

Appeal Decision

by [REDACTED] BSc (Hons) MRICS

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

Valuation Office Agency
Wycliffe House
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Durham
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e-mail: [REDACTED]@voa.gov.uk

Appeal Ref: 1830348

Planning Permission Ref. [REDACTED]

Proposal: Proposed demolition of extensions to [REDACTED], conversion and refurbishment of [REDACTED] to offices, [REDACTED], erection of 7no. townhouses [REDACTED], and the conversion of an existing [REDACTED] store building to 1no. townhouse

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];
 - d) CIL Appeal form dated [REDACTED], including appendices;
 - e) Representations from CA dated [REDACTED]; and
 - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for “Proposed demolition of extensions [REDACTED], conversion and refurbishment [REDACTED] to offices, [REDACTED] erection of 7no. townhouses [REDACTED], and the conversion of an existing [REDACTED] store building to 1no. townhouse.”
3. The CA issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED]m² at the ‘Residential Small Sites up to & inc 10’ rate of £[REDACTED]m² plus indexation. A further [REDACTED]m² was categorised as ‘all other forms including C2 Care homes’ and charged at nil. The total development was therefore measured at [REDACTED]m² with no deductions for existing use.
4. The Appellant requested a review under Regulation 113. The CA responded on [REDACTED], stating that there was insufficient evidence to support that the building had been in lawful use and therefore they considered the CIL charge to be correct.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be a maximum of £[REDACTED]. This was calculated on a net chargeable area of [REDACTED]m² at a base rate of £[REDACTED]/m². The net area was based on a total floor space of [REDACTED]m² less the existing buildings of [REDACTED]m².
6. The Appellant’s grounds of appeal can be summarised as follows:
 - a) The former occupiers vacated the building in [REDACTED]. They were therefore in occupation for 6 months within the relevant period. The property has also subsequently been in use by various other occupiers from [REDACTED] onwards. As the property was in lawful use for the relevant period, the area of the existing building should be deducted from the area of the proposed building to reach the net chargeable area.
 - b) The GIA of [REDACTED]m² used by the CA is incorrect. The total GIA of the new building is [REDACTED]m².

7. The CA has submitted representations that can be summarised as follows:
- a) There is insufficient evidence that the property was in lawful use for the relevant period and therefore the existing building should not be offset from the chargeable area.
 - b) The floor area of the residential space has been determined from the plans at [REDACTED] m².

GIA

8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the CIL charge is based on “the gross internal area of the chargeable development.”
9. 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.
10. The CA adopted a GIA of the residential areas of [REDACTED] m² within the Liability Notice. Within their representations, they state that the GIA should be [REDACTED] m² and have provided plans to show how this has been calculated.
11. The appellants have claimed the GIA should be [REDACTED] m² but have not provided evidence to show how this has been calculated.
12. I have considered the approved plans and I accept that the areas used by the CA are correct.

Lawful use of existing buildings

13. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 allows for the gross internal areas of “retained parts of in-use buildings” and “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.
14. “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.
15. “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.
16. 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.

17. Planning permission was granted on [REDACTED] and therefore the three year period in this case runs from [REDACTED].

18. The appellants have provided various pieces of evidence to support their view that the building was in lawful use during the relevant period.

[REDACTED]

19. Firstly, the appellants state that the [REDACTED] were in occupation from [REDACTED] until [REDACTED]. They have provided the following evidence to support this:

- a) A statement of truth from the former director of [REDACTED] dated [REDACTED]. This statement confirms that [REDACTED] were in possession of the property since [REDACTED].
- b) A copy of the land registry title that confirms that ownership transferred on [REDACTED].
- c) A copy of the buildings insurance effective from [REDACTED] stating that the building was occupied as "offices and partially unoccupied."

20. The CA state they believe the building was vacated on [REDACTED] and provide the following evidence to support this view:

- a) Email from their business rates department confirming that the last date of occupation by [REDACTED] was [REDACTED]. The email states that the building has been void since this date.
- b) News article by [REDACTED] dated [REDACTED] stating that they had moved to a new office.

21. In response to the CA representations, the appellants state that [REDACTED] were never in occupation of the property at any time. They state that [REDACTED] as former owner of the [REDACTED] were the occupiers of the property. This appears to directly contradict the information from the CA's business rates department that specifically names [REDACTED] as the most recent occupiers.

[REDACTED]

22. The appellants stated that [REDACTED] occupied as offices and storage from [REDACTED]. They have provided a copy of a lease dated [REDACTED] but there appears to be an error as the contractual term is defined as "a term of three years beginning on, and including [REDACTED]." The premises is shown as the first floor of [REDACTED]. This lease makes reference to an "Existing Lease" which we have not seen a copy of.

23. The lease is supported by a statement from [REDACTED] confirming the start date of occupation as [REDACTED]. It states "we occupied the offices of the building and were also given use of the rear warehouse storage facilities for storage of our machinery, parts, supplies and metal fencing."

24. Following the CA representations, the appellants provided an affidavit of [REDACTED] confirming their occupation of [REDACTED]. The affidavit states they occupied "under the terms of our lease" but "...under governmental guidance and enforcement we remained at home during lockdown and only attended the property when safe to do so. We had to vacate in [REDACTED] at the instruction of the UK government as otherwise we would be in breach as we were not a key worker operation."

25. The CA comment that an earlier version of the lease, supplied to them but not to the VOA, included a front page dated [REDACTED]. They further comment that the signatories to

the lease are not named and the signatures not dated. In any case, they maintain that the licence shows that the building could be occupied and not that it was.

26. The appellants state that [REDACTED] occupied as office and storage from [REDACTED]. This is supported by a licence to occupy dated [REDACTED] for “all that land and buildings known as [REDACTED]...or such reduced or extended area as the Licensor may from time to time designate as comprising the Building”. The licence runs “from and including [REDACTED] or until the date on this licence is determined in accordance with clause 4 or the period of the Term (whichever is later).” The term is listed as 36 months. Clause 4 allows termination by either party with six months notice.

27. The appellants grounds of appeal states “A statement has been provided by the director and principal of [REDACTED] to support that they were indeed in occupation of the building.” We did not receive a copy of this with the original appeal but we received an affidavit with the comments dated [REDACTED].

28. The affidavit of [REDACTED] confirms that [REDACTED] occupied the offices at the front of the premises and the storage facilities to the rear, under the terms of the licence and “Under covid guidance we did vacate in or around [REDACTED].” The affidavit states “I had my own set of keys and could access the property at any time.”

29. The CA comment that the licence shows that the premises could be occupied but does not prove that it was.

30. The appellants state that [REDACTED] occupied as offices. They have provided a licence to occupy dated [REDACTED] for “all that land and buildings known as [REDACTED]...or such reduced or extended area as the Licensor may from time to time designate as comprising the Building.” The licence period is stated as “from and including [REDACTED] or until the date on which this licence is determined in accordance with clause 4 or the period of the Term (whichever is later).” The term is listed as 60 months. Clause 4 allows termination by either party with six months notice.

31. An affidavit of [REDACTED] confirms that they occupied from [REDACTED]. This affidavit does not specifically mention [REDACTED]. The affidavit states they occupied “subject to Covid-19 rules at the time and only vacated in [REDACTED] at the instruction of the government.” The affidavit states “I used the property for its office space and conference room facilities.”

32. The CA state that that the licence is unclear regarding the term. Notwithstanding the lack of clarity around the licence period, the CA maintain that the licence does not prove that occupation occurred.

Additional evidence

33. The appellant has provided utility bills from [REDACTED] covering the period from [REDACTED]. This bills confirm that energy was being used at the premises, with monthly charges ranging from £[REDACTED] to £[REDACTED].

34. The appellants have provided a lockdown timeline which confirms that England entered a third national lockdown on [REDACTED].

35. A heritage statement undertaken in [REDACTED] states that the property was vacant. The appellant states that [REDACTED] were not in occupation at this time because they were not key workers.

36. The CA have provided photos taken by officers of the council in [REDACTED]. The officers noted that although the buildings contained a number of desks and general office equipment, there did not appear to be any evidence of use of the building.
37. A bat survey dated [REDACTED] states that the building is currently unoccupied. The appellants state that the report was carried out early in the morning before the premises would have been opened for the day. The CA state there is no evidence to support this contention.
38. The CA have provided a market appraisal by [REDACTED] dated [REDACTED], which includes a comment that *“the building’s condition is likely to remove even the possibility of a short-term storage at a notional rent.”*

Opinion of lawful use

39. In my opinion, the evidence provided by the appellant supports that the building was owned by [REDACTED] until [REDACTED] but does not support that they remained in occupation until this date. I consider the evidence that the building was vacant from [REDACTED] to be more conclusive, as business rates were no longer paid and there was an announcement about [REDACTED] moving to a new office. I am therefore of the view that the building was not occupied for the relevant period during [REDACTED].
40. The appellants state that the building has also been occupied by three different occupiers since [REDACTED] vacated. They have provided lease / licence information and affidavits by the occupiers. Each of the affidavits state that occupation ceased due to Covid-19 restrictions and the lockdown timeline provided by the appellant confirms that a national lockdown began on [REDACTED]. This means that the licences were signed either immediately before or during this lockdown. None of the statements confirm when actual occupation occurred post lockdown. I do not consider that holding a licence to occupy and a set of keys is sufficient to demonstrate occupation for the purposes of CIL.
41. There are photographs and comments from the conservation officer in [REDACTED]. All of these photos and comments spanning a 12 month period suggest that the buildings were vacant. The photographs are not representative of a building that has been vacated solely due to covid restrictions.
42. In my opinion, the evidence does not support that the property was occupied for a continuous period of at least six months between [REDACTED].

Calculation of Chargeable Amount

43. 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—

$$\frac{R \times A \times IP}{I_C}$$

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.”

44. I have calculated the CIL charge using a GIA of [REDACTED] m² at a rate of £[REDACTED]/m², plus indexation.

45. 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]

[REDACTED] BSc (Hons) MRICS
Valuation Office Agency
7 November 2023