

Appeal Decision

by [REDACTED]

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

Valuation Office Agency

[REDACTED]

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

Appeal Ref: [REDACTED]

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

Location: [REDACTED]

Development: Alterations to facilitate the conversion of [REDACTED] and [REDACTED] to provide [REDACTED] no. residential flats with [REDACTED].

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] and [REDACTED] (the appellants) 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 e-mail from the CA dated [REDACTED] in response to the appellants' request for a Regulation 113 Review.
- e. The CIL Appeal form dated [REDACTED] submitted by the appellants under Regulation 114, together with the 14 documents attached thereto.
- f. The CA's representations to the Regulation 114 Appeal in an e-mail dated [REDACTED].

g. The appellants' response to the CA's representations attached to an e-mail dated [REDACTED]

2. The CA have calculated that the appellants are liable to pay £[REDACTED] of CIL on the commencement of the above development. This calculation has been based on a net chargeable area of [REDACTED] sq m for the development at the Residential Zone 2 rate of £[REDACTED] per sq m (indexed). In calculating the net chargeable area the CA has adopted the gross internal area (GIA) of the proposed development at [REDACTED] sq m and has not made any deductions in respect of any existing floorspace to be demolished or any existing floorspace to be retained in the new development.

3. The grounds of the appeal are that the net chargeable area should be [REDACTED] sq m which is the GIA of the floorspace subject to a change of use on the ground floor only.

4. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. Regulation 40(7) of the CIL regulations 2010 (as amended) provides that the net chargeable area of the proposed development should be calculated based upon a formula which is essentially the GIA of the proposed development **less** retained parts of in-use buildings (**and** for other buildings, retained parts where the intended use is a use that is able to be carried on lawfully and permanently without further planning permission) and **less** any in-use buildings that are to be demolished. An 'in-use building' is defined by regulation 40(11) to mean 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.

5. The GIA of the proposed development has been calculated by the CA as [REDACTED] sq m. The appellants have not stated a total GIA since they consider that the proposed development should have referred to the ground floor only although they have provided plans indicating a proposed GIA of the area subject to a change of use on the ground floor as being [REDACTED] sq m. I am satisfied that that development comprises the entire building as stated in the Decision Notice and I have scaled plans submitted by the applicants and I am satisfied that the GIA of the proposed development as calculated by the CA at [REDACTED] sq m is correct.

6. The issue is therefore the calculation of the net chargeable area, in particular what, if any, floorspace should be deducted from the total proposed GIA in order to correctly calculate the net chargeable area. The CA did not make any deduction in the CIL Liability Notice owing to information submitted on behalf of the appellants in the CIL form (Additional Information Requirement Form) at question [REDACTED] whereby it is stated that all existing flats and shops have not been occupied for lawful use for 6 continuous months of the 36 previous months and the building was last occupied prior to [REDACTED]. In the appellant's request for a review they have provided alternate information stating that the shop was occupied, with rates being paid up to [REDACTED], and that the 2 first floor flats already existed and hence should be excluded in the calculation of the net chargeable area. On the basis of the CA's understanding that the building had been boarded up for several years, and since no evidence of occupation was provided by the appellants, the CA considered this revised information to be insufficient for them to establish that any part of the building was in use and hence did not issue a revised Liability Notice.

7. Within the appellants' CIL appeal submission there is no further evidence in relation to the ground floor commercial units having been 'in use' and in their calculation of a correct CIL charge they have based their calculation on a GIA of [REDACTED] sq m based on the floorspace of the proposed ground floor flats only. The pertinent issue therefore relates to the possible deduction of the GIA of the existing first floor residential accommodation.

8. In this regard an email from a former tenant of one of the first floor flats has been provided by the appellants which confirms that he vacated [redacted] on [redacted] which the appellants consider provides evidence of continuous lawful use within the relevant period. The CA has noted that Council Tax information indicates that [redacted] is deleted.

9. In deciding this appeal I have considered all of the submitted documentation and representations of both parties. In relation to the issue as to whether the relevant part of the existing building (ie. the residential floor area) having been 'in use' or not I do not consider that the evidence submitted by either party to be conclusive. However, based on the evidence in this particular case I consider that the existing residential floorspace should be deducted within the calculation of the chargeable area on the basis that it is a retained part where the intended use is a use that is able to be carried on lawfully and permanently without further planning permission.

10. I have scaled the plans referred to and have calculated the GIA of the existing residential floorspace to be [redacted] sq m which includes the stairwells on the ground floor.

11. Based upon this I have calculated a CIL charge as follows:

Proposed GIA (Total)	[redacted] sq m
Less Existing Residential GIA to be retained in new development	[redacted] sq m
Net CIL Chargeable area	[redacted] sq m

CIL charge: [redacted] sq m x £[redacted] x ([redacted]/[redacted]) (indexation) = £[redacted]

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 reduced CIL charge of £[redacted].

[redacted]
RICS Registered Valuer
District Valuer

