

Appeal Decision

by [REDACTED] MRICS

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

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Appeal Ref: 1799679

Planning Permission Reference: [REDACTED] decision on application [REDACTED]

Location: [REDACTED]

Development: Erection of 4 dwellings with associated car ports, cycle stores and creation of new vehicular access following demolition of existing outbuildings; erection of extension to existing dwelling ([REDACTED]).

Decision

On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine the CIL charge to be £[REDACTED] ([REDACTED]).

Reasons

1. I have considered all the submissions made by [REDACTED] (the Appellant) and [REDACTED] as the Collecting Authority (CA) in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:-
 - a. Decision reference [REDACTED] to an appeal decision by the Planning Inspectorate dated [REDACTED] for “erection of 4 dwellings with associated car ports, cycle stores and creation of new vehicular access following demolition of existing outbuildings; erection of extension to existing dwelling ([REDACTED])” following a planning application reference [REDACTED].
 - b. The CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] with CIL Liability calculated at £[REDACTED].
 - c. The Appellant’s request to the CA dated [REDACTED] for a Regulation 113 review of the chargeable amount.
 - d. The CA’s response dated [REDACTED] to the Appellant’s request for a Regulation 113 review.
 - e. The revised CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] with CIL Liability calculated at £[REDACTED].
 - f. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto and further documents submitted on [REDACTED].

- g. The CA's representations to the Regulation 114 Appeal dated [REDACTED] together with the Appellant's response dated [REDACTED].
- h. Further plans annotated with internal dimensions submitted by the Appellant on [REDACTED].

Background

2. A decision reference [REDACTED] on an appeal to The Planning Inspectorate was issued on [REDACTED] for "erection of 4 dwellings with associated car ports, cycle stores and creation of new vehicular access following demolition of existing outbuildings: erection of extension to existing dwelling ([REDACTED])". This followed a planning application reference [REDACTED] dated [REDACTED], which had been refused on [REDACTED].

3. CIL Liability Notice [REDACTED] was issued on [REDACTED] with CIL Liability calculated as: -

Residential dwellings – 10 or less (Zone A) – [REDACTED]
Chargeable Area [REDACTED] m2
CIL Rate £ [REDACTED]
Index 1.044 - £ [REDACTED]
CIL Liability £ [REDACTED]

4. The Appellant requested a Regulation 113 review of the chargeable amount on [REDACTED].

5. On [REDACTED] the CA issued the outcome of its Regulation 113 review, resulting in the CA amending reducing GIA of the proposed development to [REDACTED] m2 and concluding that the extensions to [REDACTED] (which are to be demolished as part of the chargeable development) comprise an in-use building with a GIA of [REDACTED] m2 to be off-set from the GIA of the chargeable development.

6. Whilst the CA agreed that Building 2 (the single garage) constitutes an in-use building, they stated they were not provided with plans to enable the GIA of this building to be measured and could not therefore verify the GIA figure ([REDACTED] m2) stated by the developer. Following the CIL Regulations 2010 (as amended), where the CA does not have sufficient information, or information of sufficient quality, to enable it to establish the GIA of any part of a building, they therefore deemed the GIA of the part in question to be zero.

7. A revised CIL Liability Notice [REDACTED] was issued on [REDACTED] with CIL Liability calculated as:-

Residential dwellings – 10 or less (Zone A) – [REDACTED]
Chargeable Development [REDACTED] m2
Less demolitions [REDACTED] m2
= Chargeable area [REDACTED] m2
CIL Rate £ [REDACTED]
Index [REDACTED] - £ [REDACTED]
CIL Liability £ [REDACTED]

8. A Regulation 114 Appeal dated [REDACTED] was submitted to the VOA on the same date.

Appeal Grounds

9. The appeal is made on the following grounds:-

- i) Demolition Deduction - The amount of CIL liability has been calculated without any deduction for the GIA of the seven existing buildings on the site which are intended for total or partial demolition in the course of the development.

- ii) Proposed New GIA - The amount of the CIL liability calculated by the CA is [REDACTED] m2 whereas the Appellant has calculated this at [REDACTED] m2. The appellant is unclear as to how this [REDACTED] m2 difference has arisen.

Consideration of Appeal Grounds

Ground i) Demolition Deduction for existing in-use buildings

10. The CA have agreed to off-set (or deduct) [REDACTED] m2 of the GIA of Building 1 (rear conservatory and double storey extension to main house known as [REDACTED]) from the overall GIA of the proposed development, and reflect this in their revised CIL Liability Notice [REDACTED] dated on [REDACTED].
11. The CA also accept that Building 2 (the single garage) is a lawful in-use building for CIL purposes, but state that the Appellant failed to provide scaled floorplans required to enable an accurate measure of the building's GIA. Therefore, under the provisions of paragraph (9) of Schedule 1, the CA consider that the GIA of Building 2 should be deemed as zero.
12. The CA have not off-set the GIA of the following buildings, as it is their view that the RICS Code of measuring practice excludes these structures from any measurements to GIA:-
- Building 3 (greenhouse)
 - Building 4 (potting shed)
 - Building 5 (shed)
 - Building 7 (shed)
13. Regarding Building 6 (summer house to [REDACTED]), the CA do not consider it has sufficient information, or information of sufficient quality, to enable it to establish whether this is a lawful "in-use building", and as per Schedule 1 of the CIL Regulations, the CA therefore deem this building as not being "in-use".
14. The Appellant notes the CA have disregarded the off-set of GIA for Buildings 2 (the single garage) and 6 (summer house to Laurel House) due to an alleged inadequacy with their submitted plan (Document D, drawing number [REDACTED]). The Appellant argues, however, that the buildings were measured by a professional qualified architect to GIA and plotted to scale on an acceptable plan.
15. The Appellant proposes off-set (or deduction) from the overall GIA of the proposed development for CIL purposes of the following buildings at the GIAs listed: -
- Building 1 (rear conservatory and double storey extension to main house known as [REDACTED]) - [REDACTED] m2
(17.4 m2 double storey side extension + [REDACTED] m2 conservatory).
 - Building 2 (the single garage) - [REDACTED] m2
 - Building 3 (greenhouse) - [REDACTED] m2
 - Building 4 (potting shed) - [REDACTED] m2
 - Building 5 (shed) - [REDACTED] m2
 - Building 6 (summer house to Laurel House) - [REDACTED] m2
 - Building 7 (shed) - [REDACTED] m2
- Total off-set [REDACTED] m2
16. External dimensions are annotated on plan [REDACTED] prepared by [REDACTED] and provided by the Appellant as Document D – Plan of Existing Buildings – for Buildings 2, 3, 4, 5 and 7,

whilst internal and external dimensions are provided on the same plan for Building 6, but no dimensions at all are provided for Building 1.

17. Plan [REDACTED] of the existing and proposed Building 1 prepared by [REDACTED] and submitted as part of the Appellant's Appeal is only annotated with external dimensions but contains a note stating the GIA of the total ground floor to be [REDACTED] m² and the first floor to be [REDACTED] m², but no information is given as regards dimensions or areas for the rear conservatory or double storey extension.
18. The Appellant has provided two statutory declarations regarding use of the existing buildings: -

Appendix F to Appellant submission – Statutory Declaration by [REDACTED] dated [REDACTED] regarding Buildings 1-5. This confirms that the double storey extension was added to Building 1 (the house at [REDACTED]) in the [REDACTED] s before he and his ex-wife bought the property. It also confirms that Building 2 (the garage) has been in regular use solely in connection with Building 1 since they took ownership in [REDACTED]. The declaration further confirms the construction details of Buildings 3, 4 and 5 and that they were each in regular use in connection with Building 1 from [REDACTED] until the property was sold on [REDACTED].

Appendix G to Appellant submission – Statutory Declaration by [REDACTED] dated [REDACTED] regarding Buildings 6 and 7. This confirms that Building 6 (the garden chalet) was built between [REDACTED] and [REDACTED], its construction details and regular use in connection with their main residence at [REDACTED] up to [REDACTED]. Similarly, the declaration confirms the construction details of Building 7 (a wendy house, since used as a shed) and that it was already at the property when they bought it in [REDACTED]. This also confirms its regular use in connection with their main residence at Laurel House up to [REDACTED].

Ground ii) GIA of proposed development

19. The CA have calculated the total GIA of the proposed development at [REDACTED] m², whereas the Appellant has calculated this at [REDACTED] m², as per their Schedule of Accommodation (Document J of their Appeal Submission). As identified within the Appellant's grounds of appeal, this leaves a discrepancy of [REDACTED] m² between the CA's measurements and those of the Appellant.
20. The CA argues that Document J –Schedule of Accommodation - submitted in support of the Appellant's grounds of appeal does not state the measurement methodology used, giving the CA no opportunity to identify the cause of such a discrepancy.
21. The Appellant comments that it appears the CA has measured the proposed new GIA by scaling off enlarged versions of the relevant plans. They argue that enlarging a PDF image of a plan will lead to a level of inaccuracy, whereas their own proposed new GIA was calculated on CAD drawings using the CAD software.
22. The Appellant initially provided plans [REDACTED] to [REDACTED] for House Plots 1 to 4 and the car barn along with plan [REDACTED] for [REDACTED] – proposed extensions-alterations.
23. As the Appellant's submitted schedule of accommodation and plans did not clearly show how the GIAs had been calculated, whilst the CA's measurements have been taken off copies of the plans, the discrepancy of [REDACTED] m² between the parties' respective total GIA measurements could not be considered without an alternative set of plans marked with sufficient dimension data to enable the Appointed Person to carry out their own calculation of GIA.

24. The plans for the house plots are annotated with internal dimensions, but these are for individual rooms only and the Appellant was asked by the Appointed Person to provide a new set of plans marked with gross internal dimensions measured through internal partition walls to enable the GIA to be calculated by the Appointed Person.
25. The plan for the car barn is annotated with external dimensions only, and the Appellant was asked by the Appointed Person to provide a new plan marked with "internal" dimensions measured to the internal face of each supporting pillar/column in case the floor area needed to be calculated by the Appointed Person.
26. The plan for [REDACTED] is annotated with external dimensions only, and a new plan was requested from the Appellant marked with gross internal dimensions measured through internal partition walls to enable the GIA to be calculated by the Appointed Person.
27. At the Appointed Person's request, the Appellant subsequently provided amended plans with internal dimensions marked for proposed houses 1 to 4, the car barn and for [REDACTED]

Decision on the Appeal

28. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

Measurement and inclusion of buildings in GIA

29. The RICS Code of Measuring Practice 6th Edition (May 2015) sets out the method of calculating GIA and states it:-

Includes:-

- *Areas occupied by internal walls and partitions*
- *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 (e.g. fire corridors, smoke lobbies)*
- *Mezzanine floors 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*

Excludes:-

- *Perimeter wall thicknesses and external projections*
- *External open-sided balconies, covered ways and fires*
- *Canopies*
- *Voids over or under structural, raked or stepped floors*
- *Greenhouses, garden stores, fuel stores, and the like in residential property*

30. The CA have confirmed their acceptance that parts of Building 1 (rear conservatory and double storey extension to main house known as [REDACTED]) should be included within the total GIA of the existing buildings and have off-set this GIA from the total GIA of the proposed development within their CIL calculations. The CA's off-set area of [REDACTED] m2 is higher than the Appellant's area of [REDACTED] m2.
31. The Appellant provided an amended version of plan [REDACTED] including internal dimensions to enable the GIA to be checked by the Appointed Person. The result of using these internal dimensions provided by [REDACTED], which have been checked by the Appointed Person, is that the Appointed Person calculates the total GIA of the existing conservatory and double storey extension to be demolished within Building 1 as [REDACTED] m2.
32. The RICS Code of Measuring Practice (6th Edition) s2.16 states that garages should be included in the GIA measurement of a building, and indeed the CA have confirmed their acceptance that Building 2 (the single garage) should be included within the total GIA of the existing buildings but have nevertheless deemed the GIA to be zero due to insufficient information being available regarding the GIA of that particular building.
33. The Appellant provided an amended version of plan [REDACTED] including internal dimensions to enable the GIA to be checked by the Appointed Person. The result of using these internal dimensions provided by [REDACTED], which have been checked by the Appointed Person, is that the Appointed Person calculates the total GIA of the existing Building 2 (garage) to be demolished [REDACTED] m2 for the purposes of off-set against the GIA of the proposed development.
34. Buildings 3, 4 and 5 are described in plan [REDACTED] - Existing Buildings - submitted by the Appellant as "greenhouse" and "timber shed" and Building 7 is also described as "timber shed", but the statutory declaration signed by [REDACTED] describes Building 7 as a "wendy house now used as a shed" whilst in the letter from [REDACTED] dated [REDACTED] detailing the Appellant's grounds of appeal Building 4 is described as "potting shed" and Buildings 5 and 7 as "shed".
35. The RICS Code s2.22 states that "Greenhouses, garden stores...and the like in residential property" should be excluded from GIA measurements. It is my view that a potting shed and a shed would fall within the category of "garden stores" in the RICS Code, and their areas should therefore be excluded, along with that of the greenhouse, from both the GIA of the proposed development and the GIA of existing buildings for CIL calculation purposes.
36. With regard to Building 6 (summer house to [REDACTED]), internal dimensions are annotated on plan [REDACTED] prepared by [REDACTED] and provided by the Appellant as Document D – Plan of Existing Buildings – as follows:
- [REDACTED] x [REDACTED] m = [REDACTED] m2 (rounded)
37. The statutory declaration signed by [REDACTED] describes the construction details of Building 6 as "...well insulated, satisfied building regulations requirements and has an electricity supply, lighting, power and internet but no mains water supply." As this is a more substantial structure than "Greenhouses, garden stores, fuel stores, and the like in residential property" and could, for example, be utilised as a garden office it would seem appropriate to deduct this area from the GIA of the development. The result of using these internal dimensions provided by [REDACTED], which have been checked by the Appointed Person, is that the Appointed Person calculates the total GIA of the existing Building 6 (summer house to [REDACTED]) to be demolished as [REDACTED] m2 for the purposes of off-set against the GIA of the proposed development.

GIA of the proposed development

38. The Appellant has provided amended plans [REDACTED] to [REDACTED] for House Plots 1 to 4 and the car barn including internal dimensions to enable the GIA to be checked by the Appointed Person.
39. The result of using these internal dimensions provided by [REDACTED], which have been checked by the Appointed Person, is that the Appointed Person calculates the total GIA of plots 1-4 to be [REDACTED] m2 excluding the car barns.
40. The Appellant has noted that the car barns are entirely open, and therefore are not considered to be appropriate to include within GIA. The CA took the view that the car barns constitute “*canopies*”, which are excluded from GIA as per the RICS Code of Measuring Practice. The Appointed Person is in agreement with the parties that as open-sided canopy-like structures, the car barns should be excluded from any measurements to GIA.
41. The Appellant has provided an amended version of plan [REDACTED] of Building 1 ([REDACTED]) including internal dimensions to enable the GIA to be checked by the Appointed Person.
42. The result of using these internal dimensions provided by [REDACTED], which have been checked by the Appointed Person, is that the Appointed Person calculates the total GIA of the proposed extension to Building 1 ([REDACTED]) to be [REDACTED] m2.
43. Therefore, the total GIA of the proposed development comprising plots 1-4 and the proposed extension to Building 1 is calculated by the Appointed Person to total [REDACTED] m2.
44. The CA’s total GIA was calculated at [REDACTED] m2 whereas the Appellant had calculated GIA at [REDACTED] m2 with a discrepancy of [REDACTED] m2 between the respective totals. The total GIA calculated by the Appointed Person at [REDACTED] m2 is almost half-way between these two figures and is therefore to be applied within the CIL calculations.

GIA off-set for relevant in-use buildings

45. Disagreement surrounding the issue of identifying the lawful in-use buildings has arisen from Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or off-set of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.
46. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) provides that an “in-use building” means a building which 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.
47. Part 1 – standard cases – 1 (10) also provides that “relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.
48. The relevant period of continuous lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended) is [REDACTED] to [REDACTED].
49. It is my opinion from all the information provided, including the two signed declarations by [REDACTED] and [REDACTED] as well as the CA’s own conclusions (regarding Buildings 1 and 2), that Buildings 1, 2 and 6 were lawfully “in-use” for a continuous period within three years of the grant of planning permission on [REDACTED] and the “lawful use” requirement of Schedule 1 of the CIL Regulations 2010 (as amended) has therefore been met. The GIA

of Buildings 1, 2 and 6 can therefore be off-set against the GIA of the proposed development.

50. It is my opinion that as the floor areas of Buildings 3 to 7 are specifically excluded from GIA measurements under s2.22 of The RICS Code as “Greenhouses, garden stores, fuel stores, and the like in residential property” their floor areas cannot therefore be off-set against the GIA of the proposed development for CIL Liability purposes.
51. Building 1 - Total GIA of parts to be demolished is calculated by the Appointed Person to be [REDACTED] m2.
52. Building 2- garage - Total GIA of lawful in-use building to be demolished is calculated by the Appointed Person to be [REDACTED] m2 GIA.
53. Building 6 - summer house – Total GIA of lawful in-use building to be demolished is calculated by the Appointed Person to be [REDACTED] m2 GIA.
54. The total GIA to be off-set for CIL calculation purposes in accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) is therefore [REDACTED] m2.

Calculation of Chargeable Area

55. In accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) I therefore calculate the chargeable area using the formula within Schedule 1 Part 1:-

$$\text{Net chargeable area} = GR - KR - \frac{(GR \times E)}{G}$$

Where:

G = the gross internal area of the chargeable development.

GR = the gross internal area of the part of the chargeable development chargeable at rate *R*;

KR = the aggregate of the gross internal areas of the following—

(i) retained parts of in-use buildings; and

(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

E = the aggregate of the following—

(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and

(ii) for the second and subsequent phases of a phased planning permission, the value *Ex* (as determined under sub-paragraph (7)), unless *Ex* is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

56. **Value G** (the GIA of the chargeable development): [REDACTED] m2.
57. **Value GR** (the GIA of the part of the chargeable development to be charged at rate *R*) is [REDACTED] m2 as above.
58. **Values KR(i) and (ii)**: both zero.
59. **Value E(i)**: [REDACTED] m2.
60. **Value E(ii)** is not relevant here, as the planning permission is not phased.

61. Therefore, applying the formula within Schedule 1 Part 1 the net chargeable area is calculated thus:-

$$\begin{aligned}
 & \text{[redacted]} \text{ m}^2 - 0 \text{ m}^2 - \left(\frac{\text{[redacted]} \text{ m}^2 \times \text{[redacted]} \text{ m}^2}{\text{[redacted]} \text{ m}^2} \right) \\
 & = \text{[redacted]} \text{ m}^2 \text{ GIA chargeable area}
 \end{aligned}$$

Calculation of CIL Liability

62. CIL Liability is calculated using rates and indices at [redacted] relevant at the date of planning permission was granted as:-

$$\begin{aligned}
 A \text{ (Chargeable Area)} &= \text{[redacted]} \text{ m}^2 \\
 R \text{ (CIL Rate)} &= \text{£ [redacted]} \\
 Ip &= \text{[redacted]} \\
 Ic &= \text{[redacted]}
 \end{aligned}$$

$$\begin{aligned}
 & \frac{\text{[redacted]} \times (\text{[redacted]} \times \text{[redacted]})}{\text{[redacted]}} \\
 & = \text{£ [redacted]} \text{ (rounded) CIL Liability}
 \end{aligned}$$

Decision on CIL Liability

63. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine the CIL charge to be £ [redacted] ([redacted]).

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
20 September 2022