Statement on appeal validity

by [redacted] **BA (Hons) MRICS**

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

Valuation Office Agency
[redacted]

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

Appeal Ref: [redacted]

Address of property: [redacted]

Development: Change of use of first floor and part ground floor to holiday accommodation including the alteration of existing doorway, creation of a new internal staircase and a new brick gable end to the east elevation

Planning permission details: Reference [redacted]. Conditional planning granted by [redacted] on [redacted]

Decision

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

Reasons

1. I have considered all the submissions made by the appellant 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 notice dated [redacted]
(b) The CA's Liability Notice dated [redacted]
(c) The CA's response to the review request dated [redacted] which makes reference to the appellant's regulation 113 review request of [redacted]
(d) The appellant's appeal form dated [redacted]
(e) Various plans provided alongside the appeal documentation and received by this office on [redacted]
(f) The CA's representations dated [redacted]
(g) The appellant's comments dated [redacted]

3. Planning permission was granted on [redacted] by [redacted] for: Change of use of first floor and part ground floor to holiday accommodation including the alteration of existing doorway, creation of a new internal staircase and a new brick gable end to the east elevation

4. On [redacted] the CA issued Liability Notice [redacted] (reference number) in the sum of £[redacted] based on net additional floor space of [redacted] square metres (sq m). The notice was served on [redacted].

5. A review request was submitted by [redacted] to the CA via email on [redacted] and the CA responded on [redacted]. The CIL charge remained unaltered.

6. The appellant submitted a CIL Appeal dated [redacted] under Regulation 114 (chargeable amount) stating that the chargeable amount should be based on [redacted] sqm. The appeal was received by this office on [redacted].

7. The grounds of the appeal can be summarised as follows:-

That the actual area that is above 1.5 metres and useable is [redacted] sqm. The CIL charge should be based on [redacted] sqm.

8. The CA submitted representations on [redacted] reiterating their response to the applicant's regulation 113 request. The CA's representations can be summarised as follows:-
That the CIL regulations state that calculations for chargeable development in relation to CIL liability should be based the Gross Internal Area (GIA) of the development. GIA is not defined within the CIL regulations. The RICS Code of measuring Practise 6th edition contains a widely accepted definition of GIA. The RICS definition of GIA states that areas of less than 1.5 m2 height are to be included in the calculation.

9. The appellant provided comments on [redacted]. The comments can be summarised as follows:

i) That CIL should only be charged on developments of over 100 sqm and that the subject should be exempt as it is not a wholly new dwelling. It is an annexe and is wholly dependent on the office space below.

ii) That GIA measurement is not an established code of measurement by law and that Net Internal Area (NIA) would be better suited to this development.

iii) That Government guidance states that a 'balance must be struck across a local plan area when deciding upon a levy' as 'an appropriate balance between additional investment to support development and the potential effect on the viability of a development'. The CIL liability in this particular case means the development will not be viable.

10. I have considered all the above when making my decision. I will set out additional reasoning below:

11. The CIL regulations state that development which adds 100 sqm or more floor space or creates a new development will be chargeable to CIL. In this case, the development adds less than 100 sqm of floor space so I have considered whether holiday accommodation meets the definition of a residential dwelling in accordance with the *Town and County Planning (use classes) Order 1997 (as amended).*

12. In considering whether the development is a dwelling house, I have considered condition 3 attached to the grant of planning permission which states that 'The holiday accommodation' hereby permitted:
(i) shall be used for holiday purposes only;
(ii) shall not be occupied as a person's sole, or main place of residence; and
(iii) the owners/operators shall maintain an up-to-date register of the names of all occupiers of the accommodation and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.
(Reason - The location and positioning of the accommodation proposed makes it unsuitable for independent occupation and to comply with Policies [redacted] and [redacted] of the [redacted] and guidance set out in the National Planning Policy Framework).

13. I have had regard to case law, including the decision in *Moore V Secretary of State for the Environment 1998.* The decision in this case states that there is no requirement that before a building can be a dwelling house it must be occupied as a permanent dwelling.

14. In light of points 1-3 above, I am content that the development is one which is liable to CIL

15. I have considered if it is correct that areas of under 1.5 metres height should be included within the CIL liability calculation. The CIL regulation 40 refers to GIA as opposed to NIA. Therefore, the appellant's contention that NIA should be used to calculate the CIL liability in this case would not be in accordance with the CIL Regulation 40.

16. GIA should be used. The accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6th Edition). It provides that GIA is the area of a building measured to the internal face of the perimeter walls at each floor and includes areas with a headroom of less than 1.5m.

17. I am therefore of the view that the area to be included within the CIL calculation is [redacted] sqm. There have been no representations from either side that any relevant and in use parts of the existing buildings should be accounted for by way offsetting i.e. including them within accordance with the Kr part of the CIL liability formula in accordance with CIL regulation 40 (1-7).

18. I note the appellant's point about levy setting and viability. However, this relates to the responsibilities incumbent upon a Collecting Authority when setting the CIL levy at Local Plan stage. It is not possible for me to consider the viability of individual developments way of a CIL appeal under part 10 of the CIL regulations.

19.

i) Based on the facts of this case and the evidence before me I conclude that that the appropriate charge in this case should be based on a net additional area of [redacted] sqm

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

[redacted]

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