

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

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Appeal Ref: 1855227

Address: ■■■

Proposed Development: Change of use from Dental Surgery (Class E use) to 1no. dwellinghouse (Class C3 use) including external alterations to front.

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

Decision

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

Reasons

Background

1. I have considered all the submissions made by ■■■ of ■■■, acting as Agent for the Appellant, ■■■ of ■■■ and the submissions 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 Planning Permission ■■■, dated ■■■.
- c) The CIL Liability Notice (ref: ■■■) dated ■■■.
- d) The CA's Regulation 113 Review, dated ■■■.
- e) The Appellant's Appeal Statement of Case document (including Appendices) dated ■■■.
- f) The CA's Statement of Case document (including Appendices) dated ■■■.
- g) The Appellant's comments on the CA's Statement of Case document, which are dated ■■■.

Grounds of Appeal

2. Planning permission was granted for the development on [REDACTED], under reference [REDACTED]. The approved planning permission was:-

Change of use from Dental Surgery (Class E use) to 1no. dwellinghouse (Class C3 use) including external alterations to front.

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 High (C3)), including indexation.
4. On [REDACTED], the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect and that no CIL should be payable.
5. The Appellant's appeal can be summarised to a single core point:-

The Appellant opines that the CIL calculation 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 offset against the chargeable area). It is the Appellant's case that the building has been in lawful use for a continuous period of 6 months within the past 3 years, which results in there being a zero charge as there is no increase in the gross internal area of the property.

It would appear that there is no dispute between the parties in respect of the Charging Rate, the measurement of constituent areas or the applied indexation.

Approved Development in Dispute

6. The dispute between the parties relates to a three-storey single-fronted terraced building, built circa 1905 of brick and slate construction.

Decision

7. 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.
8. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "*the development for which planning permission is granted*".
9. The Appellant opines that from about [REDACTED], the subject property has been used for activities in conjunction with the Appellant's dental practices, which included the keeping of patient records, radiographs, plaster models, PPE equipment and dental equipment. The Appellant further states that Dental Practices are legally required to

keep patient records for 12 years or until the age of 25 for patients who are minors. The Appellant states that the property was used for storage purposes up until [REDACTED], when the storage activities were moved to a different location, whilst the Appellant was preparing for the change of use of the property to residential use.

10. In support of the Appellant's contention that the building has been in storage use, the Appellant has provided:-

A letter dated [REDACTED] from [REDACTED], who delivered dental equipment to the subject property;

An invoice dated [REDACTED], confirming the movement of patient records and PPE from the property to a new location;

A letter from [REDACTED], confirming that the property was used for storing equipment and dental stock and patients' records for a number of years;

A letter from the Appellant, [REDACTED], confirming that the Property had been used for storage for the keeping of PPE for the group practices and other dental supplies for [REDACTED] dental practice and [REDACTED] Orthodontic Practices;

Photographs of the property which indicate that it was occupied for the uses described above; the photographs are dated [REDACTED].

11. The CA contends that the planning use of the building is Dental Use (Class E); however, the CA opines that it was used as a storage facility. The CA further opines that the evidence suggest that the use as a dental practice (where patients visited the building to receive dental treatments) ceased in [REDACTED]. The CA has advanced evidence of Business Rates records, which show the building was registered as empty and unoccupied since early [REDACTED].
12. The CA has cited the case of *R (oao Hourhope Ltd) v Shropshire Council* [2015] EWHC518. The *Hourhope* case related to a disputed CIL liability due on a planning permission to demolish a public house, erect residential units and the resultant application of the demolition deductions that are set out in the CIL Regulations 2010 (as amended). This case provided guidance on 'in-use buildings' in that 'in-use buildings' demolished during the development or retained on completion will be determined not by whether there is available a permitted use for the building, but by the actual use of the building.
13. As held by Hourhope - "*Whether a property is 'in use' at any time requires an assessment of all the circumstances and evidence as to what activities take place on it and what are the intentions of the persons who may be said to be using the building.*" It follows therefore, to consider not only the actual use, but the degree of activity of the actual use. In paragraph 17, I will consider the degree of actual use from the evidence submitted to me.
14. The core dispute between the parties in this case relates to the interrelated CIL Regulation concepts of 'In-use building' and lawful use. To clarify, the following three paragraphs summarise the Regulations:-
15. 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."
16. "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.

17. “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.

Accordingly, from the CIL Regulations, to meet the criteria for lawful use the subject building (█) would need to have been in a lawful use for a continuous period of six months between █ and █.

Both parties have advanced to me evidence in support of their respective viewpoints. The Appellant’s view is that the storage use is for dental purposes, so it meets the lawful use criteria; however, the CA views it differently. Of note, I find the CA’s submitted evidence in respect of Business Rates compelling; this includes inter alia:-

“...the property at █, has been vacant since █. From █ to █, the statutory initial three-month empty Rates exemption was allowed. This was followed by a subsequent empty Rates exemption due to the low Rateable Value of the property, until █. █ have been charged Empty Rates with effect from █ onwards.”

The CA submits that the building has been used solely for storage in connection with the other Dental Practices within the group, and argues that this is not its lawful use – the CA opines that the lawful use of the building was as a Dental practice with patients visiting the premises for dental treatments. Whilst there is some merit to the Appellant’s argument that the building was being used for purposes that was part of the operations of a dental practice, I find the CA’s argument persuasive in the matter. It is clear to me that the building was used for ancillary (storage) operations and not as an actual dental practice; in applying the guidance of *Hourhope*, in my view, this degree of activity does not pass the threshold test of an operational Dental Practice, where patients are treated within the subject building. In conclusion, I agree with the CA that the building was solely used for storage purpose, which was not its lawful use.

In support of my determination that the building was not in lawful use, it is clear to me that the description of the development is *Change of use from Dental Surgery (Class E use) to 1no. dwellinghouse (Class C3 use) including external alterations to front.*

[my emphasis of the underlined words Dental Surgery and not some alternative use, say, a *Store and Premises*.]

From Business Rates records, it is a factual matter that the building was registered as empty and unoccupied since █. The CA points that the Appellant has benefitted from an empty business rates charge over this period; however, this is incidental in my view – the *Hourhope* case provides guidance on the *intentions* of the parties, the fact that the registration of the building as being empty and unoccupied since █ for Business Rates purposes, show clear *intentions* of absence of use by the Appellant.

18. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the CA that the Appellant has failed to demonstrate that the building (█) has been in lawful use for the required period.
19. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of █ (█) as stated in the Liability Notice dated █ and hereby dismiss this appeal.

■ MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
7th January 2025