

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``

Appeal Ref: 1879378

Address ``redacted``

Proposed Development: Erection of 6 no. self-catering accommodation units to be used in association with ``redacted`` gliding club at ``redacted``

Planning Permission details: Granted by ``redacted``, on ``redacted``, under reference ``redacted``.

Decision

I determine that no Community Infrastructure Levy (CIL) should be payable in this case.

Reasons

Background

1. I have considered all the submissions made by the Appellant's agent (``redacted``) acting on behalf of 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) Conditional Grant of Planning Permission ``redacted``, dated ``redacted``.
- c) The CIL Liability Notice (ref: ``redacted``) dated ``redacted`` in respect of planning application reference ``redacted``. The Liability Notice stated that the CIL amount which was due, was the sum of £``redacted``.
- d) The CA's Regulation 113 Review, dated ``redacted``.
- e) Various plans of the subject development.

- f) Community Infrastructure Levy (CIL) Form 1 - CIL Additional Information, dated ``redacted``.
- g) Planning Application of subject property, dated ``redacted``.
- h) Planning Statement of subject property, dated ``redacted``, as prepared by ``redacted``.
- i) Appellant's Statement of Case document, dated ``redacted``.
- j) The CA's Statement of Case document (undated document, but received in the VOA on ``redacted``). Includes appendices, which cite two previous VOA CIL Appeal Decisions.
- k) The Appellant's comments on the CA's Statement of Case document, which is dated ``redacted``.

Grounds of Appeal

2. Conditional Planning Permission was granted for the development on ``redacted``, under reference ``redacted``. The approved planning consent (sic) was:-

Erection of 6 no. self-catering accommodation units to be used in association with ``redacted`` gliding club at ``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`` m² and a Charging Schedule rate of £``redacted`` per m² (Residential) 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.
5. On ``redacted``, the Valuation Office Agency received a CIL Appeal from the Appellant, contending that the CA's calculation is incorrect and no CIL should be payable. The Appellant opines that the lawful use is ancillary to a sui generis recreational use, which falls within the "all other development" category of the ``redacted`` CIL Charging Schedule, which carries a nil rate.

It would appear that there is no dispute between the parties in respect of the component Charging Rates, the measurement of constituent areas or the applied indexation. The core dispute relates to the parties binary interpretation of the type of development, relative to the 1 June 2019 ``redacted`` CIL Charging Schedule, which has a 'Residential' rate of £``redacted`` and 'All Other Development' at £0 (zero) per m².

6. At the heart of this Appeal is a dispute between the parties in respect of the constitution of the chargeable development under the CIL Regulations. This Appeal turns on whether the proposed development (self-catering lodges) is deemed ancillary to the existing gliding club (a sui generis use) as opined by the Appellant or are new buildings, which align with the definition of C3 residential accommodation and are thus chargeable, as opined by the CA.

7. The ``redacted`` CIL Charging Schedule was approved by the CA on 3 August 2018, in accordance with Section 213 of the Planning Act 2008 and regulation 25 of the Community Infrastructure Levy Regulations 2010 (as amended). The Charging Schedule took effect from 1 June 2019 and the CIL rates therein are:-

All development sites, including Sheltered Housing and Extra-care Housing but excluding the ``redacted`` Strategic Site	-	£``redacted`` per m ²
``redacted`` Strategic Site	-	£00.00 per m ²
Retail Development	-	£``redacted`` per m ²
All Other Development	-	£00.00 per m ²

Approved Development in Dispute

8. The property subject to this Appeal comprises a development proposal for the erection of 6 no. self-catering lodges/cabins to be used in association with ``redacted`` gliding club at ``redacted``. Each of the six detached lodges will comprise similar, single-storey two bedroom units with a gross internal floorspace of circa ``redacted`` m². The units will have two separate bedrooms, a shower/WC/wash hand basin and an open plan kitchen/living/dining room area. At present, the application site is used to store gliders for use by the club and is situated to the western boundary of ``redacted``.

Decision

9. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:-
10. The calculation of the chargeable amount is contained in the provisions of Schedule 1 of the 2019 Regulations. In this case (which is a 'Standard Case' under Schedule 1) the provisions of paragraphs (3) and (4) of Part 1, Schedule 1 are key; they state:-

(3) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_P}{I_C}$$

where—

A = the deemed net area chargeable at rate R, calculated in accordance with sub-paragraph (6);

I_p = the index figure for the calendar year in which planning permission was granted; and

I_c = the index figure for the calendar year in which the charging schedule containing rate R took effect.

11. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means “the development for which planning permission is granted”.
12. 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.
13. “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.
14. The Appellant opines that the subject planning permission expressly limits their use, both in the description of development and through a planning condition, to occupation ancillary to the gliding club, which is a sui generis use. The Appellant contends that the cabins cannot be occupied as permanent homes, unrestricted holiday lets, or by members of the public unconnected with the club.
15. The Appellant disagrees with the CA’s treatment of the cabins as chargeable “residential development” on the CA’s basis that they are self-contained and capable of independent occupation. The Appellant opines that this interpretation is incorrect and that the development falls within the “all other development” category of the Charging Schedule, which carries a nil rate.
16. Furthermore, the Appellant opines that the description of the development, which is for the “Erection of 6 no. self-catering accommodation units to be used in association with gliding club ```redacted```”, establishes that the lawful use is ancillary to a sui generis recreational use. The Appellant goes on to state that the cabins are not approved as dwellings or holiday lets, but as ancillary accommodation serving the needs of pilots and visitors participating in gliding activities.

The Appellant points to Condition 9 of the subject permission, which the Appellant contends reinforces this dependency:-

“...The units shall be occupied as holiday accommodation only ancillary to the use of the gliding club at ```redacted``` and shall not be occupied as permanent, unrestricted accommodation, second homes or a principal or primary place of residence.”

Given the above condition, the Appellant opines that both the description of development and the condition preclude the creation of any independent residential use. The Appellant points out that if the gliding club were to cease operating, the cabins would become incapable of lawful occupation, as their use exists only in connection with the club. In the Appellant’s view, this clearly distinguishes them from conventional dwellings or holiday accommodation capable of standalone use.

Th Appellant opines that the site forms a single planning unit comprising the gliding club and its operational facilities and cites the case of ‘Burdle v Secretary of

State for the Environment [1972] 3 All E.R. 240', which establishes that the planning unit is determined by functional and physical use. Citing this case, the Appellant opines that the cabins are functionally and physically linked to the primary use of the gliding club.

The Appellant opines that the proposed cabins:-

- Derive their lawful use from a sui generis recreational permission, not Class C3;
- Are tied by condition to the gliding club and cannot lawfully operate independently;
- Are intended for use by individual pilots and visitors, not households on holiday; and;
- Form part of a single functional sui generis planning unit.

17. The CA opines that although the cabins are tied to the ``redacted`` gliding club and are not authorised for permanent or unrestricted residential use, they are designed and intended to provide short-stay accommodation to members and visitors. The CA is of the view that given that the units are self-contained, with facilities that enable independent living during short stays (and are marketed as such) that the type of use aligns with the definition of residential accommodation for CIL purposes. Furthermore, the CA opines that even though they are ancillary to the ``redacted`` gliding club's operations, they function as individual residential units for temporary occupation. The CA cites two previous CIL Appeal Decisions in support of its argument – VOA CIL Appeal Decisions 1767425 and 1696795.
18. I will now turn to the heart of this Appeal – whether the proposed development is deemed ancillary to the existing gliding club (a sui generis use) as opined by the Appellant or are new buildings, which align with the definition of C3 residential accommodation and are thus chargeable, as opined by the CA.
19. The Appellant cites the case of 'Burdle v Secretary of State for the Environment [1972]', which identified three broad categories of distinguishing planning units and provides guidance on ancillary use; the three tests comprise:-

First Test – Ancillary Use

First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.

Second Test – Composite Use

Secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.

Third Test – Separate Planning Units

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

20. The application of the second and third ‘Burdle’ tests are somewhat interrelated in this instance and are somewhat blurred here. It is clear to me that the shared access, entrance, and location of the units within the wider location of the aerodrome are factors, which support subordinate and ancillary use to the main planning unit, which is clearly an aerodrome. I note the relatively close location of the cabins relative to the existing Gliding Club HQ building. In support of the CA’s argument, the character and configuration of the units (self-contained and capable of independent occupation) are positive factors, but in my view, it is a question of the degree of functionality of the cabins. A key item of evidence for me, is the actual description of the planning consent:-

“Erection of 6 no. self-catering accommodation units to be used in association with ‘‘redacted’’ gliding club at ‘‘redacted’’...”

[my underline emphasis ‘in association with ‘‘redacted’’’ gliding club]

Furthermore, I am drawn to the word ‘association’ in the description of the planning consent. Neither planning law nor the CIL Regulations provide a definition of the word ‘association’ and so the only apparent option available to me is to refer to the dictionary for a clear definition. I am satisfied to take the common, ordinary English dictionary definition of the word ‘association’ in this context, which is:-

- A connection or relationship between people, ideas, or things
- The act of linking or joining together

Given the clear language of both the planning consent description and Condition 9 of the grant of permission, I agree with the Appellant that the cabins are ancillary to the ‘‘redacted’’. I conclude that they are functionally and physically linked to the primary recreational use of the ‘‘redacted’’ gliding club.

21. Having studied and reviewed the two CIL Appeal Decisions cited by the CA, I am of opinion that the circumstances of the cited decisions are different to this Appeal. I note that both the cited decisions have (in part), either the description of ‘holiday cottages’ or ‘holiday-let’ within the description of both their individual planning consents. Clearly this differs from the subject Appeal, which has a description of “...self-catering accommodation...”.

Whilst it may be argued that there is little difference between the general terms of ‘holiday-let’ and ‘self-catering accommodation’ the developments in the cited appeals were not deemed ancillary by the Appointed Persons.

Given this, and other differences, I conclude that the CA’s application of VOA CIL Appeal Decisions 1767425 and 1696795 is inappropriate.

22. Given the evidence submitted, I agree with the Appellant that the proposed development is ancillary to the ‘‘redacted’’ gliding club at ‘‘redacted’’. Accordingly, the development falls within the “all other development” category of the ‘‘redacted’’ CIL Charging Schedule, which carries a nil rate. Given this, I determine that no CIL is payable.
23. In conclusion, having considered all the evidence put forward to me, I consider that the CIL payable in this case is to be a nil (zero) sum.

``redacted``

``redacted`` MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
17th December 2025