

# 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:** *Demolition of existing building: erection of a two storey building with roof accommodation comprising [REDACTED]; provision of car and cycle parking and refuse storage; and alterations to vehicular access.*

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

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the development is to be assessed in the sum of £ [REDACTED]

## Reasons

1. I have considered all the submissions made by the appellant, [REDACTED]. The Collecting Authority (CA) [REDACTED] have not submitted any representations.
2. Planning permission was granted by [REDACTED] on [REDACTED] for 'Demolition of existing building: erection of a two storey building with roof accommodation comprising [REDACTED]; provision of car and cycle parking and refuse storage; and alterations to vehicular access'.
3. On [REDACTED] the CA issued a Regulation 65 Liability Notice based on a chargeable area of [REDACTED] square metres (sqm) as follows:-

██████████

4. The appellant requested a review of the calculation of the chargeable amount on ██████████ and the CA did not issue a decision within 14 days of the request for a review.

5. The appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing the CIL charge should be reduced to £██████████. This was calculated based on a deduction of ██████ sqm for the existing building from the area of the proposed development to give ██████ sqm of additional floorspace. The grounds of the appeal are as follows:-

"The local authority by way of its CIL notice calculated the gross internal floor space of the approved scheme as ██████ square meters.

This calculation did not taken into consideration the net effect by deducting the area of the existing floor space. i.e. ██████ square metres.

Furthermore the local authority has not taken into account the existing dwelling use as falling within in the C2 class order.

In formulating our appeal to the local authority we deducted the ██████ square metres of the existing dwelling from the approved area of ██████ square meters to arrive at ██████ square meters as the calculatable floor space for applying CIL charges.

By using the local authority on line CIL calculator and the above information we arrive at CIL liability of £██████████ and not £██████████ levied by the local authority.

An appeal to the local authority was made by email on the ██████████ and followed by a written appeal dated ██████████ sent by recorded delivery.

No response had been received by the date of this appeal."

6. The CA did not submit any representations within the statutory time limits. However, they provided by email on ██████████ confirmation that they were now accepting that the area of the existing building should be netted off from the area of the chargeable development and are in agreement with the GIA being ██████ sqm.

7. Having fully considered the submissions made by the appellant, I would make the following observations:-

8. For the Gross Internal Area (GIA) of an existing building to be deducted from the GIA of the chargeable development it must be an "in-use building" which in accordance with Regulation 40(11) means a building which –

*i) is a relevant building, and*

*(ii) 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;*

*"relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;*

The building is understood to have been in existence at the date planning permission was granted. Therefore, the existing floor space can be taken into account in the calculation

under regulation 40 if it was 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, [REDACTED], i.e. it is netted off from the area of the chargeable development. It is the question of lawful use which forms the substance of this appeal.

9. In the exceptional circumstances of this case, being the absence of any evidence being put forward by the appellant or the CA regarding the lawful use of the building, I consider it reasonable to look at information which is publicly available to help me in reaching my decision. This includes accessing [REDACTED] planning website as well as a more general search of information available on the internet. Although I would normally submit to the parties any new information I intend to introduce for their comments, I do not think this is appropriate in this case as the CA are now not disputing that the area of the existing building can be netted off from the area of the chargeable development and are in agreement with the GIA being [REDACTED] sqm.

10. The site was granted planning permission on [REDACTED] for 'Continued use as [REDACTED] for a maximum of [REDACTED] (without compliance with conditions no 1 - personal permission - and no 2 - restriction of the use - attached to planning permission no [REDACTED])'. The planning permission was subject to the following condition:-

The premises shall be used only for the following purposes and for no other purpose within Class C2 of the Town and Country Planning (Use Classes) Order 1987:-

- (1) [REDACTED]
- (2) [REDACTED]
- (3) [REDACTED]

11. Planning permission was refused on [REDACTED] for 'Alterations; use as [REDACTED] [REDACTED]. In addition, planning permission was also refused on appeal for 'Demolition of existing building; erection of a two storey building with roof accommodation and lower ground floor comprising [REDACTED] [REDACTED]; provision of car and cycle parking and refuse storage within basement; and alterations to vehicular access' on [REDACTED].

12. The section of the planning application form for the relevant development which can be accessed on the CA's website refers to the existing use as a [REDACTED], with the site described as vacant with the last use being C2, but no date is given as to when this last use ended. However, there was an earlier planning application [REDACTED] where the planning application form has a date of [REDACTED] for when the last use as C2 ended.

13. The [REDACTED] has a published database known as [REDACTED] on which this property was known as [REDACTED] and was described as an '[REDACTED]' with further reference to it being a '[REDACTED]'. This includes a date of closure of [REDACTED].

14. From the information above, I am of the opinion that it is reasonable to assume that the property was in continuous use up until at least the [REDACTED] and as a result it would have been occupied for a continuous period in excess of 6 months within 3 years of the date the relevant planning permission was granted. Although it was called a [REDACTED] and its primary description within the [REDACTED] database was as an '[REDACTED]', I do not consider it unreasonable to conclude that its use can also be described as a [REDACTED] and was the use for which planning permission was granted. Therefore, I consider it is reasonable to conclude that the building does constitute an 'in-use building', therefore its GIA should be deducted from the area of the chargeable development, and this is now not being disputed by the CA.

15. The appellant has put forward an area of [redacted] sqm for the existing building which is now not disputed by the CA. I have looked at the plans available on the CA's planning website including the survey plan ref. [redacted] submitted in respect of the relevant planning permission and have taken check measurements and can confirm that the GIA of [redacted] sqm appears to be reasonable.

16. The parties have agreed that the area of the chargeable development is [redacted] sqm. However, I have also taken check measurements from the plans and can confirm that this area appears to be reasonable. Therefore, the net additional area liable to CIL is [redacted] sqm.

17. On the evidence before me and the publicly available information I have introduced, and as the CA are now not disputing the netting off of the area of the existing building, I am of the opinion that the property was 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 permitted the chargeable development. Therefore, I conclude that the chargeable amount should be assessed as below:-

[redacted]

Net chargeable area - [redacted] sqm @ £[redacted] = £[redacted]

Plus indexation = £[redacted]

(Index 1 November 2011 – 223)  
(Index 1 November 2015 – 271)

[redacted]

Net chargeable area - [redacted] sqm @ £[redacted] = £[redacted]

Plus indexation = £[redacted]

(Index 1 November 2012 – 224)  
(Index 1 November 2015 – 271)

Total Charge

[redacted]

[redacted]  
RICS Registered Valuer  
Valuation Office Agency  
[redacted]