

Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency
Wycliffe House
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Durham
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e-mail: [REDACTED]@voa.gov.uk

Appeal Ref: 1811058

Planning Permission Ref. [REDACTED]

Proposal: Change of use from night club (sui generis) to 9no. flats (use class C3) and associated works

Location: [REDACTED]

Decision

I do not consider the Community Infrastructure Levy (CIL) charge of £[REDACTED] ([REDACTED]) to be excessive and I therefore dismiss this appeal.

Reasons

1. I have considered all of the submissions made by [REDACTED] of [REDACTED] (the Appellant) and by the Collecting Authority, [REDACTED] (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
 - a) Planning decision ref [REDACTED] dated [REDACTED];
 - b) Approved planning consent drawings, as referenced in planning decision notice;
 - c) CIL Liability Notice [REDACTED] dated [REDACTED];
 - d) CIL Appeal form dated [REDACTED], including appendices; and
 - e) Representations from CA dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for 'Change of use from night club (sui generis) to 9no. flats (use class C3) and associated works.
3. The CA issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m² at the 'Residential Zone 2' rate of £[REDACTED] /m² plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], stating that the liability notice was correct.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be Nil.
6. The Appellant's grounds of appeal can be summarised as follows:
 - a) The building has been in lawful use during the relevant period and should therefore be exempt from CIL.
 - b) The GIA is [REDACTED] sqm and not [REDACTED] sq m as measured by the CA.
7. The CA has submitted representations that can be summarised as follows:
 - a) There is insufficient evidence to support that the building was in lawful use during the relevant period. The information available suggests that it was not in lawful use and therefore the existing building should not be deducted from the CIL charge.
 - b) The GIA has been measured using the proposed plans and is considered to be correct.

Lawful use

8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows "retained parts of in-use buildings" to be deducted from the gross internal area of the chargeable development.
9. "In-use building" is defined in the Regulations as a relevant building that 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. For this development, the three year period runs from [REDACTED] to [REDACTED].

10. The appellant has provided an affidavit signed by [REDACTED], director of [REDACTED] which states that the nightclub was forced to close on [REDACTED] due to Covid restrictions. It is assumed that this is a typing error and the date should read [REDACTED].
11. The appellant also refers to a planning application made in [REDACTED] ([REDACTED]) that states the building was still in use when the application was made. The document provided is undated but the application was submitted [REDACTED].
12. The CA have provided evidence of two news articles, one from [REDACTED] and one from [REDACTED] which both state that the nightclub closed on [REDACTED]. These articles were dated [REDACTED] and refer to a Facebook announcement made by the managers “on [REDACTED] afternoon” which is assumed to be the same day. At this time, the impending Covid restrictions were not known of.
13. The property would need to have been open until [REDACTED] (or to have reopened for a continuous period of 6 months at a later point within the three years) for it to meet the definition of an in-use building. It appears that the CA and the appellant agree that the property was closed at some point during [REDACTED], either on [REDACTED] or [REDACTED]. Therefore, it appears the property was not in lawful use for the required six month period.

GIA

14. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that we must calculate “the gross internal area of the chargeable development.”
15. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice definition is used. GIA is defined as “the area of a building measured to the internal face of the perimeter walls at each floor level.” The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.
16. The CA have calculated the GIA at [REDACTED] sqm. They have provided measured versions of approved plans which show the ground floor area of [REDACTED] sqm on the ground floor and [REDACTED] sqm on the first floor.
17. The appellants state that the GIA should be [REDACTED] sqm. They have provided plans that show the area of each individual flat which totals [REDACTED] sqm on the ground floor and [REDACTED] sqm on the first floor (total [REDACTED] sqm). It is unclear how the [REDACTED] sqm has been calculated.
18. I have carried out my own measurements using the approved plans and I am in agreement with the CA calculated GIA of [REDACTED] sqm.

Calculation of Chargeable Amount

19. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 provides guidance on the calculation of the chargeable amount. This states:

“(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times IP}{IC}$$

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.”

20. I consider that the CA have correctly calculated the chargeable amount, in accordance with the regulations.

21. On the basis of the evidence before me, I do not consider the Community Infrastructure Levy (CIL) charge of £ [REDACTED] ([REDACTED]) to be excessive and I therefore dismiss this appeal.

[REDACTED] BSc (Hons) MRICS
Valuation Office Agency
7 February 2023