

# Appeal Decision

by [REDACTED] MRICS

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

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**Appeal Ref: 1851808**

**Planning Permission Ref. [REDACTED]**

**Proposal: The erection of 81 dwellings (including 40% affordable homes), open space, sustainable drainage system, landscaping, biodiversity enhancement, new vehicular access off [REDACTED], pedestrian and cycle links, and associated infrastructure**

**Location: [REDACTED]**

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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 of the submissions made by [REDACTED], acting on behalf of [REDACTED] (the Appellant) and by [REDACTED], the Collecting Authority (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
  - a) Planning Appeal 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 appendices;
  - e) Representations from CA dated [REDACTED]; and
  - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under appeal reference [REDACTED] on [REDACTED] for *'the erection of 81 dwellings (including 40% affordable homes), open space, sustainable drainage system, landscaping, biodiversity enhancement, new vehicular access off [REDACTED], pedestrian and cycle links, and associated infrastructure.'*
3. The CA issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED]m<sup>2</sup> at the 'Residential development – Rest of Borough' rate of £/[REDACTED]m<sup>2</sup> plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED] confirming their opinion that the 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 £[REDACTED]. This was calculated on a chargeable area of [REDACTED]m<sup>2</sup> at a base rate of £[REDACTED]/m<sup>2</sup> plus indexation.
6. The Appellant's grounds of appeal can be summarised as follows:
  - a) The GIA adopted by the CA is incorrect as they have included car ports with fewer than two perimeter walls.
7. The CA has submitted representations that can be summarised as follows:
  - a) The car ports should be considered as buildings liable to CIL and therefore the liability notice is correct.

## Background

8. The planning appeal decision provides a list of approved plans including Garages & Stores Plans and Elevations [REDACTED] and [REDACTED]. The CA point out that this plan is not on their file and that the drawing submitted with their planning appeal is [REDACTED].
9. The appellants state that they have submitted a Section 96A Non-Material Amendment Application to update the approved plans to "Garages and Carports Plans and Elevations [REDACTED]."

10. The appellant advises that the differences between the drawings include different labelling and the addition of a door to one garage. The car ports remain unchanged and the GIA of the car ports is agreed between the CA and Appellant at [REDACTED] m<sup>2</sup>.
11. I have had sight of the NMA application and associated plans and if approved, they would not alter my decision.

#### GIA

12. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 confirms that the chargeable area should be based on “the gross internal area of the chargeable development.”
13. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice 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.
14. The appellant and CA agree that the GIA of the car ports is [REDACTED] m<sup>2</sup> and the GIA of the remaining development is [REDACTED] m<sup>2</sup>. The dispute therefore centres solely around whether the carports should be included or excluded from the GIA.
15. The appellants have provided a legal opinion from [REDACTED], dated [REDACTED], which supports their view that the car ports should be excluded from GIA.
16. The CA and appellants have both referred to previous VOA CIL Appeal Decisions where car ports and open sided buildings were considered. They each consider these decisions to support their views.
17. The CA refer to a quote from one decision that “*in certain situations the [Code of Measuring Practice] does not envisage that a lack of external walls prevents GIA from being calculated.*” They suggest therefore that the car ports can be measured to GIA and the lack of perimeter walls should not prevent them from being included.
18. The appellant’s legal council point out that in none of the examples quoted, are the car ports open on two or more sides. In their view, a car port with less than two perimeter walls could not be considered a building and is more akin to a canopy. They should therefore be excluded from GIA.
19. The CA suggest that the correct definition of “building” to be used for CIL purposes is that contained within the Planning Act 2008, as this is the parent act for the CIL Regulations. The Planning Act adopts the definition of building the Town and Country Planning Act 1990, as follows: “*“building” includes any structure of erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.*” They point out that there is no requirement for walls within this definition of a building.
20. The appellants dispute that this is the correct definition of building and point out that the 2008 act specifically excludes Part 11 (CIL) from the definition. This is because the planning definition includes structures that are not buildings, whereas CIL is only applicable to buildings with an internal area.

21. Car ports are not specifically referenced within the RICS Code of Measuring Practice. It is therefore necessary to consider the construction and appearance of the car ports, to determine whether they can be included within GIA, or whether they should more correctly be considered as a canopy and therefore excluded.
22. The car ports in this development are either freestanding car ports with no perimeter walls, or they adjoin a garage and therefore have essentially one wall and three open sides. Each car ports comprises a pitched roof, supported at each corner by a pillar. Double car ports have pillars at the midpoints of the eaves in addition to those at the corners. All of the car ports are therefore open to either three or four sides.
23. In my opinion, the car ports are more akin to canopies than to buildings that should be included within the GIA. Although I agree with the CA that a building does not need to be fully enclosed to be measurable to GIA, I also agree with the appellant that a structure comprising a roof and no walls (or one wall where it adjoins the garages) has all the characteristics I would expect of a canopy.
24. I therefore conclude that the car ports should be excluded from the GIA of the proposed development.

Calculation of Chargeable Amount

25. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 provides guidance on the calculation of the chargeable amount. This states:

“(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_P}{I_C}$$

where—

A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);

IP = the index figure for the calendar year in which planning permission was granted; and

IC = the index figure for the calendar year in which the charging schedule containing rate R took effect.”

26. The CA and the appellant have agreed that the car ports measure [REDACTED]m<sup>2</sup> and the GIA of the remaining development is [REDACTED]m<sup>2</sup>. There has been no dispute raised around the rate or indexation applied. I therefore assume these are accepted as correct.

27. I have calculated the CIL charge in accordance with the above formula as follows:

$$£[REDACTED]/m^2 \times [REDACTED] m^2 \times [REDACTED]$$

28. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED] ( [REDACTED] ).

██████ MRICS  
Valuation Office Agency  
18 November 2024