

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency

[REDACTED]
[REDACTED]
[REDACTED]

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

Appeal Ref: [REDACTED]

Address [REDACTED]

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

Development: Proposed extension of existing warehouse and change of use [REDACTED]
[REDACTED] (with removal of existing portacabins).

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] of [REDACTED] acting as agents for the appellants [REDACTED], and [REDACTED], the Collecting Authority (CA). In particular I have considered the information and opinions presented in the following documents:-

- a. The CIL Appeal form dated [REDACTED].
- b. Appellants grounds of appeal document.
- c. Appellants documents 1-22 (1. Planning Application [REDACTED], 2. Decision Notice [REDACTED], 3. CIL Liability Notice [REDACTED], 4. Request for Review dated [REDACTED], 5. Email dated [REDACTED], 6. Revised Liability Notice dated [REDACTED], 7. Charging Schedule, 8. Planning application [REDACTED], 9. Decision Notice [REDACTED], 10. Email dated [REDACTED], 11. Letter dated [REDACTED], 12. Photographs, 13. Planning Officer's report [REDACTED], 14. Appeal Decision [REDACTED], 15. Photographs, 16. Plans related to [REDACTED], 17. Plans related to [REDACTED], 18. Email dated [REDACTED], 19. Design and Access Statement [REDACTED], 20. Design and Access Statement [REDACTED], 21. Delegate Officer Report [REDACTED], 22. Photographs)
- d. Collecting Authority's representations.

e. Appellants comments on CAs representations dated [REDACTED].

2. Planning permission for the above development was granted by [REDACTED] on [REDACTED]. The council implemented its CIL Charging Schedule on [REDACTED].

3. The appellants requested a CIL liability review on [REDACTED] and a revised CIL Liability Notice was issued on [REDACTED]. The CA consider that the proposed development should be liable to a CIL Charge of £[REDACTED].

4. [REDACTED] (agent for the appellant) contends that as the proposed development is designated as Use Class B8 under the Town and Country Planning (Use Classes) Order 1987 (as amended), the correct CIL charge should be £[REDACTED]. This is based on taking the net developable area [REDACTED] square metres at the rate (B1b, B1c, B2 or B8) of £[REDACTED] per m2 plus indexation.

5. The recent planning history is understood to be as follows:-

- On [REDACTED] permission was granted ([REDACTED]) to form new [REDACTED] facility by erection of a portacabin type building.
- On [REDACTED] permission was granted ([REDACTED]) on [REDACTED] for proposed extension of existing warehouse and change of use [REDACTED] (with removal of existing portacabins).

6. The following matters are agreed by the Appellant and the CA:-

- The typing error within the CIL Liability Notice dated [REDACTED] should have read [REDACTED] rather than [REDACTED].
- The net area in question for CIL charging purposes are [REDACTED] sq m and [REDACTED] sq m.
- The apportioned area to be demolished is accepted at [REDACTED] sq m.
- The Charging Schedule was published by [REDACTED] on [REDACTED].
- The subject property is situated within the zone referred to in the Charging Schedule as [REDACTED].

7. The matter in dispute is the appropriate charging schedule rate to apply to the net developable area in order to determine the CIL Charge.

8. The CA contends that the CIL Charge be calculated based on [REDACTED] square metres at the rate (B1b, B1c, B2 or B8) of £[REDACTED] per sq m, plus indexation and a further area of [REDACTED] sq m of A1 use at the rate of £[REDACTED] per sq m, plus indexation.

9. The appellants contend that the CIL Charge be calculated based on [REDACTED] square metres at the rate (B1b, B1c, B2 or B8) of £[REDACTED] per m2 plus indexation.

10. In support of their view that the charge should be based on the total net developable area at £[REDACTED] per m2 plus indexation the appellant contends that:-

- The rate of CIL chargeable on the [REDACTED] sq m should be at £[REDACTED] per sq m as B8 use under the CIL Charging Schedule and not at £[REDACTED] per sq m as A1 use under the same charging schedule.
- The CA issued a CIL Liability Notice relating to planning reference [REDACTED]. This consent allowed the erection and use of a portacabin as [REDACTED]. The CIL Liability Notice stated that the net chargeable area, including the [REDACTED] are were to be charged at B8 use (£[REDACTED] per sq m under the same CIL Charging Schedule). Therefore the CA did not, on that occasion, assert

that the [REDACTED] element constituted an A1 (retail) use, whereas they have on this occasion.

- The [REDACTED] sq m under consideration in the CIL appeal is a like for like replacement of the portacabin consented under [REDACTED], and therefore should be treated similarly.
- The appellants contend that the CA misunderstand the planning categorisation of a [REDACTED], they suggest it is predominately for trade customers and not the general public. Further contending that although there is a limited amount of public access it is ancillary to the B8 use. The appellants quoted a planning inspectors decision in support of this contention ([REDACTED]).
- The appellants refer to planning condition 5 ([REDACTED]) which states [REDACTED]...shall only be used for purposes ancillary to the main use of the site as a builder's merchants which falls under a B8 use class'.

11. The CA contends that their calculation of the chargeable amount is correct because:-

- It is for the Local Planning Authority to reasonably come to a view on the use classification of the proposal, provided the approach is reasonable and explained, that this aspect is not for the CIL review process to consider.
- That the planning application makes it clear throughout that there is an element of retail proposed by the use of descriptions such as '[REDACTED]', '[REDACTED]' and '[REDACTED]'.
- That the appellants, on their own website, have alluded to sales to the general public and to both trade professionals and homeowners.
- That staff members of the council have bought goods at the subject property and that the sales to the public at 9% of turnover are not insignificant.
- That the area (gross) of the [REDACTED] is significant at [REDACTED] sqm and just below the [REDACTED] sq m threshold for triggering a formal retail assessment on impact under the [REDACTED].

12. I note that the planning permission grants permission for the 'Proposed extension of existing warehouse and change of use [REDACTED] (with removal of existing portacabins)'. Furthermore, it is a condition (5) of the planning permission that '[REDACTED] as shown on drawing no. [REDACTED] shall only be used for purposes ancillary to the main use of the site as a Builder's Merchant which falls under a B8 Use Class (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)), and for no other purpose'.

13. In my opinion, whilst the chargeable development in this case does include a [REDACTED] or retail element the planning consent clearly indicates that the use of this part of the property is ancillary to the main use which it is accepted falls within Use Class B8. The ancillary nature of the [REDACTED] or retail element in this case is reinforced by the condition attached to the planning permission. The Charging Schedule does not indicate that the retail rate should apply to any ancillary retail development forming part of a development falling within Use Class B8 and the planning permission does not purport to grant permission for a retail development falling within Use Classes A1-A5.

14. On the evidence before me I conclude that the CIL charge should be calculated as follows:-

The proposed gross new development area is [REDACTED] sq m, the area of building to be demolished is [REDACTED] sq m, giving a net development area of [REDACTED] sq m, at £[REDACTED] per sq m

(as defined in the CIL Charging Schedule) plus indexation and calculated in accordance with the statutory formula below at regulation 40(5) of the CIL Regulations 2010 (as amended).:-

Amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula:-

$$\frac{R \times A \times I_P}{I_C}$$

£ [redacted] sq m x [redacted] (index)

[redacted] (index)

£ [redacted]

Where:-

A = The deemed net area chargeable at rate R;

I_P = The index figure for the year in which planning permission was granted;

I_C = The index figure for the year in which the charging schedule containing rate R took effect.

15. On the evidence before me I am of the opinion that the entire net developable area of the proposed development ([redacted] square metres) should be charged at the B8 rate of £ [redacted] per m2 plus indexation and the CIL charge should therefore be £ [redacted] ([redacted]).

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