Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency - DVS
Wycliffe House
Green Lane
Durham
DH1 3UW

e-mail: [redacted] @voa.gov.uk.

Appeal Ref: 1779549

Planning Permission Reference: [redacted]

Location: [redacted]

Development: The erection of 22 dwellings following demolition of former school buildings and dwelling.

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 [redacted] (the Appellant) and [redacted] as 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 Permission reference [redacted] for application reference [redacted] issued on [redacted].
   b. CIL Liability Notice reference [redacted] issued by the CA dated [redacted] at £[redacted] CIL liability.
   c. The Appellant's request for a Regulation 113 review dated [redacted].
   d. The CA's confirmation of CIL Liability in their Regulation 113 review outcome issued [redacted].
   e. The amended CIL Liability Notice reference [redacted] issued by the CA dated [redacted] at £[redacted] CIL liability.
   f. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
   g. The CA's representations to the Regulation 114 Appeal dated [redacted].
   h. Further comments on the CA's representations prepared by the Appellant and dated [redacted].

i. Floor plans of the proposed development annotated with Gross Internal Floor area (GIA) dimensions provided by the Appellant on [redacted] in response to the Appointed Person's request.
j. The CA's comments on the floor plans of the proposed development in relation to the calculation of GIA dated [redacted].

2. Planning Permission for application reference [redacted] was granted on appeal on [redacted] under reference [redacted] for "*the erection of 22 dwellings following demolition of former school buildings and dwelling*".

3. The CA issued CIL Liability Notice reference [redacted] on [redacted] with CIL Liability calculated thus:-

   Chargeable Area [redacted] *m2 @ £*[redacted] */m2 x Index* [redacted] *= £*[redacted] *CIL Liability*

   There was no off-set for existing buildings within this calculation.

4. On [redacted] the Appellant requested a Regulation 113 review of the chargeable amount from the CA.

5. On [redacted] the CA issued the outcome of its Regulation 113 review of the CIL Liability calculation and amended the GIA of the proposed development to [redacted] m2, which was slightly higher than previously calculated.

6. The CA noted that the relevant period for at least six months of continuous lawful use would be [redacted] to [redacted]. They agreed there was sufficient evidence for the building known as [redacted] to be classified as a lawful 'in-use' building' and agreed the GIA of [redacted] m2 should be off-set against the total GIA of the proposed development for CIL purposes. The CA further considered however that they did not have sufficient information, or information of sufficient quality, to enable them to establish that the main school building qualified as lawful in-use buildings.

7. The CA issued a revised CIL Liability Notice reference [redacted] on [redacted] with CIL Liability calculated thus:-

   Total Development GIA [redacted] *m2*
   Less
   Existing in-use buildings GIA [redacted] *m2*
   = Chargeable Area [redacted] *m2 @ £*[redacted] */m2 x Index* [redacted] *= £*[redacted] *CIL Liability*

8. A Regulation 114 Appeal dated [redacted] was submitted to the Valuation Office Agency and received on [redacted].

9. The Appeal is made on the following grounds:-

   i) *the CA has incorrectly measured GIA as per the RICS Code of Measuring Practice (6th edition), and*
   ii) the CA has not off-set the existing GIA of the main school building

10. Under appeal ground 1) the Appellant argues that the GIA of the proposed development is [redacted] m2 whilst the CA has measured it to be [redacted] m2.

11. Under appeal ground ii) the Appellant argues that the GIA of the main school building at [redacted] m2 qualifies as an 'in-use' building' for CIL purposes and should be off-set against the GIA of the proposed development when calculating the CIL Liability.

12. Both parties agree that [redacted] can be classified as an 'in-use' building for CIL purposes and that the GIA of [redacted] m2 should be off-set against the GIA of the proposed development when calculating the CIL Liability.

13. **With regards to appeal ground i) The GIA of the proposed development**: The CA's view is that in accordance with The RICS Code of Measuring Practice (6th Edition) party walls should be included in GIA where buildings are formed of multiple dwellings, as The Code states "*Areas occupied by internal walls and partitions*" should be included in GIA. They note that the Appellant's annotated floorplans show the GIA of each dwelling/plot rather than the complete floor level for each building, which is contrary to The Code.

14. The Appellant responds that The Code states, when measuring GEA (Gross **External** Area), that "*Party Walls – in shared ownership are to be measured to their central line….*" Therefore they argue that The Code recognises that party walls are in effect perimeter walls and when measuring to GEA one would measure up to the central line. They argue that it must therefore follow that when measuring to GIA (Gross **Internal** Area) Party Walls are also treated as perimeter walls and the GIA should be measured to the internal face of the party walls at each floor level.

15. The CA also argues that The Code requires that "*columns, piers, chimney breasts, stairwells, lift wells, other internal projections, vertical ducts, and the like*" should be included in GIA measurements. Accordingly, the CA consider they have correctly included the fireplaces and chimney breasts shown on the approved floorplans in their GIA calculation.

16. The Appellant disagrees that fireplace recesses should be included and argues that a fireplace recess is not a chimney breast that projects internally within the internal face of the perimeter wall. A fireplace recess which projects externally beyond the internal face of an external wall should not be included when calculating GIA as The Code states under 2.18 that perimeter wall thicknesses and external projections are excluded. The Appellant asserts that a fireplace recess is therefore within the perimeter wall thickness and is an external projection and should therefore be excluded from the GIA.

17. The CA also argues that The Code states that all areas, regardless of headroom, should be included in GIA measurements. They hold the view that the floor area occupied by the bay windows should be included in GIA, stating "*Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at each floor level*" and therefore they consider that the face of the perimeter wall begins at the point of the window frame.

18. The Appellant argues that a 'projecting bay window' (often termed an "oriel window") is an external projection beyond the internal face of the internal perimeter wall which does not extend to floor level. Therefore, they assert that it should be excluded from the GIA calculations. They also argue that a 'standard window frame' which is sited within the perimeter wall should be excluded from the GIA calculations, as it does not extend to floor level and projects beyond the internal face of the perimeter wall. They argue that The Code clearly defines that when measuring "*GIA is measured to the internal face of the perimeter walls at each floor level*", and they disagree with the CA's view that the face of the perimeter wall begins at the face of the window frame. The appellant argues that The Code clearly states in note GIA 4 "*Internal face – means the brick/block work or plaster coat applied to the brick/block work*".

19. The Appellant notes that a projecting bay is where the perimeter wall projects beyond the internal face of the main perimeter wall, forming a multi-sided projection that extends to floor level. They reason that a projecting bay is different to a projecting bay (oriel) window, the key difference being that a projecting bay (oriel) window does not extend to floor level. A projecting bay does extend to floor level however, and therefore they agree

it would be correct to include the area up to the internal face of the perimeter wall of the projecting bay within the GIA Calculations.

20. The CA notes that The Code excludes canopies from GIA, but the Appellant has excluded all porches from their measurements. The CA disagree with this approach, as some of the porches are more substantial than a 'canopy' and are bounded by more than two walls and therefore result in measurable floorspace: for example, Plots 10 and 11. Where this is the case, the CA have included the porch areas within the GIA measurements.

21. The Appellant disagrees and argues that porches are an external feature and are not only external to the perimeter walls, but also are external projections. The porches of the approved drawings are open on at least one side and therefore cannot be considered internal. They argue that The Code states:

    (2.18) (Excludes) Perimeter wall thicknesses and external projections
    (2.20) (Excludes) Canopies.

    The Appellant asserts that porches should be treated as canopies, as both serve the same purpose and provide protection to an entrance to a building. Due to the open nature of porches the area cannot be measured as GIA when measured at floor level, as there is no perimeter wall on at least one side to measure to. Furthermore, supporting posts, dwarf/full height walls are external projections which the code excludes from GIA.

22. For all the above reasons the Appellant disagrees with the CA's interpretation and application of The Code and asserts that the CA's GIA calculation of [redacted] m2 is incorrect. The Appellant proposes that their GIA calculation of [redacted] m2 is a fair and accurate interpretation and application of The Code. The Appellant's calculations of the GIA have been prepared using the original digital (CAD) based drawings and a digital polyline method to calculate the resultant GIA (as opposed to measuring paper or pdf copies, which they believe is less accurate, and was the approach taken by the CA).

23. Regarding internal walls and partitions, The RICS Code of Measuring Practice 6th Edition section 2.1 states that areas occupied by internal walls and partitions should be included in GIA. Furthermore, Note GIA 2 - Separate buildings - further states that "*GIA excludes the thickness of perimeter walls, but includes the thickness of all internal walls. Therefore it is necessary to identify what constitutes a separate building*".

24. The RICS Code of Measuring Practice sets out the method of calculating GIA but it does not give guidance on what is to be measured for CIL purposes. As Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – Standard cases - 1 (3) refers to the GIA of "*the chargeable development*" this would in my opinion point to calculating the GIA of the whole development, treating the two halves of each semi-detached dwelling and the four self-contained apartments in each block as one building in each case, and thus treating a party wall as an internal partition to be measured through for GIA purposes.

25. The Appellant's reference to the measurement of Gross External Area (GEA) is noted, but Gross Internal Area (GIA) is the measurement method being applied here and any interpretation of / guidance on the application of GEA is therefore of no relevance.

26. Regarding whether fireplaces and chimneybreasts should be included within GIA, The RICS Code of Measuring Practice 6th Edition (May 2015) 2.0 defines GIA as the "*area of a building measured to the internal face of the perimeter walls at each floor level*" with further reference to Note GIA 4 regarding what is meant by "*internal face*" and states GIA:

    Includes:-
    - *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*

Excludes:-

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

27. The RICS Code specifically excludes "*external projections*", and "*External open-sided balconies, covered ways and fires*" and in my opinion this would apply to externally projecting fireplace recesses, which must therefore be excluded from the GIA.

28. Similarly, with regards to a projecting bay (oriel) window, the fact that such structures do not continue down to floor level and are a form of external projection corresponds with those areas of a building specifically excluded from GIA in The RICS Code as being "*external projections*". As such, it is my opinion that projecting bay / oriel windows should be excluded from GIA.

29. Regarding the matter of whether porches should be included within GIA, it is noted by both parties that The RICS Code only specifically excludes "*Canopies*", and the Appellant has argued that a porch fulfils the same purpose as a canopy and is also a form of "*external projection*" and as such should be excluded from GIA.

30. Porches are not specifically mentioned as being either included or excluded from GIA in The RICS Code, but it does include an example at [redacted] illustrating how to calculate the GIA of a loading bay by measuring to the internal face of a supporting pillar. This loading bay has walls to three sides and is open sided to the front. This example indicates that it is possible to measure GIA to the inside face of a supporting pillar in the absence of a wall. This would also imply that a loading bay would define some form of boundary. Having an area within a boundary does not require walls but only a structure of some kind that can provide a recognisable form of "boundary". This would seem to be supported by example [redacted] *D*, and it is therefore my opinion that the same approach can be applied to the measurement and inclusion of a porch within the GIA.

31. It is therefore my view that neither the CAs or Appellants' GIA calculations have correctly applied The RICS Code.

32. The Appellant's GIA of [redacted] m2 incorrectly excludes the thickness of internal walls and partitions within individual pairs of semi-detached houses and individual blocks of four

self-contained apartments, which must be included in GIA as being part of "*the chargeable development*" which would in my opinion be the GIA of the whole building in each case. Similarly, their GIA calculation incorrectly excludes porches, which in my opinion should be included within GIA.

33. The CA's GIA of [redacted] m2 incorrectly includes externally projecting fireplace recesses and projecting bay (oriel) windows, which in my opinion must be excluded from GIA due to their being "*external projections*".

34. The difference in measured area between the CA's and Appellant's GIAs equals [redacted] m2. This is partly due to the incorrect inclusion of externally projecting fireplace recesses and projecting bay (oriel) windows within the CA's GIA of [redacted] m2.

35. From a review of the plans, the areas to be deducted are:-

    Projecting fireplace recesses: [redacted] m2 total
    Projecting bay (oriel) windows: [redacted] m2 total
    Total: [redacted] m2

36. Therefore the correct GIA of the proposed development is:-

    [redacted] m2 (as per the CA's calculation of GIA)
    Less
    [redacted] m2 (total GIA of the projecting fireplace recesses and projecting bay (oriel) windows)
    = [redacted] m2 GIA of the proposed development

37. **With regards to appeal ground ii) Whether the main school building is a relevant in-use building**: The Appellant considers that the main school building should be deducted as part of the calculation of the chargeable amount, and refers to Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) which defines an "*in-use building*" as a building which:

    > *(i) is a relevant building (i.e. one which is situated on the relevant land on the day planning permission first permits chargeable development);*
    > *And*
    > *(ii) which contains a part that has been "in lawful use" for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development.*

38. In accordance with the above, the relevant period of "*at least six months*" of continuous lawful use would fall within the three year period [redacted] to [redacted].

39. The Appellant has provided a range of documentation regarding the use of part of the main school building:-

    A. Licence to Occupy ([redacted])
    [redacted] are permitted to occupy the area edged in red on Plan 2 for "*two and half hours on a Tuesday and Thursday or each week*" for and area edged in red on Plan 2, which is contained within the west of the main school building. The 'Licence to Occupy' gave the [redacted] the ability to use part of the main school building for up to five hours each week.

    The CA remain of the view, however, that they have not been presented with any evidence that this licence was actually pursued on a weekly basis.

    B. Statement from [redacted] (The Appellant and Director of [redacted])
    This states that the main school building has been in-use for a continuous period from the [redacted] until the [redacted] by [redacted].

C. Email from [redacted] (Former Projects Coordinator - [redacted])
A statement from Jill Cobbett dated [redacted] confirms the [redacted] were in occupation from [redacted] to [redacted].

D. Email from [redacted] (Former resident of [redacted])
A statement from [redacted] (tenant and occupier of the [redacted]) dated [redacted] confirms he witnessed the [redacted] using the school hall from [redacted] to [redacted].

E. Letter from [redacted] (Director and President of [redacted])
[redacted] has set out a statement which outlines the [redacted] programme of rehearsals and performances.

The CA note there is no reference within this letter to these rehearsals or performances occurring within the hall of the main school building, with the exception to a reference to "*some principal rehearsals in preparation for the* [redacted] *production*", which was presented at [redacted] from [redacted] to [redacted]. The CA comment that as the performance was located at a different venue, this infers that rehearsals may have taken place within the period of 3rd September and [redacted], but it is not clear how many or the dates on which they took place within the hall of the main school building. The CA also note the letter also states that "*Following the* [redacted] *performance, some additional fitness rehearsals commenced on Saturdays at* [redacted] *for the next scheduled production of 'L*[redacted]", but they consider the evidence given does not provide details on the dates or regularity of these rehearsals.

F. Non-Domestic Rating Bills
The Appellant argues that the payment of non-domestic rates for period of ownership to date is consistent with the owner maintaining the building, meeting its obligations, and not abandoning any use of the building.

The CA argue that the payment of non-domestic rates does not help to demonstrate that the building qualifies as 'in-use'.

G. Electricity and Gas Bills
The Appellant argues that utility bills demonstrate that a live electrical service was available during the 'in lawful use' period, therefore demonstrating that the [redacted] was fit for purpose.

The CA argue that the utility bills provided do not align with the appellant's 'in-use' time period and therefore do not help to support that the main school building qualifies as an 'in-use' building.

40. The CA argue that none of the information provided gives evidence as to dates of when the [redacted] actually used the hall during the period [redacted] to [redacted]. The CA has searched the [redacted] website and have found no reference to the hall of the main school building at [redacted] being used as one of its regular venues; other venues (e.g. [redacted], [redacted]) are referenced throughout its website. They reason that whilst it is acknowledged there was an ability for the hall to be used as a result of the 'Licence to Occupy', this does not necessarily mean the building was actually 'used'.

41. The CA note that the Financial Viability Assessment ([redacted]) produced by the Appellant confirmed that the property was vacant, and that site visits undertaken by the CA since the submission of [redacted] (25 Unit Scheme) in [redacted] have shown the buildings to be boarded up and secured by fencing.

42. The Appellant argues that this Financial Viability Assessment was submitted as part of the planning process, where the report stated the property was vacant. The purpose of report was to assess the financial viability of the site and whether the proposed development could support on site affordable housing, quoted as follows:

The Property comprises a former period house which had been converted for school use. Over the years a number of extensions and new buildings had been added including the [redacted] building (a pre-fabricated classroom block), a single storey nursery building and a two storey detached [redacted]. The school has now closed and the Property is vacant, although, it is assumed this would not restrict the Property from being reinstated as a school or similar use in the future.

43. The Appellant argues it is clear the report text was merely providing an overview of the property for the purposes of assessing the financial viability in respect of on-site affordable housing, and that such reports are desktop based, with no site visit required of the author. They also argue that site visits conducted by the CA in [redacted] showing the building boarded up and with secure fencing pre-date the licence to occupy ([redacted]) and are therefore not relevant.

44. The CA has provided internet links and photographs to help show the state of dereliction within the main school building. Images in Appendix 3 of their submission show the school hall boarded up and in a state of disrepair, although these images are outside of the relevant period of occupation by [redacted] referred to by the appellant ([redacted] until [redacted]). Both [redacted] and [redacted] have stated that had it not been for the National Lockdown due to covid-19 the [redacted] would have continued to utilise its 'Licence to Occupy'. However, given these images the CA has some doubts about whether use could have continued.

45. The Appellant comments that the school hall images are dated [redacted] and [redacted] along with a further image dated [redacted]. Whilst within the three year qualifying period, these images were captured after the lawful in-use period had ended. The Appellant therefore argues that both images are not relevant to the subject CIL appeal as they do reflect the condition of the property at the relevant times.

46. The CA also refer to the [redacted] Bat Report (Appendix 4) which show photographs of the school buildings boarded up, but the Appellant notes the report pre-dates the beginning of the three year qualifying period by at least one year, and also was provided prior to the grant of the licence to occupy by [redacted] by approximately two years. The Appellant therefore argues that the Bat Report is not relevant to the subject appeal.

47. The internet link provided by the CA to "[redacted]" dated [redacted] is within the three year qualifying period ending on the day planning permission was first permitted, but pre-dates the grant of the licence to occupy by [redacted] which commenced [redacted]. The Appellant therefore argues this information is not relevant to the period of occupation and the continued lawful use by the [redacted].

48. The internet links provided by the CA entitled "[redacted]" dated [redacted] and "[redacted]" also dated [redacted] are both dated after the three year qualifying period ended. Both links are also dated some sixteen months after the lawful in-use period ended, and the Appellant therefore argues this information is not relevant to the subject CIL appeal.

49. In accordance with Schedule 1(1)(8), the CA remain of the view that they do not have sufficient information, or information of sufficient quality, to enable them to establish that the main school building is an "in-use building" for CIL purposes.

50. The Appellant argues that they have provided various documents / statements / evidence to show that the [redacted] entered into a licence to occupy school hall from the [redacted] and that [redacted] President [redacted] has confirmed they first used the facility on vand continued to use the school hall until the [redacted] when Central Government imposed a covid19 National Lockdown. They argue they have demonstrated a continuous lawful in-use period of six months from [redacted] to [redacted].

51. The Appellant also states that their appeal representations show there was a specific process making the school hall 'fit for purpose' prior to the granting of the licence to occupy to [redacted] from [redacted]. As indicated in [redacted]'s statement, the boarding up of the school and fencing the main part of the school were undertaken to protect the property and did not prevent use of the school hall by the [redacted], and the fencing was adjusted to provide access to the school hall, including a fire escape route to the rear. This is further explained in the statement by [redacted] which explains how the hall was made ready and suitable for use by [redacted] [redacted].

52. The Appellant notes that [redacted] used the school hall for rehearsals, not their actual public productions, and the venue for a rehearsal would not be publicly advertised on the [redacted] website, whereas a production venue such as [redacted] or the [redacted] would be publicised in order to attract the public to attend the show. The Appellant argues the fact that [redacted] made use of the school hall is established through the statements submitted and the CA do not appear to have evidence contradicting this.

53. The Appellant proposes that CIL Liability should be calculated on the basis of:-

Chargeable development GIA [redacted] *m2*
Less
Existing GIA – main school building [redacted] *m2*
Existing GIA – headmasters house [redacted] *m2*
= Chargeable GIA [redacted] *m2*
@ £[redacted] */m2*
X Indexation [redacted]
= £[redacted] *CIL Liability*

54. The CA has measured the proposed GIA as [redacted] m2. In calculating the chargeable area, the CA has off-set the existing [redacted] m2 GIA of the "Headmasters House" in accordance with Schedule 1 of the CIL Regulations 2010 (as amended). As such the chargeable area is [redacted] m2.

55. In accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) the CA calculate CIL Liability to be:

(A) [redacted] *x (R)* [redacted] *x (Ip)* [redacted]
(Ic) [redacted]

= £[redacted] *CIL Liability*

Where*:*
- *R is the CIL rate in £/sqm*
- *A is the net increase in gross internal floor area (sqm)*
- *Ip is the All-in Price Index for the year in which planning permission was granted*
- *Ic is the All-in Price Index for the year in which the charging schedule started operation*

56. Disagreement surrounding the issue of identifying the lawful in-use buildings has arisen from Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or off-set of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.

57. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) 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.

58. Part 1 – standard cases – 1 (10) also provides that "*relevant building*" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

59. The main school building, of which the school hall was a part, closed in [redacted] and the Licence to Occupy by [redacted] was granted in [redacted]. The relevant period of continuous lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended) is [redacted] to [redacted]. This licence appears to be a legitimate Licence Agreement, albeit for a nominal £[redacted] per week which suggests either it is not a genuine commercial arrangement or the Licensor is being community minded. Whatever the intentions, this document alone does not prove that the property was in-use for the required period of time.

60. The statement from [redacted] states that part of the main school building was used from the [redacted] until the [redacted] by [redacted] - a period of over six months. The statement from [redacted] confirms t[redacted] were in occupation from [redacted] to [redacted] – a period of eight months. The statement from [redacted] confirms he witnessed [redacted] using the school hall from [redacted] to [redacted] – a period of just over ten months. The commonly agreed period of occupation by [redacted] between these three statements is therefore [redacted] to [redacted], with one statement suggesting occupation as early as [redacted] and another statement suggesting occupation as late as [redacted], although covid19 rules prevalent at the time would have prevented attendance by groups at that time.

61. [redacted] `s statement mentions advertising the building for use in the local press as well as carrying out remedial works to make it fit for use. She does acknowledge that the windows were boarded up and vandalism had occurred, but this had been rectified by installing new glass at the higher level and retaining the boarding to the lower windows, which might explain why the building still looked boarded up and derelict from the outside. M[redacted] also ensured fire safety measures were in place. This document alone does not prove that the property was in-use for the required period of time however.

62. The Statement of [redacted] suggests that he saw cars parked by the property and members of [redacted] entering the property on several occasions, "approximately twice a week" from [redacted] to [redacted]. In this respect I note [redacted] claims to have seen [redacted] using the hall more frequently than [redacted] have indicated that they actually used it. Whilst this may indicate use of the property had occurred, [redacted] could not be sure the visitors were from [redacted], and they could just as easily have been employees of [redacted] inspecting/maintaining the property. Once again, this document alone does not prove that the property was in-use for the required period of time.

63. The statement from [redacted] confirms that [redacted] entered into an agreement (licence to occupy) with [redacted] on [redacted] to use the school hall and supporting welfare facilities at the property known as [redacted], [redacted], [redacted] for training in dramatics and rehearsals. The Licence to occupy commenced on the [redacted]. He further advises that [redacted] used the school hall for some principal rehearsals from [redacted] in preparation for the [redacted] production (held elsewhere) from [redacted] to [redacted], following which some additional fitness rehearsals commenced on Saturdays for the next scheduled production due to be staged from [redacted]. Due to Central Government's covid19 national lockdown restrictions imposed on the [redacted] the performance was cancelled and all visits to the building ceased. This information only confirms a short period of use prior to the show in [redacted] and occasional use for fitness rehearsals afterwards, which may not alone prove an adequate use for a continuous period.

64. From the [redacted] utilities invoices provided by the Appellant, the gas invoices appear to have been for a standing charge only with no units registered as used or charged for on the invoices provided, which are based on estimated meter readings (marked "E" on the invoices). Most of the electricity invoices are based on estimated readings (marked "E" on

the invoices), but an actual reading would appear to have been taken for each of the three separate meters for the invoices produced on [redacted] and [redacted] (where there is no "E" attached to the reading figures) which show the same readings as the estimated meter readings dating from before the period of alleged use. These invoices would indicate that no gas or electricity was used over the period of use claimed. It is difficult to see how even part of the building could have been used during the relevant in-use period covering autumn/winter [redacted] without heating and lighting being used on each occasion, and even if there had been some power usage over this period this wouldn't necessarily prove 'in lawful use' as this might have related to security lighting etc.

65. Whilst the CA has some doubts about whether use of the building could have continued after the Government's covid19 restrictions were eased, the photographic images submitted to show the building's poor internal state of repair are dated [redacted] and [redacted] along with a further image dated [redacted]. As the statements from [redacted], [redacted], [redacted] and [redacted] state, occupation by [redacted] was unexpectedly stopped by the covid19 national lockdown on [redacted] before the images were taken. These images, whilst showing the building to be in poor internal repair around [redacted] onward, do not disprove that the building could have been in use some time beforehand as is indicated by the four statements.

66. Images captured for the [redacted] Bat Report were taken some two years before [redacted] licence to occupy commenced and are therefore of little relevance in establishing whether the building was in-use during [redacted].

67. The internet links with photographs of the interior of the building provided by the CA entitled "[redacted]" dated [redacted], "[redacted]" dated [redacted] and "[redacted] also dated [redacted] are all outside of the time-period covered by the [redacted] licence to occupy and are therefore of little use.

68. Although there is evidence of some potential lawful use in four statements confirming occupation of part of the building by [redacted] between [redacted] and [redacted], this must be balanced against the evidence of the utility bills which show little or no energy usage during the autumn and winter of [redacted] to [redacted] which to me is highly unlikely and so suggests that the building was not in fact subject to regular use for a continuous period at that time. Whether a property is "in use" at any time requires an assessment of all the circumstances and evidence as to the activities and the frequency of those activities that took place on it. The hall had evidently been boarded up for 3 years prior to the licence agreement to [redacted] in [redacted] and it was in poor internal condition by the time of the photograph in [redacted]. In consideration of all the evidence presented to me I do not consider that it can be concluded that the use of the hall by [redacted] for rehearsals in [redacted] and '*some'* fitness rehearsals on Saturdays thereafter constituted lawful use for a continuous 6 month period as required by Schedule 1 of the CIL Regulations.

69. It is my opinion that from all the information provided it cannot be conclusively established that part of the building was lawfully "in-use" for a continuous period within three years of the grant of planning permission on [redacted] and the "lawful use" requirement of Schedule 1 of the CIL Regulations 2010 (as amended) has not therefore been met.

70. The GIA of the main school building cannot therefore be off-set against the GIA of the proposed development.

71. Applying the corrected GIA of the proposed development, the CIL Liability is therefore to be calculated as follows:-

Proposed development GIA [redacted] *m2*
Less
Existing GIA – headmasters house [redacted] *m2*

= Chargeable GIA [redacted] m2
@ £[redacted] /m2
X Indexation [redacted]
= £[redacted] Rounded to £[redacted] CIL Liability

72. The CIL Liability is £[redacted] ([redacted]).

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
21 December 2021