Appeal Decision

by [redacted] BA Hons, PG Dip Surv, 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: 1784803

Planning Reference: [redacted]

Location: [redacted], [redacted], [redacted] and [redacted]

Development: Part retention of B2 land use (foundry) and internal alterations and refurbishment of listed building to provide new workshops/workspaces (B1 land use) and café (A3 land use) at ground floor. External alterations to listed building to raise roof of hayloft building and create a new link building. Demolition of unlisted 1980s building and walls to the rear. Erection of building along [redacted] and [redacted] with hotel (C1) use with ancillary members and guest uses in part 5, 6 and 7 storeys with x2 levels of basement, with restaurant/bar (A3/4 uses) at ground and mezzanine level and additional workspace (B1) use on ground and first floors. Roof plant, pool, photovoltaics, waste storage, cycle parking, public realm improvements and associated works.

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

Background

1. I have considered all the submissions made by [redacted] of [redacted], on behalf of [redacted] (the Appellant) and [redacted], the Collecting Authority (CA), in respect of this matter. In particular, I have considered the information and opinions presented in the following documents: -
   a) The Decision notice by the Secretary of State under reference [redacted] pertaining to application [redacted], dated [redacted].
   b) The CIL Liability Notice (Reference: [redacted]) for a sum of £[redacted] dated [redacted].
   c) The CA's Regulation 113 review decision dated [redacted].
   d) The CIL Liability Notice (Reference: [redacted]) for a sum of £[redacted] dated [redacted]
   e) The Appellant's request for a Regulation 113 review dated [redacted].
   f) The CA's Regulation 113 review decision dated [redacted].

g) The CIL Appeal form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto and also those received on the [redacted] and [redacted].
h) The CA's representations to the Regulation 114 Appeal dated [redacted] together with documents and correspondence attached thereto.
i) The Appellant's comments on the CA's representations dated [redacted].
j) The further documents and representations submitted by the Appellant dated [redacted] and [redacted] following my request that the parties agree areas.
k) The CA's documents and representations dated [redacted] also in response to my request for the parties to agree areas.

2. Planning permission was granted for the development on [redacted] by the Secretary of State having considered application [redacted] made to [redacted] in the forum of a public inquiry following the application having been 'called-in'.

3. On [redacted], the CA issued a Liability Notice (Reference: [redacted]) for a sum of £[redacted]. This comprised of a sum of £[redacted] payable to the CA and £[redacted] payable to the London Mayor.

4. The Appellant requested a review under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [redacted] advising that [redacted] was an interim and now that officers had carried out further measurements and considered in-use evidence, they had reviewed their figures and were issuing revised [redacted] in the sum of £[redacted].

5. I understand a further liability notice was issued on the [redacted] under reference [redacted]. It is this liability notice that is the subject of this appeal with the Appellant contesting the sum of £[redacted] (comprised of £[redacted] payable to the CA and £[redacted] to the London Mayor).

6. The Appellant requested a review under Regulation 113 on the [redacted] to which the CA responded on the [redacted] maintaining the liability stated in [redacted] to be correct.

7. The Appellant submitted an appeal to the Valuation Office Agency (VOA) on [redacted] under Regulation 114 (chargeable amount appeal) proposing the CIL charge should be £[redacted].

8. The appeal was passed to me as the Appointed Person for consideration on the [redacted]. Given that the crux of the appeal centres around the calculation of the Gross Internal Areas (GIA) of the chargeable development and existing buildings, and as the parties both have in depth knowledge of the development, I requested that the parties liaise and provide agreed areas to the VOA in order to progress the appeal as efficiently and accurately as possible.

9. Confirmation of agreed areas was provided by the parties on the [redacted]. I have proceeded to consider and determine this appeal based on these agreed areas.

Reasons

10. The Appellant has cited three grounds for appeal as follows; 1) the total amount of floorspace for the development is too high, 2) the allocation of floorspace by the CA is incorrect and 3) the allocation of the existing floorspace discount across the development has been applied incorrectly by the CA.

Ground 1

11. The Appellant was originally of the view the GIA of the chargeable development was [redacted] square metres (sq. m) that being the area that was agreed at the public inquiry.

12. The CA had calculated the GIA to be [redacted] sq. m having undertaken further measurements post the public inquiry.

13. Following my request for the parties to provide agreed areas, they have submitted to me a schedule showing that the majority of the areas have now been agreed. The Appellant now believes the area of the chargeable development to be [redacted] sq. m and the CA believes it to be [redacted] sq. m.

14. The remaining difference of [redacted] sq. m relates to the CA's inclusion of a substation and associated party wall and an area of loft space on the second floor both of which are disputed by the Appellant.

15. From reading the CA's regulation 113 review dated [redacted], I understand the Appellant considers the substation should not form part of the development as it was approved under permission [redacted]. The CA opine that as the substation is shown in the proposed ground floor drawing (ref# [redacted]) which is listed in the [redacted] decision notice and is contained within the red line site boundary shown in the site plan drawing for [redacted] (ref# [redacted]) it forms part of the chargeable development.

16. Regulation 9(1) defines the chargeable development as, 'the development for which planning permission is granted'. The chargeable development is therefore considered to be that fully described in application [redacted] as the CA has pointed out. I therefore, conclude that the substation does form part of the chargeable development.

17. However, Schedule 1, paragraph 1(10) provides that for the purposes of calculating the net chargeable area, "building" does not include;
    a) a building into which people do not normally go;
    b) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or
    c) a building for which planning permission was granted for a limited period.

18. From the plans provided, I have concluded that the substation has its own external access and that it is not accessible from the adjoining development. For that reason, I consider the substation to be an independent building rather than forming part of the adjoining building and as such would not fall to be included within the net chargeable area as it is a building into which people do not normally go. I have therefore excluded the [redacted] sq. m attributed to the substation and the [redacted] sq. m that was attributed to the party wall from my calculation of the GIA of the chargeable development.

19. The CA have advised the substation falls within a part of the development that is compromised of retained buildings and as such its inclusion within the area of the chargeable development would be a moot point. I have noted from the schedule of agreed areas provided to me on the [redacted], that the substation is located on an area where buildings are to be demolished rather than retained. As these areas are treated differently in the formula for calculating A as detailed in Schedule 1 Part 1 1. (6), it is important this difference is acknowledged to ensure the calculation of the chargeable amount is accurate.

20. It is however noted that the [redacted] sq. m of loft space on the second floor, is located within an area of retained buildings. Whilst I can appreciate the CA's view that this is largely a moot point as they have included this [redacted] sq. m within the area of the retained buildings as well, thus offsetting any liability, I conclude this [redacted] sq. m should be excluded from both the GIA of the chargeable development and that of the retained buildings.

21. GIA is not defined in the Community Infrastructure Levy Regulations 2010. The generally accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6th edition) (COMP) and I have applied this definition.

    GIA is the area of a building measured to the internal face of the perimeter wall at each floor level;

    Including

    - 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

    Excluding;
    - 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 stored, and the like in residential property

22. The area in question is only accessible via a hatch and has no floor therefore it would not fall to be included within the GIA of the chargeable development nor the GIA of the retained buildings. To include it would serve only to distort the apportionment of the communal floor space between the different uses within the development.

23. Having worked through the schedule of agreed areas provided by the parties and considering the above points, I determine the total GIA of the chargeable development to be [redacted] sq. m as asserted by the Appellant in their latest representations dated [redacted].

Ground 2

24. The Appellant's second ground of appeal is that the allocation of floorspace between the different uses within the Charging Schedules is incorrect and this is causing an artificially inflated Mayoral CIL (MCIL) charge.

25. The Appellant's representations show they believe that [redacted] sq. m of floorspace that they describe as artist/maker workshops have been wrongly allocated as office space by the CA thus incurring a £[redacted] per sq. m Mayoral CIL charge as opposed to the £[redacted] per sq. m charge, that would be incurred if classified as B1 light industrial.

26. The CA refute this point, believing that as the workshops fall within B1, they fall to be charged at a rate of £[redacted] per sq. m for MCIL.

27. To determine this point, it is necessary to turn to the MCIL Charging Schedule published in January 2019 and implemented in April 2019. The Charging Schedule defines office as, "any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices."

28. The key point here is office use that falls within B1 is to be defined as an office. The Charging Schedule does not state that all B1 use will fall to be defined as an office. Indeed, B1 of the Town and Country Planning Act (Use Classes) Order 1987, is subdivided as follows;

Class B1. Business

Use for all or any of the following purposes-
(a) as an office other than a use within class A2 (financial and professional services),
(b) for research and development of products or processes, or
(c) for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

29. A workshop space is something different to office space and it will of course be used very differently. I concur with the Appellant on this point, those areas classified as artist/maker workshops whilst falling under B1 in planning terms do not fall within B1 (a) as office use and should be charged at the rate of £[redacted] per sq. m for MCIL, as they do not fall within the definition of office, retail, or hotel that are charged at higher rates.

30. The Appellant originally claimed [redacted] sq. m of space had been wrongly allocated to office use instead of other/light industrial. Although the parties have provided a schedule of agreed areas, this did not detail the allocation of these revised areas between the different uses meaning the [redacted] sq. m is no longer accurate. I have therefore worked through the spreadsheet provided making the appropriate amendments for the substation, loft space, reallocation of office space to light industrial and consequently the allocation of the communal floorspace. This has produced the following respective areas:

Allocation	GIA in sq. m

Retail	[redacted]	
Office		
Light Industrial		
Hotel		
Total		

Ground 3

31. The Appellant's third ground of appeal is that the allocation of the existing floorspace discount across the development has been done incorrectly with the CA applying it to the [redacted] floorspace only. The Appellant is of the view the retained floorspace can be offset across the whole development not just those buildings sitting in the same location as those retained. They state that as part of the chargeable development that sits on an area of retained buildings is charged at a £0 rate it is not chargeable and should not be included in Gr. They state that the area of the retained buildings should only be apportioned across the areas of the development that attract a charge.

32. The CA does not accept this point and finds an area to be chargeable whether or not it is zero rated clarifying that, "to be chargeable is simply to be *liable* to a charge." They further elaborate that the CIL equation makes no mention of apportionment just that, "the retained area in a given use, Kr, is to be deducted from the total area in that use."

33. Schedule 1 of the CIL Regulations as amended 2019 states how the chargeable amount is calculated:

> **Chargeable amount: standard cases**
> **1**.—(1) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.
>
> (2) But where that amount is less than £50 the chargeable amount is deemed to be zero.
>
> (3) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.
>
> (4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—
>
> $$\frac{R \times A \times I_P}{I_C}$$
>
> where—
> A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);
> IP = the index figure for the calendar year in which planning permission was granted; and
> IC = the index figure for the calendar year in which the charging schedule containing rate R took effect.
>
> (5) In this paragraph the index figure for a given calendar year is—
> (a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;
(c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;
(d) if the national All-in Tender Price Index is not so published, the figure for 1st November for the preceding calendar year in the retail prices index.

(6) The value of A must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—
G = the gross internal area of the chargeable development;
GR = the gross internal area of the part of the chargeable development chargeable at rate R;

KR = the aggregate of the gross internal areas of the following—
(i) retained parts of in-use buildings; and
(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;
E = the aggregate of the following—
(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and
(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

34. It is understood the area of the buildings to be demolished is agreed at [redacted] sq. m and it is agreed these were “in use” buildings. Therefore, E is taken as being [redacted] sq. m.

35. The area of the buildings to be retained I have taken from the schedule of agreed areas provided to me on the [redacted] and based on this information I calculate the area of Kr to be [redacted] sq. m in total.

36. Looking at the formula at (6) above it is apparent that E is to be apportioned across the whole development, but Kr relates only to a respective Gr. Therefore, it is clear from the formula that Kr is not intended to be apportioned across the whole development. The definition of retained part in sub paragraph 10 affirms this: ‘“retained part” means part of a building which will be – (i) on the relevant land on completion of the chargeable development (excluding new build), (ii) part of the chargeable development on completion, and (iii) chargeable at rate R.’ The CA is correct to stipulate the area of the retained buildings is limited to the specific location, footprint and building envelope at which it currently sits.

37. Gr acknowledges that different parts of the development may attract different chargeable rates (R) and as the CA point out in some instances R may be Nil. The formula makes it clear that to calculate A, each Gr must be calculated separately. Therefore, any retained buildings that sit within the area in which the relevant Gr is located, will fall to be deducted as Kr. The hotel development does not contain any retained buildings therefore there will be no Kr reduction in floorspace for this element. The demolished buildings to be deducted will be apportioned across the whole development as stipulated in the formula above.

38. Using the revised agreed areas presented to me on the [redacted], I have calculated the CIL charge in accordance with the formula above both for MCIL and for the BCIL as detailed in the tables below:

		MCIL2 All Other Uses (Light Industrial)	MCIL2 Office	MCIL2 Retail	MCIL2 Hotel
Rate	R	[redacted]	[redacted]	[redacted]	[redacted]
GIA (sqm)	G	[redacted]	[redacted]	[redacted]	[redacted]
GIA of Rate	Gr	[redacted]	[redacted]	[redacted]	[redacted]
Retained parts of in-use buildings	Kr	[redacted]	[redacted]	[redacted]	0.00
GIA of buildings to be demolished	E	[redacted]	[redacted]	[redacted]	[redacted]
Deemed net area chargeable at rate R	A	[redacted]	[redacted]	[redacted]	[redacted]
Index figure for year charging schedule adopted	Ic	[redacted]	[redacted]	[redacted]	[redacted]
Index figure for year planning permission granted	Ip	[redacted]	[redacted]	[redacted]	[redacted]
		[redacted]	[redacted]	[redacted]	[redacted]

		BCIL2 - All Other Uses (Light Industrial)	BCIL2 - Other Retail Rest of Borough	BCIL2 - Hotel	Office
Rate	R	£ -	£ -	£	£ -
GIA (sqm)	G				
GIA of Rate	Gr				
Retained parts of in-use buildings	Kr			0.00	
GIA of buildings to be demolished	E				
Deemed net area chargeable at rate R	A				
Index figure for year charging schedule adopted	Ic				
Index figure for year planning permission granted	Ip				
		£ -	£ -	£	£ -

Total MCIL2	£
Total BCIL2	£
Total CIL	**£**

39. Having reviewed the evidence before me and considering the facts of the case I determine that the CIL payable should be the sum of £ ( ).

40. The CA have sought costs for resisting this appeal under regulation 121 if the appeal were to be dismissed. I have not dismissed this appeal and whilst I have not found in favour of the Appellant on all grounds, I do not consider that they have acted unreasonably in requesting an appeal and as such I will not be recommending costs be awarded on this occasion.

BA Hons, PG Dip Surv, MRICS
RICS Registered Valuer
Valuation Office Agency
15 March 2022