

# Appeal Decision

by ■■■ MRICS

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

Valuation Office Agency (DVS)  
Wycliffe House  
Green Lane  
Durham  
DH1 3UW

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**Appeal Ref: 1854030**

**Address:** ■■■

**Proposed Development:** Erection of 3 dwellings and 2 buildings to provide 6 flats together with associated access and landscaping following demolition of existing dwellings and outbuildings.

**Planning Permission details:** Granted by ■■■ on ■■■, under reference ■■■.

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## Decision

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

## Reasons

### Background

1. I have considered all the submissions made by ■■■ in his capacity as Director of ■■■ for the appellant, ■■■ (the Appellant) and the submissions made by the Collecting Authority (CA), ■■■.

In particular, I have considered the information and opinions presented in the following documents:-

- a) CIL Appeal form dated ■■■.
- b) Grant of Conditional Planning Permission ■■■, dated ■■■.
- c) The CIL Liability Notice (ref: ■■■) dated ■■■.
- d) The CA's Regulation 113 Review dated ■■■.
- e) The Appellant's Appeal Statement of Case document dated ■■■, which includes various Appendices.

- f) Plans of the existing buildings and the proposed development.
- g) The CA's Statement of Case document dated [REDACTED].
- h) The Appellant's comments on the CA's Statement of Case document, which is dated [REDACTED].

## Grounds of Appeal

2. The background to this Appeal stems from a planning application, [REDACTED], which was granted on [REDACTED], for "*Erection of 3 dwellings and 2 buildings to provide 6 flats together with associated access and landscaping following demolition of existing dwellings and outbuildings*".
3. This Appeal Decision relates to the CA's Liability Notice [REDACTED], for a sum of £ [REDACTED]. This was based on a Net Chargeable Area of [REDACTED] m<sup>2</sup> and a Charging Schedule rate of £ [REDACTED] per m<sup>2</sup> (Residential dwellings – 10 or less Zone A), plus indexation of [REDACTED].
4. Following a review of the CIL charge carried out under Regulation 113 on [REDACTED] by the CA, on [REDACTED] the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect, by virtue of what buildings should be included within the offset and that CIL in the sum of £ [REDACTED] should be payable.
5. The Appellant's appeal can be summarised to a single core point:-

The Appellant disputes the floorspace of the chargeable area in the CIL calculation, contending that it should fully reflect 'in-use' floorspace of all three buildings to be demolished. The Appellant opines that a lower amount of CIL should be payable as the entirety of the existing accommodation should be offset.

It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate of £ [REDACTED] per m<sup>2</sup>, the applied indexation or the floor areas of the proposed buildings and that of the buildings to be demolished.

## Decision

6. The dispute between the parties relates to the re-development of a site containing an existing two-storey early post-war building. The building comprised a pair of semi-detached houses both with separate structures which are the subject matter of the dispute. The crux of the appeal is around whether the structures constitute a garage or some other structure and whether these are included or excluded from the GIA of the development.
7. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;
  - a. retained parts of 'in-use buildings,' and
  - b. 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.

8. "In-use building" is defined in the Regulations as a relevant building that 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. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.
10. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "*the development for which planning permission is granted*".
11. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice 6<sup>th</sup> 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.
12. The Appellant opines that all the existing area of the building was in use and had a lawful use as defined to be captured under the RICS Code of Measuring Practice. As evidence of continuous lawful use, the Appellant has advanced a precis of their case, two Statement of Truth documents from the past and present occupiers (████) with regards to the use of the garages and photographs of the two structures and also a Google Streetview image from █████ showing a car parked within the garage at number 3.
13. Since the appeal was made, the CA have conceded that one of the two 'garages' (number 4) can be included within the offset but maintain that 'garage 3' should not as insufficient evidence has been supplied to substantiate the appropriate period of lawful use. The CA queries whether the 'garage 3' is one whole building, and whether it or parts of it are more akin to "*greenhouse, garden store, fuel store*" which would be excluded from GIA. The CA contends that garage 3 does not constitute as a qualifying 'in-use building' and consequently the GIA of the structure cannot be off-set. In support of the CA's argument, the CA has advanced a summary of their case alongside photographic (aerial imagery) evidence.
14. The Royal Institution of Chartered Surveyors (RICS) defines a garage as a building that's ancillary to residential use and is included in the gross internal area (GIA) of a property being a building for housing a motor vehicle or vehicles.
15. There would appear to be a convincing case for the garage at number 3 to be accepted as such (i.e. for use as a place to park a car) given that the design of the structure appears to have been in existence for a considerable number of years and the appellant has provided evidence that it has been used as such.
16. I do not agree that it is more akin to a greenhouse, fuel store or garden store because it has the physical appearance of a garage with openings wide enough to accommodate the access and storage of a vehicle and photographic evidence (Google Streetview image) of it being used to store a vehicle.

17. As there is no interconnection between the front and rear structure and there are separate access doors, I have considered whether the whole should be treated as one or split and treated as two distinct parts. Irrespective of the case put forward by the CA (referring to the aerial photos – which are mainly blurred and inconclusive) it is clear from the photographic evidence supplied by the appellant that the two parts of the 'structure' at number 3 are constructed of the same materials, in the same style and *appear* to be physically joined together. I therefore consider it reasonable to treat them as a single structure. As I have accepted that part of this structure was in lawful use of a garage, I have concluded that the entirety of the building should be deducted from the chargeable area.
18. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the appellant that the structures at numbers 3 and 4 described as garages should be offset. The GIA of the garages are (■■■■m<sup>2</sup> and ■■■■m<sup>2</sup> 'parts' A and B as per the description of the appellant) of the overall existing buildings' GIA (as per RICS) as a 'garage' and therefore included in the total to be offset. The revised calculation of the CIL is as follows:

Total development:	■■■■m <sup>2</sup>
GIA of existing houses:	■■■■m <sup>2</sup> )
GIA of garage at number 4:	■■■■m <sup>2</sup> ) – ■■■■m <sup>2</sup>
GIA of garage at number 3 (A):	■■■■m <sup>2</sup> )
GIA of garage at number 3 (B):	■■■■m <sup>2</sup> )

CIL Charge therefore based upon an increase in overall GIA of the new development measured by deducting the lawful 'in-use' GIA for a minimum period of six months within the three years prior to ■■■■ from the total GIA of the new development i.e. ■■■■m<sup>2</sup> less ■■■■m<sup>2</sup> = ■■■■m<sup>2</sup>.

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On ■■■■ and the Net Chargeable Area of the development should have been ■■■■m<sup>2</sup> as per the Liability Notice ■■■■ dated ■■■■.

19. In conclusion, having considered all the evidence put forward to me, I therefore confirm that a CIL charge of £ ■■■■ (■■■■) should be stated in a revised Liability Notice and hereby confirm this appeal.

■■■■MRICS  
Principal Surveyor  
Valuation Office Agency  
09 December 2024