

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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Appeal Ref: 1857157

Address: [REDACTED]

Proposed Development: CONVERSION OF THE EXISTING RESIDENTIAL UNIT INTO 2 X SELF CONTAINED RESIDENTIAL UNITS WITH ASSOCIATED EXTERNAL ALTERATIONS AT REAR. The conversion of the residential part of [REDACTED] which occupies the first, second and third floors into two separate flats. There is to be a 1-bedroom flat to the first floor and a 2 bedroom, duplex flat, with access to the roof terrace over the second and third floors. The ground floor commercial space is to be refurbished and provided with a WC. The commercial and residential spaces will be entirely separated.

Planning Permission details: Granted by [REDACTED] on [REDACTED], under reference [REDACTED].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (NIL).

Reasons

Background

1. I have considered all the submissions made by [REDACTED] of [REDACTED] in his capacity as representative for The [REDACTED] Company (the Appellant) and the submissions made by the Collecting Authority (CA), [REDACTED].

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

- a) CIL Appeal form dated [REDACTED].
- b) Grant of Conditional Planning Permission [REDACTED], dated [REDACTED].
- c) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED].
- d) The CA's Regulation 113 Review dated [REDACTED].

- e) The Appellant's Appeal Statement of Case document dated [REDACTED], which includes various Appendices.
- f) Plans of the existing buildings and the proposed development.
- g) The CA's representations of [REDACTED].
- h) The Appellant's comments on the CA's representations, which is dated [REDACTED].

Grounds of Appeal

2. The background to this Appeal stems from a planning application, [REDACTED], which was granted on [REDACTED], for "CONVERSION OF THE EXISTING RESIDENTIAL UNIT INTO 2 X SELF CONTAINED RESIDENTIAL UNITS WITH ASSOCIATED EXTERNAL ALTERATIONS AT REAR. The conversion of the residential part of [REDACTED] which occupies the first, second and third floors into two separate flats. There is to be a 1-bedroom flat to the first floor and a 2 bedroom, duplex flat, with access to the roof terrace over the second and third floors. The ground floor commercial space is to be refurbished and provided with a WC. The commercial and residential spaces will be entirely separated."
3. This Appeal Decision relates to the CA's Liability Notice LN [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 indexed at [REDACTED] (CCIL2 Residential less than 10 - Zone A, B, C) (LBC) and £ [REDACTED] per m² indexed at [REDACTED] (Mayor GLA) (MCIL1 – Band 1).
4. Following a review of the CIL charge carried out under Regulation 113 on [REDACTED] by the CA, 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, by virtue of what should be included within the offset and that CIL in the sum of £0 (NIL) should be payable.
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 fully reflect 'in-use' floorspace of the building to be redeveloped. The Appellant opines that no CIL should be payable as the entirety of the existing accommodation should be offset. The appellant states that as the property has been in lawful use for 6 months within the last 3 years. This lawful use means that, when calculating the CIL chargeable amount, the complete floor area of the property should be deducted as KR(i) in the formula in Schedule 1, resulting in a CIL liability of £0.00 - the development not resulting in any increase on the existing floorspace.

In summary, the appellant considers that the CIL Liability Notice fails to treat the property as an "in-use building" as defined in Schedule 1 of the Regulations by virtue of the use associated with the ground floor.

It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate, the applied indexation or the floor area of the building to be retained and redeveloped.

6. The Charging Authority state that they have reviewed the information submitted in the appellant's statement of [REDACTED] and in conjunction with the Council's records it was not clear that the property 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 and have thus rejected the appellant's representations.

Decision

7. The dispute between the parties relates to the re-development of an existing four-storey end-terrace late Victorian building, divided into a commercial unit occupying the ground floor and basement with residential use to the first, second and third floors. To the rear of the building is a roof terrace. The residential floors are accessed via the ground floor, via a corridor. This corridor is not separated from the commercial space, with the commercial floorspace having access to that corridor. It is agreed by the parties to the appeal that the GIA of the commercial space at ground floor level is [REDACTED] m², and the access corridor is [REDACTED] m² with the GIA of first, second & third floor levels at [REDACTED] m².
8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This 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. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice 6th Edition 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.

13. The Appellant opines that all the existing area of the building was in use and had a lawful use as defined to be captured under the RICS Code of Measuring Practice. As evidence of continuous lawful use, the Appellant has advanced a precis of their case, that includes a copy of the occupational lease (in force for [REDACTED] year and [REDACTED] days within the three years up to the date of granting of planning permission), rent payment schedule, forfeiture (of lease) report that stated that as at [REDACTED] there had been 'definitely recent activity inside' and Google Streetview images.
14. I consider that taking a holistic view of the evidence submitted, I would agree that the property was in continuous lawful use [REDACTED] to [REDACTED], a total of [REDACTED] year and [REDACTED] days within the three years up to the granting of planning permission. This is evidenced within the forfeiture report and photos within the Streetview imagery submitted by the appellant.
15. The appellant let the property to a tenant. The tenant failed to pay their rent or business rates as evidenced by the paperwork submitted. However, the appellant maintains that the tenants remained in occupation until [REDACTED]. The regulations state (schedule 1 part 1) "(8) 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". I consider that the evidence submitted to me as part of this appeal is indeed sufficient and it is on this basis I allow the appeal and my decision is that the sum of CIL charge payable is £0 (NIL).
16. Having fully considered the representations made by both parties and all the evidence submitted, I agree with the appellant that the CIL Charge should therefore be based upon an increase in overall GIA of the new development measured by deducting the lawful 'in-use' GIA for a minimum period of six months within the three years prior to [REDACTED] from the total GIA of the new development i.e. [REDACTED] m² less [REDACTED] = 0.00m².
- [REDACTED]
- On [REDACTED], the Net Chargeable Area of the development should have been 0.00m² as per the Liability Notice LN [REDACTED] dated [REDACTED].
17. In conclusion, having considered all the evidence put forward to me, I therefore confirm that a CIL charge of £0.00 (NIL) should be stated in a revised Liability Notice and hereby confirm this appeal.

[REDACTED] MRICS
Principal Surveyor
Valuation Office Agency
29 January 2025