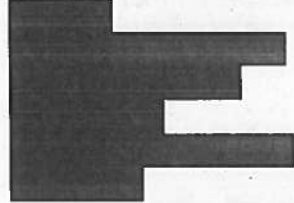


# Appeal Decision

by [REDACTED] BSc(Hons) MRICS

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

Valuation Office Agency (SVT)



Email: [REDACTED]@voa.gsi.gov.uk

---

**Appeal Ref:** [REDACTED]

**Planning Permission Ref.** [REDACTED] **granted by** [REDACTED]

**Location:** [REDACTED]

**Development: Conversion of Building to form 2no. dwellings.**

---

## Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED], [REDACTED] and [REDACTED] and [REDACTED]).

## Reasons

1. I have considered all the submissions made by [REDACTED] (the appellant) and [REDACTED], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

- a. The application for planning permission dated [REDACTED] together with associated plans, drawings and documents.
- b. The Decision Notice issued by [REDACTED] on [REDACTED].
- c. The CIL Liability Notice issued by the CA on [REDACTED].
- d. The e-mail from the CA dated [REDACTED] and a letter dated [REDACTED] in response to the appellant's request for a Regulation 113 Review.
- e. The CIL Appeal form dated [REDACTED] submitted to the VOA by the appellant, under Regulation 114, together with documents attached thereto.
- f. The CA's representations to the Regulation 114 Appeal dated [REDACTED].
- g. Further comments on the CA's response in a letter from the appellant dated [REDACTED].

2. The CA have calculated that the appellant is liable to pay a CIL charge of £[REDACTED] on the commencement of the above development. The calculation behind this figure is not detailed but the Liability Notice dated [REDACTED] states that it has been calculated from the approved plans, the additional information form and evidence of use from Revenues.

3. The grounds of the appeal are that the CA has incorrectly calculated the CIL charge as the gross internal area of existing lawfully used floorspace has not been discounted against the gross internal floorspace of the proposed development. The appellant contends that after existing lawfully used floorspace is deducted the CIL payable should be £[REDACTED] based on a net chargeable area of [REDACTED] sq m.

4. Regulation 40(7) of the CIL Regulations 2010 (as amended) provides for the deduction of the gross internal area of certain retained parts within the calculation of the net chargeable area of a development. The areas to be deducted must be either (i) retained parts of in-use building or (ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

5. Regulation 40(11) provides that an 'in-use building' means a building which 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.

6. Regulation 40(9) states that "where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building" and Regulation 40(10) states that where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish – a) whether part of a building falls within a description in the relevant definition or b) the gross internal area of any part of a building falling within such a description, "it may deem the gross internal area of the part in question to be zero".

7. In support of the appellant's view that the existing building has been in lawful use for the requisite 6 month period he has submitted detailed reasoning and documentation with the appeal which can be summarised as:

- (a) The VOA assessed the property for Council Tax and deleted the entry from the Non Domestic Rating list with effect from [REDACTED].
- (b) A signed statement by the former owner stating that he owned the building from [REDACTED] to [REDACTED], paid Council Tax for a period in excess of 6 calendar months and during that time received a single person occupancy discount for his main place of residence. He also confirms that he was registered on the electoral roll at the property.

8. Within further comments on the CA's representation the appellant has also emphasised his view that this is not a planning test but rather a test of whether the VOA would class the property as a residential or commercial property. He notes that his request for a review dated [REDACTED] references an interested person's comments submitted to the Council in an earlier planning application which states that the previous owner had "been using this property as a dwelling for a number of years". He believes that this statement together with the single person discount on Council Tax confirms lawful use of the property as a residence notwithstanding conditions within the property did not necessarily meet high standards in terms of kitchen facilities etc.

9. The CA does not consider that the submitted information sufficiently demonstrates that the relevant existing floor areas were in lawful use for the relevant period. They note that the signed statement does not identify that the previous owner actually lived within the building. They note that Council Tax records are limited in their value for demonstrating an actual use and furthermore, in their opinion, there remains significant uncertainty as to whether a previous planning permission (reference [REDACTED]) for change of use and conversion of the building to a single dwelling had been implemented and the use was lawful, or whether the building was capable of residential use given the limited evidence of works to the building and limited facilities it provided. They point out that no further information has been submitted to substantiate the lawful use, such as the provision of bills i.e. electricity bills, contractor's bills and formal statutory declarations.

10. In deciding this appeal I have considered all of the submitted documentation and representations of both parties. The CIL regulations do not provide a definition of 'in lawful use' but in my opinion a reasonable interpretation must mean that there are two criteria that need to be considered, firstly whether there has been an actual use of the existing building for the requisite 6 month period and secondly whether that use was lawful.

11. The evidence submitted as to whether the building was in lawful use is not strong. The fact that the Valuation Office has assessed the property with a Council Tax band will not necessarily prove lawful use since Council Tax and CIL are legislated under different statutes. Nevertheless in this case both the CA and the appellant refer to Council Tax payments having been made between [REDACTED] and [REDACTED], which satisfies the time period qualification, and the signed statement by the previous owner and a copy of a Council Tax bill indicate that he received a single person discount for occupancy as his main place of residence. The application of this discount does lend weight to the fact that there has been an actual use of the building as a residence, over and above a mere banding of the property. Further weight to this position is added by electoral roll registration and the reference to an interested person's comment during the planning application process for a [REDACTED] planning application whereby it was stated that the previous owner had lived at the property for years. Despite not one of these facts being a definitive test of there actually having been a residential use of the property I am satisfied that the weight of evidence is enough to establish that the existing building had a residential use.

12. In consideration of this use being lawful it appears that certain works approved under the earlier planning application for a change of use of the building from commercial to residential in [REDACTED] ([REDACTED]) have not been completed and the CA are of the view that there is doubt as to whether this permission was implemented. In my opinion the fact that there is a previous planning approval for residential use and it appears that there has been actual use of the property as a residential unit lends enough weight to a residential use of the property being considered lawful for CIL purposes.

13. Whilst the evidence in this particular case is not clear cut, for the purposes of CIL I am satisfied that the existing building can be considered as having been in lawful use.

14. I have used the areas submitted in the CIL Additional Information Form to calculate a net chargeable area of [REDACTED] square metres and used the CA's urban residential rate of £[REDACTED] plus indexation based on the BCIS TPI for November [REDACTED] / BCIS TPI for November [REDACTED] ( $\frac{[REDACTED]}{[REDACTED]} = x [REDACTED]$ ) equating to a CIL charge of £[REDACTED].

15. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore determine a CIL charge of £[REDACTED].

---

[REDACTED] BSc(Hons) MRICS  
RICS Registered Valuer  
District Valuer  
[REDACTED]