Appeal Decision

By [redacted] MRICS

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.

Appeal Ref: 1853388

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Change of use of the existing buildings to provide new homes (Use Class C3), together with internal and external works to the buildings, landscaping, car and cycle parking, and other associated works.

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] (the Appellant) and [redacted] as 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 permission reference [redacted] granted by the CA on [redacted] for "*Change of use of the existing buildings to provide new homes (Use Class C3), together with internal and external works to the buildings, landscaping, car and cycle parking, and other associated works*."
    b. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with liability calculated at a total of £[redacted]
    c. The CA's Regulation 113 Review Decision dated [redacted].
    d. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto and further representations dated [redacted].
    e. The CA's representations dated [redacted] together with documents and correspondence attached thereto.
    f. The Appellant's further comments dated [redacted] together with documents and correspondence attached thereto.

Background

2. Planning permission reference [redacted] was granted by the CA on [redacted] for "*Change of use of the existing buildings to provide new homes (Use Class C3), together with internal and external works to the buildings, landscaping, car and cycle parking, and other associated works*."

3. CIL Liability Notice reference [redacted] was issued by the CA dated [redacted] with liability calculated as:

   [redacted]
   MC2 General
   Chargeable Area [redacted] m2
   x £[redacted] rate R indexed by [redacted]
   = £[redacted]

   [redacted]
   Residential (C3)
   Chargeable Area [redacted] m2
   X £[redacted] rate R indexed by [redacted]
   = £[redacted]

   Total CIL liability £[redacted]

4. The Appellant requested a Regulation 113 review from the CA by letter dated [redacted] to which the CA responded by letter dated [redacted] .

5. An Appeal against the chargeable amount dated [redacted] was submitted to the VOA.

Appeal Grounds

6. The Appellant contends it can be shown that part of each building was lawfully occupied for 6 months in the period [redacted] – [redacted] and therefore the whole of each building's floorspace should be deducted from the calculation of the chargeable area.

Consideration of the Parties' Submissions

7. The Appellant argues that the two buildings were each a "relevant building" situated on the relevant land on the day planning permission first permits the chargeable development and each was an "in-use building" containing 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.

8. The Appellant states the buildings were lawfully occupied by [redacted] ([redacted]), who used the buildings as production offices, for the 6 months period starting on the [redacted] . In support of this they have provided the following evidence:

   a. A Statutory Declaration dated [redacted] by [redacted], director of [redacted] stating that prior to applying for planning consent in [redacted] they entered into an underlease with [redacted] on [redacted] of [redacted] months term subject to an annual rent of £[redacted] for the buildings and surrounding land for "*use as production offices and as a filming location*" and also entered into a profit share agreement "*relating to business or commercial activities at the Application Buildings (activities on the surrounding land were not included).*" [redacted] was responsible for payment of utilities from npower. Under the

profit share 20% of all [redacted] profits in relation to use of the Application Buildings (not the land) was payable on a bi-monthly basis. The first [redacted] months rent was paid in full on [redacted] and [redacted] paid the relevant electricity bills through this period. Payments were made under the profit share during this period, as shown in the bank statements between [redacted] and [redacted]. Both agreements ended on [redacted]. At para 10 *"…when the Application was submitted the site had not been occupied for 6 months*."

b. A Statutory Declaration dated [redacted] by [redacted], director of [redacted] stating that on [redacted] he entered into the underlease and profit share agreement referred to in [redacted] Statutory Declaration. "*Whilst the electricity bills refer to* [redacted]*, they related only to the two buildings and surrounding land which were referred to in the underlease, as no other parts of the site were occupied or used.*" [redacted] used the property as follows: "*The surrounding land as a filming location*" and "*The buildings themselves as filming locations and also as production offices*" and "*The buildings for general administrative work*." He also states "*Throughout the period, at least one room within each building was occupied and used on the above basis, save for very brief periods*" and "…*I confirm that the properties were in use throughout the period, and were not only used for a few days per month*."

c. The Lease document at Appendix 6 of the Appellant's appeal submission, which indicates that rental payments are on the first day of every month. The Contractual Term is stated as being a period of [redacted] months, but the lease is not dated. It also states the tenant must pay all rates and taxes.

d. [redacted] electricity bills at Appendix 9 to their appeal submission, all based on actual metre readings and dated as follows:

- *Invoice* [redacted] *for period* [redacted] *for £*[redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *for £*[redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *to* [redacted] *for £* [redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *for £*[redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *to* [redacted] *for £*[redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *for £*[redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *to* [redacted] *for £* [redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *to* [redacted] *for £* [redacted] *based on* [redacted] *KwH of use.*
- *Invoice* [redacted] *for period* [redacted] *to* [redacted] *for £*[redacted] *based on* [redacted] *KwH of use.*

e. A [redacted] Bank Statement at Appendix 8 showing receipts from [redacted] as follows:

- *Payment dated* [redacted] *from £*[redacted]
- *Payment dated* [redacted] *from £*[redacted]
- *Payment dated* [redacted] *from £*[redacted]
- *Payment dated* [redacted] *£*[redacted] *from £*[redacted]
- *Two Payments dated* [redacted] *£*[redacted] *and £*[redacted] *from* [redacted]
- *Payment dated* [redacted] *£*[redacted] *from* [redacted]
- *Two Payments dated* [redacted] *£*[redacted] *and £*[redacted] *from* [redacted]

9. The Appellant has also submitted Community Infrastructure Levy (CIL) - Form 1: CIL Additional Information signed and dated [redacted] detailing the total proposed GIA [redacted] m2 and total existing building GIA [redacted] m2 and stating each of the two buildings are to be retained and were last occupied on [redacted]. This was submitted following the CA's note that only one CIL Additional Information Form ([redacted]) was submitted during the planning application, where the applicant stated that both buildings were not occupied by a lawful

use for a continuous period of at least 6 months. The applicant had previously left the adjacent section of the form blank.

10. The Appellant argues that the lawful use of the property is commercial under Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). As the use of the property for film-making purposes falls within this class, it would therefore be entirely lawful. In addition, the statutory declarations show that the Property was being used for general administrative purposes, which would indisputably fall within Class E.

11. The CA's case is that the buildings do not meet the definition of an 'in-use building' as defined within the CIL Regulations.

12. The CA firstly consider the question as to whether the stated use of the building was lawful and note it would appear there is common ground between them and the Appellant in some regards, including that the lawful planning use of the two buildings is that falling under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended).

13. The CA note it is also common ground that the building did not benefit from permitted development rights for the temporary use of land or buildings for the purpose of commercial [redacted], under Schedule 2 – Part 4 – Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

14. The CA argue that using the buildings as locations for commercial [redacted] would not fall within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), and note that Use Class E (g)(iii) includes use for any industrial process, but argue this would also need to be a use which can be carried out in any residential area without "*detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit*". The CA argue they have no information to indicate that if the commercial [redacted] had been carried out in a residential area there would not have been such detriment to the amenity of the area, particularly in relation to noise. They further argue that "noise impacts" are deemed to be a potential significant issue in relation to commercial [redacted], hence why it is a prior approval condition where one is required to seek temporary permission under Schedule 2 – Part 4 – Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

15. The CA do agree that there are some purposes noted by the Appellant as being used within the buildings that could reasonably fall under Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), including use of the buildings for general administrative work, assuming this was not ancillary to a non-permittable use.

16. The Appellant has responded that [redacted] is widely accepted to fall within Class E (and its predecessors Class B(1)(b) and Class B1(c)). For example:

    - *Central Bedfordshire Council granted consent in June 2024 for a film and TV studio campus under Use Class E(g) in June 2024 (Ref: CB/22/03616).*

    - *Sky Studios was granted consent by Hertsmere Council for a film studio under Class B in 2020 (Ref: 20/0315/FULEI), and an appeal against an expansion on the site is now proceeding under Class E (Ref: 22/1526/FULEI).*

    - *In November 2021 the Royal Borough of Windsor and Maidenhead granted consent for the redevelopment of film studios, stating that film studios were in Use class E (Ref: 21/02245/FULL).*

- *1 Mollison Avenue, Location Collective (Enfield) was granted planning permission (Ref: 19/03721/FUL) in February 2020 for the temporary use the building and land for the purposes of film-making for 9 years. The existing premises comprised a former storage and distribution warehouse and light industrial unit (Use Classes B8 and B1c) and permission was granted for B1(c).*

- *Ashford International Film Studios was granted planning permission (Ref: 19/01476/AS) in April 2020 for a mixed-use development which included film/TV Studios, associated workshops and media village, with the decision notice listing these uses as falling within Use Class B1.*

- *Arborfield Garrison Film Studio (Wokingham) was granted planning permission (Ref: 162881) in February 2017 for the temporary change of use of the Site from Sui Generis for the use of the land for filming Use Class B1.*

17. The CA then go on to consider whether there is evidence the buildings were in the uses stated for any period of time after [redacted] . They argue that an underlease would not itself demonstrate continuous lawful occupancy of a building, only that someone had the right to occupy the building and they have cited a previous CIL Appeal decision by the AP on a different development.

18. The CA then consider whether the buildings were in lawful use for a continuous period of at least six months, noting that the 'Rent Payment Dates' set out within the underlease are for the '*first day of every month'* and that the statutory declarations clarify the position and also confirm that parties departed from a term in the underlease.

19. The CA note in the Profit Share Agreement, the 'Statement Period' is defined as '*… the period two calendar months commencing on the date of this deed and each subsequent two-month period thereafter*', the deed being made on [redacted]. They argue that the relevant statement periods would therefore be two months from this date (ie [redacted] , [redacted] etc.) and that Paragraph 2.2 is clear that the Profit Share Statement needs to be submitted within 5 working days of the end of each Statement Period.

20. The CA argue that some of the payments cannot have constituted a payment under the Profit Share Agreement: eg payments on the [redacted] (£[redacted]) and [redacted] (£[redacted]) would have been prior to the end of the first Statement Period, with other examples:

    - [redacted] *– is this for the Statement Period ending* [redacted]*?*

    - [redacted] *two payments £*[redacted] *and £*[redacted] *– are these for the Statement Period ending* [redacted]*?*

    - [redacted] *– it is not clear what Statement Period this could refer to, as the* [redacted] *is assumed to be covered above by those made on* [redacted] *.*

    - [redacted] *– is this for the Statement Period ending* [redacted]*? Noting there are no other highlighted payments for the Statement Period, it is either the case that there is no need for a payment between* [redacted] *–* [redacted] *due to no occupancy/profits, or that this is a payment for both these periods (i.e. 4 months).*

21. The CA further note the significant deviations between payment amounts, with the lowest at £[redacted] and the highest at £[redacted]. They argue that if these payments did relate to the Profit Share Agreement, it would support an argument of various levels of usage across the periods. The CA argue that money could be owed under the profit-sharing agreement without 6 month lawful occupancy of the two buildings having arisen, for example if a lawful use of the building occurred for a number of days or weeks within a two-month

period, this would not constitute a continuous period if it was not used in between, but would trigger a payment under the Profit Share Agreement as shown. The CA therefore argue that profits could have arisen without continuous occupancy, for example a period of limited filming at the location for a feature length film or television show.

22. The Appellant has responded that there is no need for "*speculation*" regarding these payments as it is clear that payments were being made pursuant to an agreement which explicitly related to activities in the property, and such payments were made throughout the relevant period.

23. The CA note that the Appellant has stated only part of the large buildings had been occupied without advising as to which parts and when. The CA argue that if they do not know which parts of the building are said to have been occupied and when, it would be impossible to ever corroborate this information with site inspections, visits, photos or other types of evidence, and that any Appellant could simply state that a use occurred in a different part of the building to the ones covered by the evidence when presented.

24. The CA have submitted a statement dated [redacted] by [redacted], Case Officer at the CA on planning application [redacted] stating he undertook a site visit on [redacted] walking around the land adjacent to both [redacted] and [redacted] office buildings. In regard to [redacted], the site visit also included a walk through the office building entrance and into the courtyard and walking by the car parks ancillary to both [redacted] and [redacted] office buildings. He states "*I do not recall these* [the car parks] *being occupied, other than people associated with the site visit.*" and "*I did not see or obtain any evidence to indicate that either of the two office buildings were occupied in any capacity*." but "*I did not enter the interior of the office buildings, other than to access the courtyard contained within the* [redacted] *office building.*"

25. The CA also submit a [redacted] Council Non-Domestic Rates database extract and commentary. They note that all properties except the car park are shown as being listed buildings that Council records indicate have been continuously empty, some for a number of years (varying dates) with the full 100% listed building exemption in place for an empty building. The CA advise that, as is the case with all empty properties, inspections are routinely carried out of the site for continued confirmation of the status and continuation of the exemption. The inspection reports from [redacted] have been included to support the continued empty status - such inspections being carried out subject to access and including brief notes on the findings. Inspection reports are provided for the following dates:

    - [redacted] – *comments "security gates closed, hut empty, whole site vacant".*
    - [redacted] – *comments "entrance to* [redacted] *blocked with concrete, no one in security hut. Site vacant, no change."*
    - [redacted] – *comments "whole site vacant, entrance blocked with concrete, gated and blocked. No workers seen or sign of occupation. Vacant."*
    - [redacted] – *comments "whole site is vacant, security gates locked, concrete bollards preventing access."*
    - [redacted] – *no comments provided.*

26. The Appellant notes that [redacted] specifically states that "*I would like to disclose that I did not enter the interior of the office buildings, other than to access the courtyard contained within the* [redacted] *office building*", and the Appellant argues the implication from the other site inspections is that the officers went no further than the site entrance before concluding that the whole site was vacant, but that on a large site with multiple buildings it would be impossible to determine whether any of them are occupied without carrying out a full inspection, including examining the interior of each building individually.

27. The CA note the Appellant stated they submitted information to indicate that neither building was subject to any relief from business rates, but the CA confirm that the buildings did benefit from empty property relief and the associated evidence has been included within the CA's submission, which shows that all of both buildings were subject to empty property relief. The CA also refer to The Economic Case Report ([redacted]) that was submitted as part of the planning application that states in Paragraph 3.32 that '*In addition, it is notable that there are no business rates which are payable on listed buildings which are vacant*'.

28. The CA argue that the two declarations submitted by the Appellant conflict with the latter's assertion that the buildings were occupied continuously for a 6 month period, with the first stating '*throughout the period, at least one room within each building was occupied and used on the above basis, save for very brief periods of time'* and the second declaration stating '*However, I confirm that the properties were in use throughout the period, and were not only used for a few days per month*.' The CA conclude that these declarations do not declare at any points that the buildings were occupied continuously for a 6 month period, nor when that period was.

29. The Appellant has responded with reference to R (Hourhope) v Shropshire Council [2015] PTSR 933, in which it was stated that:

    "If a building has a more active use, such as a factory office or shop, but that use is interrupted for a period, the question whether it thereby ceases to be "in use" must be one of assessment of the length of and reasons for the interruption, and the intentions of those who previously used and may in future use the building. No one would say that any of these uses ceased if the factory office or shop was temporarily closed on a non-working day, or for a holiday period. In those circumstances, generally the stock, furniture and any machinery used would remain in situ so that activity could resume after a short period. But it cannot be necessary that it does so in all circumstances- a shop would not cease to be used as a shop if it was closed and all the contents removed for a period of refurbishment for instance, as long as the owner intended to resume use as a shop when the work was complete. The position might be different if the shop was closed and emptied for refitting with the intention of sale when empty, or of a change to some other use such as residential accommodation. In the latter case there may be a question whether the property begins to be "in use" for the new purpose while the work is being done, and if so whether that is a "lawful" use".

30. They argue that it is therefore incorrect for the CA to assert that there could not have been any breaks at all in the lawful use – as long as the lawful use could resume after a short period this would be sufficient.

31. The CA claim an award of costs on the basis that the Appellant has acted unreasonably and have included the following comments:

    a. The number of statements submitted (Appendix D) throughout the determination of the planning application which stated that the buildings were vacant and CIL liable. The only explanation for the applicant's complete reversal of this position post-determination of the planning application is included within Paragraph 5.22 of the Statement of Case and is not deemed to be credible.

    b. The appellant has failed to clearly establish the 6 month (or longer) continuous period of lawful occupancy that they are seeking to demonstrate. The appellant has also alleged through this appeal that only part of the large buildings may have been occupied, without attempting to disclose which parts. Failure to establish clear limits like these have unnecessarily lengthened the review of the case for both the Council and appointed person.

c. The appellant has failed to produce evidence which they have claimed to have provided within the Statement of Case. This includes:

i. Missing electricity bills. This has been outlined in Paragraphs 6.43 – 6.44 above.

ii. Falsely stating neither building was subject to any relief from business rates. This has been outlined in Paragraphs 6.53 - 6.55 above. It is not considered plausible that the appellant would not have known that the buildings were subject to empty property relief.

Consideration of the Decision

32. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

33. The appeal revolves around disagreement in relation to the issue of identifying lawful in-use buildings following Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or off-set of the GIA of retained parts of in-use buildings from the GIA of the total development in calculating the CIL charge (a *KR(i)* deduction).

34. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 paragraph 1(10) – standard cases provides that an "in-use building" means a building which contains a part that has been in lawful use for a continuous period of at least 6 months within the period of three years ending on the day planning permission first permits the chargeable development.

35. Part 1 – standard cases – 1 (10) also provides that "relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

36. Based on the facts of this case, I consider the two buildings that existed on the day planning permission [redacted] was granted to be "a relevant building", as they were situated on the relevant land on [redacted] when that planning permission was granted.

37. The relevant period of continuous lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended) is [redacted] to [redacted], and if the existing buildings are deemed to satisfy the lawful in-use requirements, then GIA off-set can be applied to the CIL Liability calculation.

38. If, however, lawful in-use cannot be demonstrated then CIL would be calculated with no existing building GIA off-set.

Where the two buildings in lawful use?

39. In the case of Hourhope Ltd v Shropshire CC (2015) the High Court held that for the purpose of the CIL Regulations (2010) (as amended) the words "lawful use" meant a use that was lawful for planning purposes.

40. The Town and County Planning Act 1990, s.191(2) states that "*uses and operations are lawful if no planning enforcement action may be taken against them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and they are not in any contravention of any enforcement notice that is in force*".

41. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 – s13 PART A - Commercial, Business and Service defines Class E as follows:

"Class E. Commercial, Business and Service
Use, or part use, for all or any of the following purposes—

(a)for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
(b)for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
(c)for the provision of the following kinds of services principally to visiting members of the public—
(i)financial services,
(ii)professional services (other than health or medical services), or
(iii)any other services which it is appropriate to provide in a commercial, business or service locality,
(d)for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,
(e)for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,
(f)for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
(g)for—
(i)an office to carry out any operational or administrative functions,
(ii)the research and development of products or processes, or
(iii)any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."

42. The matter to consider here is whether use of the land and buildings for film-making activities is covered by Use Class E.

43. The Appellant has argued that [redacted] is widely accepted to fall within Class E and given examples of development schemes where this has been the case.

44. The CA argue that commercial [redacted] would not fall within Class E because whilst Class E (g)(iii) includes use for any industrial process, such use would need to be capable of being carried out in any residential area without noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. The CA further argue that "*noise impacts*" are deemed to be a potential significant issue in relation to commercial-film making, and that prior approval is therefore required to seek temporary permission under Schedule 2 – Part 4 – Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended):

"Class E – temporary use of buildings or land for film-making purposes
Permitted development
E. Development consisting of—
(a)the temporary use of any land or buildings for a period not exceeding [F20812 months] in any 27 month period for the purpose of commercial film-making; and
(b)the provision on such land, during the filming period, of any temporary structures, works, plant or machinery required in connection with that use.

E.1 Development is not permitted by Class E if—
(a)the land in question, or the land on which the building in question is situated, is more than [F2093 hectares];
(b)the use of the land is for overnight accommodation;
(c)the height of any temporary structure, works, plant or machinery provided under Class E(b) exceeds [F21020 metres], or 5 metres where any part of the structure, works, plant or machinery is within 10 metres of the curtilage of the land;
(d)the land or building is on article 2(3) land;
(e)the land or the site on which the building is located is or forms part of—
(i)a site of special scientific interest;

(ii)a safety hazard area; or
(iii)a military explosives storage area;
(f)the land or building is, or contains, a scheduled monument; or
(g)the land or building is a listed building or is within the curtilage of a listed building.

Conditions
E.2— (2) Class E development is permitted subject to the condition that before the start of each new [redacted] period the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
(a)the schedule of dates which make up the [redacted] period in question and the hours of operation,
(b)transport and highways impacts of the development,
(c)noise impacts of the development,
(d)light impacts of the development, in particular the effect on any occupier of neighbouring land of any artificial lighting to be used,"

45. The CA do agree however that use of the buildings for general administrative work (assuming this was not ancillary to a non-permittable use) would fall under Class E.

46. Consideration has been given to the various examples of development schemes involving [redacted] cited by the Appellant.

47. Central Bedfordshire Council granted consent CB/22/03616 on 14 June 2024 for: "*Hybrid Planning Application: **Development of film and TV studio campus (Use Class E (g) (i-iii) and B8)** comprising film studios, sound stages, workshops, offices, warehouses, overnight accommodation, community hub, canteen/ restaurant, ancillary floorspace, new access arrangements including bus interchange, car and cycle parking, landscaping, infrastructure and associated works. Comprising (i) Full application for phase 1, 1a and 1b which includes 54,334sqm of **stages and workshops (E(g) (i-iii)**, 50sqm education hub (F.1(a)), 384sqm transport hub, (F.2(b)), 384sqm community floorspace (F.2(b)), 8,701sqm of **ancillary floorspace (E(g)(i-iii) and B8)** and site wide enabling works (ii) An Outline application: Phases 2 – 3 and substation phase up to a maximum floor area of 75,000 sqm; which includes up to 38,000sqm of **stages and workshops (E(g)(i-iii)**, up to 25,000sqm backlot, 2000sqm substation facility, 4,100sqm of ancillary overnight accommodation, a 1,200 space multi storey car park, 5900sqm of **associated ancillary floorspace (E (g) (i-iii) and B8)** and a 2,000 sqm substation facility. The associated backlot area will be no more than 25,000sqm. All matters reserved except access. EIA development accompanied by an Environmental Statement.*" **[my emphasis]**

48. The Grant of Planning Permission for CB/22/03616 lists a number of conditions including six specifically related to protecting "*the amenity of local residents*" or "*to safeguard the character and appearance of the area*". It is also noted that whilst this relates to Use Class E (g) (i-iii) Use Class B8 is also referred to.

49. The Royal Borough of Windsor and Maidenhead granted consent 21/02245/FULL on 3 March 2022 for "*Redevelopment to create new film and TV studios, incorporating demolition, retention of 2no. existing sound stages, rehearsal building, backlot and ancillary offices on a permanent basis, construction of further new production facilities including sound stages, workshops, ancillary offices and other production facilities, use of Waterford House and Steading as ancillary accommodation, parking, landscaping and new vehicular access off Windsor Road*."

50. The Planning Officer's report dated 8 November 2021 in connection 21/02245/FULL notes "*The Application Site is located in the Green Belt. It was previously utilised for a range of uses including film studios (Class E(g)), buildings in commercial use (Class E(g), B2 and B8), a gymnasium (Class E(d)), agricultural processing (Sui generis), 5 residential dwellings (Class C3) and a plant hire and construction compound (Class B2).*" The prior

uses are mentioned as "*including film studios (Class E(g))*" and an objection had been raised in relation to "*concern regarding the temporary film use*" but the Planning Officer noted "*The application is for permanent use as a film studio. The current temporary use is not the subject of this application. In any event should the current proposal be approved it is anticipated that the temporary use would cease. Issues such as the use of diesel generators, and noise and odours associated with the temporary use are expected to cease or improve should the current application be approved and implemented*."

51. It is evident from all six planning decisions cited by the Appellant that the very fact permission was being sort in each case for uses including "film and TV studio", "film studio", "film-making", "film/TV studios" and "filming" shows that, regardless of the ultimate decision in each case, due consideration was required under the auspices of a planning application for such film/TV use, which is clearly different from the situation with the subject under consideration, where the Appellant had not applied for any temporary permission in advance with reference to Schedule 2 – Part 4 – Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)-

Conditions E.2— (2) Class E development is permitted subject to the condition that before the start of each new filming period the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
(a)the schedule of dates which make up the filming period in question and the hours of operation,
(b)transport and highways impacts of the development,
(c)noise impacts of the development,
(d)light impacts of the development, in particular the effect on any occupier of neighbouring land of any artificial lighting to be used,

52. Whilst the CA have indicated their agreement that use of the buildings for general administrative work would fall under Class E, this was on the provision that such use was not ancillary to a non-permittable use.

53. The Appellant has suggested that the statutory declarations show that the property was being used for general administrative purposes, but the declaration by [redacted], director of [redacted]., describes use as "*The buildings themselves as [redacted] locations and also as production offices*" and "*The buildings for general administrative work.*"

54. It would appear to be the case, however, that any "*general administrative work*" would be conducted as part of the business of [redacted], and thus to fall within Use Class E such [redacted] would need to be shown as representing a lawful use. To be lawful would have required the Appellant to apply for temporary permission in advance under Condition E.2(2), which they did not.

55. It is therefore my opinion that, from all the information provided, the building was not lawfully "in-use" during the relevant period, and the "lawful use" requirement of Schedule 1 of the CIL Regulations 2010 (as amended) has not therefore been met.

56. The GIA of the existing building therefore cannot be off-set as a *KR(i)* reduction against the GIA of the proposed development.

<u>Calculation of CIL Liability</u>

57. Neither party has presented an argument against the GIAs used in the calculation of CIL liability, nor against the make-up of that calculation, other than the matter of GIA off-set for existing buildings. The AP therefore has no further decision to make in this regard.

58. The CIL Liability is therefore to be calculated using rates and indices at [redacted] relevant at the date of planning permission [redacted] as follows:

    [redacted]
    MC2 General
    Chargeable Area [redacted] m2
    x £[redacted] rate R indexed by [redacted]/[redacted]
    = £[redacted]

    [redacted]
    Residential (C3)
    Chargeable Area [redacted]m2
    X £ [redacted] rate R indexed by [redacted] /[redacted]
    = £[redacted]

    Total CIL liability £[redacted]

Regulation 121 – Costs

59. The CA has requested an award of costs on the grounds that the Appellant has acted unreasonably, initially stating on a number of occasions that the buildings were vacant, but then at a later date arguing they were in-use. They then failed to provide sufficient evidence of continuous lawful use or to disclose which parts of the buildings this applied to, as well as not disclosing certain missing information, such as electricity bills for specific dates and claiming that neither building was subject to any relief from business rates.

60. The Appellant rejects that costs should be awarded, stating they have not behaved unreasonably and have a statutory right of appeal against a Regulation 113 Review, which they exercised. They argue they have clearly demonstrated continuous lawful occupancy and it cannot be argued that presenting the evidence can in any way be unreasonable. They state there is no requirement to set out which parts of the property were occupied, as the statutory test is that any part of the property must have been occupied. They also argue that the CA's assertion that they failed to produce copies of electricity bills is incorrect, and that no false statement about business rates was made, with no definitive statement on this point being made by the Appellant.

61. Regulation 121 gives the appointed person authority to make orders as to the costs of the appeal. Guidance on awarding costs states that costs will normally be awarded where the following conditions have been met:

    • *a party has made a timely application for an award of costs;*
    • *the party against whom the award is sought has acted unreasonably; and*
    • *the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Appointed Person, or part of the expense because of the manner in which a party has behaved in the process.*

62. In my opinion the Appellant has not acted unreasonably. The Appellant referenced planning decisions in support of their contention for lawful use and provided evidence of occupation as part of their representations, and I consider this sufficient to prove that they acted reasonably in reaching their opinions. I therefore deny the request for an award of costs.

Decision

63. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[redacted] ([redacted]) to be appropriate and this appeal is dismissed.

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
11 December 2024