

Appeal Decision

By [redacted] 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: [redacted] [@voa.gov.uk](mailto:[redacted]@voa.gov.uk)

Appeal Ref: 1862787

Address: [redacted]

Proposed Development: Alterations with dormer extensions to existing first floor dwelling, conversion into 3 no. apartments incorporating a loft conversion.

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

Decision

The Appeal is dismissed.

Reasons

Background

1. I have considered all the submissions made by the appellant, [redacted]. As it is not an interested party, no submissions or representations were invited to 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 Planning Permission [redacted], dated [redacted].
- c) The CIL Default Liability Notice (ref: [redacted]) dated [redacted].
- d) Extract of Purchase Contract dated [redacted], between the Buyer (the Appellant) and the Seller ([redacted]) in respect of the leasehold property, [redacted].

Grounds of Appeal

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

Alterations with dormer extensions to existing first floor dwelling, conversion into 3 no. apartments incorporating a loft conversion.

3. On [redacted], the CA issued a Default Liability Notice (Reference: [redacted]) to all parties perceived to have a material interest in the relevant land, for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m² and calculations as follows:

[redacted]..(CIL)

[redacted] m² @ £ [redacted] per m² (Residential (Higher)) x index [redacted]
= £[redacted]

..[redacted] CIL (CIL1)

[redacted] m² @ £[redacted] per m² (MCIL1 General) x index [redacted]
= £[redacted]

Total CIL [redacted] (CIL & [redacted] CIL1)

£[redacted]

4. On [redacted], the Valuation Office Agency received a CIL Appeal made under Regulation 115 (Apportionment of Liability) from the Appellant, contending that the CA has apportioned the CIL charge incorrectly and that the developer is entirely liable for the CIL.
5. In accordance with Regulation 112 (3) b), the Collecting Authority, [redacted] is not an interested party to a Regulation 115 Apportionment of Liability appeal; consequently, it has not been invited to make representations, but its calculations as provided to the Appellant have been considered.
6. It would appear that there is no dispute between the parties in respect of the measurement of the building, the chargeable area, the applied rates or the applied indexation.

Approved Development in Dispute

7. The development subject to this Appeal comprises former first floor and attic accommodation, which was converted into three self-contained flats. The accommodation is situated above a ground floor commercial (retail) unit. The building in which the accommodation is situated is a circa [redacted] built end of terrace building, constructed of brick construction. Of note, the development has completed. I understand that the completion dates of the three individual flats, which comprise the development are as follows:-

Flat 1 at [redacted] – [redacted]

Flat 2 at [redacted] – [redacted]

Flat 3 at [redacted] – [redacted]

From the submitted plans to the Local Planning Authority, Flat 1 and Flat 2 are situated at first floor level and Flat 3 is situated at second floor level. Flat 1 and 3 are understood to be two bedroom units, whilst Flat 2 is understood to be a one bedroom unit. The building is located in a commercial retail area in the heart of [redacted] and is situated on the corner of [redacted] and [redacted].

I would point that the leaseholder of Flat 1 of the development, has also made a CIL Appeal under Regulation 115 (Apportionment of Liability). The grounds and decision of the Appeal in respect of Flat 1 (Appeal Reference No. 1862662) are similar to this Appeal and are published separately.

Decision

8. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:-

Regulation 4 of the CIL Regulations provides the meaning of ‘owner’ and ‘material interest’. Regulation 4 states that for the purposes of section 208 of Planning Act 2008 (liability) a person is not an owner of the relevant land unless the person owns a material interest in the relevant land.

A material interest in the relevant land is a legal estate in that land which is—
a freehold estate; or
a leasehold estate, the term of which expires more than seven years after the day on which planning permission first permits the chargeable development.

For clarity, Regulation 2 of the CIL Regulations provides the literal definitions of:-

“owner” must be construed in accordance with section 209(7)(a) of PA 2008 and Regulation 4;
“material interest” has the meaning given in Regulation 4(2);

9. Liability for CIL is under the provisions of Part 4 of the Regulations. It would appear that the Appellant has not assumed liability for CIL or has not been transferred liability, under respectively, Regulations 31, 32. This case relates to the issue of a CIL Default Liability Notice under Regulation 33 by the CA on [redacted].
10. Regulation 33 applies where a chargeable development is commenced in reliance on planning permission and nobody has assumed liability to pay CIL in respect of that development.
 - (2) Liability to pay CIL must be apportioned between each material interest in the relevant land.
 - (3) Paragraph (2) is subject to paragraph (4).
 - (4) A person (P) is liable to pay the whole amount of CIL payable in respect of the chargeable development if—
 - a) P, or a person acting on behalf of P, has entered on and taken possession of the relevant land (in whole or in part)—
 - (i) pursuant to a power conferred by or under statute, and
 - (ii) without the agreement of the owners of the relevant land;
 - b) P, or a person acting on behalf of P, carries out works on the relevant land which cause the chargeable development to be commenced; and
 - c) at the time the chargeable development is commenced P is not an owner of the relevant land.

11. Regulation 34 provides that where liability to pay CIL has to be apportioned between each material interest in the relevant land the owner (O) of a material interest in the relevant land is liable to pay an amount of CIL calculated by applying the following formula:-

$$\frac{Vo \times A}{V}$$

Where V = an amount equal to the aggregate of the values of each material interest in the relevant land; and

A = the chargeable amount payable in respect of the chargeable development.

Where O is granted relief in respect of the chargeable development, O is liable to pay an amount of CIL equal to the amount calculated in accordance with the above formula less the amount of relief granted to O .

12. It would appear that the CA has issued a default liability notice to the Appellant, under the provisions of Regulation 36 (Default Liability of CIL). Regulation 36 (1) applies where:

- a) a person (P) assumed liability to pay CIL in respect of a chargeable development; and
- b) the collecting authority has been unable to recover an amount of CIL (A) payable by P.

(2) The collecting authority may determine that liability to pay A is transferred to the owners of the relevant land.

(3) But a collecting authority may not make a determination under paragraph (2) before it has made all reasonable effort to recover A using one or more of the provisions in Chapter 3 of Part 9.

- (4) A collecting authority which makes a determination under paragraph (2) must—
 - a) issue and serve a default of liability notice; and
 - b) apportion liability to pay A between each material interest in the relevant land.

(5) Regulation 34 applies for the purposes of apportioning liability in accordance with paragraph (4)(b) as if references to the chargeable amount were references to A.

13. The Appellant opines that he is not liable for any CIL payment and that the entire liability for the CIL should be apportioned 100% to the developer, who developed the property – [redacted]. The Appellant acquired Flat 3 on [redacted], over two years after approval of the development on [redacted]. The Appellant's interest is leasehold, comprising a term of [redacted] years from [redacted]

14. The Appellant cites that when purchasing the property in [redacted], his solicitor noted that the developer, ([redacted]) had not yet paid the outstanding CIL. A clause was inserted in the Appellant's Purchase Contract, to indemnify the Appellant from CIL liability. This was agreed and signed by [redacted] solicitor, [redacted] of [redacted]. The Appellant opines that it is apparent that no such CIL payment was made the developer and contends that the developer, [redacted]. is liable for the CIL payment in its entirety.

15. Of note, there is a CIL Liability Rider clause in the Purchase Contract dated [redacted], between the Buyer (the Appellant) and the Seller ([redacted]) in respect of the subject leasehold property.

The clause states:-

The seller warrants with the Buyer to discharge the outstanding CIL Liability in relation to the Property within 8 weeks of Completion and provide evidence of such to the Buyer or his solicitor confirming payment has been made. The Seller indemnifies the Buyer against any action or financial loss arising in respect of any non-payment of the CIL Liability.

16. It would appear in this case that the developer [redacted] had assumed liability but has not paid the full amount of CIL. It would also appear that the CA has transferred liability of CIL to the Appellant (the long leaseholder of Flat 3 of the development) plus the long leaseholder of Flat 1 (who has also appealed under Reference No. 1862662) by default; such a transfer can be made under the Regulations; however, I have no information on, and cannot comment upon, if the CA fully complied with the provisions of Regulation 36(3) and 36(4).
17. Of note, the CA has not adopted the correct formula approach to the apportionment of CIL liability, as stipulated under Regulation 34. Of further note, the Appellant has not challenged the CA's apportionment; merely their liability of CIL in the first instance. As the Appointed Person under Regulation 115(6), my remit is to reapportion liability between each material interest in the relevant land. Given the CA's incorrect apportionment approach, coupled with the fact that the incorrect apportionment is unchallenged, I am unable to comply with Regulation 115(6); accordingly, my only recourse is to dismiss this Appeal.
18. In conclusion, I hereby dismiss the Appeal.

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
21st May 2025