## **Appeal Decision**

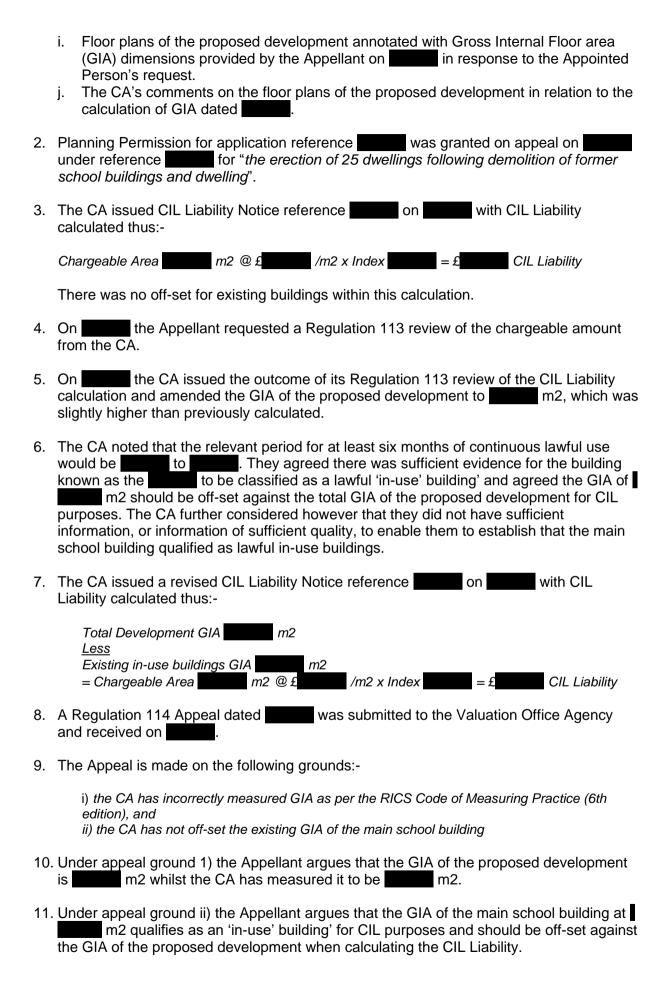


an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as Amended)

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

DH1 3UW			
e-n	nail:	@voa.gov.uk.	
Appeal Ref: 1779551			
Planning Permission Reference:			
Lo	cat	ion:	
		opment: The erection of 25 dwellings following demolition of former old buildings and dwelling.	
De	cis	ion	
l d	eteri	mine that the Community Infrastructure Levy (CIL) payable in this case should be £	
Re	easc	ons	
1.	the	ave considered all the submissions made by (the Appellant) and as Collecting Authority (CA) in respect of this matter. In particular, I have considered the formation and opinions presented in the following documents:-	
	a.	Planning Permission reference for application reference issued on	
	b.	CIL Liability Notice reference issued by the CA dated at £ CIL liability.	
		The Appellant's request for a Regulation 113 review dated.  The CA's confirmation of CIL Liability in their Regulation 113 review outcome issued.	
	e.	The amended CIL Liability Notice reference issued by the CA dated at £ CIL liability.	
	f.	The CIL Appeal Form dated submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.	
	g. h.	The CA's representations to the Regulation 114 Appeal dated	

CIL6 – VO 4003



- 12. Both parties agree that the can be classified as an 'in-use' building for CIL purposes and that the GIA of 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 m2 is incorrect. The Appellant proposes that their GIA calculation of 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:

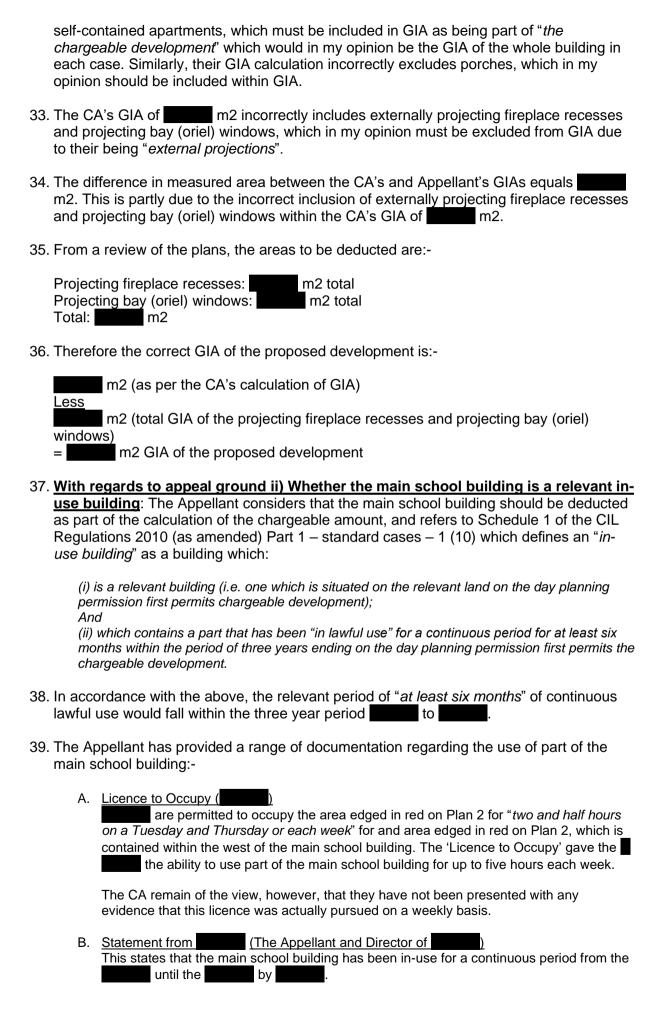
## Includes:-

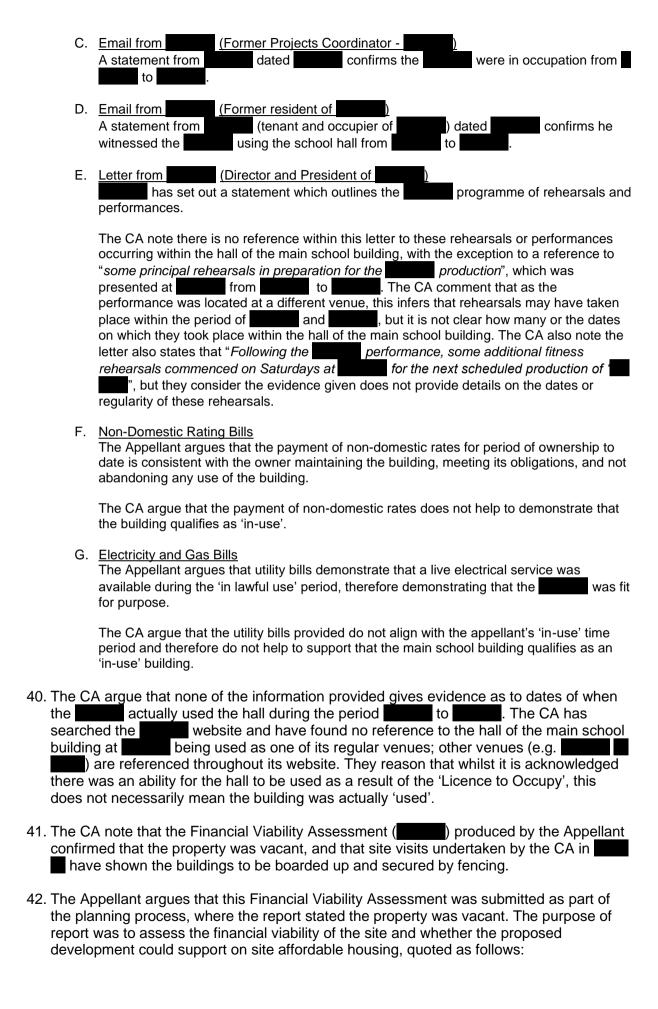
Areas occupied by internal walls and partitions

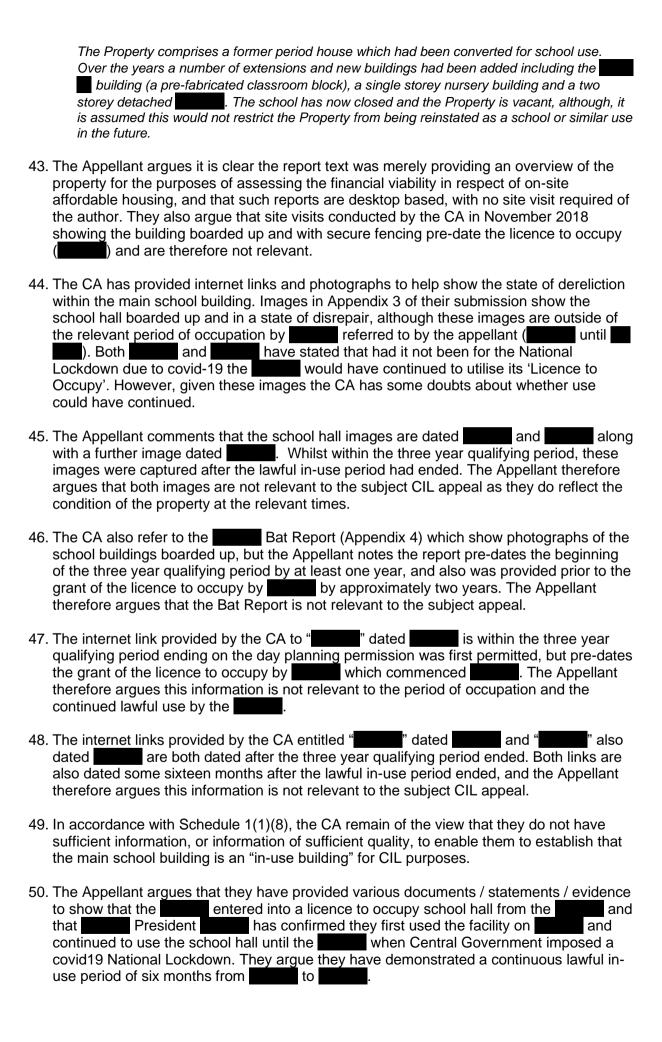
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated 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:-

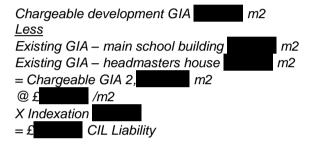
- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fires
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential property
- 27. The RICS Code specifically excludes "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 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 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 makes m2 incorrectly excludes the thickness of internal walls and partitions within individual pairs of semi-detached houses and individual blocks of four



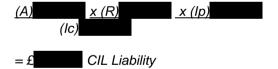




- 51. The Appellant also states that their appeal representations show there was a specific process making the school hall 'fit for purpose' prior to the granting of the licence to occupy to from . As indicated in statement, the boarding up of the school and fencing the main part of the school were undertaken to protect the property and did not prevent use of the school hall by the school hall, including a fire escape route to the rear. This is further explained in the statement by which explains how the hall was made ready and suitable for use by The
- 52. The Appellant notes that The used the school hall for rehearsals, not their actual public productions, and the venue for a rehearsal would not be publicly advertised on the website, whereas a production venue such as contract the public to attend the show. The Appellant argues the fact that The 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:-



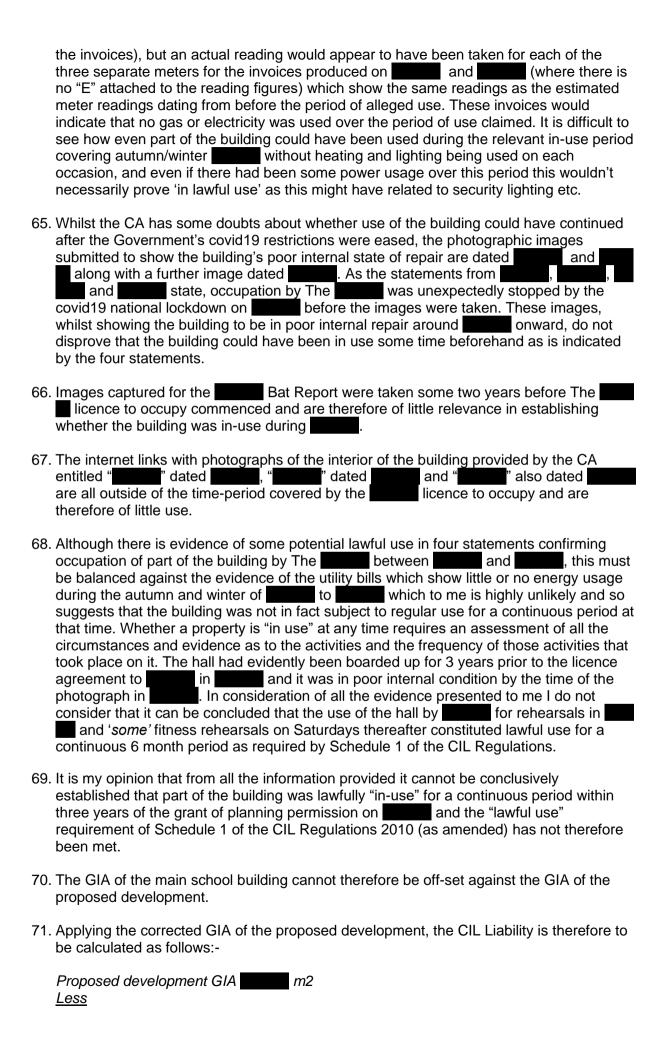
- 54. The CA has measured the proposed GIA as area, the CA has off-set the existing area m2. In calculating the chargeable m2 GIA of the "Schedule 1 of the CIL Regulations 2010 (as amended). As such the chargeable area is m2.
- 55. In accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) the CA calculate CIL Liability to be:

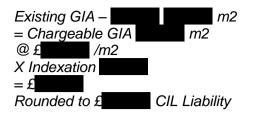


## Where:

- 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 " <i>relevant building</i> " 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 Licence to Occupy by The Licence was granted in Licence. The relevant period of continuous lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended) is Licence to Licence appears to be a legitimate Licence Agreement, albeit for a nominal £ Licence 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.
	The statement from states that part of the main school building was used from the until the by The - a period of over six months. The statement from confirms the were in occupation from confirms he witnessed The using the school hall from to - a period of just over ten months. The commonly agreed period of occupation by The between these three statements is therefore to with one statement suggesting occupation as early as and another statement suggesting occupation as late as prevalent at the time would have prevented attendance by groups at that time.
61.	`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. So 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 suggests that he saw cars parked by the property and members of the entering the property on several occasions, "approximately twice a week" from to
63.	The statement from confirms that The entered into an agreement (licence to occupy) with on to use the school hall and supporting welfare facilities at the property known as facilities at the property known as for training in dramatics and rehearsals. The Licence to occupy commenced on the for training in dramatics and rehearsals. The fortraining in dramatics and rehearsals. The fortraining in dramatics and rehearsals. The further advises that The fortraining in dramatics and rehearsals from forthe fortraining in dramatics. He further advises that The fortraining in dramatics and rehearsals from forthe fortraining in dramatics. He further advises that The fortraining in dramatics and rehearsals from fine fortraining in dramatics. He further advises that The fortraining in dramatics and rehearsals from forther fortraining in dramatics. He further advises that The fortraining in dramatics and rehearsals from fine fortraining in dramatics. He further advises that The fortraining in dramatics and rehearsals from fortraining in dramatics and rehearsals from fine fortraining in dramatics. He further advises that The fortraining in dramatics and rehearsals from fortraining in dram
64.	From the 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





72. The CIL Liability is £

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