

Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency

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Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED]

Proposal: Change of use of part ground floor night club to create a flat's entrance. Construction of new second, third and fourth floors to create 9 x 1 bedroom flats, new lift shaft, access balconies, bin stores and cycle stores.

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] and amended 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 'Change of use of part ground floor night club to create a flat's entrance. Construction of new second, third and fourth floors to create 9 x 1 bedroom flats, new lift shaft, access balconies, bin stores and cycle stores'.
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]. The chargeable area was based on a total development area of [REDACTED] m² less [REDACTED] m² of floor area in existing use.
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], providing a revised chargeable area of [REDACTED] m², based on a total development area of [REDACTED] m² less [REDACTED] m² of floor area in existing use.
5. The CA issued an amended liability notice on [REDACTED] in the sum of £[REDACTED] based on a chargeable area of [REDACTED] m² at the 'Residential Zone 3' rate of £[REDACTED] /m² plus indexation at [REDACTED].
6. 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 lift shaft should be included within the GIA (which they had initially contested).
7. 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 should be considered 'external open-sided balconies' and excluded from the GIA in accordance with the RICS Code of Measuring Practice.

- c) The covered ways that allow access from 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.
 - d) The access walkways also act as fire escapes, which are also excluded from the definition of GIA within the RICS Code of Measuring Practice.
 - e) The ground and first floors should not be included within the GIA of the development. They do not form part of the development as the proposal sits atop these storeys, with conversion of [REDACTED] m² of ground floor nightclub (providing the stair and lift access). The existing development has been excluded on the adjoining site, which is the subject of a separate CIL appeal (ref [REDACTED]).
8. 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 are 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.
 - c) The walkways do not fall within the definition of 'fire escape' which is defined by the Oxford dictionary as '*a staircase or other apparatus used for escaping from a building on fire.*' Therefore, they should not be excluded on this ground.
 - d) The existing floor space has been included in line with Schedule 1 of the Community Infrastructure Levy Regulations 2010 (as amended). The existing areas have been accepted as 'in use' so this inclusion has no impact on the resulting liability.
9. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."
10. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. The approved plans within the relevant permission (ref [REDACTED]) include all floors of the building and I consider that the chargeable development includes the whole building. The CA have accepted all of the existing building as "in use" and offset this against the proposed development.
11. 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."
12. 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.

13. 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.
14. I have considered the proposed elevation plans (ref [REDACTED] and [REDACTED]) and floor plans (ref [REDACTED] and [REDACTED]), as approved by the planning decision notice. I note that the fourth floor balcony sits above the floor below and is enclosed by the flat roof above and I therefore consider that it lies within the footprint of the building and should accordingly be classified as "internal."
15. The appellant has stated that the access walkways are fire escapes and could be excluded from the definition of GIA on this ground, or as "covered ways". The definition states that "External open-sided balconies, covered ways and fire escapes" are excluded. I therefore consider that fire escapes and covered ways are only excluded if they are considered to be external.
16. The plans state that the access walkways will be enclosed beneath the roof of the building and they appear to sit within the main structure of the upper floors. I therefore consider, based on the circumstances of this case, that the access walkways should be included in the GIA calculation.
17. I have therefore adopted the GIA calculations used by the CA in their revised liability notice. I have based my assessment on a net chargeable area of [REDACTED] m² at the 'Residential Zone 3' rate of £[REDACTED]/m² plus indexation at 1[REDACTED].
18. 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]