

Appeal Decision

by [REDACTED]

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

[REDACTED]

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

Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED] **granted by** [REDACTED]

Location: [REDACTED]

Development: Redevelopment of the site to provide [REDACTED]
[REDACTED] **with associated facilities and an** [REDACTED] **with parking and storage – Description amended following validation.**

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

Reasons

1. I have considered all the submissions made by [REDACTED] on behalf of [REDACTED] (the appellant) and the Collecting Authority (CA), [REDACTED], in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

- a. The application for planning permission dated [REDACTED] together with associated plans, drawings and documents.
- b. The Decision Notice issued by [REDACTED] on [REDACTED].
- c. The CIL Liability Notice issued by the CA on [REDACTED].
- d. The letter from the CA dated [REDACTED] in response to the appellant's request for a Regulation 113 Review.
- e. The CIL Appeal form dated [REDACTED] submitted on behalf of the appellant, under Regulation 114, together with documents attached thereto including a plan and schedule of accommodation referred to as Appendix 7.

- f. The CA's representations to the Regulation 114 Appeal dated [REDACTED] including a claim for costs.
- g. Further comments on the CA's response in a letter and attachments submitted on behalf of the appellant including a counter claim for a partial award of costs dated 2 December 2016.
- h. Further comments submitted by the CA [REDACTED].

2. The CA have calculated that the appellant is liable to pay £[REDACTED] of CIL on the commencement of the above development. This calculation has been based on a chargeable area of [REDACTED] sq m for the residential development and [REDACTED] sq m for the retail development at rates of £[REDACTED] per sq m and £[REDACTED] per sq m respectively, both indexed. In calculating the chargeable area the CA has adopted a gross internal area (GIA) of the proposed development at [REDACTED] sq m for the proposed residential development and [REDACTED] sq m for the proposed retail development. This suggests that the CA have deducted areas of [REDACTED] sq m from the residential GIA and [REDACTED] sq m from the retail GIA to arrive at the chargeable areas.

3. The grounds of the appeal are that the CA has incorrectly calculated the CIL amount owing to the fact that it has not properly discounted existing lawfully used floorspace against the proposed gross internal floorspace. The appellant contends that an additional [REDACTED] sq m (identified as tenancies 2, 3 & 4 on the plan attached at Appendix 7 to the CIL appeal) should be deducted to arrive at the chargeable area.

4. The GIA of the property does not appear to be disputed as both parties have provided calculations using a total GIA of [REDACTED] sq m. The issue therefore is how much of the existing building was actually in lawful use for the required period, as defined by the CIL regulations, and hence should be deducted from the GIA to arrive at the chargeable area

5. Regulation 40(11) of the CIL regulations 2010 (as amended) provides that 'in-use building' means a building which, is a relevant building, and 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.**

6. Furthermore Regulation 40(9) states that "where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building" and Regulation 40(10) states that where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish – a) whether part of a building falls within a description in the relevant definition or b) the gross internal area of any part of a building falling within such a description, "it may deem the gross internal area of the part in question to be zero".

6. In support of the appellant's view that [REDACTED] ([REDACTED] sq m), [REDACTED] ([REDACTED] sq m) & [REDACTED] ([REDACTED] sq m) have been in lawful use as storage for the qualifying period the following evidence and documentation has been provided:

(a) Licences to occupy (x3):

(i) Licence between [REDACTED] (Licensor) and [REDACTED] (Licensee) from [REDACTED] to [REDACTED] for a fee of £[REDACTED] per month. The permitted use is for vehicle repairs and service. The premises is stated [REDACTED]. No plan is attached to the licence to confirm the licensed area but this is said to relate to the area 2 on the appellant's plan at Appendix 7 of the CIL appeal.

(ii) Licence between [REDACTED] (Licensor) and [REDACTED] (Licensee) from [REDACTED] and [REDACTED] for a fee of £[REDACTED] per month. The permitted

use is for vehicle repairs and service. The premises is stated as [REDACTED]. No plan is attached to the licence to confirm the licensed area but this is said to relate to the area 3 on the appellant's plan at Appendix 7 of the CIL appeal.

(iii) Licence between [REDACTED] (Licensor) and [REDACTED] from [REDACTED] for a fee of £[REDACTED] per month. The permitted use is for vehicle repairs and service. The premises is stated as [REDACTED]. No plan is attached to the licence to confirm the licensed area but this is said to relate to the area 4 on the appellant's plan at Appendix 7 of the CIL appeal.

(b) Rent Ledgers – a rent sheet has been provided in relation to the payment of rent by each of the licensees on a monthly basis from the commencement date until [REDACTED].

(c) Signed affidavits dated [REDACTED]; one signed by [REDACTED] in relation to "[REDACTED]" and another by [REDACTED] in relation to "[REDACTED]". Both declare that they entered into leases with [REDACTED], took occupation of their properties on [REDACTED] and [REDACTED] respectively and have paid rents due from that date until the date of the declaration. The extent of the properties are stated as being as set out in the leases.

6. The CA does not consider that the submitted information in relation to areas 2, 3 & 4 sufficiently demonstrates that the relevant existing floor areas were in continuous lawful use for the relevant period. They consider that the Licences indicate an agreement may have been made to occupy the buildings but do not prove any occupancy or use of the buildings has occurred. They point out that no further information has been submitted to substantiate the continuous lawful use, such as the provision of bills i.e. electricity bills, the payment of business rates or redacted bank statements to show the rent ledger payments have been received.

7. In addition the CA has produced evidence that its own business rates records show that the buildings have either not been occupied or are not currently in assessment, noting that there are no assessments for 'rear of' properties at the address. The CA refers to the appellant's own planning submissions, namely the [REDACTED] and the [REDACTED], wherein the buildings are referred to as being 'deserted', having 'no commercial use' and 'remained empty'. The CA has also submitted photographs taken by the Planning Case Officer on [REDACTED] which they claim indicate that the site was derelict/deserted at this point in time.

8. In deciding this appeal I have considered all of the submitted documentation and representations of both parties. The appellant has requested that I inspect the properties but this would be a snap shot in time and would not help to decide whether the buildings in question were in actual use because the relevant period during which there must be a continuous period of 6 months occupation was 36 months before planning permission was granted.

9. In relation to the pertinent issue as to whether the relevant parts of the existing building (areas 2, 3 & 4) had been in use for a period of 6 months in the 3 years prior to the relevant date the factual evidence is conflicting. The appellant's evidence is not in my opinion conclusive for the following reasons:

- a. The licences and affidavits do not have any plans attached and so it cannot be confirmed that they relate to the relevant parts.
- b. The licences state a permitted use for vehicle repairs and service whereas the appellant is claiming use as storage.

- c. The affidavits say that the lessees/licensees took up occupation on a certain date but they do not confirm the period of occupation.
- d. The appellants have not provided any evidence of electricity bills being paid.

10. Notwithstanding the conflicting evidence provided by both parties the regulations place an onus on the appellant to provide sufficient information, and of a sufficient quality, to enable the CA to establish that the building is in use and for the four reasons listed in 9 above I do not consider that this has been achieved.

12. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore confirm a CIL charge of £[REDACTED] as stated in the Liability Notice dated [REDACTED].

13. In respect of the costs claimed by both parties I do not consider that either party has acted unreasonably. Each party should in my view bear their own costs in this matter and I do not therefore make any order as to costs.

[REDACTED]
RICS Registered Valuer
District Valuer
[REDACTED]