

# Appeal Decision

By ■■■ FRICS

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

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**VOA Appeal Ref:** 1858698

**Planning Application:** ■■■ (Reserved Matters)

**Proposal:** Approval of reserved matters (landscape) following outline approval granted under ■■■ for the erection of 78 dwellings including associated infrastructure, public open space, parking landscaping and access; details of conditions for compliance/ pre commencement 12 (AMS), 29 (LEMP), 31 (LEAP & LAP) & 33 (Sustainable Energy Strategy).

**Address:** ■■■

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## Decision

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

## Reasons

1. I have considered all of the relevant submissions made by ■■■ (the Appellant) and ■■■ - 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 decision in respect of Application No: ■■■ (Reserved Matters), dated ■■■.
  - b) CIL Liability Notice: ■■■, dated ■■■ for £■■■.

- c) CIL Appeal form dated [REDACTED], along with supporting documents referred to as attached.
  - d) Representations from the Appellant.
  - e) Representations from the CA.
  - f) Comments from the Appellant on the CA's Representations.
2. Planning Permission for the Proposal was granted as detailed [REDACTED].
3. The CA issued a CIL Liability Notice reference: [REDACTED], dated [REDACTED] for £[REDACTED], based on a chargeable area of [REDACTED] square metres.
4. On [REDACTED] the Appellant wrote to the CA which was an effective request for Regulation 113 Review.
5. On [REDACTED] the CA provided its response to the Appellant, accepting that whilst undertaking the Regulation 113 Review, an error in the CA's CIL calculation was confirmed whereby an incorrect CIL Charging Schedule Rate had been applied. Additionally, in addressing the Appellant's contention that the CA's GIA of [REDACTED] square metres, the CA undertook a remeasurement exercise, stating that it had missed areas, resulting in an increased GIA of [REDACTED] square metres. The CA issued a new Liability Notice, reference [REDACTED], on [REDACTED] for £[REDACTED]. The Appellant did not accept this outcome.
6. On [REDACTED], the Valuation Office Agency received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming the Appellant disagrees with the CA's Regulation 113 Review decision on the basis that the chargeable amount has been calculated incorrectly, with supporting documents attached.
- 7. The Appellant's grounds of appeal can be summarised as follows:**
- a) The Appellant does not agree with the CA's calculation of CIL within the subject Liability Notice [REDACTED].
  - b) The Appellant is satisfied the correct CIL chargeable rate has been applied, it is only the CA's Gross Internal Area [GIA] calculation that the Appellant is challenging.
  - c) The Appellant submits the GIA should be calculated as [REDACTED] square metres with a total CIL figure of £[REDACTED].
  - d) The Appellant states they believed the CA had incorrectly applied the RICS Code of Measuring Practice (6<sup>th</sup> Edition) ['CoMP'] in that the following areas had been incorrectly included in the GIA calculation instead of being excluded:
    - i. window reveals that do not extend to floor level
    - ii. Bay windows that do not extend down to floor level
    - iii. Party walls between semi-detached or terraced properties
    - iv. Parking spaces with canopy cover identified as carports but counted as garaging.

- e) The Appellant highlights the construction and design of the carports means they should be excluded from GIA, explaining they have a pitched roof for aesthetic reasons however are erected on vertical wooden posts. Further, some of the car canopy sides are fitted with 1.8 metre close boarded fencing, which is not a structural support, which can result in the appearance of being enclosed on three sides. The Appellant acknowledges that the placement of some of the carports adjoin the wall of adjacent houses.
- f) The Appellant states that they have reconsidered their approach to calculating GIA as part of this Regulation 114 Appeal and, having regard to the RICS Code of Measuring Practice, consider some floor areas which they had previously excluded should be included. These include:
  - i. Windows and door reveals 2.1 metres in height
  - ii. Internal chimney breasts
  - iii. Stair cores
  - iv. Bin and bike stores

The Appellant refers to a GIA plot schedule which identifies the Appellant's original and revised GIA areas.

- g) The Appellant submits the revised CIL chargeable amount should be calculated as:
  - i. ■■■ square metres x (£■■■ x ■■■) = £■■■

**8. The CA has submitted representations which I have summarised as follows:**

- a) The CA confirms its understanding of the Appellant's reason for appealing is limited to the CA's calculation of chargeable area [GIA].
- b) The CA disputes the accuracy of the plans provided by the Appellant in support of this appeal.
- c) In undertaking a review for this Regulation 114 Appeal, the CA states an error was discovered within the spreadsheet used and supplied to the Appellant as part of the Regulation 113 response. The error resulted in some of the total floor areas for house plots not being summed up correctly. The CA has included a corrected spreadsheet and information as part of the Regulation 114 representation.
- d) The CA has included a document, referenced within the representation as Appendix ■■■, to demonstrate the difference in measurement approaches between the Appellant and CA by showing side by side comparison. As part of this, the CA has stated instances where it agrees with the Appellant's GIA calculation. However, where there are differences, the CA has included comments to highlight where it is thought the differences have occurred because, the CA submits, the Appellant has not adhered to the CoMP.
- e) The CA explains its understanding that the Appellant is disputing the following inclusions:
  - a. Inclusion of window reveals that do not extend to floor level

- b. Bay windows that do not extend down to floor level
  - c. Party walls between semi-detached or terraced properties
  - d. Parking spaces with canopy cover identified as carports but counted as garaging
- f) The CA clarifies that there is no disagreement in relation to the treatment of matters “a.” and “b.”, as above, confirming the CA has excluded these.
- g) Regarding matter c) Party walls between semi-detached or terraced properties, the CA disagrees with the Appellants treatment of these when calculating GIA. The CA refers to the CoMP, and submits that party walls should be included where buildings are formed of multiple dwellings, dwellings with attached garages / carports.
- h) Regarding matter d) Parking spaces with canopy cover identified as carports but counted as garaging – the CA references the Appellant’s representation made in respect of the construction and placement of the carports. The CA references the CoMP, paraphrasing the definition of Gross Internal Area [GIA] as the area of a building measured to the internal face of the perimeter walls. The CA states that carports are not specifically detailed within the CoMP definition of GIA and are therefore neither expressly included nor excluded within the measurement of a building to the perimeter walls. The CA refers to previous VOA decisions and states it is of the view that the construction and appearance of a structure determines whether the structure (which may be referred to as a carport) is better considered a canopy or garage.
- i) The CA considers the dispute over the treatment of the carports can be categorised as:
- Carports which are part of a larger building (i.e. directly attached to a dwelling(s))
  - Detached Carports

The CA states it has provided comments on each of the carports identified within its representation submission document Appendix [REDACTED]. Regarding the first of the above categories, the CA submits the carports often share a roofline with the dwelling, and are clearly constructed as part of the wider building. Further, carports are bound by at least one side and most are bound by two sides (as the carports are attached to two different dwellings). In all cases, posts support the roof and sides and clearly delineate the edge of the structure, as does the roof above. The CA reiterates that the GIA of the attached carports falls within the definition of GIA and should be included.

- j) With regard to the second type of carport, categorised by the CA as Detached Carports, it submits these detached carports (Buildings [REDACTED]) are all fully covered with roofs with supporting pillars and the perimeter of each building can be clearly identified. The CA submits there are examples within the CoMP where it is suggested to measure to the perimeter of a building and include areas which are not fully enclosed (e.g. a loading bay). The CA submits that in certain situations the CoMP guides that the absence of external walls does not preclude inclusion in GIA. The CA submits the GIA of the detached carports falls within the definition of GIA and should be included.

k) The CA submits the revised CIL chargeable amount should be calculated as:

$$\text{i. } \blacksquare \text{ square metres} \times ((\text{£} \blacksquare \times (\blacksquare / \blacksquare)) = \text{£} \blacksquare$$

**9. The Appellant submitted comments on the CA's representations which I summarise as follows:**

- a) The Appellant considers there to be three areas which remain as disagreement between Parties:
  - i. Inclusion of Carports in the CA's calculation considered by the Appellant as car canopies and therefore excluded from the GIA calculation.
  - ii. Inclusion of party walls between properties and separating flats.
  - iii. Inclusion of external canopies and incorrect depth of garage calculation.
- b) The Appellant reiterates that the carports, are not referenced by the CoMP. Further, the Appellant reiterates and clarifies previous submission that the disputed carports have a roof and, in some cases, a partial perimeter wall where they adjoin a house. The Appellant states most of the carports are detached with a roofline supported on timber posts and appear enclosed by timber cladding however, in the majority of cases, this is to enclose rear gardens.
- c) The Appellant also states the Oxford English dictionary defines a building as a structure with walls and a roof and that the Oxford Advanced Learner's Dictionary, a wall is a long, solid structure that rises straight up from the ground and is made of stone, brick, or concrete. The Appellant submits the CoMP would include carports if the surrounding structure were walls and integral to the house, however it is the Appellant's contention the carports are surrounded by timber fencing and open on the principal access side, therefore should be excluded.
- d) The Appellant makes repeated reference to the CoMP highlighting the difference between the examples in the CoMP and the subject carports, specifically, their construction materials. The Appellant submits the carports are most similar to what the CoMP describes as Greenhouses, garden stores, fuel stores, and the like in residential property, which are excluded. Further, the Appellant submits the car canopies are not substantial enough to be considered as buildings and are not connected to services such as electricity.
- e) Regarding the inclusion of party walls between properties and separating flats, the Appellant references a historic VOA Regulation 114 Appeal, submitting this indicated that internal walls of a development separating properties are disregarded even if party walls are between flats (appeal decision 1784894). Further, the Appellant refers to the CoMP exclusion from GIA whereby perimeter wall thicknesses and external projections are excluded. Additionally, the Appellant refers to CoMP Note GIA 2 which states "Separate buildings – GIA excludes the thickness of perimeter walls, but includes the thickness of all internal walls. Therefore, it is necessary to identify what constitutes a separate building." The Appellant submits the CA has incorrectly treated semi-detached and terraced houses as single buildings and has applied Gross External Area [GEA].
- f) Lastly, regarding inclusion of external canopies and incorrect depth of garage calculation, the Appellant states the CA has incorrectly included canopy areas, referenced CoMP exclusion 2.20 Canopies and submits the CA has measured to the internal face of garage doors, not perimeter wall.

- g) The Appellant concludes by reiterating their opinion of the correct revised CIL chargeable amount as should be calculated as:

ii.  $\blacksquare \text{ square metres} \times (\pounds \blacksquare \times \blacksquare) = \pounds \blacksquare$

**10. Having fully considered the representations made by the Parties, I make the following observations regarding the grounds of the appeal:**

- a) The Appellant does not agree with the CA's calculation of GIA.
- b) Both Parties refer to past VOA CIL Appeal decisions. I cannot comment on, or determine, the validity of decisions made on previous CIL reviews regardless of whether these are in connection with the subject proposals or other unconnected ones. The individual circumstances of each appeal are assessed on a case by case basis on their own merits. In this connection, as for the previous cases referred to, unless these involve an identical set of issues, case by case consideration means that previous VOA decisions can be helpful to consider however do not set precedents.
- c) The CA's Liability Notice states at "How we calculated this figure":

"We calculated this figure using the formula below as set out in Schedule 1 of the CIL Regulations 2010 (as amended):

**The CIL Total Area Charge = Chargeable Area (A) x Rate (R) x Index (I)**

The Chargeable Area is the gross internal area of the total development less the floorspace of any existing buildings which are eligible deduction."

- d) The CIL Charging Schedule Rate "Rate" and associated indexation "Index" are not disputed between the Parties.
- e) Schedule 1 Part 1 of the Regulations state at (6) that Gross Internal Area is the basis for quantifying the part of the development to which the Rate is applied and is the generally accepted method of GIA calculation.
- f) Regulation 40 - Calculation of chargeable amount - of the Community Infrastructure Levy Regulations 2010 (as amended) now contained in Schedule 1 Part 1 of the Community Infrastructure Regulations (amendment)(England) (No.2) 2019 details the formula to be used in the calculation of chargeable amount – this is effectively the same as the equation detailed in the "How we calculated this figure" section of the CIL Liability Notice.
- g) The term Gross Internal Area [GIA] is not defined in the CIL Regulations however the Guidance Note, RICS Code of Measuring Practice [CoMP] is the principle guidance available. The prevailing edition of the RICS Code of Measuring Practice, at the date the subject Planning Permission was granted,  $\blacksquare$ , was the 6th edition. The purpose of the Code is to "*provide succinct, precise definitions to permit the accurate measurement of buildings and land, the calculation of the sizes (areas and volumes) and the description or specification of land and buildings on a common and consistent basis. This may be required for valuation, management, conveyancing, planning, taxation, sale, letting, or acquisition purposes.*"
- h) The CoMP defines GIA as:
- "...the area of a building measured to the internal face of the perimeter walls at each floor level (see note GIA 4)."**

**✓ 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 a 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 floor 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 (see APP 6)

✓ 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

Note GIA 4 referenced above is a "how to use" note, clarifying:

*“Internal face – means the brick/block work or plaster coat applied to the brick/block work, not the surface of internal linings installed by the occupier”*

- i) The parties appear to be in agreement in accepting the CoMP definition of GIA, however, the Parties both submit that each other has erred in its application in respect of the calculation of the GIA of the development.
- j) I have considered the elements of the development which the Parties remain in dispute over. I summarise these, considering the application of the CoMP, as whether specific areas and features are to be included or excluded when calculating GIA. I address these areas of fundamental disagreement adopting the Appellant's categorisation for ease of reference:

- i. “Inclusion of Carports in the CA's calculation considered by the Appellant as car canopies and therefore excluded from the GIA calculation.”

I am of the opinion that the carports, some open on all sides, some adjoin external walls of homes and some are freestanding and have “timber cladding”, as described by the Appellant, are the type of structure more akin to Canopies and therefore should be excluded from GIA.

- ii. “Inclusion of party walls between properties and separating flats.”

The Appellant has indicated in their representation plans that they have measured the proposed semidetached / terraced house designs independently as self-contained houses, thereby omitting the area of the dividing party wall at each floor level. This is incorrect when assessing GIA for CIL purposes as the whole GIA for the proposed buildings should be adopted when calculating the net chargeable area, otherwise the net increase in development referred to in the CA's CIL Charging Schedule would be understated.

- iii. “Inclusion of external canopies and incorrect depth of garage calculation.”

I am of the opinion that floor area beneath the proposed property features categorised by the CA as ‘Porches’ are external and should not be included in the calculation of GIA because of their design in this instance and the fact that they are to be constructed on or as part of the external walls of the proposed buildings, are open-sided on one or more sides and, as part of this, are not areas that could be secured or provide sufficient protection from the elements to be regarded as internal.

- k) I do not agree entirely with the way the Appellant or the CA have measured the proposed plans for GIA and therefore undertook my own measurement exercise. I calculate the GIA to be [REDACTED] **square metres** – in summary, this is greater than the Appellant's figure mainly because internal / party walls [e.g. between adjoining homes / between home and adjoining garages] are included in GIA. My GIA is lower than the CA's mainly because external areas under entrance canopies and external and / or freestanding carports are excluded.

11. The Parties have confirmed the CIL Charging Schedule Rate applied is not disputed, therefore I determine the CIL payable in this connection is £[REDACTED] [REDACTED].



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Valuation Office Agency  
22 May 2025