Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency - DVS
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e-mail: [redacted] @voa.gov.uk.

Appeal Ref: 1845409

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Erection of part second floor and third floor roof extension and change of use of second floor from offices (Class E) to create 8 residential flats (Class C3) with associated car and cycle parking, bins stores and associated communal amenity space.

Decision

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

Reasons

2. I have considered all the submissions made by [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. Planning permission dated [redacted] ref [redacted] for "*Erection of part second floor and third floor roof extension and change of use of second floor from offices (Class E) to create 8 residential flats (Class C3) with associated car and cycle parking, bins stores and associated communal amenity space*" and approved plans.
   b. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
   c. The CA's Regulation 113 Review Decision dated [redacted] .
   d. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
   e. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto along with further documents and correspondence submitted on [redacted] .
   f. The CA's representations dated [redacted] together with documents and correspondence attached thereto.
   g. The Appellant's further comments dated [redacted] .

Background

3. Planning permission [redacted] was granted by the CA on [redacted] for "*Erection of part second floor and third floor roof extension and change of use of second floor from offices (Class E) to create 8 residential flats (Class C3) with associated car and cycle parking, bins stores and associated communal amenity space*."

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

   Residential Dwellings – 10 or less (Zone B)
   Chargeable Area [redacted] *m2*
   CIL Rate £ [redacted] */m2 indexed at* [redacted]
   = £ [redacted].
   On the [redacted] the Appellant requested a Regulation 113 review, and on [redacted] the CA issued the outcome of their review, stating they were now in agreement with the Appellant's stated GIA for the development of [redacted] m2 but further stating that "*the Council do not consider that it has sufficient information, or information of sufficient quality, to enable it to establish that the existing building is an "in-use building". Where this is the case, as per Schedule 1, the Council is able to deem a building to not be an 'in-use building' and concludes this for the existing building.*"

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

   Residential Dwellings – 10 or less (Zone B)
   Chargeable Area [redacted] *m2*
   CIL Rate £ [redacted] */m2 indexed at* [redacted]
   = £ [redacted] *CIL Liability*

6. A Regulation 114 Appeal against the chargeable amount was submitted to the VOA dated [redacted].

Appeal Grounds

7. The Appellant appeals on the grounds that the GIA of the second floor of [redacted] is deductible from the GIA of the development, either as a KR(i) for an "in-use building" or under KR(ii) if KR(i) is not applied.

Consideration of the Parties' Submissions

8. The GIA of the development is no longer in contention, with both parties in agreement that the proposed GIA is [redacted] m2. There is therefore nothing further for the Appointed Person (AP) to consider in relation to the GIA of the development.

9. The Appellant contends that if a KR(i) deduction of [redacted] m2 for existing in-use buildings is applied to the total GIA of the development [redacted] m2 the chargeable GIA would equal [redacted] m2.

10. The Appellant further argues that if this [redacted] m2 GIA is multiplied by the CIL rate £ [redacted] per m2 indexed by [redacted] the CIL liability would be £[redacted]

11. In relation to a KR(ii) deduction, the Appellant contends that this would not require an earlier grant of planning permission and it would be sufficient if there was an existing authority allowing change in the use of the building or part. They argue that an authorisation under the Permitted Development Rights regime such as the Prior Approval in this case is sufficient.

12. The Appellant contends that a KR(ii) deduction is formulated in such a manner that it is applied to the retained part of the development which satisfies the planning qualification and the whole of the development does not need to satisfy that qualification. In the development authorised by the 2023 Permission the retained part is the second floor. In consequence they argue that the KR(ii) deduction is the GIA of the second floor [redacted] m2 which means the calculation of the amount of CIL liability is the same as that under KR(i), being £[redacted]

13. The CA have, in their submissions made for this Regulation 114 Appeal, confirmed they consider this to be a relevant building.

14. The CA also state that as part of this 114 Appeal the Appellant has submitted significant 'in-use' evidence regarding the use of the building, beyond that previous received by the CA. The evidence regarding 'in-use' includes: a statutory declaration, utility bills, business rates bills, companies house data and accounts, and background emails. As such, the CA agree that there is now sufficient evidence to demonstrate that the existing building 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 permitted the chargeable development.

15. The CA confirm they have measured GIA using the methodology prescribed by the *RICS Code of Measuring Practice (6th Edition)*. The CA has measured the GIA of the retained floorspace at the second floor level within [redacted], and are now happy to agree the GIA figure stated by the Appellant ([redacted] m2). As a result, the CA now agree with the Appellant that the relevant retained floorspace of [redacted] m2 can be taken into account under KR(i) of the CIL Regulations.

Consideration of the Decision

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

17. With both parties in agreement that the retained floorspace GIA is [redacted] m2 there is therefore nothing further for the AP to consider in relation to the GIA of the retained floorspace.

18. The CA note that the Appellant has stated that KR(ii) would only be applicable as a secondary argument should KR(i) be dismissed. As a result of the above, the CA now confirm they do not consider it necessary to address the points raised by the Appellant in relation to KR(ii).

19. The CA state that in accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) they now calculate the chargeable amount by applying the relevant formula:

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

Where:
A = the deemed net area chargeable at rate R: [redacted] *m2* [redacted] *(m2 less* [redacted] *m2)*
R = £[redacted]
Ip = the index figure for the calendar year in which planning permission was granted: [redacted]
Ic = the index figure for the calendar year in which the charging schedule containing rate R took effect: [redacted]

Thus:

[redacted]

= [redacted]
= £[redacted]

20. The CA hold the view that the "*slight discrepancy*" between their above figure and the Appellant's proposed £ [redacted] is due to an indexation figure being utilised in the Appellant's calculation, rather than the specific Ip and Ic figures as above, as per the requirement of the CIL Regulations.

21. The CA now request that the AP confirms a revised chargeable amount of £[redacted]

22. On [redacted] the Appellant commented in response to the CA's amended calculation of the chargeable amount above: "*In light of the Council agreeing to make a key concession in relation to the Kr(i) deduction, which it now says should apply, we consider the appellant's case speaks for itself, and therefore, aside from this email, no additional representations will be submitted.*"

23. The CA has stated they now agree sufficient evidence has been submitted to demonstrate that the existing building 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 permitted the chargeable development. I agree, and therefore a KR(i) deduction may be applied in accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended).

24. The CA and Appellant are now in agreement over the GIA of the development and also the GIA of the existing in-use building, and there is therefore nothing more for the AP to consider, other than to ensure the correct calculation has been applied.

25. Value A in the relevant formula is now correctly stated by the CA as:

Development GIA [redacted] *m2*
less Existing GIA [redacted] *m2*
=[redacted] *m2 chargeable GIA*

26. The relevant formula as applied therefore gives the following CIL Liability:

[redacted]
= £ [redacted] *CIL Liability*

27. As the KR(ii) appeal ground was made as a secondary matter in the event that a KR(i) deduction was not possible, the fact this has now been confirmed means that the KR(ii) issue no longer needs to be considered by the AP.

Decision

28. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [redacted] ([redacted]).

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
25 July 2024