

Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency (DVS)

[REDACTED]

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

Appeal Ref: [REDACTED]

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

Location: [REDACTED]

Development: *Hybrid application for the erection of petrol filling station with convenience store and sandwich bar, car wash, and car parking; motorcycle showroom and workshop with associated car parking; outline planning permission for flexible employment space (B1b/B1c/B2/B8) totalling [REDACTED] sqm with associated car parking and circulation space (scale landscaping and appearance reserved); new access from the site from [REDACTED] and pedestrian link to footbridge over [REDACTED].*

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil).

Reasons

1. I have considered all the submissions made by [REDACTED] of the [REDACTED] on behalf of [REDACTED] of [REDACTED] (the appellant) and the Collecting Authority (CA), [REDACTED], in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-
 - a. The Decision Notice issued by [REDACTED] on [REDACTED] together with all associated documents and plans referenced therein.
 - b. The CIL Liability Notice issued by the CA on [REDACTED].
 - c. The appellant's request for a review of the CIL charge dated [REDACTED] made under Regulation 113 of the regulations.
 - d. The CA's response to the review request dated [REDACTED]

- e. The CIL Appeal form dated [REDACTED] submitted on behalf of the appellant, under Regulation 114, together with documents attached thereto, including a copy of [REDACTED]'S CIL Charging Schedule.
 - f. The CA's representations to the Regulation 114 appeal dated [REDACTED].
 - g. Representations from both parties in response to my request dated [REDACTED].
2. The matter in dispute is the CIL charge that has been levied in respect of the retail element of the proposed development. There would appear to be no dispute in respect of the other parts of the development which have been included at a £0 charge.
 3. The dispute has arisen since the CA consider that the retail unit (convenience store and sandwich bar) qualifies as 'Large Format' Retail Development (A1 to A5) under the adopted Charging Schedule and has issued a Liability Notice for a CIL charge in the sum of £ [REDACTED] based on a charge of £ [REDACTED] per sq.m against a chargeable area of [REDACTED] sq.m.
 4. The appellant contends that the retail unit is not liable to CIL as it does not qualify as 'Large Format' retail and should therefore be assessed at the Standard Charge of £0 applicable to all other development not separately defined within the Charging Schedule.
 5. An extract of the CA's Charging Schedule relating to CIL rates is as follows:

Residential Development ⁽¹⁾	CIL charge per m²
District-wide (Zone 1 – See Map 1)	£ [REDACTED]
Strategic Sites (Zone 2 – See Map 1)	£0
Other Development (Across the Charging Area)	CIL charge per m²
'Large format' Retail Development (A1 to A5) including supermarkets ⁽²⁾ and retail warehousing ⁽³⁾	£ [REDACTED]
'Standard Charge' applies to all development not separately defined above, including, smaller retail <u>development (A1 to A5)</u> ⁽⁴⁾ , offices, warehouses, leisure, education and health facilities (including B, C1, C2 excluding purpose built student accommodation, & D)	£0

6. All class references are to the Use Classes as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended).
7. The Charging Schedule does not define 'Large Format' Retail Development but defines supermarkets (or superstores) as 'shopping destinations in their own right where weekly convenience shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit'.
8. 'Smaller retail development' is stated to 'exclude developments falling within the definitions of supermarkets or retail warehouses (see above). For the avoidance of doubt, 'smaller retail development' will have a floor area for serving customers measuring up to and including 280 sq.m (Sunday Trading Act 1994).'

9. The CA has calculated that the floor area for serving customers is [REDACTED] sq.m and, being in excess of the stated 280 sq.m, it therefore considers that the shop and sandwich bar qualifies as 'Large Format' Retail Development. It has based the CIL charge on a chargeable area [REDACTED] sq.m, notwithstanding that the GIA of the building is higher.
10. The appellant's view is that the petrol filling station shop is not 'Large Format' retail development 'because it bears no resemblance to the examples given or to the types of development tested in the CIL viability evidence'. The appellant argues that if a retail property exceeds the size of a 'smaller retail development' then it does not necessarily fall as being a 'Large Format' retail development. The standard charge of £0 should be applicable in this case as it applies to everything that is not 'Large Format' and the property in question is not 'Large Format' in the view of the appellant.
11. At my request both parties have made further representations detailing their view of the Use Class applicable to the petrol filling station (if any) and their view as to whether the retail area (convenience store and sandwich bar) falls as a separate development with its own use or is an ancillary use incidental to the use as a petrol filling station.
12. Both parties are in agreement that the petrol filling station has a 'Sui Generis' use and as such does not fall within any of the Use Classes as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended).
13. The appellant has submitted a copy of the Planning Statement and a Sequential Test note in support of the view that the shop and sandwich bar are ancillary to the main function of the site, which is to provide fuel sales and use as a petrol filling station. As petrol filling stations are Sui Generis, and are not listed in the CA's charging schedule as chargeable development, the appellant is of the opinion that a nil charge should apply.
14. The CA is of the opinion that, whilst ordinarily a petrol station is a sui generis use, in this instance the convenience store and sandwich bar were clearly listed separately on the description of development and not described as ancillary. In support of this view the CA states that that the planning officer's report considered the retail element to be of such a scale which required a sequential test in accordance with the National Planning Policy Framework and [REDACTED] Policy Framework Policy 13.
15. Having reviewed the evidence and arguments of both parties I consider that the site has a 'sui generis' use and that the shop and sandwich bar are ancillary to the petrol filling station use. I do not consider that the separate listing of the sandwich bar and convenience store within the description of development confirms that they are a separate primary use. The actual wording is 'erection of petrol filling station with convenience store and sandwich bar, car wash, and car parking;' which contrasts with the 'motorcycle showroom and workshop with associated car parking' and the 'flexible employment space' which are both separated by semi-colons within the description and would have a separate use in this mixed use application.
16. I also note that paragraph 2.4.1 of the applicant's planning statement referred to this part of the development as follows: 'The proposal is to develop a motorist's service station including full fuel service (petrol, diesel and electric) along with ancillary retail facilities providing food on-the-move and drink facilities to motorists using both the [REDACTED] and the [REDACTED].' This clearly refers to the retail facilities as ancillary.
17. The CA has referred to the planning officer's report in support of its argument. This document has not been submitted but since it is a publicly available document that has been referred to within representations I have considered it appropriate for me to review it on line. The CA notes that when the planning officer assessed the scheme she considered it of a scale which required a sequential test in accordance with the National

Planning Policy Framework and [REDACTED] Policy Framework Policy 13. The CA also notes that the planning officer's report identified the development as being a CIL liable development.

18. I do not consider that the sequential testing requested by the planning officer to be of relevance in the consideration of the planning use of the petrol filling station site. The appellant has submitted a note prepared following a meeting with planning officers on [REDACTED] which reviewed potentially sequentially preferable sites in relation to the petrol filling station. The note makes it clear that sequential testing is not required as petrol filling stations are not mentioned in the [REDACTED] list of town centre uses that require testing. Furthermore reference was made to the Secretary of State's interpretation of the application of the sequential test at [REDACTED], ([REDACTED]) which concluded that individual components of schemes should not be subject to disaggregation. It is the appellant's view that in the subject case, the Secretary of State's interpretation of the sequential test would mean that the retail element of the scheme (the [REDACTED] convenience store / sandwich bar) should not be separated out from the rest of the petrol filling station because they are an integral part of it. The applicant therefore considered that the proposed development should not have been the subject of the sequential test as a point of principal, however, in order to demonstrate a thorough and flexible approach to the consideration of the scheme the applicant did undertake the testing as requested. The Secretary of State's interpretation in relation to the disaggregation of uses is in relation to the sequential testing but nevertheless I consider that it is reasonable that the same principal be applied in consideration of the use of the site for CIL purposes bearing in mind the Charging Schedule in place in this instance.
19. I note that the Planning Officer report does identify the development as being CIL liable but I also note that in paragraph 1.3 of the report in relation to the description of the development she states 'Full planning permission is sought for the PFS and ancillary convenience shop / sandwich shop, as well as the motorcycle showroom and workshop.' This confirms the ancillary nature of the convenience shop / sandwich shop.
20. The petrol filling station site, to include the ancillary convenience shop and sandwich shop, therefore has a 'sui generis' use and, in accordance with the CA's Charging Schedule, will fall to have a CIL charge of £0 per sq.m since it is not residential development or 'Large format' retail development (A1 to A5).
21. On the basis of the evidence before me and having considered all of the information and evidence submitted in respect of this matter, I therefore determine a CIL charge of £0 (Nil).

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