

Appeal Decision

By [redacted] **BA Hons, PG Dip Surv, MRICS**

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

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

Email: [redacted] @voa.gov.uk

Appeal Ref: 1835076

Planning Permission Details: [redacted]

Location: [redacted]

Development: Construction of a six-storey building comprising 31 self-contained residential units (use class C3) ([redacted]), [redacted].

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] (the appellant) and [redacted], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

- a. The decision notice issued by [redacted] on [redacted] together with associated plans, drawings and documents.
- b. The first CIL Liability Notice ([redacted]) issued by the CA on [redacted].
- c. The appellant's request for a Regulation 113 review dated [redacted].
- d. The CA's response to the appellant's request for a review dated [redacted].
- e. Liability Notices [redacted] and [redacted] issued on the [redacted] and the [redacted] respectively.
- f. The CIL Appeal form received by the VOA on [redacted], submitted on behalf of the appellant under Regulation 114, together with documents and plans attached thereto.

- g. The CA's representations made in response to this appeal dated [redacted].
- h. Further comments made on behalf of the appellant received on [redacted].

Background

2. Original CIL Liability Notice [redacted] in respect of the proposed development was issued by the CA on [redacted]. It stated a chargeable amount totalling £ [redacted] based upon a chargeable area of [redacted] square metres (sq. m.) It is this liability notice that is the subject of this appeal.

3. Resultant from the appellant's request for a Regulation 113 review, the CA issued a revised Liability Notice on [redacted] ([redacted]). This superseded liability notice [redacted] and was for a sum of £[redacted]. This revision followed the CA's agreement to exclude the external walkways and staircases from the gross internal area (GIA) thus reducing the chargeable area to [redacted] sq. m.

4. A further liability notice ([redacted]) was issued on the [redacted] for a sum of £ [redacted] based upon the same chargeable area as that contained within liability notice [redacted] but with social housing relief applied

5. The appellant has submitted an appeal to the Valuation Office Agency under Regulation 114 (chargeable amount appeal) against the original liability notice [redacted]. In which, they state the chargeable amount should be £[redacted] based upon a chargeable area of [redacted] sq. m.

6. The appellant's ground of appeal is that the CA has erred in its inclusion of the balconies on the second to fourth floors on the southern elevation within their calculation of GIA.

7. The appellant opines the correct chargeable area is [redacted] sq. m. They advise that according to the detailed plans approved and listed in condition 1 of planning permission [redacted], certain balcony areas should be considered external as they are not under the cover of the roof of the main building and thus should be excluded from the GIA. They go on to explain these plans show the balconies in question do not fall within the structural envelope of the building and should be classified as external.

8. The appellant refers to RICS methodology for the calculation of GIA to support their position. He notes this guidance specifies the exclusion of open, unenclosed spaces.

9. In response the CA advise they maintain their position and are of the view it is correct to include the balconies on the second to fourth floors on the southern elevation within the GIA as they are internal open-sided balconies.

10. The CA highlight drawing "Structural Design" ([redacted], [redacted]) referred to within the appellant's appeal is not an approved plan and should not be considered. They explain this drawing cannot be admitted as credible evidence because it omits to show that the southern façade encasing these balconies is made of brick and is within the main structure of the proposed building. The CA note the appellant has

been advised to make an amending planning application as the CA believe the current plans are not coherent.

11. The CA outlines the proposed construction of the balconies as described in the design and access statement and explain that this, alongside approved drawings ([redacted]) and ([redacted]) informs their decision that the south facing balconies on the second, third and fourth floors are internal opened-side balconies under 2.4 of the RICS Code of Measuring Practice (6th ed)(COMP).

12. The CA explain that in their opinion, these balconies are internal because they are encased by durable brick walls which are quite different to cantilevers, hanging or stacked balconies. They do not consider coverage of the roof on the building to be the only deciding factor. The CA points to the CIL appeal decision included within the appellant's representations, in which the appointed person decided that the balconies on the fourth floor which sat above the floor below and were enclosed by the flat roof created by the balcony above, lay within the footprint of the building and classified them as internal.

13. The CA note that looking at the approved drawings, the design of the balconies on the fifth floor as conveyed by the south east and south west elevation plans does not seem to be reflected in the roof and section plans.

14. In response to these points, the appellant highlights that balconies must always be enclosed to some degree for health and safety reasons and notes the CA describe the disputed balconies as open sided.

15. The appellant states that the encasement material for balconies is not referenced in any guidance for measuring to GIA nor within the interpretation of internal or external. The appellant believes all of the guidance, the COMP and appeal decisions, specifically turn on structure of the roof of the main building in relation to the uppermost balcony defining the envelope of the principle building structure.

16. The appellant does not agree with the CA that the balconies sitting under the 5th floor can be classed as internal because of the ceilings above them, stating there is no foundation for this and if they were correct every balcony below the uppermost would be included within the GIA.

17. The appellant points out the CA have accepted the 5th floor balconies which have the same general layout as those balconies in question, but different weatherproofing fenestration materials are not classed as internal. They state there is no fundamental difference to the balconies below other than materials. They advise these balconies project out from the cover and weather protection of the main roof to an open to the elements, open sided cantilevered area which any reasonable person would describe as being outside.

Reasoning

18. As this is a Regulation 114 chargeable amount appeal, I am to determine the CIL payable in accordance with Regulation 40 and Schedule 1. Exemptions and reliefs are not relevant to this calculation; therefore, I have not considered the social housing relief applied in this case.

19. Both parties appear to accept that the RICS Code of Measurement Practice 6th Edition (May 2015) (COMP) is the principle source of guidance for the measurement of buildings for CIL purposes. The definition of GIA is provided within the COMP as follows:

GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.

Including:-

- *Areas occupied by internal walls and partitions*
- *Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like*
- *Atria and entrance halls, with clear height above, measured at base level only*
- *Internal open-sided balconies walkways and the like*
- *Structural, raked or stepped floors are to be treated as level floor measured horizontally*
- *Horizontal floors, with permanent access, below structural, raked or stepped floors*
- *Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)*
- *Mezzanine floors areas with permanent access*
- *Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level*
- *Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like*
- *Projection rooms*
- *Voids over stairwells and lift shafts on upper floors*
- *Loading bays*
- *Areas with a headroom of less than 1.5m*
- *Pavement vaults*
- *Garages*
- *Conservatories*

Excluding:-

- *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*
- *Greenhouses, garden stores, fuel stores, and the like in residential property.*

20. The appellant is of the view that the balconies in question are external and should not be included within the GIA, whereas the CA are of the view the subject balconies are internal and fall to be included within the GIA.

21. The exclusions and inclusions to GIA warrant some consideration. Exclusions include 'external open sided balconies, covered ways and fire escapes' which implies that 'internal open sided balconies, covered ways and fire escapes' should be included within GIA. There are no diagrams or examples as to how these might be differentiated in practice.

22. Regulation 9.-(1) states, "*The chargeable development is the development for which planning permission is granted.*" Therefore it is planning permission [redacted] and the approved plans listed within which must be considered.

23. Therefore, I have had regard to the decision notice for planning permission [redacted] and the approved plans listed therein. In particular, I have considered plans [redacted] (proposed section AA), ([redacted] proposed south east elevation), ([redacted] proposed south west elevation) and ([redacted] Proposed roof plan) that show the areas in question.

24. Looking at these plans, I determine the balconies in question to be recessed, i.e. they are inset into the façade of the building and have enclosed sides. They are also covered by the floor of the balcony above. It is possible to measure the area in question to the internal face of the perimeter wall in line with diagram [redacted] within the COMP that shows partially enclosed areas such as loading bays are to be included within the GIA.

25. I note both parties refer to a previous CIL decision on the matter of balconies. The CA notes that balconies were classified as internal where they were described as sitting above the floor below and as being enclosed by the flat roof above and thus lying within the footprint of the building. The appellant relies upon this appeal decision to support their view that the balconies are external as they protrude from the main structure using diagrams to illustrate the structural column line.

26. Looking at the plans provided, it is clear the balconies on the second to fifth floors project out over the flats on the ground and first floor. However, plans ([redacted]) and ([redacted]) show that this projection falls in line with the extent of the building line at ground floor level. Therefore, whilst projecting over the building at ground floor and first floor level, I consider the balconies in question to fall within the envelope of the main structure. There are many buildings designed in such a way that the upper floors extend out over recessed lower floors, but these floors are still considered to fall within the envelope of the building.

27. Turning to the point raised by the appellant that the balconies do not fall under the roof of the main building, I agree with the CA here, it is difficult to determine whether part of the balconies on the 5th floor are covered by the main roof or not. The elevation plans would seem to suggest they are whilst the roof plan itself suggests not.

28. However, the plans clearly show those balconies on the second to fourth floors which are the concern of this appeal, are covered by the floor of the balcony above and are enclosed to three sides and as such are recessed balconies. The consented plans show the brick face extends up continuously from the second floor balcony to the fifth, with the only breaks being the open-sided areas themselves. The plans illustrate the balconies to be recessed and not cantilevered as claimed by the

appellant. Recessed balconies by their nature are internal open-sided and consequently fall to be included within the GIA.

29. Based upon the evidence before me I agree with the CA, the GIA of the chargeable development is [redacted] sq. m. I understand there is no dispute over the charging and indexation rates applied and therefore, I determine the CIL liability before any relief at £[redacted] ([redacted]) in line with Liability Notice [redacted] issued on [redacted].

[redacted]

[redacted] BA Hons, PG Dip Surv, MRICS
RICS Registered Valuer
Valuation Office Agency
06 February 2024