

# Appeal Decision

by [REDACTED] (Hons) PG Dip Surv MRICS

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

Valuation Office Agency (DVS)  
Wycliffe House  
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Email: [REDACTED]@voa.gov.uk

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**Appeal Ref: 1819669**

**Planning Permission: [REDACTED] granted by [REDACTED] Council on [REDACTED]**

**Location: [REDACTED]**

**Development: Demolition of existing buildings and erection of 3-8 storey buildings comprising [REDACTED] residential units and commercial floorspace ([REDACTED]), with associated landscaping, access, servicing and parking**

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## Decision

Appeal dismissed.

## Reasons

1. I have considered all the submissions made by [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 submitted documents:-
  - a. The decision notice issued by [REDACTED] on [REDACTED] together with associated plans, drawings and documents.
  - b. The CIL Liability Notice issued by the CA on [REDACTED].
  - c. The CA's response to the appellant's request for a review dated [REDACTED].
  - d. The CIL Appeal form received by the VOA on [REDACTED], submitted on behalf of the appellant under Regulation 114, together with documents and plans attached thereto.
  - e. The CA's representations to the appeal dated [REDACTED].
  - f. Further comments made on behalf of the appellant on [REDACTED].

2. CIL Liability Notice [REDACTED] was issued by the CA on the [REDACTED]. The total CIL Liability stated in this notice was £[REDACTED] after social housing relief of £[REDACTED]. The liability is made up of both Mayoral and local authority CIL as detailed below;
- [REDACTED]
3. The notice states the total area of the chargeable development to be [REDACTED] square metres (sq. m) with a net chargeable area of [REDACTED] sq. m after the gross internal area (GIA) of the demolished buildings at [REDACTED] sq. m is off set.
4. The appellant and the CA had an email exchange between [REDACTED] and [REDACTED]. During this exchange the parties set out their respective views on what should be included within the GIA of the chargeable development but were unable to reach an agreement. On the [REDACTED], the appellant advised the CA he was treating his email of the [REDACTED] as a request for a review under Regulation 113 and the CA's response on the [REDACTED] as the outcome of that review. The CA indicated their acceptance to this proposed course of action on [REDACTED].
5. The appellant has submitted an appeal to the Valuation Office Agency under Regulation 114 (chargeable amount appeal) stating that in his opinion, the calculation of the amount of CIL payable should be based on the following floor areas:
- GIA of the chargeable development = [REDACTED] sq. m
  - GIA of buildings to be demolished = [REDACTED] sq. m
  - Deemed net chargeable area = [REDACTED] sq. m
6. The appellant calculates the CIL liability to be £[REDACTED]. This comprises of a Mayoral liability of £[REDACTED] and liability to the CA in the sum of £[REDACTED] after the deduction of social housing relief at £[REDACTED]
7. The appellant has three grounds of appeal that have led him to conclude the above CIL liability should be adopted.
1. The CA has wrongly included external walkways and fire escapes within the GIA.
  2. The CA has wrongly included open sided balconies within the GIA.
  3. The CA has wrongly included external walls within the GIA.
8. The CA has submitted representations in response to this appeal advising that in their opinion, the appellant is applying the RICS Code of Measuring Practice (6<sup>th</sup> edition) incorrectly and they maintain all of the areas stated above are to be included within the GIA.

9. All three grounds of the appellant's appeal centre around GIA and what falls to be included or excluded. It is assumed discrepancies in the floor areas adopted between the parties arise solely from the grounds of the appeal. No other issues have been raised and it is assumed that the parties both agree on the charging rates and indexation rates applied.
10. As this is a Regulation 114 chargeable amount appeal, I am to determine the CIL payable in accordance with Regulation 40 and Schedule 1. Exemptions and reliefs are not relevant to this calculation; therefore, I have not considered the social housing relief applied in this case.
11. The CIL regulations stipulate that CIL calculations are to be based on gross internal area (GIA). Both parties appear to accept that the RICS Code of Measurement Practice 6<sup>th</sup> Edition (May 2015) (COMP) is the principal source of guidance for the measurement of buildings. The definition of GIA is provided within the Code as follows:

*GIA is defined as the area of a building measured to the internal face of the perimeter walls 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 fire escapes*
- *Canopies*
- *Voids over or under structural, raked or stepped floors*
- *Greenhouses, garden stores, fuel stores, and the like in residential property.*

12. The first ground of appeal is that the COMP specifically excludes 'external open sided balconies, covered ways, fire escapes, and minor canopies'. The appellant opines that the walkways and fire escapes in question are not within the main building structure. They explain these areas need to be outside because of the fire strategy design of the building and claim the walkways are not internal balconies. They have provided extracts from the consented Structural Scheme and Report and the Planning Committee report where these areas are referred to as external walkways. Therefore, the appellant concludes these areas should be excluded from the GIA. The appellant advises that the CA referred to these areas as corridors within their email of the [REDACTED] and the appellant considers these areas do not conform with the Oxford Dictionary definition of a corridor.

13. In response, the CA opines that a boundary of a building does not necessarily need to be a wall and they use [REDACTED] of the COMP as well as a past CIL decision to support this view highlighting how it is accepted practice to measure to the internal face of a supporting pillar in the instances of loading bays and undercroft parking etc. The CA goes on to explain that it is debatable whether these areas are corridors, walkways or another form of circulation space but, they consider that these areas; "are clearly inside the perimeter extent of the building" and should be included within the GIA. The CA state; "all walkways and balconies (except one balcony "Type 1") are in our view within this boundary and internal."

14. Having considered the submissions of both parties and having regard to the building plans and the COMP, I find in favour of the CA on this ground and conclude these areas should be included within the GIA.

15. I can see why this dispute has arisen given the RICS definition includes '*Internal open-sided balconies, walkways and the like*' but excludes '*External open-sided balconies, covered ways and fire escapes*'. The appellant believing the walkways fit the definition of the latter and the CA the former.

16. In this case, the walkways are fully enclosed on one side and, despite being partially open on the remainder, I do not consider that they fit the description of being external for GIA. All of the walkways sit over space on the floors below, are covered above falling below the roof line and lie within the boundary of the building which is demarcated by the pillars running from the roof to the ground floor.

17. There are examples shown within the Code where it is suggested that it is appropriate to measure to the perimeter of the building and include an area such as a loading bay (Diagram D), despite it not being fully enclosed at that level. This would appear to confirm that in certain situations, the RICS code does not envisage that a lack of external walls prevents GIA from being calculated. Here, the internal perimeter wall is the pillars. I agree with the CA, all of the walkways and fire escapes

referred to sit within the perimeter walls of the building despite them not being fully enclosed on all sides. I consider that the walkways in question fit the description of 'internal open sided balconies, walkways and the like', which are specifically included within the definition of GIA.

18. Ground 2 centres around whether or not the balconies should be included within the GIA. As noted above the COMP states internal open-sided walkways and the like should be included but external open sided balconies, covered ways and fire escapes are excluded.
19. I understand there are six different balcony types that are part of the chargeable development and both parties agree Type 1 is an external balcony as defined in the COMP and have excluded it from their calculation of the GIA. The appellant is of the view the remainder are also external and should be excluded from the GIA, whilst the CA maintain these types conform with the definition of an internal balcony and should be included.
20. The appellant describes these balconies as thermally broken from the structure and open on one or more sides depending on type. Consequently, the appellant considers these balconies should be excluded from the GIA as they are "external." They further support their position with reference to a CIL Appeal decision which referred to internal balconies having habitable space all around them and point out none of the balconies within the chargeable development have habitable rooms above and or below with the balconies being within the footprint of the commercial building before projecting from the main structure above.
21. In response, the CA cites part of the same CIL decision where the Appointed Person concludes; *"that if a balcony does not protrude from the external wall of a building and it is surrounded by the main structure of the building with an open front then this is an internal balcony that should be included within the GIA. If the balcony was attached or constructed to protrude from the main external wall this would come within the definition of an external balcony and should be excluded from the definition of GIA."* The CA opines that balcony types 2 and 6 are not external as they lie within the rectangular main structure of the building, are covered by the roof of the main building, and do not protrude like Type 1.
22. The CA addresses the habitable space point raised by the appellant. They consider the appellant has misinterpreted the CIL decision about habitable space having to be all around. The CA claim the decision only explained the balcony in question was sitting above a floor and underneath a flat. The CA advise type 3 balconies do not protrude from the main wall of the building and are "classic" internal balconies. In addition the CA confirm they see Type 4 balconies in the same way with the CGI images showing the balconies inset from the main elevation walls and advise that the Type 5 balconies when viewed on the floorplans are inset from the main elevations and roofline. The CA therefore considers all of the balconies are internal and as such should be included within the GIA.

23. In respect of ground 2, I find in favour of the CA. The balconies in question lie within the footprint of the main building and as such fit the description of “internal open-sided balconies” which are specifically included. In reaching this decision I have had regard to the Appointed Person’s decision within the appeal decision submitted by both parties and concur that; *“if a balcony does not protrude from the external wall of a building and it is surrounded by the main structure of the building with an open front then this is an internal balcony and should be included in the GIA. If the balcony was attached or constructed to protrude from the main external walls this would come within the definition of an external balcony and be excluded from GIA calculations.”* Therefore, I agree all of the balconies aside from Type 1 which protrudes from the main structure, are internal and fall to be included within the GIA. The definition of GIA requires measurement to internal face of the perimeter walls of the building at each floor level. In this case where there are recessed balconies, I consider a measurement to the perimeter walls of the building will include the recessed balcony areas. There are other instances where the Code suggests it is appropriate to measure to the perimeter of the building and include an area such as a loading bay as described above.
24. The appellant’s third ground is that the CA have wrongly included external walls within the calculation of GIA. The appellant highlights 2.18 of COMP which states perimeter wall thickness and external projections are to be excluded from GIA.
25. The CA have responded to this point advising the walls in question can be seen on the floor plan of Type 5 balconies and are within the building perimeter separating the flats from the balconies. The CA reiterate their view that having considered previous CIL decisions concerning undercroft parking and carports, they consider it appropriate to measure to the perimeter of a building and in doing so, including areas that are not fully enclosed. They go on to explain in their view it follows that these walls between the flats and the walkways are included within the GIA as they are internal and do not define the perimeter of the building.
26. In respect of Ground 3, I also find in favour of the CA. GIA Note 2 within the COMP states; *“GIA excludes the thickness of perimeter walls but includes the thickness of all internal walls. Therefore, it is necessary to identify what constitutes a separate building.”* In this case, the balcony and the flats are part of the whole building which comprises the chargeable development, they are not separate, with the balconies forming part of the flats. I, therefore, agree with the CA these separating walls would be considered internal walls for the purposes of GIA.
27. It is assumed that now it has been decided that the disputed areas are to be included within the GIA, that the parties agree on the total GIA of the chargeable development. The submissions do not refer to any other areas of dispute and having taken check measurements of the provided plans, my calculation of the GIA is very close to the CA’s. It is noted the CA has adopted a larger GIA of █████ sq. m of buildings to be demolished than the appellant and I have taken this area to be correct to reach a net chargeable area of █████ sq. m. Given this, I concur with the CA, the CIL liability in this case pre relief, is £█████ (█████) and dismiss this appeal.

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RICS Registered Valuer  
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16 June 2023