

# Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency  
Wycliffe House  
Green Lane  
Durham  
DH1 3UW

e-mail: [REDACTED]@voa.gov.uk

---

**Appeal Ref: 1819634**

**Planning Permission Ref. [REDACTED]**

**Proposal: Erection of a mixed-use building comprising of [REDACTED] flats and ground floor commercial floor space together with associated landscaping, access and parking following demolition of buildings.**

**Location: [REDACTED]**

---

## Decision

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

## Reasons

1. I have considered all of the submissions made by [REDACTED] (the Appellant) and by [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) Planning decision ref [REDACTED] dated [REDACTED];
  - b) Approved planning consent drawings, as referenced in planning decision notice;
  - c) CIL Liability Notice [REDACTED] dated [REDACTED] and [REDACTED] dated [REDACTED];
  - d) CIL Appeal form received [REDACTED], including appendices;
  - e) Representations from CA dated [REDACTED];
  - f) Appellant comments on CA representations, dated [REDACTED];
  - g) Additional representations from the Appellant dated [REDACTED]; and
  - h) Additional representations from the CA dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for 'Erection of a mixed use building comprising of [REDACTED] flats and ground floor commercial floor space together with associated landscaping, access and parking following demolition of buildings.'
3. The CA issued a CIL liability notice [REDACTED] on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m<sup>2</sup> at the 'Residential dwellings - more than 10 (Zone B)' rate of £[REDACTED]/m<sup>2</sup> plus indexation plus [REDACTED] m<sup>2</sup> at the 'Out of Centre Retail – other than convenience' rate of £95/m<sup>2</sup> plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], stating that they did not consider there to be sufficient evidence to demonstrate that the existing building was in lawful use. However, they did confirm an error in their calculation of GIA and therefore issued a revised Liability notice for a total sum of £[REDACTED]. This was calculated on a GIA of [REDACTED] m<sup>2</sup> of residential and [REDACTED] m<sup>2</sup> of retail space.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be based on a net chargeable area of [REDACTED] m<sup>2</sup>. This was calculated as [REDACTED] m<sup>2</sup> of residential floor space and [REDACTED] m<sup>2</sup> of retail floor area, less [REDACTED] m<sup>2</sup> of existing 'in-use' floor space.
6. The Appellant's grounds of appeal can be summarised as follows:
  - a) The showroom area was in lawful use during the relevant period and should be offset against the CIL charge. Sufficient evidence has been provided to demonstrate this.

7. The CA has submitted representations that can be summarised as follows:
  - a) There is insufficient evidence to determine that the showroom was in continuous use for a six month period and therefore no off-set should be granted.
  - b) The GIA of the existing building has been incorrectly calculated by the appellant
  - c) The indexation adopted by the CA in the Liability Notice is incorrect and should be amended.

#### In-use buildings

8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows “the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development” 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.
10. “Relevant building” means a building which is situated on the “relevant land” on the day planning permission first permits the chargeable development. “Relevant land” is “the land to which the planning permission relates” or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.
11. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of “in-use building” then it can deem the GIA of this part to be zero.
12. The showroom area had planning permission granted on [REDACTED] under ref [REDACTED] for retail (A1), financial and professional services (A2), offices and research and development (B1a/b) or non-residential institutions (D1).
13. The appellant has provided a tenancy agreement dated [REDACTED] that shows the showroom was let to [REDACTED]. This agreement has no fixed term and can be terminated at will by either party. The permitted use within the agreement is “the sale of charity calendars and the holding of the occasional evening events as agreed from time to time with the Landlord.”
14. Alongside the tenancy agreement, the appellant has provided a letter provided by the charity confirming that they occupied from [REDACTED] to [REDACTED] for administration, display and sale of the [REDACTED]. The letter includes photographs of the gallery in use and includes a screenshot from the [REDACTED] Council website date [REDACTED] which advertised the gallery being open on [REDACTED] from 10:00 – 14:00.
15. The appellants have also provided a photograph of a newspaper article about the gallery and an advert for the gallery which states it will be open every Saturday 10am until 2pm from [REDACTED].

16. The CA maintain that the evidence provided does not demonstrate continuous use but rather occasional/seasonal use. In addition, the planning documents submitted with the application, such as the application form dated [REDACTED] and Design and Access Statement dated [REDACTED] state that the property was vacant.
17. In response to the CA representations, the appellants provided evidence demonstrating the sales that occurred and income generated from [REDACTED] to [REDACTED] (a six month period).
18. In my opinion, the use of the showroom for sales of calendars and as a pop-up art gallery is lawful. The appellants have provided sufficient evidence to demonstrate that this use continued for at least a six month period during the three year period. Although the gallery appears to have only opened once a week, I consider that this amounts to more than merely occasional or seasonal use and I am therefore satisfied that on the facts of this case, the in-use criteria has been met.

### GIA

19. The GIA of the proposed building has been agreed between the appellant and the CA.
20. The CA have queried whether the calculation of GIA of the existing building is correct and in accordance with the RICS Code of measuring practice. They have not provided alternative calculations.
21. 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.
22. I have considered the GIA calculations provided by the Appellants and I consider that they do represent the GIA of the existing building, measured in accordance with the RICS Code of Measuring Practice.

### Calculation of Chargeable Amount

23. 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.”

- (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.

24. I have calculated A as follows:

Residential

$$\text{[REDACTED]} - \left( \frac{\text{[REDACTED]} \times \text{[REDACTED]}}{\text{[REDACTED]}} \right) = \text{[REDACTED]} \text{ m}^2.$$

Retail

$$\text{[REDACTED]} - \left( \frac{\text{[REDACTED]} \times \text{[REDACTED]}}{\text{[REDACTED]}} \right) = \text{[REDACTED]} \text{ m}^2.$$

25. The CA have raised that there was an error in their Liability Notice as they incorrectly adopted an IP figure of [REDACTED] instead of [REDACTED]. I have reviewed the CIL Index and I can confirm that a figure of [REDACTED] is correct.

26. My calculation of the CIL charge is as follows:

Residential:

R = £ [REDACTED] (Residential dwellings – more than 10 (Zone B)

A = [REDACTED] (as above)

IP = [REDACTED]

IC = [REDACTED]

$$\text{£ [REDACTED]} \times \text{[REDACTED]} \times \text{[REDACTED]}$$

Total - £ [REDACTED]

Retail:

R = £ [REDACTED] (Out of centre retail (other than convenience))  
A = [REDACTED] (as above)  
IP = [REDACTED]  
IC = [REDACTED]

£ [REDACTED] x [REDACTED] x [REDACTED]  
[REDACTED]

Total - £ [REDACTED]

27. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

[REDACTED] MRICS  
Valuation Office Agency  
20 July 2023