# Appeal Decision

## by [redacted] MRICS

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

Valuation Office Agency (DVS)

[redacted]

E-mail: [redacted]@voa.gsi.gov.uk

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**Appeal Ref:** [redacted]

***Address:*** [redacted]

***Proposed Development:*** *Refurbishment and conversion of redundant* [redacted] *(including demolition works) to create 3No. 1 bed apartments, 1No. 2 bed apartment and 2No. 3 bed apartments with two new build extensions to create 10No. 2 bed new build apartments, the existing dwelling to be used for ancillary accommodation to the main building with associated new access, car parking and landscaping works (part retrospective).*

***Planning Permission details:*** *Granted by* [redacted] *on* [redacted], *under reference* [redacted].

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## 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 the appellant, [redacted] of [redacted] (acting on behalf of [redacted]) and the submissions made by the Collecting Authority (CA), [redacted]

2. Planning permission was granted for the development on [redacted], under reference decision [redacted]

3. On [redacted], the CA issued a Liability Notice ([redacted]) for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m² @ £[redacted] per m², with indexation at [redacted].

4. On [redacted], it is understood that the appellant appealed to the Planning Inspectorate under Regulation 118(1), contending that the CA issued a demand notice with an incorrectly determined commencement date. I would point out that the appellant's representations under Regulation 117 and 118 remain the purview of the Planning Inspectorate and not the Valuation Office Agency; accordingly this appeal decision is confined to the Regulation 114 appeal and the calculation of the chargeable area.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (1) (b) (review of chargeable amount) from the appellant. The appellant contends that the CA failed to notify the appellant of the decision of the review request and the reasons for the decision. In addition, the appellant contends that the CA's calculation is incorrect and is of opinion that the CIL payable is £[redacted]. The appellant's calculation is based upon on a net chargeable area of [redacted] m² @ £[redacted] per m² = £[redacted]. The calculation put forward by the appellant comprises of:

   Area of the new build and conversion [redacted] m² less the retained buildings of [redacted] m² and less the demolished buildings of [redacted] m² = [redacted] m².

6. The appellant's contention can be summarised to a core point:

   From the appellant's perspective, the CIL calculation should reflect 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the appellant considers is an eligible deduction, which can be offset against the chargeable area). In addition, the appellant contends that the demolished side extensions are an eligible deduction.

7. The CA disagrees, contending that none of the buildings have been in continuous use and that no eligible deduction can be made for retained or demolished floorspace under Regulation 40. The CA contends that the chargeable amount should be calculated on the basis of the GIA for the new apartments, with no deductions for retained or existing parts.

8. There is no disagreement between the CA and the appellant in respect of the floorspace of the existing building which can be potentially offset; both parties agree that the GIA of Sandal House is approximately [redacted] m². However, I note that the CA has not explained its rationale in its calculation of the net chargeable area, of [redacted] m².

9. Excluding deductions for retained or existing parts, the appellant offers a gross chargeable area for the development as [redacted] m², whereas the CA offers a lower floorspace in its Liability Notice of [redacted] m². The CA believes that this difference may be accounted for by '[redacted]' – the detached building in the rear garden. The CA has not included the GIA of [redacted] in the CIL chargeable area. This is because the CA's Charging Schedule applies only to Residential (C3) uses, Retail Warehouse (A1) uses and Large Supermarkets with a GIA equal to, or greater, than 2,000 m². The CA considers that [redacted] does not benefit from Residential (C3) use, citing Condition 17 of approved planning application [redacted]:

   *The detached curtilage building identified as 'Ex house' on approved drawing [redacted] shall be used solely for residential purposes ancillary to the apartment accommodation hereby approved and shall not be used at any time as a separate unit of independent living accommodation.*

10. At the heart of the matter is the continuous use of the accommodation (the existing building floorspace) which the appellant considers is an eligible deduction, which can be offset in the CIL calculation.

11. Regulation 40(7) of the CIL Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;

    a. retained parts of 'in-use buildings', and

    b. 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.

    Under regulation 40(11), to qualify as an 'in-use building' the building must contain 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.

12. The appellant contends that [redacted] falls within the definition of an 'in-use building'. However, as part of its representations, the CA points to the appellant's submitted CIL Additional Information Form dated [redacted]; under Section 7 (Existing Buildings) the answer to the question *"Was the building or part of the building occupied for its lawful use for 6 continuous months of the 36 previous months (excluding temporary permissions)?"* the appellant's stated response in the ticked box was *"No"* to all three existing buildings on the site.

13. From the documentary evidence in paragraph 12, I have concluded that the building has emphatically not been in continuous use by the appellant up to the period of [redacted]. In considering continuous use from [redacted] to the requisite period of [redacted], I must consider evidence as to what activities took place within the existing buildings, and the intentions of the appellant who was using the building.

14. The appellant has cited the case of *R (oao Hourhope Ltd) v Shropshire Council* [2015] EWHC518. The Hourhope case related to a disputed CIL liability due on a planning permission to demolish a public house, erect residential units and the resultant application of the demolition deductions that are set out in the CIL Regulations 2010 (as amended). This case provided guidance on 'in-use buildings' in that 'in-use buildings' demolished during the development or retained on completion will be determined not by whether there is available a permitted use for the building, but by the actual use of the building.

15. As held by Hourhope - *"Whether a property is 'in use' at any time requires an assessment of all the circumstances and evidence as to what activities take place on it and what are the intentions of the persons who may be said to be using the building."* It follows therefore, to consider not only the actual use, but the degree of activity of the actual use.

16. The appellant cites the occupation of [redacted] by three residents - [redacted] and his dog [redacted]. The appellant has cited that they were live-in guardians, with their occupation for site security purposes, to deter vandalism and theft. Whilst I understand and accept this purpose, I am of opinion that in isolation, this occupation does not pass the threshold test for the required degree of activity. Beyond the cited security use, little evidence has been submitted by the

appellant in respect of activity of actual use; from the submitted evidence, the occupation seems incidental to the works being executed to the wider [redacted] site. In support of my conclusion, that the occupation does not pass the threshold test, I cite the appellant's own submitted evidence. Within the appellant's representations, the appellant submitted evidence of utility bills in respect of [redacted]. The evidence included:

- Council Tax Bill ([redacted]) for [redacted]
- Council Tax Bill ([redacted]) for [redacted]

The CA points to the detail in both these bills – under the 'Account Details' section, both bills indicate that an *'Empty and Unfurnished 0% Discount'* has been applied. The [redacted] bill indicates an *'Empty and Unfurnished 0% Discount'* application from [redacted] to [redacted], whilst the [redacted] bill indicates an *'Empty and Unfurnished 0% Discount'* application from [redacted] to [redacted]. These two bills jointly cover the time up to the requisite period of [redacted]. I agree with the CA's opinion that these Council Tax records are documentary evidence that indicate that [redacted] (the [redacted]) was not occupied during this period. Based upon the submitted evidence, I have concluded that [redacted] was either unoccupied or the occupation did not meet the threshold test as an in-use building from [redacted] to the requisite period of [redacted].

17. Finally, I must consider the appellant's contention that the demolished side extensions are an eligible deduction. By the appellant's own admission, the demolished parts were demolished prior to the approval of planning application [redacted]. Accordingly, I agree with the CA's opinion that the demolished parts are not a relevant building and they do not fall under the definition of an 'in-use building'. In conclusion, I agree with the CA that credit cannot be granted for the demolished floorspace.

18. In conclusion, based on the facts of this case, I do not consider that the property was in continuous use for the requisite period and failed to meet the threshold test of an 'in-use' building under the provisions of Regulation 40(11). I therefore consider that it was reasonable for the CA to deem that the property was not an in-use building for CIL purposes.

19. However, the CA has not put forward evidence of its rationale, in its calculation of the net chargeable area at [redacted] m². Based upon the appellant's Accommodation Schedule of the [redacted], I am of opinion that the CA has made a minor error in calculating the area. Having checked the component areas on the Accommodation Schedule, I calculate the total area as follows:

[redacted]

20. In conclusion, having considered all the evidence put forward to me, I consider that based on the particular facts of this case and based on the following calculation:

[redacted] m² x @ £[redacted] per x [redacted] = £[redacted]

I determine that the CIL payable in this case should be £[redacted].

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