

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: 1883918

Planning Application Reference: [REDACTED]

Proposal: Approval of all reserved matters following outline approval of [REDACTED] for a residential dwelling following demolition of existing equestrian facilities (application 1).

Address: [REDACTED]

Decision: The appeal is allowed for the reasons set out below. I determine the revised amount of CIL to be £Nil.

Reasons

1. I have considered all of the relevant submissions made by [REDACTED] [the Appellant] and [REDACTED] - the Collecting Authority [CA] in respect of this matter. In particular, I have considered the information and opinions which are pertinent to this Regulation 114 appeal presented in the following documents:

1. Planning Permission reference [REDACTED].
2. CIL Liability Notice: [REDACTED], dated [REDACTED], for £[REDACTED].
3. CIL Appeal form dated [REDACTED], along with supporting documents referred to as attached.
4. Representations from the Appellant.
5. Representations from the CA.
6. Comments from the Appellant on the CA's Representations.

2. Planning Permission reference [REDACTED] was granted as detailed [REDACTED].

3. The CA issued Liability Notice [REDACTED], dated [REDACTED], based on:
 - Chargeable area: [REDACTED] sqm
 - CIL rate: £[REDACTED]/sqm
 - Indexation: [REDACTED]
4. The Appellant did not agree with the CA that there was a CIL liability. On [REDACTED], the Appellant requested a Regulation 113 Review.
5. On [REDACTED], the CA issued its review decision which was that the liability had been correctly calculated and therefore the CIL liability remained as issued.
6. On [REDACTED], the VOA received a Regulation 114 appeal disputing the CA's Regulation 113 Review decision on the basis that the Gross Internal Area [GIA] of multiple existing buildings should be offset against the development, resulting in nil CIL.
7. Planning permission [REDACTED] was a Reserved Matters Approval pursuant to the outline permission [REDACTED] for "a residential dwelling following demolition of existing equestrian facilities (application 1)."
8. The CA issued a Liability Notice, AS ABOVE, calculating CIL on the basis that no existing in-use floorspace could be offset, resulting in a chargeable amount of £[REDACTED].

The Appellant's grounds of appeal can be summarised as follows:

9. The Appellant disputes the calculation on the grounds that the existing buildings on the site (said buildings are referenced in plans supplied) as Buildings [REDACTED] and part of Building [REDACTED] meet the CIL "in-use" building test under Schedule 1 of the CIL Regulations and should therefore be taken into account when calculating the chargeable amount. The Appellant states that these buildings were relevant buildings and had been in continuous lawful use for at least six months within the three-year period ending on the date planning permission first permitted the chargeable development ([REDACTED]).
10. The Appellant's case is that sufficient evidence of lawful use was provided during the Regulation 113 review process, including leases, statutory declarations, bank statements evidencing rent payments, utility bills and photographs, and that this evidence demonstrates continuous equestrian and residential use of the existing buildings.
11. The Appellant also provides further and more detailed evidence with the Regulation 114 appeal, including additional statutory declarations and updated plans, in response to the CA's stated concerns.
12. Two principal matters are identified as being in dispute:
 1. whether sufficient and sufficiently detailed evidence has been provided to demonstrate that Buildings [REDACTED] and [REDACTED] satisfy the "in-use" building test; and

2. whether adequate plans were available to allow the Gross Internal Area of the retained and demolished parts of Building [REDACTED] to be measured and verified.

13. The Appellant contends that all existing buildings on the site satisfy the “in-use” test and that the associated floorspace, both retained and to be demolished, should be included as inputs in the Schedule 1 calculation. On that basis, the Appellant calculates that the net chargeable area is nil and that the correct CIL liability for the Reserved Matters Approval is £0.

14. The Appellant also makes an application for an **award of costs under Regulation 121**, on the basis of the CA’s handling of the Regulation 113 review process.

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

15. The CA identifies two principal matters raised by the Appellant:

1. the provision of updated existing floorplans to enable the GIA of Building [REDACTED] to be taken into account; and
2. (B) the contention that further existing buildings (Buildings [REDACTED] and [REDACTED]) qualify as “in-use” buildings and should be included in the calculation of the chargeable amount.

16. In relation to **Building [REDACTED]**, the CA confirms that it accepts **Building [REDACTED]** as an “in-use” building, having been satisfied that at least part of it was in lawful use for the requisite period. However, the CA states that it has insufficient information to establish and verify the GIA of the parts of **Building [REDACTED]** said to be **demolished or retained**. The CA notes inconsistencies between the outline and reserved matters plans as to which buildings are to be retained or demolished and refers to Schedule 1 of the CIL Regulations, which allows the CA to deem the GIA to be zero where adequate information is not available. On that basis, the CA concludes that no part of the GIA of **Buildings [REDACTED] and [REDACTED]** can be taken into account in the calculation.

17. In relation to **Buildings [REDACTED] and [REDACTED]**, the CA sets out the statutory definition of an “in-use building” and confirms agreement with the Appellant on the relevant period for lawful use. The CA notes agreement as to the lawful equestrian (sui generis) use of **Buildings [REDACTED] and [REDACTED]**. Following consideration of the additional evidence submitted with the Regulation 114 appeal, the CA concludes that, on balance, sufficient evidence has been provided to demonstrate that at least part of **Buildings [REDACTED] and [REDACTED]** were in lawful use for the requisite six-month period. However, the CA states that it is unable to measure and verify the GIA of these buildings from the plans provided, citing inconsistencies in scaling. Applying the provisions of **Schedule 1**, the CA therefore deems the GIA of these buildings to be zero for calculation purposes.

18. On the basis of the information it considers usable, the CA maintains its calculation of the chargeable amount, applying a **chargeable area of [REDACTED] sqm** at a **rate of £ [REDACTED] per sqm**, with indexation based on an **Ip of [REDACTED]** and **Ic of [REDACTED]**, resulting in a CIL liability of **£ [REDACTED]** as set out in the most recent

Liability Notice (– updated liable party). The CA notes a disagreement with the Appellant regarding the correct index figure for **Ip**.

19. In respect of **costs**, the CA opposes the Appellant's application under **Regulation 121**. It states that it acted reasonably within the constraints of the **Regulation 113 review** process, that the Regulations expressly permit it to deem buildings not in-use or to assign zero GIA where information is insufficient, and that it did not act unreasonably in reaching its Regulation 113 decision based on the information available at that time. The CA therefore requests that the application for costs be dismissed and that the appeal be determined by upholding the chargeable amount of £

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

20. The Appellant responds to the CA's Regulation 114 representation by identifying areas of agreement and addressing matters said by the CA to require clarification. The Appellant notes that the **CA now accepts that Buildings and all qualify as "in-use" buildings** for the purposes of Schedule 1 of the CIL Regulations, and that there is no dispute regarding the chargeable nature of the development, the applicable charging rate, the **GIA** of the approved dwelling, or the relevant **indexation** figures (**Ip** and **Ic**).
21. The Appellant states that the **remaining issues** relate to (i) the treatment of existing floorspace in **Buildings and as retained or demolished**, and (ii) the CA's inability to measure the GIA of **Buildings and** due to scaling issues with earlier plans. In response, the Appellant provides clarification, supported by references to the outline officer report and reserved matters approval documents, that **Buildings and** are to be demolished, while **Buildings and** are to be retained, and that the relevant floorspace should be treated accordingly within the Schedule 1 calculation.
22. The Appellant also responds to the CA's comments on measurement by **submitting updated, scaled survey plans for Buildings and**, stating that these address the scaling concerns identified by the CA and enable the GIA of the existing buildings to be measured and verified. On that basis, the Appellant maintains that the existing floorspace for all relevant buildings should be included as **retained or demolished floorspace**, as appropriate, in the calculation of the chargeable amount.
23. The Appellant concludes that, taking account of the agreed "in-use" status of the buildings, the clarified demolition and retention status, and the updated measurement information, the correct calculation of CIL results in **either a nil chargeable amount or a chargeable amount below the statutory de minimis threshold**, which is deemed to be zero under the CIL Regulations.

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

24. The pivotal issues for determination include the **Demolition and retention of existing floorspace** - whether, for the purposes of the **Schedule 1 calculation**, the existing floorspace within **Buildings and** is correctly identified as retained floorspace (**KR**) and/or demolished floorspace (), having regard to the outline permission, reserved matters approval and associated plans.

25. **Measurement and verification of GIA** - Whether sufficient and sufficiently reliable information has been provided to enable the GIA of the existing buildings to be established, measured and verified for inclusion within the **Schedule 1 calculation**, or whether the deeming (insufficient information) provisions apply.
26. **Correct calculation of the chargeable amount** - Having regard to the above matters, what is the correct chargeable amount under **Part 1 of Schedule 1** of the Regulations, including, if applicable, consideration of any statutory de minimis provision, where at paragraph 2 of Schedule 1, Part 1 states that where the chargeable amount calculated “is less than £50 the chargeable amount is deemed to be zero.”
27. **Costs (Regulation 121)** - Whether an award of costs is justified, having regard to the parties’ submissions on the conduct of the Regulation 113 review process and the Regulation 114 appeal.
28. **Statutory framework** - the calculation of the chargeable amount must be carried out in accordance with **Schedule 1** of the Regulations. For Regulation 114 appeals, the Appointed Person’s role is confined to determining whether the chargeable amount has been calculated correctly under that Schedule.
29. In standard cases, the “deemed net area chargeable” is calculated by reference to the **GIA of the chargeable development**, subject only to the specific deductions expressly provided for in **Schedule 1 Part 1**.
30. Meaning of “**in-use**” and “**relevant building**” - Schedule 1 defines an “**in-use building**” as a **relevant building** which contains a part that has been in lawful use for a continuous period of at least six months within the three years ending on the day planning permission first permits the chargeable development.
31. However, this definition does not operate in isolation. The Regulations do **not** provide a free-standing credit for any in-use building on the planning unit. Rather, the definition is a gateway test which determines **whether existing floorspace may be taken into account at all** within the **Schedule 1** calculation.
32. **When existing GIA may be deducted** - Schedule 1 permits the deduction of existing floorspace only where that floorspace is **part of the development authorised by the planning permission**, typically where an existing building (or part of it) is demolished, or retained and incorporated within the completed chargeable development, or subject to a change of use forming part of the chargeable development.
33. **No redevelopment or change of use** - Where an existing building remains **entirely unaffected by the planning permission** – i.e. it is not demolished, not physically altered, and not subject to a material change of use requiring planning permission, there is **no link** between that building and the “chargeable development” for the purposes of **Schedule 1**. In those circumstances, there is no statutory basis to offset its GIA against the GIA of new development elsewhere on the site. The Regulations contain **no provision** allowing existing floorspace to be deducted simply because it is in lawful use and located within the same planning unit.
34. If the Appellant’s position is that the GIA of an existing, continuing in-use building can be offset **without any redevelopment or change of use**, that argument conflates the **qualifying test** for an “in-use building”, with the **separate and narrower question** of whether that building’s floorspace is relevant to the **Schedule 1** calculation. On a proper reading of Schedule 1, the former does not of itself give rise to a deduction.

35. I am satisfied that, while the Regulations permit the GIA of certain existing in-use buildings to be incorporated into the calculation of (A) [A = the deemed net area chargeable at rate **R**, calculated in accordance with sub-paragraph (6)], this is only where that floorspace **forms part of the chargeable development** as retained or demolished floorspace. Where an existing building is **neither redeveloped nor subject to a material change of use**, Schedule 1 does not provide for its GIA to be offset against the chargeable GIA proposed.
36. **Identification of relevant existing floorspace** - The calculation of the chargeable amount depends on identifying which elements of existing floorspace form part of the development authorised by the subject planning permission, either as retained floorspace (**K_R**) or demolished floorspace () within the meaning of Schedule 1. While the Appellant provided tabulated information describing existing buildings and their floorspace, that material did not, of itself, clearly relate those buildings to the scope of the authorised development shown on the approved plans. In particular, it was not clear from those tables alone whether **Buildings** () and () were affected by the permission, or whether they were retained and unaffected by the development.
37. Having reviewed the approved plans listed in the Reserved Matters Approval, I am satisfied that **Buildings** () and () are to be demolished and replaced by the proposed dwelling and associated works, and that **Buildings** () and () are retained. There is nothing in the approved plans to indicate any redevelopment or change of use affecting **Buildings** () and (). Accordingly, only the floorspace of **Buildings** () and () falls to be treated as demolished floorspace for the purposes of the Schedule 1 calculation.
38. I have calculated the GIA of the existing buildings by reference to the scaled plans submitted with the Appellant's comments on the CA's Regulation 114 representations. While my measurements do not precisely replicate those advanced by the Appellant, any difference is minor in the context of the overall calculation, and I have therefore adopted the Appellant's stated GIA for **Buildings** () and (), which are to be demolished.
39. **Schedule 1 Part 1** of the Regulations sets out the calculation at (4):
- The amount of CIL chargeable at a given relevant rate (**R**) must be calculated by applying the following formula:
- $$R \times A \times I_p \div I_c$$
- 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.../...
40. The rate **R** (£ / sq m), indices **I_p** () and **I_c** () are ultimately **not disputed** between the Parties.
41. At paragraph (6):

The value of **A** must be calculated by applying the following formula –

$$G_R - K_R - (G_R \times E / G)$$

where -

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.

42. Taking these in order as above:

G (the GIA of the chargeable development) and **G_R** = (the GIA of the part of the chargeable development chargeable at rate **R** (£[REDACTED])), both (**G and G_R both [REDACTED] sq m**) - I note these are not disputed between Parties.

K_R (total GIA of retained parts of in-use buildings and other relevant buildings, where those parts can lawfully and permanently continue in-use without further planning permission as at the day before permission for the chargeable development is granted) – I note the appellant submits that [REDACTED] sq m in respect of **Building [REDACTED]** and part of **Building [REDACTED]** (equine use) plus existing residential element of **Building [REDACTED]** of [REDACTED] sq m. However, as explained above, there is nothing in the approved plans to indicate any redevelopment or change of use in **Buildings [REDACTED]** and [REDACTED] therefore there is no statutory basis to offset their GIA against the proposed GIA elsewhere on the site, so I determine **K_R** should be **0.00 sq m**.

E (the GIA of in-use buildings to be demolished before completing the chargeable development) – this should be the GIA of **Buildings** “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]” (to be demolished and replaced with the “Proposed House” “Formal Gardens”, and “Ornamental Pond”) I concur with the Appellant’s stated GIA of [REDACTED] sq m.

43. As E ([REDACTED] sq m) is greater than GR ([REDACTED] sq m), this affects the calculation so that the chargeable amount is negative, therefore **the chargeable amount is deemed to be zero.**
44. **Costs (Regulation 121)** – Regulation 121 confers a discretionary power on the Appointed Person to make orders as to costs. That discretion must be exercised sparingly and only where a party has acted unreasonably, such that the other party has been put to unnecessary expense. The mere fact that an appeal succeeds, or that a Liability Notice is withdrawn, does not of itself justify an award of costs.
45. **Availability and sufficiency of GIA information** - In considering the calculation of the chargeable amount, I have distinguished between the availability of information relating to the existing buildings on the site and the sufficiency of that information to permit a reliable calculation of GIA.
46. The Appellant's earlier representations made clear that a number of existing buildings were present and asserted that their floorspace should be taken into account for CIL purposes. In that sense, information concerning the existence and general use of those buildings was available prior to the Regulation 114 appeal.
47. However, the information provided at that stage did not clearly or unequivocally identify which buildings formed part of the development authorised by the subject planning permission, nor did it sufficiently distinguish between buildings to be demolished and those to be retained. In particular, it was not possible, on the basis of the earlier material alone, to determine with certainty whether **Buildings [REDACTED] and [REDACTED]** were affected by the permission or how their floorspace related to the **authorised development** as shown on the approved plans. Although the Appellant submitted tables setting out floorspace figures for individual buildings, those tables did not explicitly link the stated floorspace to the **scope of the permitted development.**
48. It was only following receipt of the Appellant's comments on the CA's Regulation 114 representation, supported by scaled plans and explanatory material, that sufficient clarity was provided to enable the GIA of the existing buildings to be calculated. That material demonstrated, by reference to the **approved plans**, that **Buildings [REDACTED] and [REDACTED]** are to be demolished as part of the **authorised development**, while **Buildings [REDACTED] and [REDACTED]** are retained. This information enabled me to identify unequivocally which existing buildings' floorspace is associated with the **development authorised by the planning permission** and to calculate the relevant GIA accordingly.
49. I have therefore considered the conduct of both Parties in light of the Appellant's request for an award of costs against the CA and I am of the opinion that the CA did not act unreasonably and therefore an award of costs against the CA is not justified.
50. For the reasons set out above, the appeal is allowed and I determine the chargeable amount of Community Infrastructure Levy to be £Nil. While Regulation 121 of the Regulations provides a power to make an award of costs, I find no basis to do so in this case. Accordingly, no order for costs is made.

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Valuation Office Agency
10 March 2026