

Appeal Decision

By [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency

[REDACTED]

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

Appeal Ref: [REDACTED]

Planning Permission Ref: [REDACTED] (granted by [REDACTED]
[REDACTED] on [REDACTED])

Location: [REDACTED]

Development: Construction of new [REDACTED] centre including various facilities [REDACTED] plus car parking and open space together with associated infrastructure [REDACTED] and landscaping

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £ [REDACTED].

Reasons

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

- a. The Planning Decision issued by [REDACTED] on [REDACTED].
- b. The CIL Liability Notice issued by the CA on [REDACTED].
- c. The appellant's request for a Regulation 113 review dated [REDACTED].
- d. The CA's Decision Notice dated [REDACTED] in response to the appellant's request for a Regulation 113 review.
- e. The CIL Appeal form submitted by the appellant as a Regulation 114 Chargeable Amount Appeal (dated [REDACTED], and received by the VOA on [REDACTED]), together with documents and correspondence attached thereto.
- f. The CA's representations (dated [REDACTED]), in response to the Regulation 114 Appeal submitted by the appellant.

- g. Comments on the CA's representations; sent by the appellant, in correspondence dated [REDACTED].
- h. The CA's response (dated [REDACTED]) to my request for comments upon the relevance of the [REDACTED] and the [REDACTED].
- i. The appellant's response (dated [REDACTED]) to my request for comments upon the relevance of the [REDACTED] and the [REDACTED].

2. Planning permission for the above development was granted by [REDACTED] on [REDACTED]. On [REDACTED] the CA issued a Liability Notice in the sum of £[REDACTED]. This was based on a net chargeable area of [REDACTED] square metres of 'retail' development charged at £[REDACTED] per square metre (sq m); plus application of an indexation factor stated to be [REDACTED].

3. On [REDACTED] the appellant requested a review of the calculation of the chargeable amount under Regulation 113. Four reasons were stated; A) Timely service of Liability Notice; B) Request for Discretionary relief; C) Calculation of chargeable area (ultimately, definition of 'retail' development); D) Incorrect recipient of Liability Notice.

4. The CA issued their decision notice on the review on [REDACTED], in which the CA noted the chargeable figure in the Liability Notice and directly addressed the points made by the appellant in their request for a review. The CA review concluded that the subject development is liable for CIL, but accepted that there are [REDACTED] and a [REDACTED] which can be counted as existing buildings (totalling [REDACTED] sq m) and deducted from the chargeable area; thereby, giving a new chargeable area of [REDACTED] sq m and leading (with indexation) to a revised CIL charge of £[REDACTED].

5. On [REDACTED] the parties submitted a CIL Appeal under Regulation 114 (chargeable amount) contending that the chargeable amount should be £[REDACTED].

6. The appellant's case is now focused upon the definition of 'retail' within the CA's Charging Schedule. It is the appellant's view that in the absence of a definition of 'retail' in both the CIL Regulations and in particular the CA's Charging Schedule, the definition of retail is open to interpretation and must be construed narrowly. The appellant considers that 'retail' should be interpreted in the ordinary sense and means retail shops, in their view, it does not include [REDACTED] which have been included in the CA's CIL liability calculation. If the area of the [REDACTED] are excluded then the CIL liability will be zero.

7. The appellant, with their appeal papers, provided the following documentary evidence in support of their view:

- a) Copy of Planning Application
- b) Planning Permission Grant Notice
- c) Site Plan
- d) Drawings of the buildings close to the East Boundary of the site
- e) CIL Liability Notice
- f) [REDACTED] (the appellant) Regulation 113 Review Request Letter
- g) CA response to Review Request (Decision Notice)
- h) CA Charging Schedule adopted [REDACTED]
- i) CA Charging Schedule for [REDACTED] with a detailed definition of Retail
- j) Community Infrastructure Levy appeal decision: published [REDACTED]
- k) CA CIL Viability Study [REDACTED]
- l) Other correspondence between the CA and [REDACTED] re CIL
- m) Copy of VOA decision publication web page
- n) Retail Footprint Plan

8. The CA submitted representations on [REDACTED] which can be summarised as follows (see overleaf):

- a) The CA accepts that the CIL rates are not tied to the Use Classes Order, but the CA states government advice suggests these provide a useful reference point and that the Council, as the CA, "has consistently used all the A Classes (A1 to A5) as 'retail' when applying the Charging Schedule. This would therefore include a [REDACTED] ([REDACTED]) as well as shops (Class A1)."
- b) The CA further notes "under the General Permitted Development Order an [REDACTED] use could subsequently change to an A1 use without the need to apply for planning permission."
- c) In respect of the Oxford Dictionary definition of 'retail', the CA states "this (definition) does not make a distinction as to what is sold and it could just as well be a cup of coffee or a meal."
- d) Finally, the CA note their Charging Schedule was based on a Viability Study and that "setting different CIL rates required a balance between simplicity with the viability evidence but overall it was acknowledged that out of town retail sees better margins....and (there is) nothing that differentiates between the A1-A5 retail uses when applying the CIL charge."

9. The appellant submitted comments on the CA's representations dated [REDACTED] which can be summarised as follows:

- a) The appellant highlights "we have seen no documentation, evidence or intention that the Council (CA) meant that all A Use Classes are included in its definition of 'retail'. There is nothing in the viability study or on the CA's webpages, charging schedule or other CIL guidance that is consistent with the CA's assertion."
- b) The appellant's general view is "neither a member of the public or property development professional would consider a [REDACTED] as a shop."
- c) The appellant notes and comments that in setting the CIL rates the council "balanced simplicity and viability evidence". The appellant suggests that it would have been very simple to clarify in the charging schedule that 'retail' included classes (A1-A5) as others including nearby [REDACTED] have done.
- d) The appellant elaborates: - "We note that the viability study which informed the charging schedule didn't "specifically relate to the development type now proposed" and that the viability study was "used to inform the charging schedule". As such we see nothing in this representation that is inconsistent with paragraph 17 of our grounds of appeal which relates to the intention of the charging authority at the time the charging schedule was adopted. We would draw attention again to paragraph 2.2.4 of the viability assessment (document 11) where the viability of [REDACTED] and [REDACTED] is considered as in town centre use and as such shows an intention that no CIL should apply."

10. On [REDACTED], I provided the extracts below from the National Planning Policy Framework (NPPF) and [REDACTED] to the parties and invited their representations in respect of the relevance of both of those documents.

National Planning Policy Framework (2018); extract taken from page 68: -

"Main town centre uses: **Retail development** (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, [REDACTED], [REDACTED], bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities)."

[REDACTED] (2016); extract taken from page 196: -

"24.10 Variety and activity are essential elements of the vitality and viability of town centres. Different, but complementary uses can reinforce each other to attract large numbers of people thereby ensuring the vibrancy of town centres both during the day and in the evening. Non-retail uses such as entertainment facilities, museums, hotels and conference centres, market stalls, [REDACTED] and [REDACTED] can add variety. Within town centre shopping areas (outside primary shopping frontages) A2 (financial and professional services) and [REDACTED] ([REDACTED]) uses which contribute to the diversity and vitality of centres will generally be permitted. Other non-retail uses which would detract from diversity and vitality will not usually be permitted."

11. The CA's representations [dated [REDACTED]] can be summarised as follows:-

"....the various references to retail or non-retail uses are only relevant to town centre sites and specifically relevant to planning policies rather than the application of the CIL Regulations. Government advice does suggest that the Use Classes Order is a useful reference point but that is all."

12. The appellant's representations [dated [REDACTED]], to the NPPF and [REDACTED] extracts I provided on [REDACTED], can be summarised as follows:-

- a) *"....the [NPPF] extract does show that at a national policy level the interpretation of retail does not include [REDACTED] etc. and that these are classed as "Leisure" activities."*
- b) *"....we note that the Charging Authority's local plan demonstrates that restaurants and cafes are not retail. The third sentence from the extract from para 24.10 makes this absolutely clear: "Non-retail uses such as... [REDACTED] can add variety"."*

13. Having fully considered the representations made by the appellant and the CA, I record my observations regarding the grounds of the appeal in the following paragraphs.

14. I agree that the dictionary definition of 'retail' is a material consideration and a reasonable starting point. The online Oxford Dictionary entry defines 'retail' as *"the sale of goods to the public in relatively small quantities for use or consumption rather than for resale."* I would note that "consumption" could include the consumption of food and drink; though the dictionary is silent whether this is expected to be onsite, offsite or both. It is my view that it could include both and therefore looking at this definition in isolation it could lead one to conclude that cafes and restaurants fall within this definition.

15. However, I think it is important to go on and consider the context of the term 'retail', i.e. what should it be taken to mean in the context of its use in a CIL Charging Schedule setting out the charges applicable to different uses for which planning permission has been granted under the Town and Country Planning Act 1990. I think in this particular context (i.e. a description of use when used in a CIL Charging Schedule) it is relevant to look at planning law and guidance. This is why I asked for the parties views on extracts from the NPPF and the [REDACTED] Local Plan.

Continued overleaf>

16. The "Retail" and "All other Non Residential Uses" development types listed within the Charging Schedule (Part A) split the charging area into three localities. Beyond the subject charging area (the "Rest of [REDACTED]" locality), I note that the "Inside Town Centre Shopping Areas (as defined in the New Local Plan)" locality explicitly mentions the Local Plan. Therefore, whilst I accept the CA's comments that the NPPF and [REDACTED] Local Plan relate "...to planning policies rather than the application of the CIL Regulations." the CA themselves reference the Local Plan within their Charging Schedule and, in the absence of more material evidence to the contrary, these additional sources cannot in my view be ignored. In my view, the extracts from the NPPF and the [REDACTED] Local Plan referred to in paragraph 10 above, both lead the reader to the conclusion that cafes and restaurants are not normally regarded as a 'retail' use.

17. Furthermore, Schedule 2, Part 3 (changes of use) to the Town and Country Planning (General Permitted Development) (England) Order 2015 lists how "[REDACTED]...." may change use "...to retail" (see below extract).

Class A – [REDACTED], takeaways or pubs to retail

Permitted development

A. Development consisting of a change of use of a building from a use falling within Class [REDACTED] ([REDACTED]), A4 (drinking establishments) or A5 (hot food takeaways) of the Schedule to the Use Classes Order, to a use falling within Class A1 (shops) or Class A2 (financial and professional services) of that Schedule.

In my opinion this again reinforces the distinction between '[REDACTED]' and 'retail'.

18. Based on the facts of this case and the evidence before me I conclude that, on balance, the weight of evidence does not support the conclusion that the subject [REDACTED] development fall within the 'retail' CIL category in the CA's Charging Schedule. Therefore, the CA's CIL charge (revised to £[REDACTED] in CA's decision notice on the review of [REDACTED]) is not appropriate in this case and there should be no CIL payable in respect of the [REDACTED] within the subject development. The CIL liability in this case should therefore be £[REDACTED].

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

1. The first part of the document is a letter from the Secretary of the State to the Governor, dated 10th March 1870. It contains a report on the progress of the work done during the year ending 31st December 1869. The letter is signed by the Secretary, and is addressed to the Governor.

2. The second part of the document is a report on the progress of the work done during the year ending 31st December 1869. It is signed by the Secretary, and is addressed to the Governor. The report contains a detailed account of the work done during the year, and is accompanied by a statement of the accounts.

3. The third part of the document is a report on the progress of the work done during the year ending 31st December 1869. It is signed by the Secretary, and is addressed to the Governor. The report contains a detailed account of the work done during the year, and is accompanied by a statement of the accounts.

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