

# Appeal Decision

by [REDACTED]

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

[REDACTED]

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

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Appeal Ref: [REDACTED]

Address: [REDACTED]

Development: Change of use from [REDACTED] to residential (Use Class C3)

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

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## Decision

I determine that there should be no Community Infrastructure Levy liability payable in respect of the above development.

## Reasons

1. I have considered all the representations made by the appellant [REDACTED] 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 Notices dated [REDACTED].
- (c) The appellant's request for a Review dated [REDACTED].
- (d) Completed CIL Appeal form dated [REDACTED].
- (e) Additional supporting documents submitted with the CIL Appeal including:-
  - (f) CIL liability Review chronology
  - (g) Site plan
  - (h) A Review of [REDACTED] in [REDACTED] from [REDACTED] dated [REDACTED].

- (i) The CA's representations received on [REDACTED] and [REDACTED].
- (j) The appellant's comments on the CA's representations received on [REDACTED]

2. Planning permission was granted by [REDACTED] on [REDACTED] for Change of use from [REDACTED] to residential (Use Class C3).

3. On [REDACTED] the CA issued two Regulation 65 Liability Notices [REDACTED] and [REDACTED] based on a chargeable area of [REDACTED] square metres (sqm) as follows:-

[REDACTED]

4. The appellant has provided evidence that he requested a review of the calculation of the chargeable amount on [REDACTED] on the basis that 'no terms of [REDACTED] use were non-compliant and therefore this application should not be CIL liable'.

5. The appellant has provided further evidence that [REDACTED] sent an email to the CA on [REDACTED] [REDACTED] and was informed by the CIL officer at the CA on the [REDACTED] that the request for the review was invalid as [REDACTED] did not have access to the CA's CIL inbox at the date the request for the Review was sent as well as subsequently, as [REDACTED] access had been withdrawn by the CA's ICT department.

6. On [REDACTED] the appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing that no CIL charge should be payable. The grounds of the appeal can be summarised as follows:-

(a) The property has always been in lawful use and there are more than 10 other cases where CIL was not liable with identical circumstances in the same development.

(b) The development is more than 10 years old, mainly residential. [REDACTED] have sent in writing that they do not have evidence for non compliance and therefore the development is not liable to CIL.

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

(a) The review was invalid as the appellant had not submitted a notice of chargeable development, or assumed liability. Should liability be assumed now, any subsequent request for a review under Regulation 113 would be invalid by virtue of not being received within 28 days of the issuing of the relevant liability notices.

(b) A link to the planning file on the CA's website was attached. This was done to 'shed some light' on the application granted and the grounds for the permission which formed the basis for the CIL calculation. The existing building was not in its lawful use for a continuous period of any 6 months of the previous 36 months prior to planning permission being granted, therefore the existing areas should not be deducted.

8. The appellant submitted comments on the CA's representations, dated [REDACTED] as set out below:-

(a) The property was used as a [REDACTED] unit for all of the 36 months prior to the planning application and was in lawful use.

(b) There was never a non-compliance with the guidance published by [REDACTED]  
[REDACTED]

iii) [REDACTED] stated that on the balance of probabilities the property has been in residential use, but this is not only incorrect but it is based on no evidence, or change in circumstances.

9. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding this matter and including the grounds of the appeal.

10. The CA have submitted that the initial request for a Review was invalid and this would appear to be for the reasons as set out at paragraphs 5 and 7(a) above (the appellant's evidence having not been challenged by the CA). Therefore, any appeal under Regulation 114 would also be invalid as there had been no valid request for a review under Regulation 113.

11. I am satisfied that the initial request for a Review that was sent to the CA on [REDACTED] would not have been invalid as a result of the inability of the CIL officer to access the CA's CIL inbox at this time. In my opinion this request clearly satisfied the requirements of Regulation 113 (2) as set out below:-

*(2) A request for review must be made—*

*(a) in writing to the collecting authority; and*

*(b) before the end of the period of 28 days beginning with the day on which the liability notice stating the chargeable amount subject to the request for review was issued.*

12. The CA state that the request for the review was also invalid as a result of the appellant having not submitted a notice of chargeable development or assumed liability. Regulation 113(1) states that an interested person may request a review and Regulation 112(2) defines an interested person as:-

*(2) For the purposes of this Part a person is an interested person if—*

*(a) in the case of a request for review under regulation 113 or an appeal under regulation 114, the person is—*

*(i) the person who has assumed liability to pay CIL in respect of the chargeable development, or*

*(ii) the relevant person within the meaning of regulation 65(12);*

Regulation 65(12) is set out below:-

*(12) In this regulation "relevant person" means—*

*(a) in the case of a general consent, the person who has submitted a notice of chargeable development;*

*(b) in the case of planning permission granted subject to a condition requiring that further approval is obtained before commencing development, the person who has applied for that approval;*

*(c) in all other cases, the person who applied for planning permission.*

13. The approval in this case does not fall within 65(12)(a) or (b) so as the appellant was the person who applied for planning permission they satisfied the requirements of 65(12)(c) and can be considered an interested person so I am satisfied that the request for the Review was valid. As the appellant made a valid request for a Review and did not receive a decision within 14 days of the date of their request I conclude that they were entitled to make an appeal under Regulation 114.

14. The appellant has stated that the property has always been in use as a [REDACTED] unit although no evidence has been provided to support this contention. The CA consider that on the 'balance of probabilities' it had been in residential use for the whole 36 months prior to planning permission being granted, having considered it was in full residential use when it was inspected on [REDACTED] in connection with the planning application.

15. The definition of an 'in-use building' in Regulation 40(11) states that a building must contain a part that has been in lawful use for a continuous period of 6 months within the period of three years ending on the day planning permission was granted. If this is satisfied then the area can be netted off from the area of the chargeable development before calculating the CIL charge. From the report provided by the appellant titled '[REDACTED]' it would appear that since 1996 [REDACTED] has sought to secure the work use by way of a planning condition/Section 106 agreement broadly along the lines of "The workspace of the [REDACTED] hereby approved and identified on the approved drawings shall be used for work purposes only and not as residential accommodation", i.e. a defined section of the property would be annotated on the relevant plans as being the workspace and by inference the remainder would be residential, i.e. the Live part of the [REDACTED] designation.

16. In this instance, as there appears to be no dispute that the property was occupied for at least a 6 month continuous period in the 3 year period ending on the date of the planning permission then even if the CA were correct and the whole property was occupied on a residential basis then that would mean those areas that were not defined as workspace would be in lawful use as residential. Therefore, I am satisfied that the building was in lawful use as per Regulation 40(11) and is an 'in-use building' thereby allowing the area of the building to be netted off the area of the chargeable development. This results in the area of the chargeable development being [REDACTED] sqm.

17. On the evidence before me I conclude that there should be no CIL charge in this case as the net additional area is 0 sqm.

[REDACTED] BSc(Hons) MRICS  
RICS Registered Valuer  
Valuation Office Agency  
[REDACTED]