

Appeal Decision

by [REDACTED] BSc(Hons) FAAV MRICS

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

Valuation Office Agency

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

Appeal Ref: [REDACTED]

Address of property: [REDACTED]

Development: Develop land by the construction of 5no dwellings and associated car ports, form vehicle access and pedestrian footpath

Planning permission details: Planning permission ([REDACTED]) granted by [REDACTED]

Decision

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

Reasons

1. I have considered all the submissions made by the appellant, [REDACTED] of [REDACTED] and [REDACTED] 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], issued by [REDACTED], together with associated plans drawings and documents.

(b) The CIL Liability Notice dated [REDACTED] issued by the CA.

(c) The CA's Decision Notice on review of CIL chargeable amount dated [REDACTED]

(d) The completed CIL Appeal form dated [REDACTED] received by the VOA, submitted by the appellant under Regulation 114, together with documents and plans attached hereto:

1. Planning Decision Notice
2. Approved Planning Drawing
3. CIL Liability Notice

4. Email from [REDACTED], [REDACTED] dated [REDACTED] to [REDACTED]

CIL Appeal VOA Ref [REDACTED]

5. Grounds for Appeal
6. CIL Calculation Workings

(e) The CAs' representations to the appeal received by the VOA on [REDACTED], included the approved development plans, Decision Notice, CIL Charging Schedule and CIL Liability Notice, together with redacted copies of CIL Appeal Decisions they considered relevant to this appeal.

(f) The appellants comments in relation to the CA's representations made on [REDACTED]

2. A CIL Liability Notice in respect of the proposed development, issued by the CA on [REDACTED] 2020 notified the appellant of a liability to pay £[REDACTED] of CIL on commencement of planning permission [REDACTED], to [REDACTED].
3. The appellant requested a formal review of the CIL charge under Regulation 113 on [REDACTED] but the CA confirmed it would not be revising the CIL charge payable.
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 exclude the areas referred to as 'car ports' and the CIL Charge should be £[REDACTED].
5. The appellant holds that the GIA of the permitted development totals [REDACTED] sqm, (which excludes the car ports) and the CIL charge should be £[REDACTED]. The CA have utilised a GIA of [REDACTED] sqm to calculate the CIL charge for the permitted development, which includes the car ports, giving rise to a CIL charge of £[REDACTED]
6. There is a difference of [REDACTED] sqm between the Appellants' and the CAs' assessment of GIA for the permitted development and chargeable area. (*The CA Chargeable Amount Calculation is detailed and identifies the GIA of each car port. The car ports are shown as totalling [REDACTED] sqm. This difference is less than the difference between the Appellants and CAs' assessment of GIA*). However whilst the exact measurement of the car port accommodation may differ, it is the inclusion of the car port areas within the GIA that is key and which has been appealed.
7. The grounds of the appeal are based upon the definition of Gross Internal Area (GIA) and the inclusion of the car ports within the GIA (and thus chargeable area) of the approved scheme. The appellant considers, given the lack of definition of GIA in the CIL regulations and measurement definitions that exist elsewhere, that the car ports should be excluded from the chargeable area.
8. The Appellant references the RICS Code of Measuring Practice (6th Edition) (CoMP) and the RICS Property Measurement (2nd Edition) (PM) to support their view; stating that CoMP expressly includes garages, loading bays and conservatories but expressly excludes external open sided balconies, covered ways and canopies from GIA.

9. The Appellant considers the PM guidance goes further than the CoMP guidance and excludes any ground level areas or structures beyond the external wall such as sheltered areas and they feel that the car ports fall within this definition. The Appellant states they are largely open sided, and they do not consider that car ports constitute garages but more closely resemble canopies than enclosed garages.
10. The Appellant also asserts that there is no provision within either of the RICS guidance notes to measure the GIA of a structure that is not fully enclosed.
11. The CA consider that the carports should be included within the GIA. The CAs' chargeable area of [REDACTED] sqm includes the GIA measurement of the five dwellings and the GIA of the three proposed car port structures included within the permitted development.
12. The CA considers the car ports to be built structures/buildings, which do not fall within the excluded definitions like canopies and as a result have included the GIA of the car ports.
13. The CA states that it is common practice, as proven through case law to use the CoMP to measure the chargeable areas of a CIL liable development. They hold that the PM does not contain a definition of GIA and is therefore not relevant to the calculation of a CIL chargeable area and the PM is not an accepted measuring practice guidance for measuring CIL liable developments.
14. The CA consider that "car ports" were common structures at the time the CIL Regulations were passed and they could have been included in the exemptions if the legislative authorities wished to do so. They also consider that all of the car ports in the subject development could easily be fully enclosed to provide fully garaged areas.
15. The CA consider the car port structures allow for the measurement of the gross internal area of the structure using the two walled sides and pillars on the two other sides.
16. Having fully considered the representations made by the appellant and the CA I note:

The CIL Regulations 2010 (as amended) simply state that the charge should be based on the gross internal area (GIA) but they do not refer to either the Code of Measuring Practice. The only definition of GIA however is that contained in the RICS Code of Measuring Practice 6th Edition (May 2015):

GIA is defined as the area of a buildings measured to the internal face of the perimeter walls at each floor level.

Including:-

- *Areas occupied by internal walls and partition's*
- *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 (eg fire corridors, smoke lobbies)*
- *Mezzanine floor 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 fire escapes*
- *Canopies*
- *Voids over or under structural, raked or stepped floors*
- *Greenhouses, garden stores, fuel stores and the like in residential property.*

17. My response to the appellants' three main points identified as their grounds for appeal taking the above into account is as follows:

a) *Neither the CoMP nor PM expressly include car ports in their measurement of GIA or IPMS2 Residential*

GIA is defined as the area of a building measured to the internal face of the perimeter walls. Car ports are not specifically detailed in the above definition of GIA and are therefore neither expressly included nor excluded within the measurement of a building to the perimeter walls. I consider the construction and appearance of a structure determines whether the structure (which may be referred to as a car port) is better considered a canopy or garage.

IPMS 2 does not define GIA and is not therefore relevant to a CIL calculation.

b) *The status of the car ports more closely resembles canopies than garages.*

I have reviewed the approved planning drawings for the development [REDACTED]:

- Plot 1 has a double car port attached to the house. It has a pitched, hipped, clay tile roof (to first floor height) with stained timber cladding to two sides. Timber posts on staddles support the roof to the two open sides and clearly delineate the edge of the structure, as does the roof above.
- The car port serving Plots 2 & 3, is similar in appearance, size, height and construction to plot 1. It is open to two sides, with a pitched, hipped, clay tile roof, stained timber walls to two closed sides and supporting, timber posts on staddles to the two open sided sections. The open side with the hip end, has stained timber cladding to the roof level element.

- The car port for plots 4 & 5 is detached. It has a pitched, slate covered roof and stained timber cladding to two sides. Two sides are open and the edge of the building is clearly delineated by the roof line above and the presence of supporting timber posts on staddles.

In conclusion, I consider that the construction and appearance of the above described buildings determines that they are more appropriately considered open sided garages, rather than canopies.

c) *No provisions exist to measure the GIA of a structure that is not fully enclosed.*

The car ports are all fully covered with roofs with supporting pillars and the perimeter of each building can be clearly identified. There are examples within the above Code of Measuring Practice where it is suggested that it is appropriate to measure to the perimeter of a building and include areas which are not fully enclosed (eg a loading bay). This appears to confirm that in certain situations the CoMP does not envisage that a lack of external walls prevents GIA from being calculated.

18. Having considered the facts of this case and the evidence submitted in respect of the calculation of the CIL charge for this development, I am of the opinion that the car port accommodation may be described as falling within the GIA as defined in the RICS Code of Measuring Practice.

19. I do not consider the CIL charge detailed within the Liability Notice dated [REDACTED], to be excessive and I therefore dismiss this appeal.

[REDACTED] MRICS FAAV
RICS Registered Valuer
Valuation Office Agency