

# Appeal Decision

by [REDACTED]

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

[REDACTED]

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**Appeal Ref:** [REDACTED]

[REDACTED]

Development: Change of use from offices to use as a house.

Planning permission details: Prior approval under the Town and Country Planning (General Permitted Development) Order 1995 (as amended by Amendment (England) Order 2013) granted by [REDACTED] on [REDACTED] under ref. [REDACTED]

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case is correctly assessed in the sum of £ [REDACTED] ([REDACTED]).

## Reasons

1. I have considered all the submissions made by the Appellant, Mr [REDACTED], and those by the Collecting Authority, the [REDACTED].
2. The case relates to a single storey office building that received Prior Approval for it to be used as residential.
3. The Appellant made an application to the [REDACTED] for prior approval of a change of use from offices to use as a studio flat. In [REDACTED] prior approval was granted for use as studio flat.
4. The Appellant made a second application to the [REDACTED] for prior approval of a change of use from offices to use as a house. On [REDACTED] prior approval was granted for use as house.

5. The [REDACTED] as the Collecting Authority issued a CIL liability notice on [REDACTED] in the sum of £ [REDACTED] (based on Internal Floor Space of [REDACTED] square metres). This comprised [REDACTED]

6. On [REDACTED] the Valuation Office Agency received a CIL appeal made by the Appellant under Regulation 114 (chargeable amount), contending that the chargeable amount has been calculated incorrectly and that the CIL charge should be £nil on the grounds that there has been no additional development work arising from the change of use from office to studio flat to house. The appellant contends that the change of use does not comprise chargeable development for CIL purposes.

7. Representations and comments were received from the Collecting Authority and the Appellant and having given full consideration to these I would make the following observations:-

- a. The Gross Internal Area (GIA) of the property does not appear to be disputed. Both parties refer to the area being [REDACTED] square metres.
- b. The issue is whether or not the building was in lawful use on the day the planning permission first permits the chargeable development.
- c. The Collecting Authority contend that the building was not in use as defined in the CIL Regulations and accordingly the net chargeable area for CIL is the entire building.
- d. The Collecting Authority must calculate the amount of CIL payable (the 'chargeable amount') in respect of a chargeable development in accordance with regulation 40. Regulation 40(5) provides that the amount of CIL chargeable at a given rate R is based on a formula by reference to A, the deemed net area chargeable at rate R.
- e. Regulation 40(7), as amended, provides that the net chargeable area must be calculated by applying a formula that includes establishing both Gr – the gross internal area of the part of the chargeable development chargeable at rate R, and also Kr – which is an aggregate including retained parts of in-use buildings.
- f. Whether the development is liable to CIL depends on whether the chargeable amount has been correctly calculated under regulation 40 and this requires a decision on whether the existing building in this case was in lawful use for the required period, as defined by the CIL regulations. If the building was in use for the required period then the net chargeable area would be nil, if the building was not in use for the required period then the net chargeable area will be [REDACTED] sqm.
- g. 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.
- h. The decision to be made is whether or not the building was actually in use for a continuous period of at least six months within the period of three years ending on [REDACTED]?
- i. From the submissions the evidence that the building was not in use for the prescribed period is:-
  - The property has been treated as vacant for Business Rates purposes from [REDACTED] until [REDACTED]. The appellant also says that the property

was residential from [REDACTED] although there is nothing to suggest that the property was occupied or "in use" during that period.

- The Local Authority's Business Rates Team visited the property on [REDACTED] and noted that it appears the property has been unoccupied for some time.
- The Business Rates Team also has a note of a telephone exchange with the Appellant on [REDACTED] where it is claimed it was stated 'the property has been empty for years'.

j. From the submissions the evidence that the building was in use for the prescribed period is:-

- In the Appellant's representations dated [REDACTED] it is stated that the property has not been used for its purpose for a number of years, but it has been used to store tools and materials with occasional visits for hobbies and maintenance.
- Submissions also include a copy of sales particulars that show internal photographs of the property, at an undefined date, with some furniture and other items present. However the appellant in his comments on the Collecting Authority's representations says the property has been up for sale for a [REDACTED] year long period.

8. From the submissions and on the balance of probabilities, I cannot establish that the property was 'in use' for a continuous period of at least six months within the period of three years ending on [REDACTED]. On the evidence before me, I am therefore satisfied that the charge was correctly raised and I dismiss the appeal.

9. I conclude that the appropriate charge in this case should be based on a deemed net area chargeable of [REDACTED] square metres at the rates applicable from the published charging schedules;

[REDACTED]:	[REDACTED] m2	£ [REDACTED]
[REDACTED]	[REDACTED] m2	£ [REDACTED]
Total CIL payable =		£ [REDACTED] ([REDACTED])

[REDACTED]  
RICS Registered Valuer  
[REDACTED]