

# Appeal Decision

by [REDACTED] MRICS BA Hons, PG Dip Surv

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

Valuation Office Agency  
Wycliffe House  
Green Lane  
Durham  
DH1 3UW  
Email: [REDACTED]@voa.gov.uk

---

**Appeal Ref: 1818471**

**Planning Permission Details:** [REDACTED]

**Location:** [REDACTED]

**Development: General Permitted Development Order 2015, Schedule 2 Part 3  
Class MA – Prior Notification Application for change of use from commercial,  
business and service (Use class E) to 4 dwellings (Use class C3).**

---

## Decision

I confirm that the Community Infrastructure Levy (CIL) charge stated in the Liability Notice issued on [REDACTED] is not excessive and hereby dismiss this appeal.

## Reasons

1. I have considered all of the submissions made by [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 Form 5 Notice of Chargeable Development dated [REDACTED] together with associated drawings and plans.
- b. The Decision Notice issued by [REDACTED] on [REDACTED].
- c. CIL Liability Notice [REDACTED] issued by the CA on [REDACTED].
- d. The request for a Regulation 113 review made to the CA by the appellant on [REDACTED].
- e. The Chargeable Amount review decision issued by the CA on [REDACTED].
- f. The CIL Appeal form and statement received by the VOA on [REDACTED] and submitted by the appellant under Regulation 114, together with documents attached thereto.

- g. The CA's representations to the Regulation 114 Appeal dated [REDACTED].
- h. Further representations received from the CA on the [REDACTED] drawing attention to an error in the calculation of the CIL liability.
- i. Further comments on the CA's response made by the appellant on [REDACTED].

## Background

2. The appellant submitted a Form 5: Notice of Chargeable Development on [REDACTED] for the above chargeable development and the CA confirmed prior approval was not required on the same date.

3. Regulation 8 of the CIL Regulations 2010 (as amended) (7) determines the time at which planning permission first permits development under a general consent as being:

- a) *on the day on which the collecting authority receives a notice of chargeable development submitted to it in accordance with regulation 64 in respect of that development; or*
- b) *if no notice of chargeable development is submitted in accordance with regulation 64, the day on which the last person is served with a notice of chargeable development in accordance with regulation 64A(3).*

4. CIL Liability Notice [REDACTED] was issued by the CA on [REDACTED], stating a chargeable amount totalling £[REDACTED].

5. The appellant requested a formal review of the CIL charge under Regulation 113 on the [REDACTED].

6. The CA issued their Regulation 113 – Review of Chargeable Amount decision on [REDACTED] confirming the CIL liability in the sum of £[REDACTED].

7. The appellant submitted a Regulation 114 (chargeable amount appeal) to the Valuation Office Agency on the [REDACTED]. The appellant has stated that the CIL liability in this case should be nil.

8. The appeal is made on the following ground:

Evidence provided shows the property has been occupied on a continuous basis for a six-month period during the past three years and therefore the requirements of Schedule 1 Part 1 (10) "in-use building" (ii) of the Community Infrastructure Levy 2010 (as amended) are met and the existing floorspace should be taken into account in the calculation of CIL liability.

9. The appellant opines that they have supplied sufficient evidence and evidence of sufficient quality to demonstrate the building was "in-use" for two separate relevant periods between the [REDACTED] and [REDACTED]. The appellant considers that both periods meet the criteria of continuous lawful use for at least a six-month period during the relevant period.

10. The appellant has provided various documents to support his view that the in-use criteria have been met. These include:

- A covering letter in support of the appeal stating that they do not believe the CA to have fully considered the evidence the appellant submitted to them as part of the Regulation 113 review. The appellant also advises additional evidence is now provided as part of this Regulation 114 appeal.
- A document that details the occupancy and use history of [REDACTED] from [REDACTED] until [REDACTED]. This document advises that [REDACTED] leased the property from [REDACTED] as office and storage space. We are advised that they renewed their lease in [REDACTED] for a further [REDACTED] years. The document explains the ground floor was only used for the term of the lease and the lease ended on [REDACTED] when the tenant purchased alternative premises.
- A timeline illustrating why the appellant considers [REDACTED] was occupied for a minimum of 12 months between [REDACTED] and [REDACTED]. This is supported by the provision of an unsigned lease with a date of [REDACTED] in favour of [REDACTED]. The appellant states [REDACTED] was occupied for a minimum of 7 months between [REDACTED] and [REDACTED]. Further detail is provided within their document; “occupancy and use [REDACTED]”. This document states the property was leased by [REDACTED] in [REDACTED] and the lease was renewed for a further three years in [REDACTED] before ending in [REDACTED] when the tenant moved to alternative premises. The timeline also illustrates that the appellant considers both properties to have been occupied for a 13-month period between [REDACTED] and [REDACTED], this period being supported by a statutory declaration and photographs.
- Photographs submitted alongside Form 5 to the CA and as part of the representations to this appeal. The appellant opines these photographs show the building still in use as office space, as office furniture in situ and boxes used for storage can be seen.
- A statutory declaration made by [REDACTED] dated [REDACTED]. [REDACTED] declares to have used the top floor of [REDACTED] as overflow offices and the ground floor of [REDACTED] to store boxes under an informal arrangement from [REDACTED] until [REDACTED].
- An email from the Non-Domestic Rates department of [REDACTED] dated [REDACTED]. This states that according to their records, [REDACTED] has been vacant since the [REDACTED] and [REDACTED] has been vacant since [REDACTED].

11. The CA are of the view that the CIL liability in this case should be £[REDACTED]. The CA, as part of their representations have advised us of an error in the original CIL calculation. They advise their system had adopted the wrong indexation figure of [REDACTED] rather than [REDACTED]. Adopting the correct indexation figure increases the CIL liability from the £[REDACTED] contained within liability notice [REDACTED]. I confirm that in accordance with Schedule 1, the correct indexation figure is [REDACTED].

12. The CA confirm that they agree that the building is a relevant building and that they also agree the relevant period for at least six months of continuous lawful use is the period between [REDACTED] and the [REDACTED].

13. The CA advise that at the time of their 113 Review decision, they do not consider that they had sufficient information or information of sufficient quality, to enable them to establish that the existing building was an “in-use building.”

14. Within their Regulation 113 review, the CA advise they consider the email from [REDACTED] Business Rates Officer implies that [REDACTED] has been vacant since at least [REDACTED] and [REDACTED] since [REDACTED]. They advise the lease for number [REDACTED] is unsigned and does not give specific start or end dates, therefore it is not possible for the Council to ascertain whether this demonstrates continuous usages within the relevant period. The CA also state in their review decision that in their opinion, the photographs submitted show desks and a bakery counter in place but that these undated photographs show that when they were taken, the building was not “in-use”.

15. The CA has commented upon the further evidence submitted by the appellant as part of this Regulation 114 appeal. They opine that the document detailing the history of [REDACTED] up until [REDACTED] is anecdotal and there is no supporting information to corroborate this. The CA also considers the statutory declaration contradictory to the information contained within the email regarding business rates and the photographs previously provided.

### Decision and Reasoning

16. It is clear a disagreement has arisen in respect of the application of Schedule 1 Regulations 40 and 50 of the CIL Regulations 2010 (as amended) within which, a calculation of the *net* chargeable area of a development, provides for the deduction of the gross internal area of an ‘in use building’ that is to be demolished as part of the development, as well as certain retained parts.

*(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;*

17 . Schedule 1 of the CIL Regulations 2010 (as amended) (10) (ii) 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 six months within the period of three years ending on the day planning permission first permits the chargeable development”.*

18. Schedule 1 (8) states that; “*where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building*”.

19. Both parties agree the building to be a relevant building and also the relevant period during which at least six months continuous use must be demonstrated. However, the appellant considers they have provided sufficient information and information of sufficient quality to demonstrate the building was in continuous lawful use for at least a six-month period during the relevant period, but the CA does not consider the information provided sufficient to determine this point.

20. I have reviewed all of the evidence submitted by both parties in relation to this issue and I consider that in this case, there is insufficient information or information of sufficient quality to prove that the building has been in continuous lawful use as offices for three months over the three years preceding the relevant date.

21. I agree with the CA, the document detailing the occupancy and use history of [REDACTED] is anecdotal only and there is no firm evidence to substantiate lawful continuous use for at least six months during this time.

22. The timeline provided by the appellant relies upon the document described above to demonstrate [REDACTED] was occupied until [REDACTED] and an unsigned lease from [REDACTED] to support occupation of [REDACTED] until [REDACTED]. The lease in itself does not prove occupation, only that someone had the right to occupy.

23. The email from the business rates officer at [REDACTED] advises when these premises fell vacant, but the information does not prove lawful continuous occupation up until those dates and suggests the properties were still vacant at the date of writing, that being [REDACTED].

24. The external photographs provided show the ground floor of [REDACTED] boarded up and the shutters down on [REDACTED]. It is noted the appellant advises the last occupier did not require a high street presence. The internal photographs show a completely empty kitchen, a disused bakery counter and pictures of empty office accommodation. The photographs of the office accommodation show office furniture in-situ but there is little evidence of the workspace being utilised. There are no computers or other office equipment such as printers, telephones or photocopiers visible and limited evidence of any stationary etc that one would expect to see in an active office environment. The photographs show one desk with 3 small boxes of files on top, but it also has an office chair on top suggesting the desk was not actively being used. The appellant has also highlighted a photograph where 4 mugs can be seen and a box under the sink. I have considered the appellant’s explanation of remote working meaning a simplified work place is required with often just a laptop being necessary and do acknowledge this may well be how the occupier operated their business. However, I do not consider the photographs provide sufficient information or information of sufficient quality to conclude whether the building can be described as an “in-use building” for CIL purposes.

25. The statutory declaration provided by [REDACTED] confirms the top floor was used as 'overflow offices' and the ground floor was used to store boxes during the relevant period. However, there is no indication of the frequency of any visits to the offices and the term 'overflow' implies that the use may have been intermittent when other offices were busy. I do not consider it demonstrates the CIL criteria of continuous lawful use for at least a six-month period have been fulfilled.

26. In view of the photographs and lack of any corroborating evidence in relation to an actual office use, such as utility bills in relation to electricity and water supply, statements from staff indicating frequency and length of visits to the office etc, I consider any actual use as offices has not been adequately proven. There is no reason to doubt that [REDACTED] and his staff did occasionally attend the premises but there is no evidence of their continuous use of the premises as offices.

27. In reaching my decision I have had consideration of the decision in R (oao Hourhope Ltd) v Shropshire Council (2015). The Hourhope case suggests that for a building that has an active use, such as an office, but that use is interrupted, 'the question of whether it thereby ceases to be 'in-use' must be one of assessment of the length of and reasons for the interruption and the intentions of those who previously used and may in future use the building'. Without evidence as to the frequency and duration of any staff visits, I cannot assess the length of, or the reasons for, the interruption to use of the premises. Hence, I do not consider that sufficient evidence has been provided to confirm the property was in continuous use as offices for the requisite period.

28. It is noted [REDACTED] has also declared the ground floor of [REDACTED] was used to store boxes of files. Other than two photographs showing four small boxes in the premises we have no further details about the use of the premises as storage. However, it is acknowledged storage use is likely less active than office use.

29. During the relevant period, the property had planning permission for Class E use under the Town and Country Planning Act (Use Classes) Order 1987 as amended. Whilst office and retail use are covered under Class E, storage is not, this use falling under B8. A change to B8 use would have required planning permission which had not been applied for nor granted. Therefore, the use of the ground floor of [REDACTED] for storage was not lawful. This is in line with the judgement in Hourhope which confirmed that the lawful use of ancillary storage in a building with an alternative active use (public house in the case of Hourhope) is that of the alternative active use not storage.

30. After consideration of all of the evidence before me, I do not consider there to be sufficient information or information of sufficient quality for me to determine that the property was in continuous lawful use for at least six months during the relevant period. I dismiss this appeal.

[REDACTED] BA Hons, PG Dip Surv, MRICS  
RICS Registered Valuer

Valuation Office Agency  
17 May 2023