Appeal Decision

by [redacted] BA (Hons) PG Dip Surv MRICS

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

Valuation Office Agency
[redacted]
Email: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Planning Permission Ref. [redacted] **granted by** [redacted]

Location: land adjacent to [redacted]

Development: Erection of a dwelling following demolition of existing 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 submitted documents:-

a. The application for planning permission dated [redacted] together with associated plans, drawings and documents.
b. The Decision Notice issued by [redacted] on [redacted].
c. The CIL Liability Notice dated [redacted] in the sum of £[redacted].
d. The applicant's request for a Regulation 113 Review of Chargeable Amount dated [redacted].
e. The Regulation 113 – Review of Chargeable Amount issued by the CA on the [redacted]
f. The CIL Appeal form dated [redacted] submitted by the appellant under Regulation 114, together with the 7 documents attached thereto.

g. Further documents provided by the appellant on the [redacted] which included planning documents relating to the proposed development, correspondence with [redacted] pertaining to the Regulation 113 review, a sworn affidavit by the appellant attesting to the use of the existing buildings along with statements from the other joint owners to the same effect and evidence from energy companies that show a De Minimis amount of electricity consumption at the premises from 2010 onwards.
h. The CA's representations to the Regulation 114 Appeal dated [redacted].
i. The appellant's response to the CA's comments dated [redacted].

2. The Liability Notice was issued by the CA in the sum of £[redacted] based upon a chargeable area of [redacted] square metres (sq.m) being the Gross Internal Area (GIA) of the proposed development, charged at a rate of £[redacted] per sq.m (indexed).

3. The appellant is of the opinion the CIL liability should be £[redacted]. This is based upon a GIA of the proposed development at [redacted] sq.m and the deduction of the GIA of the existing buildings on site that total [redacted] sq.m. Thus leaving a net chargeable area of [redacted] sq.m.

4. Therefore there are two main issues to consider in this appeal. The first being what the GIA of the proposed development is and the second being whether the GIA of the existing buildings can be netted off the GIA of the proposed development.

5. Gross Internal Area (GIA) is not defined within the Regulations and therefore the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6th Edition) definition is used. GIA is defined 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.

6. The first issue to consider is the GIA of the chargeable development. From the submissions provided by both parties it is evident the disparity in areas arises from the inclusion of the porch area by the CA and its exclusion by the appellant.

7. My understanding of the porch area from the plans and documents provided, is that the north elevation is open, the south and east elevations are enclosed and the west elevation is partially enclosed. In accordance with the RICS Code of Measuring Practice (6th edition) I concur with the CA that this area should be included within the GIA and as such, the area of the chargeable development is, [redacted] sq m.

8. The second issue relates to whether the area of the existing buildings on site can be deducted from the GIA of the proposed development to arrive at the net chargeable area. Regulation 40(7) of the CIL Regulations 2010 (as amended) provides that the net chargeable area of the proposed development should be calculated based upon a formula which is essentially the GIA of the proposed development **less** retained parts of lawfully in-use buildings. An 'in-use building' is defined by regulation 40(11) to mean a building which is a relevant building (a building which is situated on the relevant land on the day planning permission first permits development) and 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.

9. The CA has not made any deduction in respect of 'in-use' buildings. They have confirmed that they accept the buildings known as Building A and Building B are relevant buildings as they existed on the relevant land on the day planning permission first permitted the chargeable development but the CA have concluded that they do not have sufficient information or information of sufficient quality to establish that Buildings A and B are 'in use' buildings

10. The CA in support of this decision have noted that Building B was constructed in accordance with permission [redacted] as an ancillary gymnasium and that it is not considered to be in that use at present. The CA notes there is no initial planning permission for Building A.

11. The CA notes the appellant's submissions show the buildings have had a variety of uses over the years including a gym, owner/manager accommodation, ancillary residential outbuildings, studio/workshop and for use as storage. The CA have noted that the Design and Access Statement submitted with the planning application for the development, states

Building A retains a bathroom, kitchen, bedroom and living room. The CA have concluded from the information provided, they cannot, with any certainty, establish when residential use was abandoned and when storage commenced. They make the same observation for Building B. They cannot be certain when the transition from ancillary nursing home building to ancillary residential use occurred nor when it became used for storage no longer connected to a residential unit.

12. The appellant has provided a number of documents, including a sworn affidavit and witness statements from the other owners that provide a background as to the current use of the buildings and when this use was established. They have also provided photographs showing both the interior and exterior of the buildings dating from [redacted] to [redacted].

13. The appellant advises that his parents purchased the site in [redacted] along with [redacted], [redacted] and the surrounding land and outbuildings that included Buildings A and B. The appellant notes that his parents ran the nursing home and Building A was used for storage in connection with the business and Building B was reconfigured as owner-manager accommodation. The nursing home was sold in [redacted] but the appellant's parents retained [redacted] and the subject buildings. I understand there was a period in the [redacted] s when the appellant's parents resided in Building A whilst [redacted] was refurbished. After this, Building A was used for domestic storage and Building B as a studio/workshop and storage space.

14. The appellant's father passed away in [redacted] and the appellant's mother inherited Buildings A and B. In [redacted] the appellant's mother split the land, retaining [redacted] herself and gifting the subject land with Buildings A and B upon, to the appellant, his brothers and their wives. In [redacted] , the appellant's mother sold [redacted] and moved to [redacted] .

15. Since at least [redacted] , the appellant states that Buildings A and B have been used by himself and the other co-owners to store personal possessions. None of the owners live in the adjoining properties. The owners have visited from time to time to pick up and drop off items for storage and to carry out some maintenance to the properties.

16. The appellant notes the Buildings are not connected to the mains gas supply available in the locality and have no independent water supply. Building A does have an electricity supply but evidence provided shows minimal usage from [redacted] to present day.

17. Given the history of the site and the evidence provided by the appellant that shows Buildings A and B being used for storage of personal possessions over a number of years and the very low amount of electricity consumed, I conclude that the Buildings were used for the storage of personal possessions and have been since at least [redacted] . There is no evidence to suggest that the Buildings have been used for anything but storage since this date and as the Buildings have been in use for storage for at least 10 years, this use would now be considered their lawful use.

18. To qualify as an 'in-use' buildings, the Buildings must have been in lawful use for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

19. The appellant has provided photographs showing the Buildings were used for storing possessions and these date from between [redacted] and [redacted] . I therefore conclude Buildings A and B were in lawful use for a continuous period of at least six months during the relevant period.

20. As the consideration of issue 2 has led to the conclusion that GIA of Buildings A and B can be deducted from the area of the chargeable development, this leads to a third related issue, that being the actual GIA of Buildings A and B.

21. The CA are of the view that the GIA of Building A is [redacted] sq.m and the appellant considers it to be [redacted] sq.m. The CA considers the GIA of Building B to be [redacted] sq.m and the appellant considers it to be [redacted] sq.m.

22. I have not been provided with hardcopy scale plans that would enable me to make check measurements to comment on the areas provided. I have however considered the points made by both parties and have been able to make conclusions based upon them.

23. The discrepancy in areas with respect to Building A, surrounds an area of [redacted] sq.m that is said to be the loft area above the porch. The appellant has included this area as it was used for storage. The CA have excluded this area as there was no permanent staircase to access it by.

24. Looking at the plans and photographs provided, I can see no evidence of a permanent fixed staircase providing access to this storage area and in accordance with the RICS Code of Measuring Practice (6th edition), I have excluded this area from my calculations because of the lack of permanent access. For the avoidance of doubt, as the porch area below the loft area is open to three sides, I agree with the CA that this functions as a canopy and as such I also exclude this area. I conclude that the GIA of Building A is [redacted] sq.m.

25. The discrepancy in areas with respect to Building B, relates to an area of [redacted] sq.m. This area is said to be a store at the rear. The CA have excluded this area as they believe it to be used to store logs and they note fuel stores are excluded from GIA under the Code of Measuring Practice. The appellant has provided a photograph that shows there was an internal door connecting Building B directly to the store and advise that they have never used the area to store logs and as such have not provided the CA with photographs that show this use. The appellant has noted they have used the area to store garden equipment in. If this was a residential property then there is a strong argument that this area would be excluded under the Code of Measuring Practice as a garden store. However, I believe as Building B is used solely as storage and is not ancillary to any residential property, this scenario is not applicable. I also note that there does not appear to be any difference in construction quality between the main building and this area of [redacted] sq.m. As the whole building is used as storage I see no reason to exclude this area. I therefore conclude the GIA of Building B is [redacted] sq.m.

26. Based upon the above I have calculated the CIL charge as follows:

Proposed GIA (Total)	[redacted] sq.m
Less Existing GIA	[redacted] sq.m
Net CIL Chargeable area	[redacted] **sq.m**

CIL charge: [redacted] sq.m x £[redacted] x ([redacted] / [redacted]) (indexation) = £[redacted]

27. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I confirm a reduced CIL charge of £[redacted] ([redacted]).

[redacted] [redacted] BA (Hons) PG Dip Surv MRICS
RICS Registered Valuer
District Valuer
[redacted]