

Appeal Decision

by ■■■ MRICS VR

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

Valuation Office Agency (DVS)
Wycliffe House
Green Lane
Durham
DH1 3UW

E-mail: ■■■ [@voa.gov.uk](mailto:■■■@voa.gov.uk)

Appeal Ref: 1852185

Address ■■■

Proposed Development: Change of use of part of retail unit to form 2no. flats.

Planning Permission details: Granted by ■■■ on ■■■, under reference ■■■

Decision

I determine that no Community Infrastructure Levy (CIL) should be payable in this case.

Reasons

Background

1. I have considered all the submissions made by ■■■, acting as Agent for the appellant, ■■■ and e-mail documentation made by the Collecting Authority (CA), ■■■.

In particular, I have considered the information and opinions presented in the following documents:-

- a) CIL Appeal form dated ■■■.
- b) Grant of Conditional Planning Permission ■■■, dated ■■■.
- c) The CIL Liability Notice (ref: ■■■) dated ■■■.
- d) Copies of e-mail correspondence between the Appellant and the CA, which were exchanged on ■■■, ■■■ and ■■■. The correspondence included the Appellant's request for a Regulation 113 Review.
- e) The Appellant's Appeal Statement of Case document (undated).
- f) Plans of the subject development.
- g) CIL Additional Information Form 1, dated ■■■.

- h) The CA was invited to make representations; however, the CA did not respond and I have received no correspondence from the CA whatsoever in relation to this Appeal.

Grounds of Appeal

2. Planning permission was granted for the development on [REDACTED], under reference [REDACTED].
3. On [REDACTED], the CA issued a Liability Notice (Reference: [REDACTED]) for a sum of £[REDACTED]. This was based on a net chargeable area of [REDACTED] m² and a Charging Schedule rate of £ [REDACTED] per m² (Residential Zone 2), plus indexation of [REDACTED]. Of note, the Liability Notice lists a Total Development area of [REDACTED] m², which is offset by an Existing Use area of [REDACTED] m², to arrive at the net chargeable area of [REDACTED] m².
4. On [REDACTED], the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that a Regulation 113 Review was requested, but the CA did not respond to the Regulation 113 Review within 14 days. Having reviewed the correspondence and given the absence of any CA representations in this case, I am satisfied that the Appellant's contention that the CA did not undertake a Regulation 113 Review is a factual matter. Although the Charging Authority acknowledged the Appellant's request, it did not provide the Review and did not respond to the Appellant's queries on the matter.

In addition, the Appellant contends:-

- The calculation stated on the Liability Notice appears to be incorrect.
 - The GIA measured appears to be incorrect.
 - The Charging Authority did not deduct the existing floor area.
 - An Award of Costs is to be made to the Appellant on the grounds that the CA have acted unreasonably.
5. The Appellant's appeal can be summarised to a single core point:-

The Appellant disputes the floorspace of the chargeable area in the CIL calculation, contending that it should reflect 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the appellant considers is an eligible deduction, which can be off-set against the chargeable area). The Appellant opines that the CIL payable should be £[REDACTED] ([REDACTED]).

It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate of £[REDACTED] per m², or the applied indexation.

Decision

6. The dispute between the parties relates to the re-development of an existing two-storey building situated in a terrace, which fronts [REDACTED].
7. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."
8. Furthermore, Schedule 1 of the 2019 Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;
 - a. retained parts of 'in-use buildings', and

- b. 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.
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. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "*the development for which planning permission is granted*".
 12. The Appellant opines that all the existing area of the building was in use and had a lawful use and should be deducted from the chargeable area. The Appellant further opines that the development is a change of use with no new build floor space; all the area is existing and should be deducted, resulting in a charge of [REDACTED] ([REDACTED]). As evidence of continuous lawful use, the Appellant has advanced to me a copy of a lease agreement dated [REDACTED]; [REDACTED] the lease was for a five year term from [REDACTED], expiring on [REDACTED].
 13. The Appellant contends that the content of the Liability Notice suggests that the CA is not questioning the extant use or the lawfulness of the building. As there was no Regulation 113 Review, the CA has not offered a view on the matter; given the evidence of the lease agreement and in the absence of any other evidence, I agree with the Appellant that the building was in lawful use.
 14. Given that I have concluded that the building was in lawful use and only part of the building needs to be in-use for its lawful purpose for the entire area of the building to be considered in-use and deductible, I agree with the Appellant that the entirety of the accommodation can be off-set.
 15. In a determination of the evidence, I am satisfied that the building was in lawful use as per Schedule 1 of the 2019 Regulations and is an 'in-use building' thereby allowing the area of the building to be netted off the area of the chargeable development. This results in the area of the chargeable development being a [REDACTED] sum ([REDACTED] m²).
 16. On the basis of the facts in this case and the evidence submitted before me, I therefore determine that the CIL payable in this case is to be a [REDACTED] ([REDACTED]) sum.

Award of Costs

17. The Appellant has requested an award of costs on the grounds that the CA have acted unreasonably. Specifically, the Appellant cites that the project has been unfairly delayed by the CA's inaction, which has resulted in loss of rent and increased construction costs as works will now run into [REDACTED]. The application was approved on [REDACTED] and the Appellant further cites that it took the CA's CIL team three weeks to issue an incorrect charge, and they have not provided the Regulation 113 Review.

18. Given that the CA has not undertaken a Regulation 113 Review, I am not unsympathetic to the Appellant's claim for an Award of Costs. However, I would point out that a key document in aiding the CA's calculation of CIL – the CIL Additional Information Form 1 (which contains key data on the development) was not uploaded by the Appellant as part of the initial planning application to the local planning authority. Whilst the Appellant states that it was an admin error and the CA did not request a copy of CIL Form 1, when validating the application, it nevertheless is a factual matter that it was not submitted to the CA until [REDACTED]. Given this fact, I determine that an award of costs will not be made under Regulation 121.

[REDACTED] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
8th November 2024