

Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency

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

Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED]

Proposal: Construction of 6 no. Studio/1 bedroom flats on third and fourth floors above existing three storey retail/restaurant building. Refurbishment of existing building. Provision of new cycle store and bin store.

Location: [REDACTED]

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], acting as agents for [REDACTED] of [REDACTED] (the Appellant) and by the collecting authority [REDACTED] (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
 - a) Planning decision ref [REDACTED] dated [REDACTED];
 - b) Approved planning consent drawings, as referenced in planning decision notice;
 - c) CIL Liability Notice [REDACTED] dated [REDACTED];
 - d) CIL Appeal form dated [REDACTED], including covering letter and appendices;
 - e) Representations from CA dated [REDACTED]; and
 - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for '*Construction of 6 no. Studio/1 bedroom flats on third and fourth floors above existing three storey retail/restaurant building. Refurbishment of existing building. Provision of new cycle store and bin store*'.
3. The CA issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m² at the 'Residential Zone 3' rate of £[REDACTED] /m² plus indexation at [REDACTED].
4. The Appellant requested a review under Regulation 113 on [REDACTED] suggesting a GIA of [REDACTED] m² and a CIL charge of £[REDACTED]. The CA responded on [REDACTED], confirming their opinion that the CIL liability notice was correct.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m² at a base rate of £[REDACTED] /m² and indexation at [REDACTED]. The revised floor area reflects the Appellants acceptance that the stairwell should be included within the GIA (which they had initially contested).
6. The appellants grounds of appeal can be summarised as follows:
 - a) The GIA calculation carried out by the CA is incorrect as it includes external private balconies and covered ways;
 - b) The balconies on the top floor flats are recessed from the face of the building but are open sided and sit under a roof overhang, which does not form part of the main structure of the development. They should therefore be considered 'external open-sided balconies' and excluded from the GIA in accordance with the RICS Code of Measuring Practice;
 - c) The walkways that allow access from the communal external stairways to the front door of each property should be considered 'covered ways' and excluded from the GIA in accordance with the RICS Code of Measuring Practice; and

- d) The access walkways act as fire escapes, which are also excluded from the definition of GIA within the RICS Code of Measuring Practice.

7. The CA has submitted representations that can be summarised as follows:
 - a) The GIA has been measured in accordance with the RICS Code of Measuring Practice 6th Edition;
 - b) The balconies and walkways on the third and fourth floor area recessed and considered to fall under the definition of 'Internal open-sided balconies, walkways and the like.' They should therefore be excluded from the GIA; and
 - c) The access walkways do not fall under the Oxford Dictionary definition of 'Fire Escape' and so should not be excluded from the GIA.
8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This calculation is based on the "gross internal area of the chargeable development."
9. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice definition is used. GIA is defined as "the area of a building measured to the internal face of the perimeter walls at each floor level." The areas to be excluded from this are 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; and greenhouses, garden stores, fuel stores and the like in residential property. The definition of GIA explicitly includes "internal open-sided balconies, walkways and the like."
10. The appellant and the CA disagree over whether the balconies and walkways should be defined as "internal" or "external" and therefore whether they should be included or excluded from the GIA. The parties have provided examples of two separate VOA decisions, which they consider to support their argument.
11. One of these decisions concludes that if a balcony does not protrude from the external walls of a building and is surrounded by the main structure of the building with an open front, then this is an internal balcony. If it is attached or constructed to protrude from an external wall this would be external. The other decision concludes that recessed balconies should be included within GIA.
12. I have considered the proposed elevation plans (ref [REDACTED]) and floor plans (ref [REDACTED]), as approved by the planning decision notice. I note that the fourth floor balconies sit above the floor below and are enclosed by the flat roof above and I therefore consider that they lie within the footprint of the building and should accordingly be classified as "internal."
13. The access walkways on the third and fourth floor do not appear to sit beneath the roof of the building and although they sit above included floor space on the ground floor, they appear from the elevation plans to sit outside of the main structure of the upper floors. I therefore consider, based on the circumstances of this case, that the access walkways should be excluded from the GIA calculation.

14. I have calculated my GIA by scaling the approved plans [REDACTED] and [REDACTED]. My figures can be summarised as follows:

Floor	Appellant	CA	VOA
Third	[REDACTED]	[REDACTED]	[REDACTED]
Fourth	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]

15. I have calculated the CIL charge based on a net chargeable area of [REDACTED] m² at a rate of £[REDACTED] /m² at an indexation rate of [REDACTED].

16. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED] ([REDACTED]).

[REDACTED]

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Valuation Office Agency

[REDACTED]