# **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-mail: @voa.gov.uk.		
Appeal Ref: 1786738		
Planning Permission Reference:		
Location:		
Development: Change of use from HMO to residential (use class C3).		

## **Decision**

I determine that the Community Infrastructure Levy (CIL) payable in this case is £0 (zero pounds).

### Reasons

<b>/</b>		Collecting Authority (CA) in respect of this matter. In particular, I have considered the
	a.	Planning permission granted on for "Change of use from HMO to residential (use class C3)."
	b.	The CIL Liability Notice issued by the CA on for the sum of £
	C.	Letters dated from the CA titled "CIL Liable Development" stating that "a
		change of use from HMO to residential creates a dwelling for CIL purposes." and "CIL Regulation 40 in-Lawful Use Evidence" advising the Appellant that the "CA has not received sufficient and satisfactory evidence to prove that the existing buildings on site meet the in lawful use test" and "CIL Liability Notice does not take into account the floor space for any existing buildings on the site."
	d.	The CA's decision dated on its Regulation 113 review stating "The chargeable amount review is declined. A replacement liability notice containing the same chargeable amount is however being issued alongside this decision to correct the property comparable information and match that provided under the land registry.
		the property ownership information and match that provided under the land registry title deeds, as the information supplied on the application form by the planning agent was clearly incorrect."

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	regarding the original change of use for the property from C3 residential to a House under Multiple Occupation (HMO).  f. The CIL Liability Notice reissued by the CA on with CIL Liability	
	calculated as £	
	g. The CIL Appeal Form dated submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and and and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated and submitted by the Appellant under Regulation 114, together under Regula	
	h. The CA's representations to the Regulation 114 Appeal dated together with the Appellant's response dated.	
Ba	ckground	
2.	Planning permission was granted on for "Change of use from HMO to residential (use class C3)."	
3.	A CIL Liability Notice with the CIL Liability calculated as £ along with a separate letter of the same date from the CA titled "CIL Liable Development" stating that "a change of use from HMO to residential creates a dwelling for CIL purposes." A separate letter also dated titled "CIL Regulation 40 in-Lawful Use Evidence" issued by the CA advised the Appellant that the "CA has not received sufficient and satisfactory evidence to prove that the existing buildings on site meet the in lawful use test" and "CIL Liability Notice does not take into account the floor space for any existing buildings on the site."	of e
4.	The Appellant requested a Regulation 113 review on	
5.	On the CA issued the outcome of its Regulation 113 review stating "The chargeable amount review is declined. A replacement liability notice containing the same chargeable amount is however being issued alongside this decision to correct the property ownership information and match that provided under the land registry title deeds, as the information supplied on the application form by the planning agent was clearly incorrect."	
6.	The CIL Liability Notice in respect of planning permission was reissued by the CA on with CIL Liability calculated as:-	
	Residential Zone 2  Proposed GIA $m_2$ Chargeable GIA $m_2$ $m_2$ $m_3$ $m_4$ $m_5$ $m_6$ $m_7$ $m_8$ $m$	
	The only amendment was the name change from " on the earlier version of the CIL Liability Notice to " on the later reissued notice.	
7.	An appeal under Regulation 114 against the chargeable amount dated was submitted to the VOA on the same date.	

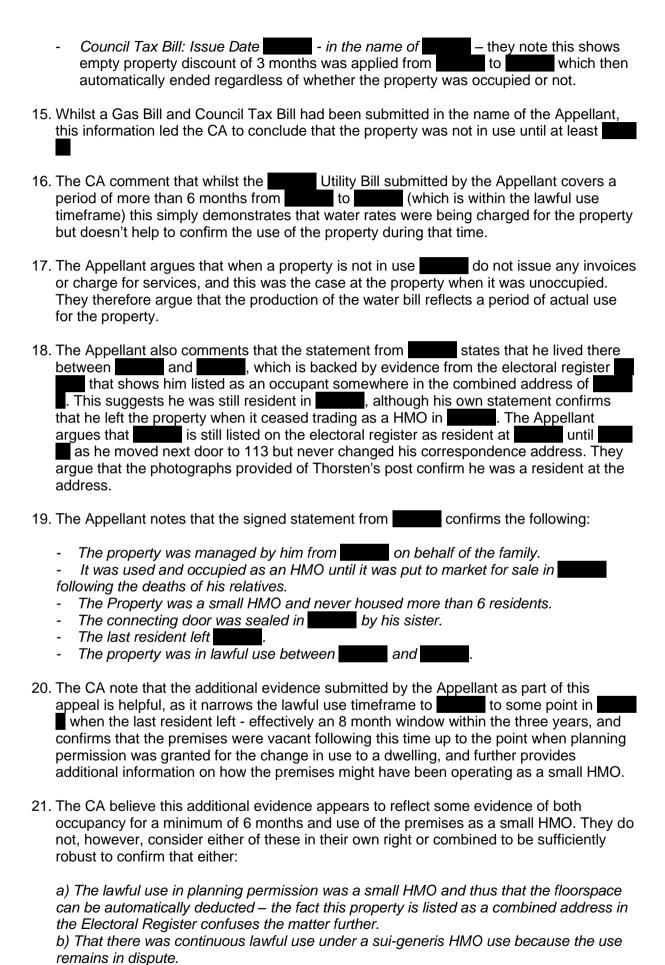
## **Appeal Grounds**

8. The appeal is made on two grounds:-

- 1) The CIL liability should be £0 as the existing floorspace should be deducted from the chargeable amount calculation under lawful use provision.
- 2) The CIL liability should be £0 as the existing floorspace should be deducted from the chargeable amount because the permitted use was a small HMO for less than 6 persons, so should have been automatically deducted from the CIL chargeable amount calculation regardless of continuous lawful use.
- 9. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

## Consideration of Appeal Ground 1 - Lawful in use off-set

CO	Consideration of Appear Ground 1 - Lawrul III use oil-set		
10.		e Appellant argues that the property was lawfully in use for 6 months in the three year iod up to (ie from as evidenced by:-	
	-	A statement by confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between and confirming he was resident at the property continuously between a confirming he was resident at the property continuously between a confirming he was resident at the property continuously between a confirming he was resident at the confirming he was resident at t	
	-	A statement from confirming that he managed the property as a HMO on behalf of his family from until it was placed on the market for sale in the property was let as a HMO for more than 6 months during the three year period to during which time it never had more than six residents, the last of whom left in the state of the state	
	-	Thames Water invoice undated but issued in advance covering the period to for the sum £ including arrears of £ from the previous unpaid invoice dated.	
11.	dat wo	e CA state the relevant period is actually three years dating back from as the e planning permission first permitted the development. For this reason, the Appellant all uld need to supply sufficient information and information of sufficient quality that a full use had been operating continuously for a minimum of 6 months between a supply sufficient quality that a full use had been operating continuously for a minimum of 6 months between a supply sufficient quality that a full use had been operating continuously for a minimum of 6 months between a supply sufficient quality that a full use had been operating continuously for a minimum of 6 months between a supply sufficient quality that a full use had been operating continuously for a minimum of 6 months between a supply sufficient quality that a full use had been operating continuously for a minimum of 6 months between a supply sufficient quality that a supply s	
12.	igner the on the this use per act	e CA contend that the last 15 months of the relevant period up to can be ored as the property was marketed for sale in with vacant possession, and y conclude that the property was vacant between and the completion of sale when they conducted their Regulation 113 review the CA noted there was no rent public registration of the property as a registered HMO, which they feel suggests HMO use had not operated since the purchase by the Appellant. They argue as a dwelling without the benefit of a planning permission until such time as planning mission was granted on The CA argue it is unclear what the situation wally was, but the Council Tax Certificate indicates the property was vacant and that Council Tax Bill shows it has been charged as a dwelling since purchase in	
13.	der	e CA argue that if a C3 dwelling was the lawful use, such use for 6 months cannot be monstrated as the premises were vacant on when the sale completed, and 6 nths C3 use had not occurred by the time they carried out the Regulation 113 review.	
14.	The	e CA note the following information:-	
	-	Gas Bill – showing opening of account to addressed to in the name of the Appellant - they argue this doesn't prove occupancy, but only identifies the person being billed.	



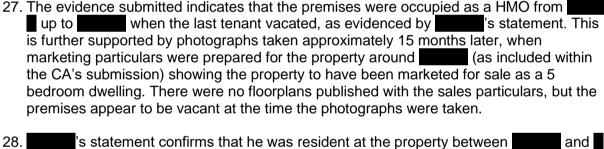
22. The CA does accept, however, that the evidence indicates a minimum of 6 months continual occupancy of some form of HMO use.

## **Decision on Appeal Ground 1**

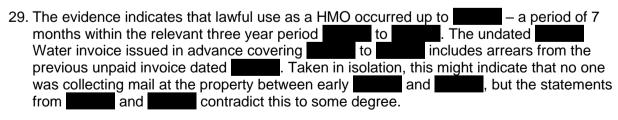
23.	This appeal ground arises from disagreement surrounding the issue of identifying the
	lawful in-use buildings as a result of Schedule 1 of the CIL Regulations 2010 (as
	amended), which provides for the deduction or off-set of the GIA of retained parts of in-
	use buildings from the GIA of the total development in calculating the CIL charge (a KR
	(i) deduction).

24.	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 6 months within the period of three years ending on the day planning permission first permits the chargeable development.
25	The Appellant's contention is that the building was in lawful in use for 6 months as a

	small HMO during the relevant three-year period to to the planning permission first permitted the change of use.		
26.	The Appellant has provided a range of documentation regarding the use of the property during this time including:-		
	<ul> <li>A statement by</li> <li>A statement from</li> <li>A Water invoice.</li> </ul>		
27	The evidence submitted indicates that the promises were essuried as a LMO from		



28. It is a statement confirms that he was resident at the property between and and information from the Appellant indicates that he resided at 113 for some time thereafter, but undated photographs provided by the Appellant show that he was receiving post addressed to that shows that shows also submitted evidence from the electoral register that shows that shows combined address of the state of the state



30. Later evidence submitted to the CA by the Appellant comprises a gas bill showing the
opening of an account in the name of the Appellant for the period to
addressed to but this would only show their occupation for just under 4 months
from to Similarly, a Council Tax Bill was issued on in the name
of , and this shows empty property discount of 3 months was applied from
to Once again, this only shows the Appellant (which I assume to be incorrectly
identified as was responsible for the property for a period of just under 4 months
from to to to to the first to t

31.	The CA note that "the evidence does reflect a minimum of 6 months continual occupancy of some form of HMO use", and evidence submitted by the Appellant confirms this. The matter to consider is whether this use was lawful.
32.	Whilst the HMO might at one time have operated as two combined houses and planning permission only permits "change of use of from residential to house in multiple occupation" and places no limit on the number of occupants. The later variation permission dated permits "construction of internal connecting door" (between the dining rooms of and only and condition 2 states: "This permission shall ensure for the benefit of and only and the connecting doorwayshall be closed permanently within one month of the date cease to reside at nos and only and only and only was created merely to enable the owners to move between separate houses without going outside, which is confirmed by the statement from their grandson and that each property was operated as a separate HMO.
33.	The sales particulars dated prepared by sales as being still present, and we are advised in statement that his sister later sealed the doorway in has confirmed that he operated the business for his Grandparents until they passed away, when the property was sold. The Appellant advises us "Both properties were operated as HMO's and owned by the same family. In the owners of the property passed away and the family members who inherited the property closed the HMO operation and sold the property". The last tenant moved from following the death of fo
34.	Planning permission refers only to changing use to a HMO in and places no restriction on the number of occupants. Whilst there was a later personal variation permission with a restrictive condition pertaining to an interconnecting doorway and action should have been taken to comply with this condition within 1 month of when ceased to reside at the property, <i>condition 2</i> only required the door to be closed permanently, it did not require it to be removed. In my opinion there is no evidence to suggest that this condition was not complied with. The departure of the last resident in after death indicates that lawful use of 11 as a separate HMO had occurred for a period of at least 6 months within the relevant three-year period to
35.	It is my opinion that from all the information provided it can be shown that the property was lawfully "in-use" as a HMO in compliance with planning permission period of at least 6 months within three years of the grant of planning permission on and the "lawful use" requirement of Schedule 1 of the CIL Regulations 2010 (as amended) is therefore met.
36.	The GIA of the existing building must therefore be off-set as a KR (i) deduction against the GIA of the development for the purposes of calculating the CIL charge.

Consideration of Appeal Ground 2 –the property was a HMO for less than 6 persons, therefore an automatic deduction from CIL should apply

- 37. The Appellant argues that whilst planning permission was granted for change of use from HMO to C3, there was a lack of information regarding the previous classification. They argue that permission should have been allowed through permitted development, but as it was assumed by the CA that the HMO was large (when in fact it was occupied by six or less people) and the CA have assumed that it was operating as a *sui generis* HMO.
- 38. The CA contend that the proposed works permitted are for a change of use to a C3 dwelling, which they argue falls under the definition of dwelling as set out in clause 2: Interpretation of the CIL regulations 2010 (as amended) '"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling (other than for the purposes of Part 7)'.
- 39. The CA also argue that under the Planning Act 2008 the definition of development for CIL purposes is any works done to a building. This includes change of use.
- 40. They also contend that in relation to commencement, the relevant definition of commencement under CIL Reg. 7 relates to the earliest date on which a "material operation" is begun. This has the same meaning as Section 54(4) of the T&CPA 1990 (as amended) (time when development begun). Section 54(4) of the T&CPA 1990 "material operation" means—
  - (a)any work of construction in the course of the erection of a building; (aa)any work of demolition of a building:
  - (b)the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
  - (c)the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b); (d)any operation in the course of laying out or constructing a road or part of a road; (e)any change in the use of any land which constitutes material development.'
- 41. In this instance based on the permitted works the CA argue that clause (e) above would apply, and on the basis of the above assessment:
  - i) The proposed works fall under the definition of development for CIL purposes ii) The works are automatically chargeable as they are creating a dwelling for CIL purposes.
- 42. The CA therefore conclude that the change of use is not outside the meaning of development for CIL purposes and thus is CIL liable and requires a CIL chargeable amount calculation to be undertaken.
- 43. The CA contend that if the property had been de-listed with Environmental Health Residential Services as an active HMO prior to being put to market for sale that would not automatically change its use in planning terms to a C3 dwelling, especially if the HMO permission was for a *sui generis* use. They state that whilst the Appellant has stated that the lawful use was what is now known as a C4 HMO, the evidence available from the planning history cannot substantiate this, nor substantiate that the planning permission has been complied with in terms of its restrictive conditions. Having been put up for sale as a single dwelling the CA can only assume that the internal door in the dining room had been permanently closed.
- 44. The CA state that this inconsistency and lack of clarity leads them to conclude that the probable use was a *sui generis* HMO, and for that reason it would not have benefited from automatic permitted development rights under the Town & Country Planning General Permitted Development Order (2015) (GDPO) for use as a C3 dwelling without

the benefit of planning permission. For this reason, the existing floorspace cannot be automatically deducted from the chargeable amount calculation as it doesn't comply with the requirements of Schedule 1 of the CIL Regulations 2010 (as amended) as a K(ii) deduction for retained parts.

## **Decision on Appeal Ground 2**

- 45. This appeal ground revolves around the issue that the property was formerly a house in multiple occupation (HMO), which then changed to a Use Class C3 dwelling house and therefore if it qualifies for a K(ii) deduction for 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.
- 46. The Appellant contends that under the Town & Country Planning General Permitted Development Order (2015) Class L small HMOs changed to dwelling houses and vice versa are enabled under "Permitted development":
  - L. Development consisting of a change of use of a building—

(a)from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwelling houses) of that Schedule:

(b)from a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.

- 47. The GPDO also states under "Development not permitted":
  - L.1 Development is not permitted by Class L if it would result in the use—

(a)as two or more separate dwelling houses falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order of any building previously used as a single dwelling house falling within Class C4 (houses in multiple occupation) of that Schedule; or

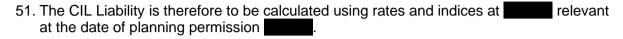
(b)as two or more separate dwelling houses falling within Class C4 (houses in multiple occupation) of that Schedule of any building previously used as a single dwelling house falling within Class C3 (dwelling houses) of that Schedule.

- 48. Strictly, this issue does not now need to be considered, as my decision in respect of appeal ground 1 is that K(i) off-set of the existing GIA against the development GIA should be given in accordance with Schedule 1 of the CIL Regulations 2010 (as amended). However for completeness I have considered the matter below.
- 49. CIL Regulation 9 (1) is clear on the point that the "chargeable development is the development for which planning permission is granted". It is clear from the CIL Liability Notice issued by the CA that the development permitted under was the basis for the CA's CIL calculation and is described as "Change of use from HMO to residential (use class C3)."

50. It is noted that there was no restriction within the	planning permission to
less than seven occupants and that	t door which appears to be similar in size
and style was specifically granted separate plan	ning permission in as a sui
generis large HMO. Given the size of	nd the fact that some of the rooms could
have been occupied as doubles, notwithstanding	g the evidence from the previous operator

and tenant that there were never more than 6 occupants, there is not sufficient evidence to confirm that the property was a small HMO under Use Class C4. In consideration of this and the fact that planning permission was required for a change of use I do not consider that the retained parts should qualified for a KR(ii) deduction in accordance with Schedule 1 – Part 1 – of the CIL Regulations pertaining to Standard Cases.

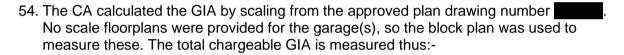
## **Calculation of CIL Liability**



- 52. The property is located in the CA's adopted charging schedule ( Residential Rate Zone 2, which is £ // m2 and subject to indexation. The rate to be applied is not in dispute between the parties.
- 53. The relevant indexation values within the Part 1 formula are:

/p = |

This produces an indexation factor of



Ground Floor m2
First Floor m2
Second Floor 7m2
Garages m2
TOTAL m2
Ground Floor m2
TOTAL m2
First Floor m2
First Flor m2
First Floor m2
Firs

55. The total areas marked for each floor on this plan are larger for the ground and first floors, but slightly smaller for the second floor/loft. The total difference between the two total floor areas for the house (excluding the garages) is:-

Appellent's total m2 less CA's total m2 = m2

- 56. The plans do not specify whether the marked areas are GIA or some other basis of measurement, and for this reason it would seem reasonable to utilise the CA's smaller total GIA for the purposes of calculating CIL.
- 57. The CIL liability is thus calculated as:-

Residential Zone 2
Proposed GIA \_\_\_\_\_\_ m2
Less
Existing GIA \_\_\_\_\_ m2
Chargeable GIA 0 m2
Therefore CIL Liability is £0 (zero)

### **Decision on CIL Liability**

58. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £0 (zero pounds).

DipSurv DipCon MRICS RICS Registered Valuer Valuation Office Agency 14 March 2022