

# Appeal Decision

by [REDACTED] MRICS

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

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**Appeal Ref: 1828760**

**Planning Permission Reference:** [REDACTED]

**Location:**

[REDACTED]

**Development:** Alter and extend existing building to form a single 3 storey block providing an additional five 1- bedroom flats and one studio flat.

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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] 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. Outline Planning Permission reference [REDACTED] granted on [REDACTED] to “*Alter and extend existing building to form a single 3 storey block providing an additional five 1-bedroom flats and one studio flat.*”
  - b. The CIL Liability Notice [REDACTED] issued by the CA dated [REDACTED] with CIL Liability calculated at £[REDACTED]
  - c. The CA’s response dated [REDACTED] to the Appellant’s request for a Regulation 113 review along with an amended CIL Liability Notice at £[REDACTED] CIL Liability.
  - d. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
  - e. The CA’s written representations to the Appointed Person (AP) dated [REDACTED] along with the Appellant’s further comments dated [REDACTED].

## Background

2. Outline Planning Permission reference [REDACTED] was granted on [REDACTED] to "Alter and extend existing building to form a single 3 storey block providing an additional five 1-bedroom flats and one studio flat."
3. A CIL Liability Notice reference [REDACTED] dated [REDACTED] was issued by the CA with CIL Liability calculated as £[REDACTED]
4. A request for a Regulation 113 review was made by the Appellant, and following this the CA reduced the chargeable area.
5. A revised CIL Liability Notice reference [REDACTED] was issued by the CA on [REDACTED] with the amended CIL Liability calculated as follows:-

*Dwelling houses*

GIA new [REDACTED] m2 [this should actually read "GIA of the chargeable development"]

GIA existing [REDACTED] m2

Net GIA increase [REDACTED] m2

Chargeable Area [REDACTED] m2

CIL Liability £[REDACTED]

6. A Regulation 114 Appeal against the chargeable amount dated [REDACTED] was submitted to the VOA on the same date.

## Appeal Grounds

7. The Appellant argues that a net additional GIA of [REDACTED] m2 should be taken as the chargeable area, and that the CIL Liability should therefore be £[REDACTED]

## Consideration of the Parties' Submissions

8. The Appellant contends that the CA's calculation of the chargeable area at [REDACTED] m2 is incorrect, as it includes the area marked "driveway" on ground and first floor plan reference [REDACTED] - 6 no. FLATS EXTENSION- Ground & First Floors dated [REDACTED].
9. The Appellant refers to *The RICS Code Of Measuring Practice* which defines GIA as "the area of a building measured to The Internal Face Of The Perimeter Walls at each floor level." They point to the plans, which show that at ground floor level the proposed development has two perimeters each comprising four walls, each containing a flat (one existing and the other proposed).
10. The Appellant measures the net additional GIA to be [REDACTED] m2 excluding the three-meter-wide entrance drive (marked "driveway" on plan reference [REDACTED]) running beneath the first floor, which they argue is a shared/communal access driveway (not undercroft parking) required for access to the commercial premises fronting Blandford Road.
11. The Appellant contends that this driveway, along with the depth of the external walls of the existing and proposed buildings at ground floor level, do not form part of the GIA and should be excluded, and that each flat should be measured to the internal face of the perimeter wall as shown on the plan within *Appendix 2* (perimeter wall to [REDACTED] highlighted yellow, and extension to [REDACTED] shaded blue with the communal driveway hatched in red).
12. The Appellant calculates the GIA of the existing flats as follows:-

Ground Floor [REDACTED] m2  
 First Floor [REDACTED] m2  
 Total [REDACTED] m2 existing GIA

13. They also calculate the net additional GIA of the proposed development as:-

Ground Floor  
 [REDACTED] - [REDACTED] m2  
 Less [REDACTED] m2 recessed lobby  
 [REDACTED] (inc stairwell) [REDACTED] m2

First Floor  
 [REDACTED] - [REDACTED] m2  
 [REDACTED] and [REDACTED] (incl wall between [REDACTED]) [REDACTED] m2

Second Floor  
 [REDACTED] - [REDACTED] m2

[Total [REDACTED] m2 – by the appellant's calculation]

14. The CA note that the proposed new development has a service route for vehicles at ground floor level contained within the footprint of the building to allow access to the existing residential and commercial premises fronting [REDACTED], as well as parking and refuse storage for the new development. The CA confirm they have included this area within the calculations for the proposed chargeable development.
15. The CA also refer to *The RICS Code of Measuring Practice*, and note it refers to floor areas to be included within GIA as including “*Internal open-sided balconies, walkways, and the like*”.
16. They also reference another CIL Appeal within the CA’s geographical area where the AP has supported the above approach (Appeal reference 1680241) and specifically the AP’s comment within that decision that the “*access road is within the perimeter walls of the building and does not fall within the definition of the areas to be excluded. I therefore consider that it should be included within the GIA calculation.*”
17. The CA also comment that when raising this case with other CAs there are differences of opinion as to whether access routes such as these should be included or excluded from GIA.
18. The CA calculate the GIAs as follows:-

GIA existing building [REDACTED] m2  
 Total GIA of the chargeable development [REDACTED] m2

## Consideration of the Decision

19. I have considered the respective arguments made by the CA and the Appellants, along with the information provided by both parties.
20. It would appear there is no dispute between the parties as to the principle of off-setting the GIA of existing buildings against the total GIA of the chargeable development, but the inclusion of specific parts within the GIA of the chargeable development remains a matter for dispute between the parties.

21. The CIL Regulations do not define GIA, so it is necessary to adopt a definition of GIA.  
*The RICS Code of Measuring Practice 6th Edition (May 2015) defines GIA as the “area of a building measured to the internal face of the perimeter walls at each floor level...*

*Including:-*

- 2.1 Areas occupied by internal walls and partitions
- 2.2 Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- 2.3 Atria and entrance halls, with clear height above, measured at base level only
- 2.4 Internal open-sided balconies walkways and the like
- 2.5 Structural, raked or stepped floors are to be treated as level floor measured horizontally
- 2.6 Horizontal floors, with permanent access, below structural, raked or stepped floors
- 2.7 Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- 2.8 Mezzanine floors areas with permanent access
- 2.9 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
- 2.10 Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- 2.11 Projection rooms
- 2.12 Voids over stairwells and lift shafts on upper floors
- 2.13 Loading bays
- 2.14 Areas with a headroom of less than 1.5m
- 2.15 Pavement vaults
- 2.16 Garages
- 2.17 Conservatories

*Excluding:-*

- 2.18 Perimeter wall thicknesses and external projections
- 2.19 External open-sided balconies, covered ways and fire escapes
- 2.20 Canopies
- 2.21 Voids over or under structural, raked or stepped floors
- 2.22 Greenhouses, garden stores, fuel stores, and the like in residential property.”

22. A covered driveway / under-croft access is not specifically mentioned in the definition of GIA and is therefore neither expressly included nor excluded within the measurement of a building to the perimeter walls.
23. I have reviewed plan reference [REDACTED] - 6 no. *FLATS EXTENSION- Ground & First Floors* dated [REDACTED] as well as the annotated / marked-up version of this plan submitted as *Appendix 2* to the Appellant's CIL Appeal submission dated [REDACTED] for the development.
24. The plans show this under-croft / covered driveway is located at ground floor level running below the first-floor level of the proposed link-building that will run between the existing building and the new building to be constructed to the other side of this “driveway”. It is open at both ends and provides access to the rear of separate commercial premises fronting [REDACTED]. The Appellant considers that this area should be excluded from the GIA calculation since it is outside the perimeter of the building.
25. Exclusions and inclusions to GIA under the *RICS Code of Measuring Practice* warrant some consideration: Paragraph 2.4 covers “*Internal open-sided balconies walkways and the like*” which are all included within GIA - however these are internal to the building; paragraph 2.19 covers “*External open-sided balconies, covered ways and fire escapes*”

which are all excluded from GIA. There are no diagrams or examples as to how these might be differentiated in practice.

26. The inclusions in the *RICS Code* definition do not specifically mention “driveways” although “garages” are to be included in GIA, as also are “internal open sided balconies, walkways and the like”. In respect of these latter items there are clearly examples of where an area without external walls on some sides can be included within the definition of GIA. This would appear to confirm that in certain situations the *RICS Code* does not envisage that a lack of external walls prevents GIA from being calculated. *Diagram D* in the *RICS Code* illustrates a calculation of the GIA of a “loading bay” based upon measuring to a supporting pillar on one side of the bay.
27. The area in question lies beneath the upper floors of the building and is not therefore covered by a canopy, which would be specifically excluded by the *RICS Code of Measuring Practice*. This is not, however, a parking area but merely a driveway enabling through-access to other buildings with an area at one end located adjacent to the entrance to the proposed new building performing the function of a canopy (but in fact being more of an external covered way).
28. The CA have referred to a previous AP decision reference 1680241 on another CIL Appeal within their locality. Each CIL case is decided upon its individual circumstances, and in that particular case there was an access road situated within the perimeter of the proposed building boundary at ground floor level which did not fall within the definition of the areas to be excluded from GIA, and it was the APs view that the access through a car park forming part of the permitted development should be included within the GIA calculation.
29. Whilst this current case and the AP decision reference 1680241 have several additional floors above each under-croft area and are within a ‘block’, the *RICS Code of Measuring Practice* requires that for GIA the measurement is taken to the internal perimeter walls at each floor level, and in that decision 1680241 there were no internal perimeter walls to measure to on the ground floor (other than across the whole block) as there was no perimeter wall between the parking and the driveway. The difference in this current case is that perimeter walls do exist to the building between the driveway and the flats on the ground floor.
30. I am therefore satisfied that in this case the perimeter walls of the building at ground floor level are those surrounding the two flats and the under-croft “driveway” should therefore be excluded when calculating the GIA of the ground floor on the basis of it being a “covered way” as in paragraph 2.19 of the *RICS Code of Measuring Practice* and being external to the perimeter walls of the building at ground floor level.
31. As the covered way is to be excluded from GIA, the measurement of the ground floor of both the new and existing buildings must therefore be to the internal face of their respective perimeter walls of the building at ground floor level, as proposed by the Appellant. As there appears to be no dispute in relation to the measurements, or other areas to be included within the net chargeable area, I therefore accept the area calculated by the Appellant at [REDACTED]m2 and calculate the CIL charge as follows:

Residential Zone C ([REDACTED])

[REDACTED]m2 chargeable GIA

X £ [REDACTED] /m2 CIL Rate [from [REDACTED] Base Year] indexed to £ [REDACTED] /m2 for [REDACTED]

= £ [REDACTED] CIL Liability

## Decision

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

[REDACTED] DipSurv DipCon MRICS  
RICS Registered Valuer  
Valuation Office Agency  
16 October 2023