

Appeal Decision

by [REDACTED] BSc FRICS

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

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VOA Appeal Ref: 1858486

Planning Application: [REDACTED]

Proposal: Planning Permission Granted For: Full application for the proposed erection of a part single, and part two storey extensions. Consisting of a single storey side and rear and two storey gable end front extensions. Alterations to three cottages including provision of rear dormers and changes to fenestration. Following any required demolition of outbuildings / additions, Provision of three car ports, widening of access, landscaping. (As part of phased development)

Address: [REDACTED]

Decision

Appeal dismissed.

Reasons

1. I have considered all of the relevant submissions made by [REDACTED] [REDACTED] on behalf of [REDACTED] [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 decision in respect of Application No: [REDACTED], dated [REDACTED].
 - b) CIL Liability Notice: [REDACTED], dated [REDACTED] for £[REDACTED].
 - 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) Appellant and CA's comments on the respective representations.
2. Planning Permission for the proposal was granted as detailed [REDACTED].
 3. The CA issued a CIL Liability Notice Liability Notice reference: [REDACTED], dated [REDACTED] for £[REDACTED], based on a chargeable area of [REDACTED] square metres.
 4. On [REDACTED] the Appellant submitted a written request to the CA requesting a Regulation 113 Review.
 5. A Regulation 113 Review was undertaken and the CA responded to the Appellant in writing [REDACTED] explaining the review found that the CIL Liability Notice was correct and that the CIL payment should be as stated. 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 position that CIL is chargeable.
 - b) The Appellant describes the works which are the subject of this Appeal as a phased development. The Appellant submits CIL should not be applicable because:
 - i. As part of the application, the Appellant submitted a "Phasing Plan" denoting four phases:
 - Phase 1 – car ports and access – total GIA is [REDACTED] sqm
 - Phase 2 – front (west) extensions – total new floor area – [REDACTED] sqm
 - Phase 3 – side and rear extensions – total new floor area [REDACTED] sqm
 - Phase 4 – landscaping – no floor area.
 - ii. CIL should be £NIL as no phase is over 100 square metres.
 - c) The legislation does not distinguish between phasing for CIL and phasing for construction – if a development is phased for construction purposes, it follows that it is also phased for CIL purposes.
 - d) The CIL Regulations do not exclude small scale developments.
 - e) Regulation 9(4) states that "In the case of a grant of [phased planning permission], each phase of the development is a separate chargeable development."

- f) The CA's referencing of VOA Appeal Decision [dismissed] 1759634 is not relevant as it concerned a much more complex development linked to the restoration of listed buildings within each phase, and each phase has a CIL liability with demolished and in-use GIA to calculate.
- g) Reiterates that the CA accepted the development was phased when they validated application / granted planning permission / If CA had concerns about phasing for CIL purposes, it should have been raised before planning permission was granted and not at a later stage.

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

- a) Referring to the wording "(As part of phased development)" that it is constrained from unilaterally changing the description used in the planning application form.
- b) References VOA Appeal Decision 1759634 [which was dismissed] – there was also a "Phasing Plan" for the development, [also four phases], and these could have been carried out in any order. Additionally, in the historic case referenced, there was a clear planning purpose for phasing [returning heritage assets to use as soon as possible – that situation differs from the subject appeal where there is no planning purpose [for phasing].
- c) The CA submits "phased planning permission" is for development to be carried out in phases, where the planning authority is willing to accept it – is expected to be especially useful for large scale development e.g. housing development delivered over a number of years with cashflow challenges arising from requirements for on-site infrastructure.
- d) The CA references Regulation 9(4) - each phase of a phased planning permission is a separate chargeable development.
- e) The calculation of CIL when applied to the phasing approach adopted by the Appellant can only be applied within the CIL Regulations where the development as a whole is the chargeable development.
- f) The CA concludes by stating that phasing in the context of this appeal has no planning purpose.
- g) The calculation of CIL when applied to the phasing approach adopted by the Appellant can only be applied within the CIL Regulations where the development as a whole is the chargeable development.
- h) The CA understands the appeal is made solely on the basis that the Appellant considers the development not to be CIL liable, and no comments were made on the measurements and calculation made.

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

- a) The Appellant does not agree with the CA's statement that it cannot unilaterally alter the wording contained within applications. The Appellant cites the CA's alteration to the subject application description and argues this confirms its acceptance that the proposal is a phased development.
- b) The CIL Regulations do not exclude smaller developments.
- c) The Application included drawing "██████████ – ██████████ – PHASING PLAN – SITE PLAN" within which four phases are clearly illustrated. Further, had the CA not recognised the phasing, it would not have made explicit reference to this document in the decision notice.
- d) The Appellant refutes the CA's point that the phasing plan does not include ordinal numbering by stating the Regulations do not require ordinal numbering and this may be relevant for phases which involve demolition and in-use floorspace to be calculated by phase, not relevant to the subject appeal.
- e) The Appellant refers to the CA's stipulation within the planning permission whereby "materials to be used in the construction of the external surfaces of the extensions , carports, hard surfacingto be approved before the proposed car ports in phase 1 commence above damp course level..." The Appellant submits this stipulation demonstrates the CA understood the car ports would be developed first as Phase 1. Further, the Appellant submits there is a logic to the order of the Phasing referencing.
- f) The Appellant reiterates and expands upon points made previously, including focussing on the meaning of wording with Regulation 9(4) whereby each phase of a phased development as a separate chargeable development and rerefers to the phasing plan that forms part of the subject application.
- g) The Appellant further addresses the CA's reference to historic CIL Appeal reference 1759634, highlighting that it concerned a larger and more complex development linked to the restoration of listed buildings.
- h) The Appellant concludes by reiterating the subject application is clearly a phased one and requests that the CIL calculation is recalculated for each of the four phases.

Regulations

10. CIL Regulation 9(1) states the '*meaning of "chargeable development"*' as "*The chargeable development is the development for which planning permission is granted.*" Regulation 9(4) states "*In the case of a grant of phased planning permission, each phase of the development is a separate chargeable development.*"

11. The CIL Regulations define “*phased planning permission*” at Regulation 2 as “*a planning permission which expressly provides for development to be carried out in phases.*”
12. CIL Regulation 8 ‘*Time at which planning permission first permits development*’ states at 3A:
- (a) for any phase of an outline planning permission which is granted in outline—
 - (i) on the day of final approval of the last reserved matter associated with that phase; or
 - (ii) if earlier, and if agreed in writing by the collecting authority before commencement of any development under that permission, on the day final approval is given under any pre-commencement condition associated with that phase; and
 - (b) for any other phase—
 - (i) on the day final approval is given under any pre-commencement condition associated with that phase; or
 - (ii) where there are no pre-commencement conditions associated with that phase, on the day planning permission is granted.

Consideration of Representations

13. The Appellant contends that the planning permission was granted as a phased permission, which is disputed by the CA.
14. The planning permission was granted for “*Full application for the proposed erection of a part single, and part two storey extensions. Consisting of a single storey side and rear and two storey gable end front extensions. Alterations to three cottages including provision of rear dormers and changes to fenestration. Following any required demolition of outbuildings / additions, Provision of three car ports, widening of access, landscaping. (As part of phased development).*”
15. The planning permission includes the following conditions:
- a) Condition 2, within the ‘Conditions and Reasons’ section of the notice states: “*Approved details - This permission is in respect of the submitted application plans and drawings numbered [11 plans listed including “[REDACTED] - [REDACTED] - PHASING PLAN - SITE PLAN”...], ...The development shall be carried out in accordance with the approved details unless other minor variations are agreed in writing after the date of this permission and before implementation with the Local Planning Authority. Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the application form and associated details hereby approved.*”
 - b) Condition 3, within the ‘Conditions and Reasons’ section of the notice states: “*Materials - Before development of the proposed car ports within phase 1 as outlined within [REDACTED] - [REDACTED] - PHASING PLAN - SITE PLAN*

hereby permitted commences above damp course level, samples and details of the materials to be used in the construction of the external surfaces of the extensions, carports, hard surfacing and in the alterations to the external surfaces of the existing building(s) shall have first been submitted to and approved in writing by the local planning authority. Development shall not be carried out other than in accordance with the so approved details. Reason: To ensure that the external appearance of the building is satisfactory. Relevant policy: Core Strategy policies CP1 and CP3."

16. The Appellant states that the CA assessed the proposals for phasing and accepted that the planning permission should be so phased. If not, the phasing plan would not have been approved, nor would the description of development.
17. The Appellant references the CA's commentary submitted as part of its Regulation 113 response that – "it is evident that the geographical location and sequence of each phase must be clearly defined in order to accurately determine the amounts for KR, E, and Ex within the chargeable amount calculation" The Appellant responds that the phasing plan clearly identifies the geographical location of each phase along with the extent of the chargeable development and that the four separate phases are coloured coded, and the sequencing is clearly stated next to each phase on the phasing plan (i.e. Phases 1 to 4). As this development is essentially to extend three dwellings and construct car ports, the geographical areas and the sequencing are therefore obvious (as per the colour coding). The values of KR, E and Ex [as in components of the chargeable amount calculation] are not relevant to this development as there are no in-use buildings to be taken into account in the CIL calculation.
18. The CA disputes that the planning permission is a phased development. They state that the CA's validation of the application based on the planning application form and description of development including a reference to phasing does not indicate that the phasing is effective for the purposes of CIL or otherwise.
19. The CA references Government guidance on the phasing of planning applications for CIL purposes set out in the Community Infrastructure Levy (CIL) National Planning Policy Guidance (NPPG) which states "*Where the planning authority is willing to accept it, a planning permission for a development can be subdivided into 'phases' for the purposes of the levy (see 'How does the levy relate to planning permission?' [hyperlink removed]). This is expected to be especially useful for large scale development, which is an essential element of increasing housing supply.*"
20. The CA continues by stating that phasing of development for CIL purposes is to prevent the CIL costs of providing infrastructure from prejudicing the necessary infrastructure being provided by spreading CIL payments over phases of development. It is not to avoid the payment of CIL. They opine that the chargeable development is not large scale development for which on-site infrastructure is required to mitigate its impacts.
21. The CA addresses the Appellants submissions based on Conditions 2 and 3 of the planning decision notice. The CA states there is nothing in Condition 2 that expressly determines the sequence in which the development is to be implemented. The CA states the effect of Condition 3 is not to expressly confirm that the car ports will be the first phase of development. Condition 3 provides that details of the extensions, carports, hard surfacing etc., shall be submitted and approved and the development carried out in accordance with the approved details before the car ports/Phase 1 can be commenced. Following the submission and approval of the details for the extensions, carports, hard surfacing etc., any of those phases described in Condition 3 may precede or be carried

out after another. It does not determine the sequence in which the phases must be carried out. The development can be carried out in any sequence.

22. The CA reference that in this appeal the deduction of buildings to be demolished prior to completion of the development is not being claimed. The absence of planning condition that expressly secures the sequence of development and the absence of a phasing plan that links the retained parts to the relevant chargeable development (phase) means that the CIL calculation of liability at Part 1 of Schedule 1 of the CIL Regulation can only be applied effectively to the development as a whole.
23. The CA references CIL Regulation Schedule 1 Part 1 which details the formula and its components used in the calculation of the chargeable amount. Specifically, the CA states that the Appellant's case does not address how the requirements in Part 1 of Schedule 1 Paragraph 1(6) and critically how the "Kr(ii)" "E" and "Ex" floorspace within the application site can be calculated for CIL purposes. The CA submits that the Appellants are not seeking to offset retained parts of in use building or buildings within the application site that are to be demolished prior to completion of the development. Therefore, the Kr(i) and E elements of the CIL calculation are not engaged. As each phase of development is a separate chargeable development Kr(ii) floorspace must be defined within each phase/chargeable development. [REDACTED] - [REDACTED] - PHASING PLAN – SITE PLAN shows areas described as phases which are not associated with or comprise Kr(ii) floorspace (retained parts).
24. I include the relevant text from the Regulation referenced in this connection:
- G = the gross internal area of the chargeable development;
 - G_R = the gross internal area of the part of the chargeable development chargeable at rate R ;
 - K_R = the aggregate of the gross internal areas of the following—
 - (i) retained parts of in-use buildings; and
 - (ii) 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;
 - E = the aggregate of the following—
 - (i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and
 - (ii) for the second and subsequent phases of a phased planning permission, the value E_x (as determined under sub-paragraph (7)), unless E_x is negative,

provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.
- (7) The value E_x must be calculated by applying the following formula—

$$E_P - (G_P - K_{PR})$$

where—

- E_P = the value of E for the previously commenced phase of the planning permission;
- G_P = the value of G for the previously commenced phase of the planning permission; and
- K_{PR} = the total of the values of K_R for the previously commenced phase of the planning permission.

25. The CA also references VOA Appeal Decision 1759634 in which the appellant argued that their development should be treated as a phased development. The Appointed Person dismissed the appeal and found that although the site had been divided into four areas which were named as phases, there was no requirement for the phases to be developed sequentially or in any particular order. The Appointed Person stated at para 38:

"In my opinion, it is important that to be a 'phased planning permission' the planning permission must clearly specify the order in which the phases will be developed. I qualify my opinion as follows: If a permission is to be treated as a phased planning permission, the order in which the phases will be developed must be known in order to properly identify the deduction for demolished buildings when calculating the chargeable amount for each phase in accordance with the formula in Schedule 1, Part 1, paragraphs 1(6) and (7) of the CIL Regulations 2010 (as amended). If the order in which the phases must be developed is not specified in the planning permission, then it is not possible to calculate 'Ex' in the formula when planning permission has been granted (because if the order of the 'phases' is not stipulated within the planning permission, it is not possible to identify which will actually be the "second phase" and which will be "the previously commenced phase" until the development of each 'phase' has actually commenced)."

Decision

26. I acknowledge the Appellant's stance that reference to the proposal being a phased development has been made throughout the application process, including within the decision notice itself. However, I also I acknowledge the CA's explanation that Local Authorities cannot unilaterally amend wording on an Applicant's application and they have merely adopted the naming schedule of the documents as submitted by the Appellant.

27. The chargeable amount for CIL must be calculated in accordance with Regulation 40, Schedule 1. For phased planning permissions, this includes a requirement to establish some values by reference to "the previously commenced phase of the planning permission." The CA argue that as the "phases" in the subject permission do not have a specified order, this calculation cannot be established. The appellants argue that this is irrelevant as this only applies to existing buildings which are to be deducted from the chargeable area and in this case, there are none.

28. In my opinion, the formula for calculating the CIL charge needs to be considered in full, even if some figures may be Nil. Therefore, the fact that there are no buildings to be deducted from the chargeable amount does not persuade me that this formula can be disregarded.

29. The Appellant has sought to divide the proposed development into four phases, whereby no singular phase as described exceeds the 100 square metre threshold where CIL

becomes chargeable. The planning decision notice references these phases but places no restrictions on what order they should be developed and specifies no restrictions that certain conditions must be met before moving onto a different phase (aside from a general pre-commencement condition in relation to the car ports). Once implemented, development under the subject planning consent could, if the Applicant so wished, be built in any order or all at once as there are no restrictions or stipulations within the consent requiring completion of one phase before another is permitted to commence.

30. Having fully considered the representations made by the Appellant and the CA, I therefore determine that the planning application does not expressly provide for the development to be carried out in phases.
31. CIL Regulation 9 (1) states "*The chargeable development is the development for which planning permission is granted.*" As I have concluded this is not a phased development, the chargeable development is all that permitted under the planning decision in respect of Application No: [REDACTED], dated [REDACTED], as per the description contained above on Page 1.
32. The GIA of the chargeable development exceeds the 100 square metre threshold and therefore minor development exemption does not apply.
33. There is no dispute in relation to the net chargeable area, rates adopted or indexation and I therefore dismiss this appeal.

[REDACTED] BSc FRICS
Valuation Office Agency
14 March 2025