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: 1792686

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Erection of a first floor extension and second floor mezzanine level to facilitate conversion of part of the existing building into 13 flats (2x 3-bed, 6x 2-bed and 5x 1-bed) with associated cycle/refuse storage and retention of ground floor commercial unit.

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] of [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. Certificate of Lawfulness of Proposed Use or Development reference [redacted] issued by the CA on [redacted].
   b. Planning permission [redacted] granted on [redacted].
   c. Planning permission [redacted] granted on [redacted].
   d. The CIL Liability Notice [redacted] issued by the CA dated [redacted] for the sum of £[redacted].
   e. The Appellant's request for a Regulation 113 review of the chargeable amount dated [redacted].
   f. The CA's decision on the Regulation 113 review dated [redacted].
   g. The amended CIL Liability Notice [redacted] issued by the CA dated [redacted] for the sum of £[redacted].

h. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto dated [redacted] and [redacted].
i. The CA's representations to the Regulation 114 Appeal dated [redacted] together with the Appellant's response dated [redacted] and the CA's further clarification dated [redacted].
j. Further information on calculation of GIA by the Appellant dated [redacted] and [redacted] together with comment from the CA dated [redacted].

Background

2. A Certificate of Lawfulness of Proposed Use or Development reference [redacted] was issued on [redacted] for "*proposed conversion of part of the first floor to 2 x one bed flats.*"

3. Planning permission [redacted] was granted on [redacted] for "*Roof alterations to form first floor and alterations including new windows/doors to facilitate part conversion of former bank into 8 flats (6x 2-bed, 2x 1-bed) with associated parking and cycle/refuse storage.*"

4. Planning permission [redacted] was granted on [redacted] for "*Erection of a first floor extension and second floor mezzanine level to facilitate conversion of part of the existing building into 13 flats (2x 3-bed, 6x 2-bed and 5x 1-bed) with associated cycle/refuse storage and retention of ground floor commercial unit*."

5. CIL Liability Notice [redacted] was issued by the CA dated [redacted], with CIL Liability calculated as:-

   Residential
   [redacted] *m2 GIA chargeable area*
   @ £[redacted] */m2 CIL Rate indexed at* [redacted]
   = £[redacted] *CIL Charge*

6. On [redacted] [redacted] solicitors submitted a Regulation 113 review request to the CA on the basis that the GIA of the existing building is [redacted] m2 and the GIA of the proposed development is [redacted] m2. Their view was that the building (or parts thereof) had been in lawful use for a continuous period of at least six months within the period of three years ending on the day the Permission first permits the chargeable development, and that CIL is therefore only chargeable in relation to the proposed new floorspace totalling [redacted] m2.

7. On [redacted] the CA issued the outcome of their Regulation 113 review, stating "*Whilst TSB may have occupied the premises to some degree (it is unclear as no information has been provided in relation to the nature of the occupation only that the keys were not rescinded until* [redacted]*) the continuous lawful use of the building had stopped by* [redacted] *when the bank closed to members of the public and had ceased providing services to them*" and "*As such it cannot be determined that the building was in continuous lawful use within the required 36 month period ending on* [redacted] *as it has been closed to members of the public since at least* [redacted]*." They concluded that they had "measured the floor area and concur with the* [redacted] *m2 figure given for the residential element of the development in the letter from* [redacted] *which is the existing building subject to the change of use and the extension*" and advised that an amended CIL Liability Notice was in the process of being issued.

8. An amended CIL Liability Notice [redacted] was issued by the CA dated [redacted], with CIL Liability recalculated as:-

Residential
[redacted] m2 GIA chargeable area
@ £[redacted] /m2 CIL Rate indexed at [redacted]
= £[redacted] CIL Charge

9. An appeal against the chargeable amount was submitted to the Valuation Office Agency dated [redacted] on the same date.

Appeal Grounds

10. The Appellant believes the CA has erred in their position and interpretation of the CIL Regulations in denying the 'offset' of the existing GIA in their calculation of CIL, and the GIA of the scheme is also subject to disagreement.

11. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

Consideration of Appeal Grounds

12. The Appellant argues that a letter from the prior owner's ([redacted]) property advisers, [redacted], clearly confirms that banking activity continued by [redacted] and that use of the various safes/strong rooms for storage and safe keeping of bank and customer assets (including gold coins, deeds and other items for safe keeping) satisfied the in-use requirements for part of the building through to the termination of their lease on [redacted] and thus provides in excess of 6 months continuous use in the 3 year period ending upon the grant of the relevant planning permission.

13. The Appellant has submitted a Statutory Declaration dated [redacted] by the Appellant which refers to a Deed of Surrender by [redacted] and Land Registry Form TR1 transfer document both dated [redacted] for the property, which was handed over to the Appellant on [redacted] along with a Business Rates invoice from [redacted] for charges from [redacted] up to [redacted].

14. The Appellant has also submitted a letter from [redacted] dated [redacted] that confirms that their client, [redacted], occupied the premises up to surrender of the lease on [redacted], and that whilst branch banking activities had ceased at an earlier time, the "*premises still had banking activities in the storage of deeds/valuables and other items of value (or for safe keeping) in the safes on the premises and these were only emptied at the end of* [redacted] ".

15. The Appellant submitted the following GIA calculations within Appendix 2 of their response to the CA's representations:-

Existing GF [redacted] m2 GIA
Existing FF [redacted] m2 GIA
Existing 2nd floor [redacted] m2 GIA
Existing 3rd floor [redacted] m2 GIA
Total 2,[redacted] m2 GIA

Proposed GF [redacted] m2 GIA
Proposed FF [redacted] m2 GIA
Proposed 2nd floor [redacted] m2 GIA
Proposed 3rd floor [redacted] m2 GIA
Total [redacted] m2 GIA

16. Thus they calculated the additional GIA to be [redacted] m2 for the proposed scheme less [redacted] m2 for the existing in use building = [redacted] m2 chargeable GIA for CIL purposes.

17. From their calculations the Appellant proposed the CIL Liability to be:-

    Chargeable GIA [redacted] m2
    X CIL Rate £[redacted] indexed to £[redacted] / m2
    = £[redacted] CIL Liability

18. Initially the Appellant had argued that two flats on the first floor were subject to an earlier permission reference [redacted] granted on [redacted] under a Certificate of Permitted Development, and that the GIA of these two flats should be omitted from the chargeable area under Schedule 1 – Part 1(6) as retained parts able to be lawfully used without further planning permission.

19. They argue that under Schedule 1 an in-use building is defined as a relevant building which contains a part that has been in lawful use, and thus the confirmed use of the various safes/strong rooms around the premises until at least [redacted] is sufficient to demonstrate more than six months continuous use in the relevant three-year period [redacted] to [redacted].

20. The Appellant concludes that as planning permission was granted on [redacted] the relevant three-year period runs from [redacted], and that provided the Building (or part of the Building) was in lawful use for 6 months between the [redacted] and [redacted] its GIA can be offset when calculating the CIL liability.

21. The Appellant notes that the Deed of Surrender confirms that [redacted] were in occupation of the Building until the [redacted], when the keys were handed over to them. They further state they have provided emails to [redacted]'s agent ([redacted]) dated [redacted] confirming that they had sought to enter the Building, but that [redacted] were still in occupation on this date.

22. They further contend that the correct date is also corroborated by the CIL Additional Information Form submitted in relation to the first planning permission which stated that the Building was last used on [redacted].

23. The Appellant also provided a Business Rates statement showing these were charged up until [redacted] and information demonstrating that the building was removed from the rating list on [redacted].

24. The Appellant argues that the building was therefore in lawful use for a continuous period of at least six months between [redacted] and [redacted] and its GIA should be offset as existing floorspace against the GIA of the proposed development, and the retention of the ground floor commercial unit falls within the 'continued use' element of Schedule 1 – Part 1(6) and can therefore be deducted under KR(i).

25. The CA contend that the continuous lawful use of the building ended with closure of the [redacted] branch when it relocated and argue they do not have a defined date for when this occurred. They note that the details described in the Regulation 113 review response indicate that this relocation of the branch had taken place at least by the end of [redacted]. They note that the appellant does not dispute that the closure of the branch occurred outside of the six-month window from [redacted] – [redacted] in which continuous lawful use of the building must have happened, as stipulated under Schedule 1, Part 1, Paragraph 10 of The Community Infrastructure Levy Regulations 2010 (as amended).

26. The CA also note that in the planning application form the Appellant has referred to the existing building as having been in Class A2 use, which the CA concurs with. The Use Classes Order 1987 (as amended) in force at the time defined Class A2 (Financial and Professional Services) as being '*where the services are provided principally to members*

of the public'. This definition remains in Class E (c) of the revised Order introduced in [redacted]. The CA therefore argue that it appears the bank was closed to customers and contend it cannot therefore have been in continuous lawful use for Class A2 purposes as services were no longer principally being provided to visiting members of the public.

27. The CA contend that whilst the letter from [redacted] states that the premises had '*banking activities in the storage of deeds/valuables and other items of value (or for safekeeping) in the safes*' this has not been further evidenced, and the Statutory Declaration provided by the Appellant does not offer evidence of the use following closure of the branch, whilst the emails referred to by the Appellant between [redacted] and [redacted] concern the surrender of the lease and return of the building to the Appellant rather than the use of the building itself. The CA conclude that it has not been explained how, with the banking services closed at ground floor to customers, the basement services were managed, accessed or secured for the benefit of its retained customers.

28. The CA also comment that if the building was used purely for the storage of valuables then this would seem to be more akin to a Class B8 Storage and Distribution use, particularly as Class A2 made no reference or provision towards the storage of goods as part of the Use Class. They argue that a change from Class A2 to Class B8 was not permissible under permitted development and cannot be seen to be a continued lawful use of the building as required for CIL purposes.

29. The CA refer to the High Court decision of R (oao Hourhope Ltd v Shropshire Council (2015) which considers a similar scenario concerning the use of a building. Paragraph 9 of the Statutory Declaration provided by the Appellant states that the building '*still contained everything that the bank needed to operate'*. Hourhope addresses this with the consideration that the question of whether a use has ceased is guided by the length and reason for the interruption, and the intention of future use of the building. In this case, the CA argues that given the [redacted] lease had ended and planning permission was subsequently sought for the conversion of the site to a largely residential use it is clear the Class A2 use of the building as a building open to the public was not intended to be re-established, and thus the building cannot be considered to have been 'in-use'.

30. The CA notes that with regards to the measurement of the floorspace the figure used in the CIL calculation from the Liability Notice dated [redacted] was taken from the CIL Additional Information form provided with the planning application submitted by the Appellant. This figure was questioned as part of the Regulation 113 review, with a revised total provided by the Appellant in the letter from [redacted] dated [redacted]. The CA remeasured the plans and accepted the GIA provided by the Appellant, resulting in the Liability Notice dated [redacted]. The CA therefore question why the floorspace figure is being challenged by the Appellant at the current appeal stage and note that the floor plans submitted by the Appellant with their appeal differ from those approved with the planning permission.

31. The CA note that the Appellant had initially argued for the off-set of floorspace for two flats on the first floor, for which a proposed Lawful Development Certificate was previously granted (ref: [redacted]). The CA have argued that these flats, however, were included in the planning application form and the description of the development for which permission was sought was for the conversion of the building to 13 flats (ref: [redacted]), and as such the CA considers the floorspace of these flats should be included in the calculation as they form part of the development for which the planning permission relates.

32. The Appellant maintains that the building was in lawful use up until the bank surrendered its lease and removed the valuables from the safes and strong rooms in the property on [redacted]. They argue that the use is not required to be exclusively to visiting members of the public and would expect few, if any, customers ever had access to the safes or strong

rooms at any time – but these were facilities utilised by the bank in provision of its banking services to both their business and retail customers as well as the bank's own purposes. They argue this is consistent with the planning requirements that the premises were open "principally to visiting members of the public". They note that the period [redacted] to [redacted] is some 260 weeks, and the period [redacted] to [redacted] is 7 weeks. Thus, the Appellant argues this latter period at most equates to 2.6% of the period the property was leased by [redacted] bank before incorporating a specific start date within [redacted] (which they have not been able to ascertain precisely).

33. The Appellant argues that with a premises relocation it is perfectly reasonable and normal that both premises can be in lawful use during any brief 'overlap period' subject to operational requirements and prior to fully removing bank assets and valuables from the safes and strong rooms within the building. A period whereby public access was limited to a period of 3 to 7 weeks (depending on the date in [redacted] the branch closed to the public) is less than 3% of the occupation period (excluding [redacted]) and cannot reasonably be considered unlawful where the test is principally for public access – thus well over 97% of the lease was inclusive of public branch access.

34. The Appellant argues that [redacted] confirmation should be considered robust, appropriate and sufficient to evidence the use of part of the building by their client [redacted].

35. The Appellant also states that the Statutory Declaration by [redacted] (exhibit [redacted] at pages 31-35) shows the business rates for the bank being paid up to [redacted] and argue that business rates are an aspect regularly considered as evidence of occupation, given that reliefs (and/or penalty premiums) are available or applied to unoccupied properties. They note that the CA has not evidenced any such absence prior to [redacted] which exceeds the minimum 6 month period necessary to gain the statutory offset.

36. The Appellant does not agree with the CA's contention that the storage of valuables, deeds and gold coins can be considered a storage activity akin to Class Use B8 Storage and Distribution.

37. The Appellant is of the view that reference to the decision in R (oao Hourhope Ltd) v Shropshire Council [2015] EWHC 518 (Admin) is misplaced, as the circumstances of that case are very different from the current case. The bank was still controlling the property, conducting banking activities in keeping valuable items in the safes (and not merely a storage use) across the site and paying business rates up until the surrender of their lease on 22 July 2019. Hourhope held that it would be inappropriate to consider storage of items to be "*separate uses which are themselves authorised for planning, but activities ancillary to and part of the overall permitted use*" which in that case was a public house and in the subject under consideration here is a bank.

38. The Appellant notes that in contrast to their own appeal, Hourhope had taken vacant possession of the property following the closure of the public house ([redacted]), and a sale from the mortgagee in possession ([redacted]) and had sought to argue the abandoned furniture, fittings and chattels left within the property were being stored during its planning application period. The Appellant's own qualifying use relates to the lawful tenant ([redacted]) that had occupied the building and run its banking operations from that site since [redacted] up until surrendering its lease on [redacted] and emptied the safes and strong rooms of valuables and deeds held on its own account and that of bank customers.

39. The Appellant points to the approved drawings in Appendix 1 and their revised GIA measure and CIL Calculation (Appendix 2) in their appeal submission that confirm the full proposed development GIA as [redacted] m² and their view that CIL Liability should be assessed as £[redacted].

40. The Appellant notes that the CA challenge the offset of the two flats already approved within the Lawful Development Certificate (Ref: [redacted]) granted on [redacted]. Whilst they agree these apartments are incorporated within the plan drawings, they argue that the CIL Regulations has a specific offset to address areas of any project that are capable of lawful use without further permission within Schedule 1 1.(6)KR(ii) in that the retained parts can be deducted from the chargeable development 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. They argue that this applies to the two flats, as the planning use before and after the [redacted] permission is C3, meeting the Regulatory requirement for offset.

41. The Appellant contends this was ratified in the case of R oao Giordano v London Borough of Camden [2019] EWCA Civ 1544 which held that the second statutory deduction in calculating CIL applies to retained parts that are able to be used without further permission. The important dates are those of the position the day before grant of planning permission, and that after its grant. Hence in this case, the position on [redacted] is that these two apartments had planning approval for C3 (dwelling houses) use under permission [redacted] granted in [redacted]. Equally, the [redacted] permission granted planning approval for C3 (dwelling house) use of the wider areas, including the first floor two apartments. Accordingly, the use before and after the subject permission are the same and thus the calculation of CIL for this permission should take account of the statutory deduction as the retained parts were capable of lawful use without further planning permission.

42. The Appellant notes that the Giordano decision stated that the correct interpretation of Schedule 1 must be that there were only two types of 'relevant buildings' – those that have been in lawful use for the requisite continuous six-month period and those not required to have been in lawful use, but in which the intended use is able to be carried on. Further the decision states "*It excludes a liability to pay CIL under a newly granted planning permission where the landowner is already lawfully entitled to use the same floorspace in the same way, and presumptively with the same burden on local infrastructure, and, in a case such as this, without paying CIL. And it achieves this without obliging the owner of the premises, before it can avail itself of the "statutory deduction", to have carried out all the works required to adapt or convert the building for the use in question under a prior planning permission, and to incur the cost and delay in doing that, only to have to undo some or all of those works after the new permission has been granted*".

43. The Appellant notes that any such calculation would be entirely negated if the Appointed Person determines that the building was in qualifying use up until the [redacted], whereby the full existing GIA would be offset under Schedule 1 1.(6)KR(i), resulting in a CIL liability only with regard to the net additional new areas at first and second floor levels.

44. The CA comment that the original Liability Notice issued on [redacted] was calculated on the residential use GIA of the development at [redacted] m2 which was the figure given on the CIL Additional Information Form dated [redacted] that was provided as part of the planning application ref: [redacted] by the Appellant. The Appellant requested a Regulation 113 Review referring to a letter from [redacted] dated [redacted] stating the total residential element of the development to be [redacted] m2. The CA re-issued the Liability Notice for [redacted] on [redacted] to reflect this amended GIA.

45. The CA notes that as part of the Regulation 114 Appeal the Appellant has again contested the floor area and provided a new set of figures in the document: VOA-[redacted] which appears, when setting aside the lawful use issue, to be at odds with the figures given by [redacted] for the Reg 113 review.

46. Given the CA had previously agreed with the floorspace measurement at the Regulation 113 review, they query whether this aspect of the appeal can be challenged again at the current stage. The Appellant has now provided another second set of figures as part of this Regulation 114 appeal which are listed in the document: [redacted].

47. The CA argue it is therefore unclear as to how the Appellant can state the CA has "*chosen to ignore this Regulatory requirement in their dogged pursuit of an excessive and incorrect CIL liability from our client*" as they argue they have not refused to revise the Liability Notice. The CA disagree that the existing floor area should be taken into consideration in the calculation of the chargeable amount, which is a separate matter and has already been addressed in their representation dated [redacted].

48. The CA comment that with regard to the Appellant's argument in relation to the Certificate of Proposed Use ref: [redacted], the use of these flats had not been implemented at the time that the planning permission ref: [redacted] was granted. The CA cannot therefore understand how the floorspace of those flats constitutes 'retained floor area' for the purposes of the CIL chargeable amount as argued by the Appellant. The CA contend that the Lawful Development Certificate was not a planning approval, but a confirmation that on the date it was issued the flats could be created without the need for a planning consent. Given the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 introduced a requirement for Prior Approval to be sought for such a development on 1 August 2021 the CA question whether the Certificate still stands, as the legislation to which it pertained has changed as the two flats had not been implemented at the time this new legislation took effect - a material change as detailed in Section 192(4) of the Town and Country Planning Act 1990.

Decision on Appeal Grounds

49. This appeal principally 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).

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

51. The Appellant's contention is that the building was in lawful use for 6 months during the relevant three-year period [redacted] to [redacted], when planning permission [redacted] was granted on [redacted].

52. The Appellant has provided documentation regarding the use of the property during this time including:-

    - *A Statutory Declaration dated [redacted] by the Appellant which refers to*
    - *A Deed of Surrender by [redacted] dated [redacted]*
    - *A Land Registry Form TR1 transfer document dated [redacted], showing the property was handed over to the Appellant on [redacted]*
    - *A Business Rates invoice from [redacted] for charges from [redacted] up to [redacted]*
    - *A printout from the Gov.UK web pages showing that the building was removed from the rating list on [redacted].*
    - *A letter from [redacted] dated [redacted] that confirms that their client, [redacted], occupied the premises up to surrender of the lease on [redacted], and that whilst branch banking activities had ceased at an earlier time, the "premises still had banking activities in the*

storage of deeds/valuables and other items of value (or for safe keeping) in the safes on the premises and these were only emptied at the end of [redacted]".

53. The Deed of Surrender confirms that [redacted] were in occupation of the building until the [redacted], when the keys were handed over. The Appellant has also provided emails to [redacted]'s agent ([redacted]) dated the [redacted] which show they had sought to enter the building then, but [redacted] were still in occupation on this date.

54. The [redacted] letter would seem to prove that occupation and use of the property in connection with banking activities occurred up to [redacted] – a period of 6 months within the relevant three-year period [redacted] to [redacted].

55. The Business Rates invoice from [redacted] shows that business rates for the bank were invoiced up to [redacted]. This does not prove that use of the premises actually took place up to this time however, and indeed it is noted that the printout from the Gov.UK web pages submitted by the Appellant shows the property was not removed from the rating list until [redacted].

56. The CA argue that the continuous lawful use as a bank requires it to be open to customers/the public, and that it cannot therefore have been in continuous lawful use for Class A2 purposes as services were no longer principally being provided to visiting members of the public after the bank moved premises "*at least by the end of* [redacted]". The letter from [redacted] confirms however that the premises continued with '*banking activities in the storage of deeds/valuables and other items of value (or for safekeeping) in the safes*'.

57. The CA also comment that if the building was used purely for the storage of valuables then this would be more akin to a Class B8 Storage and Distribution use, particularly as Class A2 made no reference or provision towards the storage of goods as part of the Use Class. They argue that a change from Class A2 to Class B8 was not permissible under permitted development and cannot be seen to be a continued lawful use of the building as required for CIL purposes.

58. The CA have referred to R (oao Hourhope Ltd v Shropshire Council (2015) and the Statutory Declaration provided by the Appellant that states that the building '*still contained everything that the bank needed to operate*'. They argue that the [redacted] lease had ended and planning permission was subsequently sought for the conversion of the site to a largely residential use, and that the Class A2 use as a building open to the public was not intended to be re-established, and thus the building cannot be considered to have been 'in-use'.

59. The Appellant has argued that the bank was still controlling the property, conducting banking activities by keeping valuable items in the safes (and not merely a storage use) and paying business rates until the surrender of their lease on [redacted]. They reason that it would be inappropriate to consider storage of valuables and gold in the safes to be separate uses which are themselves authorised for planning, but activities ancillary to and part of the overall permitted use.

60. The building was used as a bank open to the public and including the storage of valuables up to the relocation of the retail banking part from the start of [redacted], but use of the safe and strongroom continued until [redacted] eventually handed over the property on [redacted]. The storage of valuables for the bank and its customers had always been an essential part of the banking service that had taken place at the property from at least [redacted] and continued to be during the period of less than two months after the customer-facing part of the operation had moved to new premises. As the Appellant has argued, this latter period accounts for a very small portion of the overall time [redacted] provided a full range of banking services from the premises, and it is difficult to envisage that an

application for a change in Use Class, as suggested by the CA, would have been made for such a short period of time prior to the bank's departure from the property.

61. It is my opinion that from all the information provided it can be shown that the property was lawfully "in-use" as a Bank for a period of 6 months 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) is therefore met.

62. 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.

63. Regarding the second part of the appeal, with regards to the measurement of the floorspace of the building, the original Liability Notice issued by the CA on [redacted] was calculated on the residential use GIA of the development at [redacted] m2 which was the figure given on the CIL Additional Information Form dated [redacted] provided as part of the planning application reference [redacted] by the Appellant.

64. The Appellant made the Regulation 113 Review request partly to revisit the calculation of this figure and stated in their Regulation 113 request letter from Clarke Willmott dated [redacted] that *'the total residential element of the development is* [redacted] *m2'*. As such, the CA re-issued the Liability Notice for [redacted] on [redacted] to reflect this.

65. The CA note that the Appellant is now proposing a KR(ii) deduction of the floorspace of two flats for which a proposed Lawful Development Certificate was previously granted (ref: [redacted]). These flats were included in the planning application form and the description of development where permission was sought for the conversion of the building to 13 flats (ref: [redacted]), and as such the CA considers the floorspace of these flats should be included in the proposed GIA as they form part of the development for which the planning permission relates.

66. The Appellant attached approved drawings in Appendix 1 of their response to the CA's representations of [redacted], together with their revised GIA measure and CIL Calculation (Appendix 2). These confirm the full proposed development GIA as [redacted] m2 and state the following floor areas:-

Existing GF [redacted] *m2 GIA*
Existing FF [redacted] *m2 GIA*
Existing 2nd floor [redacted] *m2 GIA*
Existing 3rd floor [redacted] *m2 GIA*
Total 2, [redacted] *m2 GIA*

Proposed GF [redacted] *m2 GIA*
Proposed FF [redacted] *m2 GIA*
Proposed 2nd floor [redacted] *m2 GIA*
Proposed 3rd floor [redacted] *m2 GIA*
Total [redacted] *m2 GIA*

Thus*:*

Proposed Development GIA [redacted] *m2*
Less
Existing GIA [redacted] *m2*
= Chargeable GIA [redacted] *m2*

67. The Appellant comments that the above calculations are based on plans reference [redacted] contained within *Appendix 1* of their response to the CA's representations, but those plans are not annotated with any dimensions to enable a calculation of GIA, and there is

no clear indication as to how the proposed floor areas listed on these plans under "Accommodation Schedule" have been calculated nor to which basis of measurement. It is noted that for the existing floor areas under "Accommodation Schedule" on the plans the following areas are stated:-

Existing GF [redacted] *m2*
Existing FF [redacted] *m2*
Existing 2nd Floor [redacted] *m2*
Existing 3rd Floor [redacted] *m2*
TOTAL [redacted] *m2*

68. Therefore all but the existing first floor area are almost the same as the Appellant's calculations of GIA listed above. For the first floor, the area marked on the plan at [redacted] m2 is some [redacted] m2 less than the GIA calculated by the Appellant at [redacted] m2. The Appellant's agent advises they had not been involved with, nor could they verify, the architects' floor area annotations/Accommodation Schedule on the plans, and so had not used those areas in their assessment, as they regularly find architects areas are not correctly measured to GIA, often omitting circulation areas/space. This may explain the discrepancy in these areas. It is their view that the total existing GIA is therefore [redacted] m2 and in an email dated [redacted] the CA have indicated they are willing to concur with the measurements provided in the Appellant's email dated [redacted].

69. For the proposed floor areas under "Accommodation Schedule" on the plans the following areas are stated:-

Proposed GF A2 use - [redacted] *m2*
Proposed residential 13 flats - total [redacted] *m2*
1 bed dwellings A & B approved under [redacted] *– total* [redacted] *m2*
TOTAL [redacted] *m2*

70. The Proposed floor area is less than the Existing floor area within the "Accommodation Schedule" on the plans, which is at odds with the calculations submitted by the Appellant indicating a chargeable area of [redacted] m2. Yet again, the Appellant's agent advises they had not been involved with, nor could they verify, the architects' floor area annotations/Accommodation Schedule on the plans, and so had not used those areas in their assessment, as they regularly find architects areas are not correctly measured as GIA, often omitting circulation areas/space - which may explain the discrepancy in these areas. It is their view that the total proposed GIA is therefore [redacted] m2 and in an email dated [redacted] the CA have indicated they are willing to concur with the measurements provided in the Appellant's email dated [redacted].

71. The CA also note in their email to the Appointed Person dated [redacted] that the *Existing First Floor Plan* ([redacted]) includes [redacted] m2 floorspace labelled on the accompanying document as '*Rear South block – formerly safe/strong room*' and state it is unclear whether this is existing floorspace; the first floor floorspace figure on the plan itself by the original architect is [redacted] m2, which is [redacted] m2 less than the total provided by the Appellant. As such, it does not appear to have been included in their total, furthermore Clarke Wilmott also considered the area new floorspace as part of the Regulation 113 Review submission.

72. The Appellant clarifies in an email dated [redacted] that the [redacted] m2 queried by the CA was a plant room area and thus the drawings of existing floorspace were minimal as the space was a large void with some redundant M&E HVAC equipment/ducting on a solid concrete floor. Additionally, drawing [redacted] Existing Elevations 3 in section 05 (the earlier plan [redacted] indicates this should be referenced [redacted]) clearly shows the roof to be at 'two storeys' height that joins the front part of the site with the separate rear development (undertaken within permission [redacted]). These elevations clearly show the

plant room double doors and ventilation intake/outlet. The Appellant therefore suggests Clarke Willmott perpetuated the architect's error in the omission of this plant room area, without validating the areas. They therefore confirm the GIA for First Floor Existing should include this plant area as per their schedule at [redacted] m² giving a total GIA for Existing of [redacted] m²

73. As the existing and proposed GIAs are no longer in contention between the parties, these GIAs will be utilised by the Appointed Person in calculating CIL liability.

Calculation of CIL Liability

74. The formula within Schedule 1 Part 1 is:-

$$\text{Net chargeable area} = GR - KR - \frac{(GR \times E)}{G}$$

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.

75. **Value G** (the GIA of the chargeable development): [redacted] m2 as per the Appellant's calculation and accepted by the CA.

76. **Value GR** (the GIA of the part of the chargeable development to be charged at rate R) is [redacted] m2 less the commercial element of the development [redacted] m2 (as per the Appellant's calculation) = [redacted] m2.

77. **Value KR(i)** is [redacted] m2 less the commercial element of the development [redacted] m2 (as per the Appellant's calculation) = [redacted] m2.

78. **Value KR(ii)** is zero.

79. **Value E(i)** is zero.

80. **Value E(ii)** is zero.

81. Therefore, applying the formula within Schedule 1 Part 1 the net chargeable area is calculated thus:-

$$[\text{redacted}]\ m2 - [\text{redacted}]\ m2 - \frac{([\text{redacted}]\ m2 \times 0)}{[\text{redacted}]\ m2}$$

= [redacted] *m2 GIA chargeable area*

82. CIL Liability is calculated using rates and indices at [redacted] relevant at the date of planning permission [redacted] as:-

Residential
[redacted] *m2 GIA chargeable area*
@ £[redacted] */m2 CIL Rate indexed at* [redacted] *is £*[redacted] */m2*
= £[redacted] *rounded CIL Charge*

Decision on CIL Liability

83. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that on the facts of this case the CIL charge should be £[redacted] ([redacted]).

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
16 June 2022