

## **Appeal Decision**

by [redacted] **BSc (Hons) MRICS FAAV**

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

Valuation Office Agency  
Wycliffe House  
Green Lane  
Durham  
DH1 3UW

e-mail: [redacted] @voa.gov.uk

---

**Appeal Ref: 1837053**

**Planning Permission Ref.** [redacted]

**Proposal: Prior Approval for change of use from a Class E use to residential use providing 6 self-contained units with associated cycle spaces.**

**Location:** [redacted]

---

### **Decision**

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

### **Reasons**

1. I have considered all of the submissions made by [redacted], acting on behalf of [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 appeal decision ref [redacted] Appeal Ref [redacted] as granted at appeal on [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 by the Planning Inspectorate on [redacted] (ref [redacted]) under application [redacted] for 'Prior approval for change of use from a

Class E use to residential use providing 6 self-contained units with associated cycle spaces.'

3. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m<sup>2</sup> at the [redacted] Residential rate of £[redacted] plus indexation ([redacted]), and the [redacted] CIL [redacted] rate of £[redacted] plus indexation ([redacted])
4. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted] stating their view that the charge was 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 Nil.
6. The Appellant's grounds of appeal can be summarised as follows:
  - a) The property was in lawful use for at least six months during the relevant period and therefore a GIA offset should be applied.
7. The CA has submitted representations that can be summarised as follows:
  - a) There is insufficient evidence to support that lawful use occurred for at least six months during the relevant period.

#### Lawful use

8. 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."
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. 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.
12. The appellant confirms that the property had existing planning permission under reference [redacted] for the use of the premises for office purposes. The site was then used for many years as the [redacted]. It is understood by the appellant that the [redacted] closed around [redacted]. The site was purchased by the appellant on [redacted] and the prior approval application was submitted ([redacted]) on [redacted]. The appellant confirms that the building was vacant when prior approval was submitted, but that the building was used, for office purposes between [redacted] and [redacted].

13. The appellant upholds that the building was used for its lawful purpose (E class use) for a period in excess of 6 months within the 3 year period, prior to the granting of planning permission at appeal on [redacted]. I note that there appears to be no disagreement in relation to the dates of the three year period under consideration.
14. Supporting evidence of the appellants claim has been provided in the form of a bill from [redacted] for payment of Business Rates (the building being described as an office and premises) and bills for gas and electricity for the relevant subject period, together with three statutory declarations and cleaning bills.
15. Electricity bills, from [redacted] have been provided for the period dating from [redacted] to [redacted]. The electricity meter reading of [redacted] at [redacted] remained unchanged throughout. The gas bill for the building showed a meter reading of [redacted] on [redacted] which also remained unchanged through to [redacted]. I consider the zero use of electricity and gas during the stated periods to be commensurate with an unoccupied office.
16. Statutory declarations from the Appellant ([redacted]), [redacted] Architect ([redacted]) and structural engineer ([redacted]) respectively state that the building had been used as an office by the appellant to run his property development and management business from, that they visited the appellant for meetings at the premises on 4 occasions and that they attended the office on numerous occasions during the period from [redacted] to [redacted].
17. Whilst the Statutory declarations have been considered, the level of use, as indicated by the utility bills, implies the office was predominately empty. The property was not registered with Companies House as the appellants company address.
18. The appellant states he used the property as an office, continuously from [redacted] to [redacted]. He does not indicate the regularity/frequency of use, be it days per week and hours per day. It is understood that the nature of the appellants business is property related which may indicate the sporadic and infrequent use of the building.
19. The statement of [redacted] confirms his attendance at the building on four occasions for meetings with [redacted]. He also states he believes and understood the address to the operational office of the appellants company. Four meetings and a persons understanding, does not evidence the continuous lawful use of the building as an office for six months. I consider this belief to be outweighed by the other available evidence which implies inconsistent and occasional use.
20. The third statement from [redacted] is like [redacted]; it confirms meeting the appellant for the purposes of business, at the subject building. The ownership of the building (by the appellant) and reasons for meeting (to discuss business matters relating to the appellants company), would indicate that the property is being used as an office. Occasional and infrequent use do not provide evidence of the building being in lawful use for a continuous period as an office though.
21. The CA refute the appellants claim that the building was 'in use' as an office for the 6 month period between [redacted] and [redacted]. They state the payment of Business Rates did not prove that the building was in use as an office. They highlight that the utility bills provided showed zero use for the period from [redacted] to [redacted] which indicates that the building was not being used as an office during this time. They state a monthly cleaning bill of £[redacted] per month does not prove the building was being used as an office and the statutory declarations do not prove continuous use of the building for its lawful use.

22. The CA state the building was not the given address for the appellants company (as registered with Companies House). The CA provide a timeline detailing past planning applications and associated forms that were submitted by the appellant during the period they claimed to be occupying the building as an office. The supporting report for application [redacted] drafted by [redacted] Town Planning confirmed the site was vacant ([redacted]). The Appeal Statement for application [redacted] states the site was unoccupied. Planning Application [redacted] submitted [redacted] confirmed the site was vacant with its last use being a [redacted], not the office for the appellant (applicant). The CA hold that the agent for the appellant was unaware that his client used the building as an office and referred to the site as vacant or not in use.
23. In my opinion, the utility bills provided are commensurate with a non operational office as usage was so low. The planning application documents, contradictory to the appellants claims, referred to a vacant and unoccupied site/building and whilst not definitive, the building address was not used as the company address with Companies House.
24. The 'in-use' exemption for the calculation of the Chargeable Amount for CIL (Community Infrastructure Levy) only applies if the relevant building has been in lawful use for continuous period of at least six months within the three years preceding the date the planning permission first permits development. I consider the evidence provided does not indicate that the building was in lawful use for a **continuous** period during the relevant 3 year period. I do not consider that sporadic use for meetings evidences the building as having been in lawful use in this instance when the totality of the evidence is considered.
25. I understand that the GIA of the existing building is the same as the GIA of the consented building (i.e. this is a change of use with no additional floor space) and therefore the net chargeable area is [redacted] m<sup>2</sup>.
26. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]) and hereby dismiss this appeal.

[redacted] BSc (Hons) MRICS FAAV  
Valuation Office Agency  
02 February 2024