

# Appeal Decision

by [REDACTED] MRICS

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

Valuation Office Agency (SVT)

[REDACTED]

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

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Appeal Ref: [REDACTED]

Planning Permission Reference: [REDACTED]

Location: [REDACTED]

Development: 35 apartments containing a mixture of 1, 2 and 3 bedrooms and [REDACTED] sqm of B1 office space.

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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 of the submissions made by [REDACTED] of [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 documents:-
  - a. Planning Application Decision Notice ref [REDACTED] issued by the CA on [REDACTED].
  - b. Planning Application Decision Notice ref [REDACTED] issued by the CA on [REDACTED] granting reserved matters approval.
  - c. CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL liability.
  - d. Review of Chargeable Amount, CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL Liability.

- e. The CIL Appeal form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
- f. The CA's representations to the Regulation 114 Appeal dated [REDACTED].
- g. Further comments on the Appellant's representations prepared by the CA and dated [REDACTED].
- h. A1 plans provided by the Appellant received in this office on the [REDACTED].
- i. A1 plans provided by the CA received in this office on the [REDACTED] along with an accompanying email dated the [REDACTED] that explained the CA's areas.

### Background

2. Planning consent reference [REDACTED] for the development was issued by [REDACTED] on [REDACTED].
3. Planning consent reference [REDACTED] for the development was issued by [REDACTED] on [REDACTED].
4. A CIL Liability Notice reference [REDACTED] was issued by the CA on [REDACTED] for the amount £ [REDACTED] ([REDACTED]) based on the CA's assessment of Gross Internal Area (GIA) for the proposed development of [REDACTED] m<sup>2</sup>.
5. The Appellant requested a formal review of the CIL charge under Regulation 113 which the CA duly undertook. They advised that they would not be revising the CIL charge payable.
6. The Appellant has submitted an appeal to the Valuation Office Agency under Regulation 114 (chargeable amount appeal) stating that in his opinion the calculation of the amount of CIL payable should be £ [REDACTED] ([REDACTED]).
7. The appeal is made on the following ground:
  - The existing building on the development site qualifies as an in-use building and its GIA should be subtracted from the C3 new-build residential GIA.
8. Although not cited as a ground of appeal, there is also a discrepancy in the GIA of the chargeable development to be resolved.
  - The Appellant's areas are as follows: the residential C3 area is [REDACTED] m<sup>2</sup> and the B1 office development area is [REDACTED] m<sup>2</sup>.
  - The CA considers the area of the chargeable development to be [REDACTED] m<sup>2</sup> and they have included the C3 residential area only.

## **Ground 1: Previous Occupancy of the Property and Deduction of Floor Space Within the CIL Calculation**

9. A disagreement has arisen in respect of the application of Regulations 40(7) and 40(11) of the CIL Regulations 2010 (as amended) where the calculation of the *net* chargeable area of a development, provides for the deduction of the gross internal area of an 'in use building' that is to be demolished as part of the development, as well as certain retained parts'.

10. 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.

11. 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"

12. The Appellant provided the CA with evidence to demonstrate lawful use and continuous occupation during the qualifying period of [REDACTED] to [REDACTED] as part of their request for a review under Regulation 113. I understand from the CA's representations this included non-domestic rates bills for the periods [REDACTED] and [REDACTED] along with proof of payment.

13. The CA concluded that whilst the evidence provided showed the property had been in lawful use, it did not prove continuous use.

14. As part of their Regulation 114 CIL Appeal to the VOA, the Appellant has provided utility bills from the period [REDACTED] to the [REDACTED]. The CA has provided comments on this evidence to support its consideration by the VOA when determining whether the existing building was in continuous occupation for at least a six month period during the qualifying period.

15. I am of the opinion the Appellant has adequately demonstrated as part of this appeal that the property was in lawful use and was continuously occupied for at least six months during the qualifying period. As such the existing building's area should be deducted from the area of the chargeable development.

16. As it has been concluded that the existing building should be considered as an in-use building, this has raised questions about its GIA with both parties presenting different figures.

17. The Appellant is of the view the area of the existing building is [REDACTED]m<sup>2</sup>. The CA is of the view the area of the existing building is [REDACTED]m<sup>2</sup>

18. I wrote to both parties on the [REDACTED] asking for A1 plans for both the existing building and the chargeable development. I also suggested that it would be advisable for the parties to liaise and try to agree areas before replying to me.

19. Both parties have provided A1 scale plans of the existing building and the chargeable development. They have not agreed areas between themselves so I have used the plans provided to calculate the respective areas.

20. Both parties appear to accept that the RICS Code of Measurement Practice 6<sup>th</sup> Edition (May 2015) is the principle source of guidance for the measurement of buildings. The definition of GIA is provided within the Code as follows:

*GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.*

*Including:-*

- *Areas occupied by internal walls and partitions*
- *Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like*
- *Atria and entrance halls, with clear height above, measured at base level only*
- *Internal open-sided balconies walkways and the like*
- *Structural, raked or stepped floors are to be treated as level floor measured horizontally*
- *Horizontal floors, with permanent access, below structural, raked or stepped floors*
- *Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)*
- *Mezzanine floors areas with permanent access*
- *Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level*
- *Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like*
- *Projection rooms*
- *Voids over stairwells and lift shafts on upper floors*
- *Loading bays*
- *Areas with a headroom of less than 1.5m*
- *Pavement vaults*
- *Garages*
- *Conservatories*

*Excluding:-*

- *Perimeter wall thicknesses and external projections*
- *External open-sided balconies, covered ways and fire escapes*
- *Canopies*
- *Voids over or under structural, raked or stepped floors*
- *Greenhouses, garden stores, fuel stores, and the like in residential property.*

21. In the marked plans provided by the CA, it shows they have excluded two void areas on the first and second floor staircases.

22. Considering the criteria above, I consider that these areas should be included in the GIA and consequently, having taken check measurements, I agree with the Appellant, that the GIA of the existing building is [REDACTED]m<sup>2</sup>.

## **Issue 2: GIA of the Chargeable Development**

23. The Appellant has put forward a total GIA of [REDACTED]m<sup>2</sup> for the Chargeable Development. This is made up of [REDACTED]m<sup>2</sup> of C3 residential space and [REDACTED]m<sup>2</sup> of B1 office space. The breakdown of these areas is shown on plan [REDACTED]. No further explanation of this area has been provided.

24. The CA has put forward a total GIA of [REDACTED] m<sup>2</sup> for the Chargeable Development. The explanation they have provided shows the discrepancies between their area and the Appellants, is as a result of the Appellant omitting the lower ground floor undercroft parking area of [REDACTED] m<sup>2</sup> and also the inclusion of [REDACTED] m<sup>2</sup> of residential serviced accommodation. The CA has confirmed this type of accommodation does not fall within the definition of C3 or C4 use for the purposes of the CIL Charging Schedule adopted in [REDACTED].

25. Having considered the Town and Country Planning (Use Classes) Order 1987 (as amended) I agree this type of accommodation does not readily fall within C3 or C4 use. I therefore agree it would fall to be charged at £[REDACTED] in accordance with the CIL Charging Schedule Adopted in [REDACTED].

26. In respect of the undercroft parking area, this is located at ground floor level on the west side of the building. Plans show this is below the upper floors which are supported by a series of pillars. It is largely open on two sides and also provides access to external car parking to the east side. The area in question lies beneath the upper floors of the building, it is not covered by a canopy which is specifically excluded in the RICS Code of Measuring Practice. I consider that it is appropriate to measure the building to the internal face of the pillars at ground floor level and include the covered parking area within the GIA calculation. I consider that the area in question then falls to be included much the same way as a loading bay. It is also noted there are 9 spaces that are under the projection of the first floor serviced accommodation, shown within dotted lines on the plans. I have concluded this area should not be included within the GIA as it is wholly open on three sides. It is also difficult to make any logical assumption as to whether these spaces would fall within the residential or office allocation.

27. Having taken check measurements from the scale plans provided, I have concluded the area of [REDACTED] m<sup>2</sup> put forward by the CA is correct for the C3 residential element of this development. I have also confirmed their areas for the office development and serviced accommodation. As such the total area of the Chargeable Development is [REDACTED] m<sup>2</sup>.

28. I note from condition 10 of planning permission [REDACTED] J that the 84 parking spaces to be provided are to be allocated between the development elements as follows: 35 spaces allocated to the residential properties, 31 spaces allocated to the office space and 18 spaces to be shared between the whole development.

29. The plan provided shows that 31 spaces fall within the undercroft parking area with the remaining spaces being external. I have not been advised of the location of the allocated spaces but, I consider it logical to assume the residents of the flats would be provided with the undercroft parking. Consequently this area would be chargeable at £[REDACTED] in accordance with the C3 rate set out in the CIL Charging Schedule adopted in [REDACTED].

30. Based on the facts of this case, 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]).

[REDACTED]  
[REDACTED] BA (Hons) PG Dip Surv MRICS  
RICS Registered Valuer  
Valuation Office Agency  
[REDACTED]

