

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency



Email: [REDACTED]@voa.gsi.gov.uk

Appeal Ref: [REDACTED]

Address of property: [REDACTED]
[REDACTED]

Development: Development of 9 Residential Apartments

Planning permission details:
[REDACTED] Granted by [REDACTED]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £ [REDACTED] ([REDACTED])

Reasons

1. I have considered all the submissions made by the appellant and I have also considered the representations made by the Collecting Authority (CA) [REDACTED]. In particular, I have considered the information and opinions presented in the following documents:-

- (a) Planning permission decision letter dated [REDACTED]
- (b) The CA's Liability Notice dated [REDACTED]
- (c) The CA's Decision Notice on review of CIL chargeable amount dated [REDACTED]
- (d) Completed CIL Appeal form dated [REDACTED] with covering letter containing the Grounds of Appeal by [REDACTED]. In addition to the documents in 1a-d above, the following documentation also accompanied the appeal form:

- (i) Assumption of Liability Notice
- (ii) Emails between C.A and Appellant
- (iii) Architect's plans and drawings
- (iv) Documents relating to the social housing commuted sum and associated calculations

(e) The CA's representations contained within their statement of case received on [REDACTED]. In addition to the documentation listed in 1a-c above the bundle contained:

- (i) Email correspondence between C.A and appellant
- (ii) x2 VOA appeal decisions
- (iii) Measurement calculations

- (iv) Drawings [REDACTED]
- (v) CIL Charging Schedule
- (vi) RICS Code of Measuring Practice
- (vii) Case officers report in respect of planning applications
- (viii) S106 agreement
- (ix) Copies of planning application forms
- (x) Floor and elevation plans

(f) The appellant's comments on the CA's representations were received on [REDACTED]

(g) On [REDACTED] the CA requested to make further comment / a reply in response to the appellant's comments. The appointed person felt they were in receipt of enough information to decide the appeal and declined to receive further comments.

2. Planning permission was granted on [REDACTED] by [REDACTED] for an outline application for the development of 9 residential apartments. Matters to be considered: Access, Appearance, Layout and Scale. A reserved matters application relating to landscaping was granted on [REDACTED]. A variation of conditions was applied for in [REDACTED] and approved on [REDACTED]. It should be noted that this decision does **not** relate to variation [REDACTED].

3. On [REDACTED] the CA issued a Regulation 65 Liability Notice [REDACTED] in the sum of [REDACTED] based on net additional floor space of [REDACTED] square metres (sq m) as follows:-

[REDACTED] sq m at £[REDACTED] per sq m indexation at [REDACTED] and £0.00 relief = £[REDACTED]

4. The appellant requested a Review of the calculation of the chargeable amount under Regulation 113 by email on [REDACTED]

6. On [REDACTED] the parties submitted a CIL Appeal under Regulation 114 (chargeable amount) stating that the chargeable amount should be £[REDACTED]

7. The grounds of the appeal can be summarised as follows:-

That the CA included balconies in their GIA calculation which is incorrect along with associated reasoning for this conclusion. The reasoning references the RICS Code of Measuring Practice and extracts from government issued CIL guidance. In addition, the appellant states that an element of social housing relief should be granted due to a commuted sum in respect of 2 out of 9 units.

8. The CA submitted representations on [REDACTED] which can be summarised as follows:-

That it is correct to include the balconies in the GIA calculation. That the VOA cannot consider social housing relief matters as they are outside the scope of Regulation 114 provisions. The CA's statement contained dictionary definitions of a balcony, quoted a [REDACTED] opinion, made references to the RICS Code of Measuring Practice and contained [REDACTED] published measurement guidance, plans and measurement calculations relating to the subject property.

9. The appellant submitted comments on the CA's representations dated [REDACTED] which can be summarised as follows:-

Additional comment on social housing relief together with copies of a S106 agreement, a social housing relief claim form, CIL additional information form and correspondence between the appellant and the CA. The appellant also commented on the CA's explanation of their approach to measurement, reiterating the reasons why they disagreed with the CA's approach.

8. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding the grounds of the appeal:-

9. *On the issue of social housing relief, the VOA has no authority to determine such matters. The matter of social housing relief cannot be considered by way of a Regulation 114 appeal. The Regulation 114 appeal is valid due to the disputed GIA measurements only. The VOA cannot consider matters relating to Regulation 49. Such matters are between the Council and the Claimant.*

10. Turning to the matter of GIA I have considered the matter carefully.

CIL is calculated with reference to the chargeable area in accordance with the formula set out in Regulation 40 of the Community Infrastructure Regulations 2010 (as amended). The Gross Internal Area (GIA) of the area liable to CIL needs to be calculated in order to ascertain the chargeable area. GIA is not further defined in the Regulations and so it is established practice to consider the RICS Code of Measuring Practice 6th Edition for further clarification. The latest edition of the RICS guidance was published in 2017.

The RICS Code of Measuring Practice 6th Edition states that internal open sided balconies should be included in the calculation whilst external open sided balconies, covered walkways and fire escapes are expressly excluded.

I then looked to the dictionary definition of a balcony. A balcony is "a platform on the outside of a building with access from an upper floor". This definition negates the opinion of an internal balcony being contained only wholly within the structure of the building and akin to an internal platform or mezzanine. Balconies open to the elements can therefore be either internal or external balconies. I further considered whether the subject balconies should be defined as internal or external balconies for the purpose of calculating the GIA.

I considered the decisions in previous CIL appeals where balconies wholly recessed into the external walls of the main structure had been classed as internal balconies and included in GIA calculations.

I concluded that if a balcony does not protrude from the external wall of a building and it is surrounded by the main structure of the building with an open front then this is an internal balcony that should be included in the GIA. If the balcony was attached or constructed to protrude from the main external wall this would come within the definition of an external balcony and be excluded from the definition of GIA.

Turning to the subject development, the first and second floor balconies as per the elevation drawings protrude from the main structure. They should therefore be excluded from any GIA calculation. It is also noted that the ground floor patios would not come within the dictionary definition of balconies as they are not accessed from an upper floor. They also should be excluded from the GIA calculations.

The CA calculate the area inclusive of balconies and communal areas to be [REDACTED] sq m. In their statement of case, the appellant states that their opinion of GIA is [REDACTED] sq m. There is no dispute as to whether the communal areas should be included in the GIA calculation but for the avoidance of doubt it is correct to include them.

I have printed and scaled measurements from the plans and I can agree with the appellant's GIA calculation of [REDACTED] sq m.

11. Based on the facts of this case and the evidence before me I conclude that that the appropriate charge in this case should be based on a chargeable area of [REDACTED] sq m as set out below

[REDACTED] sq m x £ [REDACTED] x [REDACTED] index = £ [REDACTED]

[REDACTED]

BA (Hons) MRICS
RICS Registered Valuer
Valuation Office Agency