

Appeal Decision

By [redacted] **FRICS**

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

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VOA Appeal Ref: 1837458

Planning Application: [redacted]

Proposal: Construction of four storey building comprising of nine residential apartments (Class C3) (seven x 2-bedroom flats and two x 1-bedroom flats) with private amenity, cycle parking, refuse storage and ground floor childrens day nursery (Class E.f) with landscaping and associated ancillary development.

Address: [redacted]

Decision

Appeal dismissed.

Reasons

1. I have considered all of the relevant submissions made by [redacted] **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 decision in respect of Application: [redacted].
 - b) CIL Liability Notice Ref: [redacted] (dated [redacted]) superseded by LN [redacted] (dated [redacted]), which was issued by the CA following receipt of assumption of liability form, both for £[redacted].
 - c) CIL Appeal form dated [redacted], along with supporting documents referred to as attached.
 - d) Representations from the Appellant.

- e) Representations from the CA.
2. Planning permission was granted as detailed within the Decision Notice for Application reference [redacted], dated [redacted] – permitting ‘Construction of four storey building comprising of nine residential apartments (Class C3) (seven x 2- bedroom flats and two x 1-bedroom flats) with private amenity, cycle parking, refuse storage and ground floor childrens day nursery (Class E.f) with landscaping and associated ancillary development’ at [redacted].
 3. The CA issued a CIL Liability Notice for £[redacted] stating this was based on a proposed chargeable area of [redacted]sqm. This is the net chargeable area figure after an eligible deduction for demolition of an existing nursery building of [redacted] sqm from the total proposed area of [redacted] sqm.
 4. A Regulation 113 Review was requested by the Applicant [redacted] which the CA responded to with its findings [redacted]. The CA’s review decision was that the original chargeable amount of £[redacted] ([redacted] sqm of deemed net area) should remain valid.
 5. On [redacted], the Valuation Office Agency received a CIL appeal application from the Appellant made under Regulation 114 (Chargeable Amount Appeal) proposing that the chargeable area should be [redacted] sqm equating to CIL of £[redacted], with supporting documents attached.
 6. **The Appellant’s grounds of appeal can be summarised as follows:**
 - a) The Appellant does not agree with the CA’s calculation of chargeable area.
 - b) The Appellant calculates the net chargeable area to be [redacted] sqm and submits that the CA has incorrectly included balconies and amenity areas, shown on the approved drawings, within its calculation of GIA. The Appellant references the pre-appeal identification of [redacted] sqm difference in net chargeable area calculations between the Appellant and CA.
 - c) The Appellant has provided copies of the proposed floor plans for each floor level [Ground, First, Second and Third floor levels] marked up to indicate the floor areas which the Appellant has categorised as “Amenity” areas. These can be described as being generally those parts of the floor levels toward the south elevation of the proposed building at each floor level. The Appellant submits these areas are open-sided walkways and balconies and should be excluded from the chargeable area because they are external and therefore excluded by definition of GIA. The CA has included the same “Amenity” areas in its GIA, categorising them as internal.
 - d) In support of the Appellant’s position, reference is made to the following:
 - i. RICS Code of Measuring Practice [CoMP] – Referencing the definition of Gross Internal Area [GIA], including 2.4 “Internal open-sided balconies, walkways, and the like” and excluding 2.19 “External open-sided balconies, covered ways and fire escapes” – submitting disputed areas are external and should be excluded.
 - ii. The Collins English Dictionary definition of internal and external.

- iii. Opinion of Planning Architect, Construction Architect and Building Control Officer – all consider the balconies are external.
- iv. GIA measurement by TDO Architecture, Building Regs and Approved Documents – with regard to balcony rail height differing dependent on whether internal or external – with BC stating balconies are external so rail height must be the higher as external.
- v. Insulation and Air Tightness – Appellant submits balcony areas are out with thermal envelope.
- vi. Planning Guidance - The [redacted] Housing Design Guide "(GIA)...It does not include the area of external private amenity space".
- vii. The [redacted] Residential Design Standards 2011 state in Paragraph 2.6 that "*all new residential development must provide an adequate amount of useable outdoor amenity space*" and that "it can take the form of private gardens, balconies, terraces and roof gardens" The Appellant submits the planning application was determined on the basis that these areas were areas of outdoor amenity space, in compliance with this policy, with the Officer Report stating "All nine residential units will provide at least [redacted] sqm of private amenity space, meeting or being above the required level provision threshold."
- viii. Other Consultant calculations – the Appellant submits that "two separate leading independent multidisciplinary construction and property consultancies, offering quantity surveying have measured this building in accordance with the RICS guidance and both have not included these balconies as internal floorspace."
- ix. The Appellant submits that "common sense logic would suggest that if a space can receive the weather and is therefore outside the waterproofing line of the building that it is not part of the Gross Internal Area."

7. The CA has submitted representations that I have summarised as follows:

- a) The CA considers the terrace areas, nursery covered walkway at ground level plus the relevant flat balconies on upper floors are all within the proposed building's main structure and under the roof, so should be included as per RICS CoMP "internal open-sided balconies, walkways and the like".
- b) Building Regulation requirements are outwith the CIL remit.
- c) Past VOA appeal decisions concluded that, if a balcony does not protrude from the external walls of a building and is surrounded by the main structure of the building with an open front, then this is an internal balcony.

8. The Appellant submitted comments on the CA's representations which I summarise as follows:

- a) The Appellant queried the validity of the CA's measurement, submitting that it had not requested DWG drawings [file type used in Computer-Aided Design (CAD) software] and it appears the CA has measured from PDFs, stating this is not an accurate method for calculating areas.

- b) The Appellant makes a number of other comments, reiterating and expanding on points already made.

9. **Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal:**

- a) I cannot comment on, or determine, the validity of decisions made on applications for planning permission or previous CIL reviews regardless of whether these are in connection with the subject proposals or other unconnected ones. The individual circumstances of each appeal are assessed on a case-by-case basis on their own merits. In this connection, as for the previous cases referred to, unless these involve an identical building design, case by case consideration means that previous VOA decisions can be helpful to consider however do not set precedents.
- b) In this case, the Appellant does not agree with the CA's stated chargeable area used in the calculation of CIL because areas the Appellant submits are external, and therefore should be excluded, have been included within the CA's calculation of Gross Internal Area.
- c) The term Gross Internal Area [GIA] is not defined in the CIL regulations however the Guidance Note, RICS Code of Measuring Practice [CoMP], 6th edition is the principal guidance available. The purpose of the Code is to "provide succinct, precise definitions to permit the accurate measurement of buildings and land, the calculation of the sizes (areas and volumes) and the description or specification of land and buildings on a common and consistent basis. This may be required for valuation, management, conveyancing, planning, taxation, sale, letting, or acquisition purposes."
- d) The CoMP defines **GIA** as:

"...the area of a building measured to the internal face of the perimeter walls at each floor level (see note GIA 4)."

✓ 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 a level floor measured horizontally
- ✓ Horizontal floors, with permanent access, below structural, raked or stepped floors

✗ 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

- ✓ Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- ✓ Mezzanine floor 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 (see APP 6)
- ✓ Pavement vaults
- ✓ Garages
- ✓ Conservatories

Note GIA 4 referenced above is a "how to use" note, clarifying:

"Internal face – means the brick/block work or plaster coat applied to the brick/block work, not the surface of internal linings installed by the occupier"

- e) Based on the above, the pivotal issue in this appeal arises from the Parties' differing opinions of whether the disputed areas should be included in or excluded from the GIA because they are either "Internal open-sided balconies, walkways, and the like" [the CA's opinion] or "External open-sided balconies, covered ways and fire escapes" [the Appellant's opinion]. The CoMP does not include examples of each type of inclusion or exclusion for further reference.
- f) The chargeable area for CIL is based on what planning permission is granted for. In this case, planning permission [redacted]. The permission is in turn based on approved plans:

Proposed Ground Floor Plan Plans - Proposed (Rev: [redacted])

Proposed First Floor Plan Plans - Proposed (Rev: [redacted])

Proposed Second Floor Plan Plans - Proposed (Rev: [redacted])

Proposed Third Floor Plan Plans - Proposed (Rev: [redacted])

Proposed Roof Plan Plans - Proposed (Rev: [redacted])

Proposed South Elevation Plans - Proposed (Rev: [redacted])

Proposed East Elevation Plans - Proposed (Rev: [redacted])

Proposed North Elevation Plans - Proposed (Rev: [redacted])

Proposed West Elevation Plans - Proposed (Rev: [redacted])

Proposed Section AA Plans - Proposed (Rev: [redacted])

Proposed Section BB Plans - Proposed (Rev: [redacted])

- g) The Parties have submitted marked up copies of the plans listed above as part of their representations from which measurements have been taken. Within their Written Statement, the Appellant has highlighted in yellow coloured shading on plan extracts, the areas they are of the opinion are external. The CA's copies of the corresponding plans show the extent of the GIA shaded in a blue and green coloured shading.
- i. The Proposed Ground Floor Plan [...Proposed (Rev: [redacted])] includes areas labelled "Nursery Waste / Short Stay Cycles" and "Amenity" [the disputed area at Ground level] arranged in a linear layout along the south end of the building adjacent to "Childrens Day Nursery" and "Home 1". The disputed areas are directly below the floor plate of the first-floor level and are open-sided.
 - ii. The Proposed First Floor Plan [...Proposed (Rev: [redacted])] includes three areas labelled "Amenity" [the disputed areas at first floor level] arranged along the south end of the building adjacent to "Home 2", "Home 3" and "Home 4". The disputed areas are directly below the floor plate of the second-floor level and are open-sided.
 - iii. The Proposed Second Floor Plan [...Proposed (Rev: [redacted])] includes three areas labelled "Amenity" [the disputed areas at second floor level] arranged along the south end of the building adjacent to "Home 5", "Home 6" and "Home 7". The disputed areas are directly below the floor plate of the third-floor level and are open-sided.
 - iv. The Proposed Third Floor Plan [...Proposed (Rev: [redacted])] includes two areas labelled "Amenity" [the disputed areas at third floor level] arranged along the south end of the building adjacent to "Home 8" and "Home 9". The disputed areas are directly below the roof and are open-sided.
 - v. I note the CA has not sought to include the amenity area toward the west elevation at third floor level. This area is within the footprint of the building however is not under the roof. I am of the opinion this area has been correctly excluded from GIA.

- h) The floor plans for each floor level and the corresponding South, East and West Elevation plans show that the disputed areas are within the footprint and perimeter walls of the building at each floor level.
 - i) The CIL Regulations require an assessment of what parts of a property are to be included or excluded in the calculation of GIA. I am of the opinion the disputed areas should be included in the GIA because their configuration match the RICS CoMP definition of parts to be included as “Internal open-sided balconies, walkways, and the like” and therefore I concur with the CA’s approach to calculation of GIA.
 - j) Within its Comments on the CA’s Representations, the Appellant queried the validity of the CA’s measurement, submitting that it had not requested DWG drawings. I am of the opinion this point was addressed in a previous email exchange between Parties within which the CA advised it can only use measurement of the PDF drawings submitted and approved by the Planning Application [redacted]. This is because CIL Reg.9 defines a CIL chargeable development as the development for which planning permission is granted. The scaled drawings conditioned under [redacted] planning decision notice and available on the Planning Register are the ones which measurements are taken from.
 - k) Within the CIL Liability Notice Ref: [redacted] (dated [redacted]) at “How we calculated this figure” it states “The Chargeable Area is the gross internal area of the total development less the floorspace of any existing buildings which are eligible deduction.”
 - i. The Parties agree the existing nursery building to be demolished met the “in-use building” criteria, and the offset should be [redacted] sqm.
10. The Appellant submits the net chargeable area should be [redacted] sqm [Gross proposed area of [redacted] sqm less demolition area of [redacted] sqm].
11. The CA submits the net chargeable area should be [redacted] sqm [Gross proposed area of [redacted] sqm less demolition area of [redacted] sqm].
12. There appears to be no dispute in relation to the rates adopted or indexation and I therefore dismiss this appeal. I determine the CIL payable is as per Liability Notice [redacted] (dated [redacted]), which was issued by the CA following receipt of assumption of liability form, £[redacted].

[redacted] FRICS
Valuation Office Agency
5 March 2024