

Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency
[REDACTED]

e-mail: [REDACTED]@voa.gsi.gov.uk.

Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED]

Proposal: Retention of Polytunnels

Location: [REDACTED]

Decision

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

Reasons

1. I have considered all of the submissions made by [REDACTED] of [REDACTED], acting as agents for [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];
 - b) Approved planning consent drawings, as referenced in planning decision notice;
 - c) CIL Liability Notice [REDACTED] dated [REDACTED];
 - d) CIL Appeal form dated [REDACTED], including grounds of appeal and appendices;
 - e) Representations from CA dated [REDACTED]; and
 - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for the retention of polytunnels.
3. The CA issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED] against a total chargeable area of [REDACTED] m². CIL is charged at the "Other types of Development" rate of £[REDACTED]/m², plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], confirming their opinion that the CIL liability notice was correct.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under regulation 114 (chargeable amount) contending that the CIL liability should be Nil.
6. The appellants grounds of appeal can be summarised as follows:
 - a) Polytunnels are temporary structures and do not constitute buildings. This is in accordance with the case of [REDACTED] v Secretary of State for the Environment, Transport and the Regions (No.2) [REDACTED] which states that size, permanence and physical attachment should be considered. The Planning Practice guidance states that CIL should not be payable on structures which are not buildings. The definition of "building" for planning purposes is not the same as the definition of "building" for CIL purposes.
 - b) Polytunnels should be excluded from CIL as they are buildings into which people do not normally go.
 - c) The polytunnels are not of a nature that they would generate a need for infrastructure contributions as is required by CIL.
 - d) The polytunnels are temporary. The application was for a limited period of 10 years.

7. The CA has submitted representations that can be summarised as follows:
 - a) The polytunnels measure [REDACTED] m² which is a considerable size. The frames are in situ for the whole year and therefore have permanence. The polytunnels incorporate a hooped structure and internal structures which have a physical attachment. They are therefore considered to constitute buildings.
 - b) The polytunnels do not fall into the category of “buildings into which people do not normally go” as they are accessed on a regular basis during growing season.
 - c) The polytunnels employ up to 60 people during the summer and these people benefit from facilities in the locality. The development generates traffic movements from HGVs and delivery vehicles to and from the premises, which can impact on local infrastructure.
 - d) The polytunnels are not temporary. Although the application was for a temporary period of 10 years, consent has been granted with no time restrictions.
8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This calculation is based on the “gross internal area of the chargeable development.” The Planning Act 2008, Part 11 Section 209 defines development for CIL purposes as “anything done by way of or for the purpose of the creation of a new building, or anything done to or in respect of an existing building.”
9. There is no definition given to the word “building” within the CIL Regulations, other than it expressly excludes-
 - (i) a building into which people do not normally go,
 - (ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
 - (iii) a building for which planning permission was granted for a limited period;
10. The appellant contends that if they were considered to be buildings, the polytunnels would fall within the category of “a building into which people do not normally go.” However, given the high levels of activity during the picking season, I do not consider this definition to be relevant as it is clear that they are accessed regularly for several months of the year.
11. The appellant also states that the planning application requested permission for a limited period of 10 years and therefore the polytunnels would be excluded under (i) “a building for which planning permission was granted for a limited period.” However, consent was granted without any time restrictions. I am therefore of the opinion that the polytunnels cannot be considered within this definition.
12. The government guidance on CIL clarifies that “structures which are not buildings, such as pylons and wind turbines” do not pay the levy. It is therefore necessary to determine whether the polytunnels constitute a building or a structure which is not a building.
13. The CIL regulations do not provide a definition of building and so the only apparent option available is to refer to the dictionary for a clear definition as to what constitutes a building.
14. The Shorter Oxford English Dictionary, 6th Edition 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.” An alternative dictionary definition is “a structure with a roof and walls, such as a house or factory.” A polytunnel is defined as “an elongated polythene-covered frame under which seedlings or other plants are grown outdoors.”

15. The appellants advise that the Polytunnels comprise a web of metal legs and hoops over which a polythene sheeting is stretched and anchored. The metal legs are tubes, typically between 1.5m and 2.0m in length, with a screw-end to enable it to be wound into the ground and a 'Y'-shaped uppermost portion into which the hoops are slotted. The polythene sheeting is removed for half of the year, during which all that remains is the metal legs. In addition, there is no constructed floor or base, the polythene sheeting simply covers the bare earth.
16. The appellant has referred to case law which centres around the erection of a marquee in the grounds of a hotel. This case determined that the marquee was considered to be a building for planning purposes due to its size, permanence and physical attachment. However, it should be noted that the definition for planning purposes is not the same as for CIL. For example, planning permission is required for structures such as pylons and wind turbines, which are excluded from the CIL regulations.
17. There appears to be no disagreement that the polytunnels form a structure on the land. The decision as to whether or not a structure is a 'building' will always depend on the facts of each case. In this case, I consider that the polytunnels would not reasonably be described as a building and therefore could not be considered liable for CIL.
18. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

[REDACTED]

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Valuation Office Agency

[REDACTED]