

Appeal Decision

By ■■■ 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: ■■■ [@voa.gov.uk](mailto:■■■@voa.gov.uk)

Appeal Ref: 1858835

Address: ■■■

Proposed Development: Erection of five dwellings with photovoltaic panels on roofs, associated amenity space, landscaping, car and cycle parking.

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

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 the appellant's agent, ■■■ of ■■■ (acting on behalf of 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 Planning Permission ■■■, dated ■■■.
- c) The CIL Liability Notice (ref: ■■■) dated ■■■.
- d) The CA's Regulation 113 Review, dated ■■■.
- e) Various plans and schedules for the subject development (■■■).
- f) The CA's representations letter dated ■■■, under Regulation 114.
- g) Appellant's comments on the CA's representations, dated ■■■.

Grounds of Appeal

2. Planning permission was granted for the development on [REDACTED], under [REDACTED]. The approved planning permission was:-

Erection of five dwellings with photovoltaic panels on roofs, associated amenity space, landscaping, car and cycle parking.

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] m² and a Charging Schedule rate of £[REDACTED] per m², with indexation at [REDACTED].
4. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [REDACTED], stating 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 from the Appellant, contending that the CA has calculated the CIL charge incorrectly and opines that the correct CIL payable should be £[REDACTED], based upon a chargeable area of [REDACTED] m². The central disagreement between the parties is the constitution of the chargeable area; specifically, a disagreement over the constitution of the GIA of the external bin stores of the five dwelling houses, which comprise the proposed development. The Appellant opines that the area of the bin stores does not constitute GIA, whilst the CA is of the opposite view.
6. It would appear that there is no dispute between the parties in respect of the Charging Rate, or the applied indexation.

Approved Development in Dispute

7. The proposed development site comprises a linear shaped site measuring approximately [REDACTED] of a hectare ([REDACTED] of an acre). The site comprises a former private car park located to the rear of The Courtyard, [REDACTED] and [REDACTED] in [REDACTED] Town Centre, which is characterised by mixed retail, commercial and residential properties.

Decision

8. 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 GIA of five bin stores of the five proposed dwellinghouses. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this appeal decision:-
9. 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."
10. 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.

11. Clearly there are no retained parts of in-use buildings to this proposed development and a consideration of the "the gross internal area of the chargeable development." must be made.
12. 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 (6th 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

13. 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 (6th Edition). However, the Appellant opines that the CA has erred in its application of the RICS Code of Measuring Practice (RICS CoMP) in respect of the constitution of the GIA chargeable

area of the development; specifically, the external bin stores of the five dwelling houses.

14. In respect of the parties' dispute of the bin stores and their consideration if they are deemed to be GIA, the Appellant opines that the bin stores are external to the houses, and therefore should not be included in the GIA. The CA disagrees and contends that the five bin stores of the subject development constitute areas within the definition of GIA.
15. In considering the approved plans, the CA opines that the disputed area is part of the main building, each area bound by at least two full walls and a flat roof, which covers an area greater than the disputed area. The CA further opines that in the case of dwellings 2, 3, 4 and 5, the disputed area is bound by three full walls; two of these walls relate to the relevant dwelling, and a further wall relating to a neighbouring dwelling. Whilst for dwelling 1, the area is bound by two full walls relating to the specific dwelling. Additionally, on the front elevation for each disputed area, the front side is enclosed by vertical slatting that covers more than half of the side.
16. The CA contends that the disputed area is more akin to an open porch and consider it to be storage area within the front porch and do not consider it falls under the exclusion of *greenhouses, garden stores, fuel stores, and the like in residential property*, which are excluded from GIA. The CA further opines that there are examples in the RICS CoMP, where it is suggested that it is appropriate to measure to the perimeter of a building and include areas which are not fully enclosed; as an example, the CA cites Diagram D of the RICS CoMP, which provides an example of a loading bay. Given the cited example of Diagram D, the CA contends that the RICS CoMP does not envisage that a lack of external walls prevents GIA from being calculated.
17. The Appellant opines that there is nothing within the Code of Measurement Practice 6th Edition 2015, that states that an external area bound by three walls should be included as GIA. The Appellant disagrees with the CA's contention that the three walls which form the bin store area - part of the neighbouring external wall, the external wall to the house and an open slatted fence/partition (which obscures the bin store area) form a porch storage area under GIA. The Appellant disagrees with the CA's labelling of the bin store area as an open porch, which constitutes GIA.
18. In arriving at my decision, I have interrogated the submitted development plans. In interrogating the plans, I have readily concluded that the disputed area of the five bin stores does not fall within the definition of GIA. It is clear to me that the stores have a type of construction and form, which are characterised as being outbuilding type structures. Indeed, I find the inherent design of the bin stores to be such, that they are designed to be obscured and offer privacy on their functionality, from the driveway of the proposed development. The bin stores are clearly external in my opinion. It is a fact that one of the three walls to which the CA contends binds the area is an external wall, it is a fact that the second wall structure is an open slatted fence/partition, it is a fact that the proposed development is residential; given these factual matters, I am wholly unpersuaded by the CA's contention that the disputed area constitutes GIA within an open porch.
19. The CA's allusion that the disputed area is akin to the loading bay example in the RICS CoMP is clearly inappropriate in my view; the development is residential and is clearly not commercial. I find the architect's illustration/render of the front of the development (on page ■■■ of the ■■■ Statement) and the Appellant's 'Architect Render showing front door and external bin store' compelling evidence in support of my decision.

20. In conclusion, I do not agree with the CA's opinion that the disputed area is akin to a storage area located within the porch of each dwelling. Accordingly, I agree with the Appellant that the disputed area is not GIA floorspace and the area falls under the exclusion of *greenhouses, garden stores, fuel stores, and the like in residential property*.

[my underline emphasis *and the like*].

21. Having reached my determination of the exclusion of the bin store area, I must now determine the chargeable area. Having measured the disputed bin store areas, I agree with the Appellant that they total approximately [REDACTED] m². In conclusion, I agree with the Appellant's opinion that the net chargeable area of the development is [REDACTED] m².

22. Having fully considered the representations made by both parties and all the evidence put forward to me, I determine that the CIL payable in this case should be as follows:-

[REDACTED] m² @ £ [REDACTED] per m² (with indexation at [REDACTED]) = £ [REDACTED] p

23. In conclusion, in considering the facts of the case, I determine that the CIL payable should be the sum of £ [REDACTED] p ([REDACTED]).

[REDACTED] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
11th March 2025