporting documentation included:

- (i) Planning committee report and update on report dated [REDACTED]
- (ii) Photographs showing demolition works
- (iii) Location plan
- (iv) Completed S106 agreement dated [REDACTED]
- (v) [REDACTED] CIL Charging Schedule
- (vi) [REDACTED] CIL 2020 update (Indexation)
- (vii) Planning officer CIL calculations
- (viii) Plan with notes compiled on / after site visit
- (ix) Email exchanges between CA and Appellant

(g) The appellant's comments on the CA's representations received on [REDACTED].

2. Planning permission was granted on [REDACTED] by [REDACTED] for demolition of the properties at [REDACTED] and garages on [REDACTED] and [REDACTED] and re-development of the sites to provide 35 dwellings comprising of 29 dwellings on the [REDACTED] site, 3 on [REDACTED] site and 3 on [REDACTED] site, with associated infrastructure.

3. On [REDACTED] the CA issued a Regulation 65 Liability Notice [REDACTED] in the sum of £ [REDACTED] based on net additional floorspace of [REDACTED] square metres (sq m) as follows:-

$$[REDACTED] \text{ sq m} \times \text{£} [REDACTED] \times 1 = \text{£} [REDACTED]$$

4. The appellant requested a Review of the calculation of the chargeable amount under Regulation 113 on [REDACTED]

5. The CA issued their decision notice following the review on [REDACTED]. A revised Liability Notice reference [REDACTED] was issued in the sum of £ [REDACTED] based on a revised new floorspace of [REDACTED] sq m. The CIL calculation was as follows:-

$$[REDACTED] \times \text{£} [REDACTED] \times 1 = \text{£} [REDACTED]$$

6. On [REDACTED] the parties submitted a CIL Appeal under Regulation 114 (chargeable amount) stating that the chargeable amount should be £0.00

7. The grounds of the appeal can be summarised as follows:-

- That there is no net increase in floor area and so there should be no CIL charge
- That during the planning process the Appellant was led to believe that no CIL would be payable
- That the planning committee report recommending approval expressly stated that there was no net increase in floor space for the proposed development when compared to the existing floorspace and therefore there was no requirement for a CIL payment.
- That the S106 agreement states that demolition is not commencement
- That demolition is not commencement and that no forming works have started.
- That [REDACTED] issued a Section 81 demolition notice
- That this 100% affordable development is only viable in financial terms if no CIL payment is required-That an application for social housing relief has been made but as yet a decision is outstanding. No withstanding that decision, other reliefs or exemptions such as charitable relief may be applicable

8. The CA submitted representations on [REDACTED] which can be summarised as follows:-

- That substantial demolition works had been undertaken prior to planning permission being granted
- That the CA advised via email on [REDACTED] that the development would not attract a CIL payment on the basis of no net increase in floorspace but that if the buildings were to be demolished prior to the grant of planning permission being issued there would be no floorspace to offset the proposed new floorspace and so a CIL charge would be payable
- That Social Housing Relief must be applied for prior to commencement of development
- That the reference to demolition in the S106 agreement is relevant solely for that particular document
- That the Section 81 notice related to Building Regulations
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9. The appellant submitted comments on the CA's representations dated [REDACTED] which can be summarised as follows:-

- Many of the points in the grounds of appeal were reiterated
- Planning permission was granted on [REDACTED] subject to s106 agreement
- That the s106 agreement took 7 months to sign as a result of the C.A's 'poor performance'
- That the buildings required demolition at the earliest opportunity as they were unsafe
- That physical demolition took place from the [REDACTED]
- That enforcement action in respect of the demolition works had not been taken by the C.A
- That [REDACTED]'s assessment on the [REDACTED] 'was poor and cannot be accurate'
- That [REDACTED] sq m of buildings remained as at [REDACTED]
- That the CIL charge would result in a detriment to affordable housing provision / targets

8. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding the grounds of the appeal:-

9. The appellant is contending that the buildings that were demolished between the [REDACTED] and [REDACTED] should be 'netted off' the area of the chargeable development.

The history of the site is such that planning permission was granted on [REDACTED]. The application had been recommended for approval subject to a s106 agreement in [REDACTED]. A committee report from [REDACTED], Head of Planning and Housing at [REDACTED] recommending approval and stated within the report that 'It has been calculated that there would be no net increase in floorspace, when comparing existing to proposed (floor areas) and therefore there is no requirement for a Community Infrastructure Levy (CIL) payment'.

Between [REDACTED] and the grant of planning permission on [REDACTED] various email exchanges had taken place between [REDACTED], a senior planning officer at [REDACTED] and [REDACTED] of [REDACTED] for example that email of [REDACTED] from [REDACTED] to [REDACTED] of [REDACTED], in which it was made clear that demolition prior to planning permission granted would likely result in a CIL change.

In order for the area of the existing building to be 'netted off from' the new dwelling area within the net chargeable area calculation, that building has to be a "relevant building" and "in use" under Regulation 40 (11) of the CIL Regulations 2010 (as amended). A relevant building is defined as a "building which is situated on the relevant land on the day planning permission first permits the chargeable development".

Under Regulation 8 (2) of the CIL Regulations 2010 (as amended) "the time at which planning permission first permits development" is defined as "the day that planning permission is granted for that development". In this case planning permission was granted on [REDACTED], by which time some of the original buildings and garaging had been demolished.

I therefore conclude that the area of the original buildings that had been demolished prior to the grant of planning permission cannot be considered to be a 'relevant building' and cannot therefore be netted off from the area of the new development.

The matter of commencement which is much discussed by both parties in their submissions is not relevant in so much as I only need to consider the matter of the relevant building in relation to Regulation 40 (11)

10. I reach this conclusion despite the committee report recommending approval which included the statement stating that no CIL would be payable. It is understandable how this sentence, if taken in isolation, could be misleading. However, there are subsequent emails in which the [REDACTED] planning officer sets out the position fully. I am unable to take the misleading statement into account when reaching my decision which must be in accordance with the CIL regulations.

11. I am unable to consider the application for Social Housing Relief as the VOA does not consider such appeals. This is between the C.A and the appellant directly. It does mean that the issue of commencement, much discussed by the parties in their submissions, is not particularly relevant to the outcome of this appeal under Regulation 114. I am also unable to consider issues of the financial viability of a development resulting from a CIL liability or wider affordable housing policy matters.

12. An appeal for Charitable Relief has not been made. The VOA does consider appeals under Regulation 116 but only in so far as disputes relating to apportionments of qualifying / non qualifying land. The availability of Charitable Relief is not a matter for the VOA.

13. I am unable to consider delays or 'poor performance' of the CA.

14. I do not consider the issuing of a demolition notice to be relevant to this appeal other than by way of background information.

15. I note that the total floor space of the proposed development is not disputed. The CA recalculated the remaining relevant building areas to be set off to be [REDACTED] m2 following the Regulation 113 review and have provided some supporting evidence in the form of an annotated site plan, photographs and calculations. The appellant, in their comments, stated that [REDACTED] m2 of relevant buildings remained on [REDACTED]. They have not however submitted evidence to support that calculation. Therefore, I have adopted the figure provided by the C.A as there is no information within the appellant's grounds of appeal or comments to show how or why this calculation is incorrect.

16.

- i) Based on the facts of this case and the evidence before me I conclude that that the appropriate charge in this case should be based on a net additional area of [REDACTED] sq m
- ii) I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £ [REDACTED] ([REDACTED]).

[REDACTED]

[REDACTED] MRICS  
RICS Registered Valuer  
Valuation Office Agency  
Date [REDACTED]