

# Appeal Decision

by [REDACTED] MRICS VR

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

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

E-mail: [REDACTED]@voa.gov.uk

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**Appeal Ref: 1830091**

**Address:** [REDACTED]

**Proposed Development:** Erection of a new discount foodstore (Use Class E) with access, car parking and landscaping and other associated works.

**Planning Permission details:** Granted by [REDACTED].

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## Decision

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

## Reasons

### Background

1. I have considered all the submissions made by the appellant, [REDACTED] and the submissions made by the Collecting Authority (CA), [REDACTED].

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

- a) CIL Appeal form dated [REDACTED].
- b) Grant of Full Planning Permission [REDACTED], dated [REDACTED].
- c) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED].
- d) Appellant's Statement of Case on various e-mails to the CA, dated [REDACTED], [REDACTED] and [REDACTED].
- e) The CA's Statement of Case to Appellant in an e-mail, sent [REDACTED].
- f) Approved plans of proposed development.
- g) The CA's Statement of Case document to VOA (undated) but received on [REDACTED].

## Grounds of Appeal

2. Planning permission was granted for the development on [REDACTED], under reference [REDACTED].
3. On [REDACTED], the CA issued a Liability Notice (Reference: [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>, and indexation at [REDACTED] ([REDACTED]).
4. It appears that the Appellant did not request a review of the CIL charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). However, it is understood that the CA responded to the Appellant, citing that it was of the view that its original decision was correct and should be upheld.
5. 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.
6. The Appellant's appeal can be summarised to a single core point:-

In that the CIL charge has been calculated incorrectly and that the GIA of the development is [REDACTED] m<sup>2</sup>. On this size of GIA, the Appellant contends that the development falls into the *All other retail (Use classes A1-A5) and assembly and leisure development (D2)* category (under 2,000 m<sup>2</sup>) of the [REDACTED] CIL Charging Schedule, which has a rate of £[REDACTED] per m<sup>2</sup>. Thus, the Appellant's opinion of the CIL payable is £[REDACTED] ([REDACTED] m<sup>2</sup> @ £[REDACTED] per m<sup>2</sup> with indexation at [REDACTED] = £[REDACTED]).

7. The CA disagrees, contending that the proposed GIA of the development is [REDACTED] m<sup>2</sup> and thus falls into the *Development resulting in large convenience goods based stores of 2,000 sq metres gross or more* category of the [REDACTED] CIL Charging Schedule, which has a rate of £[REDACTED] per m<sup>2</sup>.

It would appear that there is no dispute between the parties in respect of the applied indexation.

## Decision

8. The dispute between the parties relates to a proposed development of a [REDACTED] store to be constructed on a parcel of undeveloped land. The site is situated on the outskirts of the town of [REDACTED] and is understood to comprise of approximately [REDACTED] m<sup>2</sup> ([REDACTED] acres) in size.
9. At the heart of the matter is a dispute between the parties in respect of the floorspace of the chargeable area and the parties' differing interpretations of what constitutes GIA/floorspace. Specifically, the dispute relates to the canopy area of the proposed food store, located to the northern and western elevations of the building. The Appellant does not consider that the canopy area should be included within the GIA, in accordance with the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6<sup>th</sup> Edition) [hereinafter referred to as the 'Code'].
10. The CA is of opinion that the disputed canopy area constitutes GIA/floorspace. Whilst the CA accepts that 'Canopies' are excluded in the Code (at paragraph 2.20), the CA opines that a canopy is a protrusion from a wall which has neither sides nor supporting posts. The CA further opines that the covered area on the approved drawings has a wall at both ends and a supporting post at the corner, which is clearly visible on both the approved plans [REDACTED] and the elevations [REDACTED]. The CA opines

that this is similar to the example given in Diagram D on page 15 of the Code for the loading bay area, rather than the 'canopy' illustrated, which clearly has no walls or supporting features. The CA contends that the canopy is thus measurable and should be included in the internal floorspace calculation for the purposes of calculating the Community Infrastructure Levy. The Appellants do not contest that there is a supporting feature at the corner of the building and it is to this point that the measurements have been taken.

11. In support of its contention, the CA also cites previous VOA CIL Appeal decisions 1740191 (██████) and 1714353 (██████). Of note, both of these decisions were cited in a redacted format. A key contention of the CA is the comments within Appeal decision 1714353, which determined in that case, that Barn 1 and Barn 4 were open-sided buildings, which were determined to be GIA (and thus supports the CA's contention).

The CA points to paragraph 17 c) of CIL Appeal decision 1740191, which stated:-

*There are examples within the above Code of Measuring Practice where it is suggested that it is appropriate to measure to the perimeter of a building and include areas which are not fully enclosed (e.g. a loading bay). This appears to confirm that in certain situations the CoMP (the Code) does not envisage that a lack of external walls prevents GIA from being calculated.*

12. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."
13. Furthermore, Schedule 1 of the 2019 Regulations 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
14. Clearly there are no retained parts of in-use buildings in this development and a consideration of the "the gross internal area of the chargeable development." must be made.
15. The CIL Regulations do not define Gross Internal Area (GIA), so it is necessary to adopt a definition. The definition of GIA provided in the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6<sup>th</sup> Edition) is the generally accepted method of calculation.

GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.

Including:-

- 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

Excluding:-

- 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
- Greenhouses, garden stores, fuel stores, and the like in residential property

16. The parties appear to be in agreement in accepting the Royal Institution of Chartered Surveyors (RICS) definition of Gross Internal Area (GIA) as per the definition of GIA provided in the RICS Code of Measuring Practice (6<sup>th</sup> Edition). However, the Appellant opines that the CA has erred in its application of the RICS Code of Measuring Practice (the Code) in respect of the GIA of the canopy of the development.

17. Canopies are not GIA as held by paragraph 2.20 of the Code. In respect of the CA's contention that the subject canopy is similar to the loading bay in Diagram D of the Code, I disagree; in my view, the appeal canopy is clearly not a loading bay. A canopy can be defined as an overhead roof structure that has open sides and is typically intended to provide shelter from the rain or sun; it may also be used for decorative purposes, or to give emphasis to a route or part of a building.

The loading bay in Diagram D of the Code is clearly a loading bay and not a canopy. A loading bay is not defined in the Code; however, it is defined in RICS Property Measurement 2<sup>nd</sup> edition (January 2018) as an '*Area(s) designed for vehicles next to or adjacent to a Loading Dock*'. Having interrogated the subject approved development plans - [REDACTED] (floor plan), [REDACTED] (elevation plan) and [REDACTED] (roof plan) the disputed canopy is clearly an 'L' shaped overhead structure. The structure overhangs and extends to approximately [REDACTED]% of the western elevation (including the front main entrance of the building) and the full extent of the northern elevation. I am clearly of the view that the disputed canopy does not resemble or functions as a loading bay. In addition, the canopy is clearly not next to or adjacent to a loading dock. Whilst there is a mini dock/loading dock to the western elevation of the building, of note, this is situated at the opposite side of the western elevation, where the canopy does not extend to (approximately [REDACTED]% of the western (front) elevation has no canopy). In conclusion, I clearly conclude that the disputed canopy is a canopy and not a loading bay. It is also labelled as a canopy on plan [REDACTED]. Given

this conclusion, I determine that the canopy is not GIA and thus its area cannot be chargeable for CIL.

18. In respect of the CA's cited previous CIL Appeal decisions, I would explain that each CIL Appeal is individual and is assessed on its own merits. Having read the unredacted versions of both cited Appeal decisions, I am satisfied that the circumstances are different and comparisons are inappropriate. I clarify as follows:-

Of note, the cited CIL Appeal decision of 1740191 related to *associated car ports...* and the Appointed Person in that decision deemed that the development was different - *...I consider that the construction and appearance of the above described buildings determines that they are more appropriately considered open sided garages, rather than canopies.* Whilst the content of paragraph 17 c) of Appeal decision of 1740191 *may* be pertinent, the circumstances of that Appeal are wholly different – the accommodation was deemed to be open sided garages; the dispute of this subject appeal relates to unequivocally, that of a canopy in my view. Accordingly, in arriving at my decision of the subject Appeal, I have attached no weight to the cited Appeal decision of 1740191.

In respect of the cited CIL Appeal decision of 1714353, the disputed accommodation related to two agricultural barns, which of note, were deemed to be *buildings* and were not canopies. Accordingly, in arriving at my decision of the subject Appeal, I have attached no weight to the cited Appeal decision of 1714353.

19. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the Appellant that the net chargeable area of the development is [REDACTED]m<sup>2</sup> and agree with the Appellant's calculation of the CIL charge at £[REDACTED].
20. In conclusion, in considering the facts of the case, I determine that the CIL payable should be the sum of £[REDACTED] ([REDACTED]).

[REDACTED] MRICS  
Principal Surveyor  
RICS Registered Valuer  
Valuation Office Agency  
1<sup>st</sup> November 2023