Appeal Decision

by [redacted] BEM BSc (Hons) MRICS

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

Valuation Office
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [redacted]@hmrc.gov.uk

Appeal Ref: 1889294

Address: [redacted]

Proposed Development: Demolition of existing buildings and construction of 7 dwellings with associated parking.

Planning permission: Granted on the [redacted] following by [redacted] (application Ref [redacted]).

Decision

I determine that the Community Infrastructure Levy (CIL) chargeable amount in this case should be £[redacted] ([redacted]).

Background

1. I have considered all of the submissions made by [redacted] on behalf of [redacted] (the Appellant) and [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. The CIL Appeal form dated [redacted] submitted on behalf of the Appellant under Regulation 114.
    b. The Grounds of Appeal including appendices relating to the Decision (Ref: [redacted]) issued by [redacted] on [redacted], the approved plans, the Regulation 113 request ([redacted]) and CA's response ([redacted]), two VOA Appeal Decisions for reference, plan showing location of units, photographic evidence and copy of Skerritts of Nottingham Limited v. Secretary of State for the Environment, Transport and Regions (No.2) [2000] 2 PLR 102.

c. The CIL Liability Notice (Reference: [redacted]) dated [redacted].
d. The CA's representations to the Regulation 114 Appeal dated [redacted] including a copy of two VOA Appeal Decisions for reference.
e. The Appellant's comments on the CA's representations received by the Valuation Office (VO) on [redacted].

2. Planning permission was granted by [redacted] (application Ref [redacted]) dated [redacted] for, "Demolition of existing buildings and construction of 7 dwellings with associated parking."

3. On [redacted], the Council issued the first Liability Notice (ref. [redacted]), which stated that the CIL liability in respect of the planning permission was £[redacted]. On [redacted], the Appellant submitted a Regulation113 request for a review of the first Liability Notice – on the basis that the existing buildings on site has been in lawful use for the relevant period and should benefit from the lawful use discount from CIL liability. On [redacted], the CA provided their response to the Regulation113 Request, stating that they accepted that buildings [redacted] to [redacted] were buildings in lawful use, but that they rejected the secure explosives storage units, on the basis that these were not "buildings" and, therefore, could not be deducted from liability. The CA also confirmed that they considered the car ports authorised as part of the planning permission should be included in the GIA for the development. The CA's response was accompanied by the second Liability Notice (ref. [redacted]) date [redacted], which reduced the CIL Liability to £[redacted]. The Appellant subsequently queried buildings [redacted] and [redacted] and on [redacted] the CA issued the relevant Liability Notice (ref. [redacted]), which applied the lawful use deduction to these buildings, and further reduced the CIL Liability for the development to £[redacted].

4. The Appellant confirmed the relevant Liability Notice was not issued as a result of the previous Regulation 113 review process, but subsequent to it. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted], stating that they consider the CIL charge to be correct.

5. On [redacted], the Valuation Office received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability stated by the CA was incorrectly calculated.

Grounds of Appeal

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

   a). The car ports should not be included in the GIA of the development authorised by the planning permission; and
   b). The storage units are buildings, which have been in lawful use for the relevant period, and should also benefit from the lawful use deduction set out in.

7. There are no disputes concerning the Gross Internal Area (GIA) or indexation for the calendar year in which the charging schedule took effect.

8. Both parties have advanced to me evidence in support of their respective viewpoints.

Reasoning

9. The relevant CIL Regulations 2010 (as amended) are set out below:

Regulation 9 – Meaning of Chargeable Development

(1) The **chargeable development** is the development for which planning permission is **granted**.

Schedule 1 (6) of the 2019 Regulations "**KR**" allows for the deduction of floorspace of certain existing buildings from the gross internal area (GIA) of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. The deductible floorspace of buildings that are to be retained includes;

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.

In this particular case "**KR (ii)**" is the relevant part to consider in this instance.

Further clarification under Schedule 1 (10) is provided. An "**in-use building**" means a building which—

(i) is a **relevant building**, and

(ii) 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.

"Relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

There is no definition given to the word "building" within the CIL Regulations, other than it expressly excludes:

i. a building into which people do not normally go,
ii. a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
iii. a building for which planning permission was granted for a limited period.

Decision

Ground A – The car ports should not be included in the GIA of the development authorised by the planning permission

10. The Appellant refers to the approved elevation plans (references [redacted], [redacted], [redacted] and [redacted]), where it is shown the car ports have pitched roofs but are open on two sides and held up by plinths or pillars. They confirm that, whilst the car ports link plots [redacted] and [redacted] and plots [redacted] and [redacted], they do not form part of those dwellings, nor are they intended to be serviced.

11. The Appellants opine the car ports (as approved) are more akin to a canopy or covered external way than they are to a garage. As such, they contend they should be excluded from the GIA calculation for the planning permission and they refer (and provided as part of their supporting information) to two previous VO Appeal Decisions (Appeal References 1851808 and 1858698).

12. The CA opposes this view. It is their opinion the covered parking bays form part of the built structure, have a defined structural footprint, are permanent, roofed structures supported by columns, serve specific residential plots, are physically attached to the dwellings on either side and are enclosed by a fixed roof. The CA considers them to be akin to open sided garages and fall within the definition of GIA for CIL purposes.

13. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice (6th Edition) definition is used. GIA is defined as “the area of a building measured to the internal face of the perimeter walls at each floor level.” The areas to be excluded from this are 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; and greenhouses, garden stores, fuel stores and the like in residential property.

14. Car ports are not specifically referenced within the RICS Code of Measuring Practice. It is, therefore, necessary to consider the construction and appearance of the car ports, to determine whether they can be included within GIA, or whether they should more correctly be considered as a canopy and, therefore, excluded.

15. Each car ports comprises a pitched roof, supported at each corner by a pillar, unless adjoining a house. The remaining have pillars at the midpoints of the eaves in addition to those at the corners. All of the car ports are, therefore, open to either three or four sides.

16. In my opinion, the car ports are more akin to canopies than to buildings that should be included within the GIA. Although I agree with the CA that a building does not need to be fully enclosed to be measurable to GIA, I also agree with the Appellant that a structure comprising a roof and no walls (or one wall where it adjoins the garages) has all the characteristics I would expect of a canopy.

17. I, therefore, conclude that the car ports should be excluded from the GIA of the proposed development.

Ground B – The storage units are buildings, which have been in lawful use for the relevant period, and should also benefit from the lawful use deduction set out in.

18. The Appellant contends that secure explosives storage units [redacted], [redacted], [redacted], [redacted] and [redacted] should be regarded as "buildings" for the purposes of the CIL Regulations. They consider as there is no statutory definition of "building" within the CIL regime, the Appellant argues that the issue should be determined by applying the established threefold test of size, permanence and physical attachment, as endorsed in Skerritts and recently reaffirmed in Newham LBC v HMRC (2024).

19. The Appellants have considered the threefold test as follows:

    Size: The units are substantial in scale, comparable to other structures on the site (buildings [redacted] and [redacted]) already accepted as buildings, and significantly larger than others (buildings [redacted] and [redacted]).

    Permanence: The units have been in continuous use on the site since its establishment in [redacted], demonstrating a high degree of permanence. Their long-term presence reflects their essential operational role in storing explosives materials.

    Physical Attachment: Although resting on their own weight, they opine the units are integrated into the site's security fencing, which is a critical requirement for maintaining the explosives licence. In their view, their removal would compromise the integrity and security of the site.

20. Taking these factors together, the Appellant asserts that the units possess the characteristics of buildings and should, therefore, be treated as such for CIL purposes.

21. The CA's position is that the storage containers on site do not qualify as "buildings" for the purposes of the CIL Regulations and, therefore, cannot be treated as in-use buildings for deduction. They emphasise that, in the absence of a statutory definition of "building" within the CIL regime, the question must be determined by reference to the same threefold test as endorsed in Skerritts; an assessment of size, permanence and physical attachment.

22. The CA has considered the threefold test as follows:

    Size: The CA accepts that the containers have a measurable and potentially significant floorspace. However, it maintains that size alone is not determinative and does not, in itself, render a structure a building.

    Permanence: The CA rejects the Appellant's reliance on the length of time the containers have been on site. They argue that permanence is concerned with the inherent nature and design of the structure, not its duration in situ. It is their view shipping containers are designed to be portable, manufactured offsite, and readily transported, including being hired and removed as needed. They opine this intrinsic mobility indicates a lack of permanence.

Physical Attachment: The CA argues containers rest on the ground under their own weight and are not affixed to the land by foundations or permanent fixings. They contend their association with the site's perimeter fencing is considered incidental and does not amount to meaningful physical attachment. It is the CA's view that any inconvenience arising from their removal does not alter their fundamental lack of attachment.

23. The CA recognises that regulatory or licensing controls may be relevant to the "in-use" test, but do not assist in determining whether the structures are buildings in the first place.

24. Drawing these points together, the CA concludes that, although the containers are sizeable, their lack of inherent permanence and absence of physical attachment outweigh this factor. Accordingly, in their view they do not meet the characteristics of buildings for CIL purposes, and no lawful deduction of their floorspace can be made.

25. The CIL Regulations do not provide a definition of building. In the absence of any clear guidance from the CIL Regulations, I have therefore, had recourse to:

(i) the dictionary; for a clear definition as to what constitutes a "building", and
(ii) guidance from case law.

26. The Shorter Oxford English Dictionary, 6th Edition provides the definition of "building" as "A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc." An alternative dictionary definition is "a structure with a roof and walls, such as a house or factory."

27. In respect of the dictionary definition of a building, in the absence of any clear guidance from the CIL Regulations, I am satisfied to adopt the ordinary, common sense view of what a reasonable person would consider a shipping storage container to be. It is my decision that such a person would not view a shipping container as a building within the broader meaning of the word, as it lacks the essential characteristics of a building. Furthermore, the Shorter Oxford English Dictionary, 6th Edition defines "container" as an object for holding or transporting something; whilst the import of this definition is not without some argument, it is my view that it supports my decision that a container is not a building for CIL purposes.

28. In respect of case law, I am guided by the three tests in Skerrits, as were the Appellants and CA, which comprises of size; permanence; and degree of physical attachment. I shall address these in turn:

Size Test: In terms of size, the storage containers are certainly large enough to constitute a building. On the size aspect alone, I conclude that they would constitute a building. However, size alone is not determinative and does not, in itself, render a structure a building.

Permanence Test: The containers are not constructed on site. These containers appear to be shipping type containers of steel construction that are brought onto the site fully assembled and positioned into place by a crane. Although the Appellants argue the containers have been in place for [redacted] years, they remain fundamentally moveable units. The containers stand in place by their own weight alone. They are not fixed to the ground and are not described to be connected to any services. The containers can be moved around the site or removed from the site, hence why they are used for transporting goods in the shipping industry. Although the Appellants use the containers as part of an ongoing operational arrangement, the containers are not fixed to the ground, they are transient and could be move around the site; furthermore, suiting the needs of the business. The ability to move the containers negates the permanence test.

Physical Attachment: There is some merit in the argument put forward by the Appellant that the containers are integrated into the site's security fencing, which they purport is a critical requirement for maintaining the explosives licence. However, I agree with the CA on this, and consider, although it would be inconvenient to remove, it is incidental and does not amount to meaningful physical attachment to the land. In addition, the fact that the containers are fixed by their own weight, have no services and moreover, could be physically moved around the site, I conclude the containers have no degree of physical attachment to the land whatsoever and fail this test.

29. Taking a step back and asking what a reasonable person would consider as a building, it is my decision that such a person would not view a shipping container as a building within the broader meaning of the word as it lacks the essential characteristics of a building. They are containers, not buildings. Having considered both sides of the argument, I consider that the storage containers lack the characteristics of a building and as CIL only applies to buildings then CIL is not applicable in this case on the basis of this aspect of the appeal and as a result the GIA of these containers cannot be deducted as lawful in use space from the chargeable area.

30. In summary, whilst the placement of the containers as a boundary feature is noted, such structures are not generally regarded as buildings for the purposes of the Regulations. Accordingly, a shipping container is not considered as a **relevant building** and **Schedule 1 (6)** of the 2019 Regulations, do not apply.

31. I have calculated the CIL charge as follows:

CIL £[redacted] x [redacted] sqm x [redacted] =

[redacted]

[redacted]

32. On the basis of the evidence before me, I conclude that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]) and I hereby dismiss this appeal.

[redacted] **BEM MRICS**
RICS Registered Valuer
Valuation Office
22 May 2026