

# Appeal Decision

by [REDACTED]

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended



e-mail: [REDACTED]@voa.gsi.gov.uk.

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Appeal Ref: [REDACTED]

[REDACTED]

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

***Development:- 'Change of use from Use Class B1 (Office) to [REDACTED] residential accommodation (Sui Generis) comprising [REDACTED] bedspaces (within 1 no. communal house), with associated refurbishment works'***

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## Decision

I determine that Community Infrastructure Levy payable in respect of the above development is correctly assessed in the sum of £[REDACTED].

## Reasons

1. I have considered all submissions made by the appellant and the Collecting Authority. In particular I have considered the information and opinions expressed in the following submitted documents:-

- 1) Notice of planning decision re application ref. [REDACTED] dated [REDACTED]
- 2) Community Infrastructure Levy (CIL) Liability Notice of [REDACTED] assessing CIL liability in the sum of £[REDACTED] based on chargeable area of [REDACTED] sq.m.
- 3) Review of calculation of CIL liability, dated [REDACTED], to the sum of £[REDACTED] based on a chargeable area of [REDACTED] sq.m following e-mail request of appellant to Collecting Authority (dated [REDACTED]) to amend chargeable area to [REDACTED] sq.m.
- 4) CIL Appeal Form dated [REDACTED].
- 5) Representations from Collecting Authority dated [REDACTED]
- 6) Appellants' response dated [REDACTED]
- 7) Collecting Authority's further response to 6) above dated [REDACTED].
- 8) Marketing Report prepared by Messrs [REDACTED] dated [REDACTED] on behalf of previous owners.

2. History:- I understand that the appellants purchased the property on [REDACTED]. An outstanding planning application (ref [REDACTED]) was considered by Local Planning Authority and granted on [REDACTED]. At the date of grant the property was empty and in a semi derelict condition having been occupied by squatters. Previously the property had been occupied as offices by [REDACTED].

3. The then owners made an application to the Local Planning Authority on [REDACTED] for 'Change of use from Use Class B1 (Office) to [REDACTED] residential accommodation (Sui Generis) comprising [REDACTED] bedspaces (within 1 no. communal house), with associated refurbishment works'.

4. Planning permission was granted to the current owners (the appellants) on [REDACTED].

5. On [REDACTED] the Collecting Authority issued a Liability Notice in the sum of £ [REDACTED] based on a chargeable area of [REDACTED] sq.m.

6. By e-mail dated [REDACTED] the appellants sought review of the Liability Notice stating that the chargeable area (described as Gross Internal Area (GIA)) was incorrect.

7. The Charging Authority considered the request for review and revised the CIL liability to £ [REDACTED] based on the appellant's opinion of GIA of [REDACTED] sq m.

8. The appellant subsequently appealed against the Charging Authority's revised CIL liability under Regulation 114 stating that (in summary):-

- CIL should not be chargeable as the property had been continuously lawfully occupied for a period of six months within the three years preceding the date of grant, and
- The GIA was incorrectly stated and should be [REDACTED] sq.m. this being based on a marketing report prepared by Messrs [REDACTED] dated [REDACTED] on behalf of the previous owners.

9. Should the contention of the appellant in respect of the 'lawful occupation' be upheld then it is common ground that no CIL would be liable to be paid.

10. In considering the first contention of the appellant I note the following from the submissions:-

- a) The initial planning application submitted on behalf of the previous owners stated that the property was last occupied on [REDACTED].
- b) The appellant's response to the Collecting Authority representations states that the property was occupied by [REDACTED] 'until [REDACTED]'.
- c) The marketing report of Messrs [REDACTED] stated that the business of Simple Answers had 'failed' by [REDACTED].
- d) The Charging Authority's submission of [REDACTED] provides documentary evidence indicating that [REDACTED] were placed into liquidation on [REDACTED].

11. Noting the date of grant of planning permission it would be necessary for the property to have been 'lawfully occupied' until after [REDACTED].

12. From the above submissions, and on the balance of probabilities, I cannot establish that the property was 'lawfully occupied' continuously for six months in the three years preceding the grant.

13. 'Gross Internal Area' (GIA) is not defined within the Community Infrastructure Levy Regulations. However it is generally accepted that the GIA definition within the Royal

Institution of Chartered Surveyors Code of Measuring Practice (6<sup>th</sup> Edition) is that to be adopted. GIA is defined therein as the '*area of building measured to the internal face of the perimeter walls at each floor level.*' As such it will include such features as columns, piers, chimney breasts, lift wells, stairwells.

14. The appellants, by e-mail dated [REDACTED], sought a review of the CIL liability based on their opinion of the GIA at [REDACTED] sq.m. This was agreed by the Collecting Authority and a revised CIL liability calculated.

15. The marketing report prepared by Messrs [REDACTED] on behalf of previous owners and dated [REDACTED] refers to an area of accommodation of [REDACTED] sq.m and the appellants are now seeking to rely on this calculation.

16. On reading the marketing report it is however not apparent that the area calculated conforms to the required definition of GIA. Indeed Appendix 4 of that report illustrates layout plans with individual room areas annotated. Areas not otherwise included in the definition of GIA are not so illustrated and annotated and I therefore assume that the area of accommodation stated does not conform to the required GIA definition.

17. I therefore determine that, on the evidence of the submissions, the GIA is as previously agreed between the parties, namely [REDACTED] sq.m.

18. The Collecting Authority have further requested payment of their costs of £[REDACTED] on the basis that actions of the appellants have resulted the use of staff time to respond to an appeal that would not have been necessary had the appellant followed the proper processes.

19. CIL regulation 121 states that '*the appointed person may make orders as to the costs of the parties to the appeal and as to the parties by whom such costs are to be paid*'.

20. Appendix 8 to the VOA CIL Guidance Note provides guidance on the award of costs.

21. It is necessary to consider whether any party to the appeal has acted '*unreasonably*'. The Collecting Authority suggest that proper process has not been followed as the appellants failed to advance arguments regarding the 'lawful occupation' of the property at the review stage of the process. In order to consider the award of costs it would be necessary to determine that introducing further grounds of contention at the appeal stage is '*unreasonable*'. Clearly it would be 'preferable' had the appellants referred to the matter at the review stage. However, it is likely that, in this case, the Collecting Authority would, having no grounds to accept the contention (had it been made), have considered that the 'lawful occupation' was not proven and would have proceeded to confirm a liability to CIL. In such a circumstance an appeal would have been likely.

22. In this circumstance I therefore determine that no costs of the Collecting Authority are to be paid by the appellants.

[REDACTED]  
RICS Registered Valuer  
[REDACTED]