

Appeal Decision

By ``redacted`` BSc FRICS

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

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VOA Appeal Ref: 1860926

Planning Application: ``redacted``

Proposal: Planning Permission Granted For: *“Replacement of eighth floor structure and construction of a two storey extension at main roof level in connection with the use of part basement, ground and nine upper floors as student accommodation (Sui Generis) and two retail units (Class E) at ground level; external alterations including partial façade replacement and new/rearranged entrances and retail frontages; cycle parking; soft landscaping on roof and terraces; roof plant and solar panels; and all associated engineering and ancillary works. – the subject PP].*

Address: ``redacted``

Decision

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

Reasons

1. I have considered all of the relevant submissions made by ``redacted`` (``redacted``) / ``redacted`` (``redacted``) on behalf of ``redacted`` (the Appellant). ``redacted`` - the Collecting Authority (CA), has not submitted any representation 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 No: ``redacted``, dated ``redacted``.
 - b) CIL Liability Notice: ``redacted`` dated ``redacted`` for £``redacted``.

- c) CIL Appeal form dated ``redacted``, along with supporting documents referred to as attached.
 - d) Representations from the Appellant.
2. Planning Permission for the Proposal was granted as detailed ``redacted`` .
3. The CA issued a CIL Liability Notice Liability Notice reference: ``redacted``, dated ``redacted`` for £``redacted``, based on a chargeable area of ``redacted`` square metres.
4. On ``redacted`` the Appellant emailed the CA which was effectively a request for Regulation 113 Review.
5. On ``redacted`` the CA emailed the Appellant to advise that its approach is that student accommodation is residential. The Appellant did not accept this outcome.
6. On ``redacted``, the Valuation Office Agency received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming the Appellant disagrees with the CA's Regulation 113 Review decision on the basis that the chargeable amount has been calculated incorrectly, with supporting documents attached.
- 7. The Appellant's grounds of appeal can be summarised as follows:**
- a) The Appellant does not agree with the CA's calculation of CIL within the subject Liability Notice ``redacted``.
 - b) The CIL charging rates are listed in the "Rates" section of the CA's Charging Schedule at "Table 1: ``redacted`` CIL charging rates (per square metre)". Specifically, the Appellant disputes the CA's application of CIL charging rate (per square metre) for "Residential (including all residential 'C' use classes)" at the "Prime" rate of £``redacted`` to the chargeable area element of "student accommodation (Sui Generis)". The Appellant contends the correct CIL charging rate category is "All other uses" which attracts a Nil rate.
 - c) The Appellant submits there is disparity between how the charging schedule is written and how the CA has applied the charging rates. Specifically, that "student accommodation (Sui Generis)" is not referred to or understood to be within the "Residential (including all residential 'C' use classes)" category.
 - d) The Appellant refers to National guidance on the preparation of CIL charging schedules and that they should avoid undue complexity, and to past VOA CIL Appeal Decisions, which the Appellant submits have held that is the purpose of the charging schedule to provide predictability and clarity to developers. Specifically, the Appellant references Government Guidance on Charging schedules and Rates which includes "The charging authority should specify in their charging schedule what types of development are liable for the levy and the relevant rates for these development types."

- e) The Appellant claims there is no basis, consideration or viability evidence to justify the application of a differential charge rate on “student accommodation (Sui Generis)” in the support documents for the Charging Schedule. The Appellant refers to Government Guidance on CIL*, specifically the sections relating to “Can differential rates be set? .../... A charging authority that plans to set differential rates should seek to avoid undue complexity.” and “How can rates be set by type of use?.../... Charging authorities may also set differential rates by reference to different intended uses of development. The definition of “use” for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987 (as amended) although that Order does provide a useful reference point. Charging authorities taking this approach will need to ensure that the differential rates are supported by robust evidence on viability.” [*Government Guidance – CIL - Paragraph: 022 Reference ID: 25-022-20230104 / Paragraph: 023 Reference ID: 25-023-20201116].
- f) The Appellant claims the Charging Schedule should state explicitly that “student accommodation (Sui Generis)” is categorised as Residential, backed by evidence that other ``redacted`` Borough CA’s have taken this evidence based approach. The Appellant provided examples from other London CA’s charging schedules, London Borough of Camden (‘LBC’), the Royal Borough of Kensington and Chelsea (‘RBKC’) and London Borough of Tower Hamlets (‘LBTH’).
- g) The Appellant claims that in other proposals considered before and since the subject proposal, the CA has not categorised “student accommodation (Sui Generis)” as Residential. The Appellant references two student accommodation based applications for the same development submitted to the CA and submits that the CA’s application of the Charging Schedule in these two example cases differs from the approach taken in the subject case. Specifically, the Appellant references 21/04536/FUL [2021] and 24/03600/FULL [2025]. The Appellant highlights commentary within the ‘Report of Director of Place Shaping and Town Planning’ and the ‘Report of Director of Town Planning & Building Control’ whereby under Planning Obligations, paragraphs 8.11 and 9.11 respectively, the Applicant in these cases has stated that as “student accommodation (Sui Generis)” is Sui Generis, that no CA CIL would be payable.
- h) The Appellant references The Oxford Dictionary definition “Residential” and Use Classes Order 1987 (as amended).
- i) The Appellant references two VOA CIL Appeal Decisions in order to highlight the extent to which weighting should be applied to dictionary definitions, relative to the issue of categorising the proposed use, and submits that these Decisions guide that greater weighting ought to be attached to the Use Classes Order.
- j) The Appellant describes the differing characteristics of “student accommodation (Sui Generis)” and “Residential (including all residential ‘C’ use classes)” including the non-self contained nature of the student accommodation having shared facilities, management and the temporary, academic term time based, nature of occupancy where students generally occupy during term time only, returning ‘home’ to their primary residential dwelling during vacations.

- k) The Appellant provides additional references submitting these are in support of the difference between “student accommodation (Sui Generis)” and “Residential (including all residential ‘C’ use classes)” by referencing the National Planning Policy Framework [NPPF] (paragraph 63; 65 (b); Annex 3), [City of] ``redacted`` Plan (Policy 10) and [``redacted`` of London] London Plan (Policy H15). The Appellant claims the respective references to student accommodation support the case that “student accommodation (Sui Generis)” is different from “Residential (including all residential ‘C’ use classes)” in the way these documents categorise the use and have specific policy commentary concerning it.
- l) The Appellant submits if it were the CA’s intention to include a “student accommodation (Sui Generis)” charging rate, either within the “Residential” charging rate or a separate charging rate, the CA should have stated this within Table 1 of the Charging Schedule similar to that for “...retail (all ‘A’ use classes and sui generis retail)”, which is stated within the “Commercial” charging rate, and the evidence base supports this inclusion.
- m) The Appellant devotes several paragraphs with their Representation to what they describe as “Lack of Evidence to support application of “Residential” Charging Rate to PBSA Development”
- n) The Appellant submits the correct amount of CIL liability for the subject development is £``redacted``.
- o) The Appellant has included with their Representations a summary of matters not in dispute:
 - i. That the Development qualifies as CIL chargeable development for ``redacted`` CIL and [CA] ``redacted`` CIL.
 - ii. That the Gross Internal Area [GIA] of the approved building is ``redacted`` square metres.
 - iii. The Index Rate for Ip [indexation for planning permission] is ``redacted``.
 - iv. The Index Rate for Ic [indexation for ``redacted`` CIL Charging Schedule] is ``redacted``.
 - v. The Index Rate for Ic [indexation for ``redacted`` CIL Charging Schedule 2] is ``redacted``.
 - vi. That in-use demolition floorspace is ``redacted`` square metres.
 - vii. That existing in-use retained floorspace is: ``redacted`` square metres.
 - viii. That the chargeable area is ``redacted`` square metres.

- p) The Appellant requests that an Award of costs of making this appeal are awarded against the CA in the Appellant's favour. The Appellant states the CA's actions have caused the Appellant's expense in making this appeal. The Appellant submits the CA:
- i. has behaved unreasonably by categorising the subject proposal within the "Residential" Charging Rate set out within the Charging Schedule.
 - ii. had the opportunity to include a specific PBSA CIL charging rate within its charging schedule at the time it came into effect.
 - iii. had opportunities to review and update its charging schedule since it took effect May 2016 to include a differential charging rate for PBSA development.
 - iv. showed a lack of inclination to engage with the Appellant in a reasonable discussion or to provide detailed reasoning regarding the approach to the calculation of the chargeable amount during the Regulation 113 review process.

8. Having fully considered the representations made by the Appellant, I make the following observations regarding the grounds of the appeal:

- a) The Appellant does not agree with the CA's application of its CIL Charging Schedule and has submitted their views in support of why the CA's CIL rate for "Residential (including all residential 'C' use classes)" should not be applicable to the "student accommodation (Sui Generis)" component of the proposed development as summarised above.
- b) The Community Infrastructure Levy was introduced under the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended. Part 11 of the Planning Act covers CIL. These contain provision for Local Authorities to introduce CIL on developments within their areas – the identification of what areas are covered by CIL charging and how the CIL is calculated are set out in each Local Authority's CIL Charging Schedule. A local planning authority is the Charging Authority for its area.
- c) Regulation 9(1) of The Community Infrastructure Levy Regulations 2010 confirms that the chargeable development is the development for which planning permission is granted. Schedule 1 Para 1(3) is clear on the issue that CIL is chargeable at the relevant rate taken from the relevant charging schedule in respect of the chargeable development. The relevant charging schedule means the charging schedule which is in effect at the time planning permission first permits the chargeable development.
- d) The CA issued the subject planning decision notice, as referenced above, ``redacted``, dated ``redacted``. For ease of reference, the proposal section of the planning decision notice contains the wording "...use of part

basement, ground and nine upper floors as **student accommodation (Sui Generis)** and **two retail units (Class E)** [emphasis added] at ground level...”

- e) On ``redacted``, the CA issued CIL Liability Notice ``redacted``, as referenced above. The ‘Development Description’ of the liability notice contains the same wording as the planning decision notice. The liability notice states that a total CIL Liability is payable by the Appellant of £``redacted`` and details the two components of this amount, being ``redacted`` [£``redacted``] and the CA’s [£``redacted``]. Whilst the Appellant has stated their opinion that the total CIL liability should be £``redacted``, which is their calculation of the CIL liability, it is the CA’s application of the “Residential Prime” rate as the chargeable rate for the proposed “student accommodation (Sui Generis)” floor area which the Appellant disputes and therefore forms the basis of the appeal.
- f) At the date planning permission was granted, the prevailing Charging Schedule was that effective from ``redacted``. The chargeable rates area summarised in Table 1 of the charging schedule – these are categorised into three land uses and, where a charge per square metre is applicable, by three different charging zones, Prime, Core and Fringe. Pertinent to this appeal is the CA’s application of the “Residential (including all residential ‘C’ use classes) use at the Prime chargeable rate of £``redacted`` per square metre to the floor area of the proposed “student accommodation (Sui Generis)”.
- g) The Appellant contends that the “student accommodation (Sui Generis)” floorspace should be categorised within the “All other uses” land use as per Table 1 of the charging schedule – this category has a £Nil charging rate.
- h) Throughout, the Appellant contends that if it were the CA’s intention to include “student accommodation (Sui Generis)” either within the “Residential” charging rate or a separate charging rate, the CA should have stated this within its charging schedule. In this connection, I note the examples provided by the Appellant of other London CA’s charging schedules, which I have verified, being Tower Hamlets [“Student Housing”], Camden [“Student Housing”], and Kensington and Chelsea [“Student Accommodation”] – all include explicit reference to student accommodation use with varying degree of detail and rate.
- i) The Appellant has included extracts of their email exchanges with the CA from ``redacted``, the date the liability notice was received, onwards, including what was effectively a Regulation 113 review by the CA:
 - i. ``redacted`` the Appellant contacted the CA by email which included the query “The scheme proposes only PBSA units (no C3 residential) and such there shouldn’t be a WCC CIL charge. We would expect the charge to be only the ``redacted`` 2.”
 - ii. ``redacted`` the CA advised the Appellant “I have double checked this now with my manager. Please do appeal if you disagree with the liability notice calculation as our approach is that student accommodation is residential.”
 - iii. ``redacted`` The Appellant wrote to the CA expanding on their reasons for believing that the “student accommodation (Sui Generis)” should not be categorised within the “Residential (including all residential ‘C’ use classes)” land use, referencing a separate proposal made to the CA [``redacted`` - summarised above] highlighting no CA CIL expected.

- iv. ``redacted`` The CA response included “Please be assured that I have already discussed this case with mgmt [sic] when [the Appellant] challenged it. If you disagree with our calculation, you will need to appeal please.”
 - v. ``redacted`` The Appellant responded to the CA – within that response was a request for evidence to support the CA’s position on proposals like the “student accommodation (Sui Generis)” highlighting this use is not mentioned in the charging schedule.
 - vi. ``redacted`` the CA’s response included the explanation “The [CA] ...(CIL) charging schedule uses the following “description of types of development”.../...“Residential (including all residential ‘C’ use classes)”.../...As the National Planning Practice Guidance makes clear, the definition of “use” for the purposes of setting CIL rates is not tied to the classes of development in the Use Classes Order (UCO), although that Order can provide a useful reference point. In this case I think it is clear from the wording used that the council did not intend that “residential” would only cover types of development covered by the C use classes – although it would include them. We took this step because there are increasingly forms of development that would be reasonably regarded as being “residential” in the normal meaning of the term, but which are treated as being sui generis for the purposes of the UCO.../...Whilst the proposal is being treated as being sui generis for the purposes of the UCO, as a form of development clearly “designed for people to live in” (which would generally be accepted as a definition of “residential”) it would fall within the definition of residential development for the purposes of the CIL charging schedule and as such would be chargeable.”
- j) The Town and Country Planning (Use Classes) Order 1987 Schedule 1 Part C contains the uses which I am of the opinion would be referred to by any party interested in property development seeking to verify which uses are encapsulated by the CA’s charging schedule Table 1 land use “Residential (including all residential ‘C’ use classes)” – I summarise these UCO classes as:
- i. Class C1. Hotels: Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.
 - ii. Class C2. Residential institutions: Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3. Dwellinghouses, used as sole or main residences). Use as a hospital or nursing home. Use as a residential school, college or training centre.
 - iii. C2A. Secure residential institutions: Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks.

- iv. Class C3. Dwellinghouses, used as sole or main residences: Use as a dwellinghouse, as a sole or main residence and occupied for more than 183 days in a calendar year] by — (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).
 - v. Class C4. Houses in multiple occupation: Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.
 - vi. Class C5. Dwellinghouses, used otherwise than as sole or main residences: Use as a dwellinghouse, otherwise than as a sole or main residence and occupied for 183 days or fewer by — (a) a single person or by people to be regarded as forming a single household, (b) not more than six residents living together as a single household where care is provided for residents, or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).
 - vii. Class C6. Short-term lets: Use of a dwellinghouse for commercial short-term letting not longer than 31 days for each period of occupation.
- k) I note the planning decision notice at Condition 20. within same effectively restricts the use to student accommodation by stating:
- i. “You must ensure a majority of the student accommodation units in the development are covered by a nomination agreement(s) with one or more higher education providers. You must not allow occupation of the student accommodation until this agreement(s) has been made. You must maintain having such an agreement(s) for as long as the development is used for student accommodation. Reason: To make sure the student accomodation [sic] will be supporting London's higher education providers. This is as set out Policy H15 of the London Plan (March 2021) and Policy 10 of the City Plan 2019 - 2040 (April 2021).”

Therefore, I assessed the proposed use “student accommodation (Sui Generis)”, or PBSA as referenced by the Appellant, against The Town and Country Planning (Use Classes) Order 1987, summarised above, in addition to the Sui Generis categorisation. I do not follow how the proposed “student accommodation (Sui Generis)” would match any of the criteria under “(including all residential ‘C’ use classes)” if taking the view in this context that “use classes” is most readily associated with the use classes order as above. Therefore, I concur overall with the Appellant’s observations, including that the charging schedule does not refer to “student accommodation (Sui Generis)” in either of the land use categories which there is a chargeable rate for, being “Residential (including all residential ‘C’ use classes)” and “Commercial (offices; hotels, nightclubs and casinos; retail (all ‘A’ use classes and sui generis retail))”.

I disagree with the CA's statement referenced above "In this case I think it is clear from the wording used that the council did not intend that "residential" would only cover types of development covered by the C use classes – although it would include them..." because, in the Charging Schedule, Residential is defined as "Residential (including all residential 'C' use classes)", therefore a closed list – in other words, if it is not within these categories, it is not included and not liable to CIL. Additionally, considering the examples of other London CA's charging schedules provided by the Appellant, which include explicit reference to student accommodation, I do not think it is clear that the charging schedule wording "Residential (including all residential 'C' use classes)" intends to include "student accommodation (Sui Generis)".

- l) Based on the CA's responses provided by the Appellant, the CA has sought to clarify the interpretation of its charging schedule wording "Residential (including all residential 'C' use classes)" is not limited to those contained within the relevant parts of the UCO. However, as I have stated above, I am of the opinion the UCO would be the principal reference for any party interested in property development seeking to verify which uses are encapsulated by the CA's charging schedule Table 1 land use "Residential (including all residential 'C' use classes)".
 - m) The Appellant references past planning applications and VOA CIL Appeal decisions. 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 set of issues, case by case consideration means that previous VOA decisions can be helpful to consider however do not set precedents.
9. I find that there was a Charging Schedule in place at the date of the granting of the subject planning permission and therefore CIL liability has arisen. The CA were correct to serve a Liability Notice on the Appellant. However, I do not follow how the grant of planning permission for "student accommodation (Sui Generis)" land use can be expected to fall under the category "Residential (including all residential 'C' use classes)" as listed on the CA's charging schedule. I concur with the Appellant's submission that there is no reference to "student accommodation (Sui Generis)" on the charging schedule and that the proposed floor space under this land use should be categorised under "All other uses" on the charging schedule which attracts a Nil rate. Therefore, I calculate the revised chargeable amount as follows:

1860926 Revised Chargeable Amount	
MCIL2	
Student accommodation (Sui Generis)	£``redacted``
Retail	£``redacted``
Sub-Total	£``redacted``
CA	
Student accommodation (Sui Generis)	£0

Retail	-£``redacted``
Sub-Total	-£``redacted``
Total CIL Liability	£``redacted``

There is a difference between the Appellant's calculation and my own which, aside to minor rounding, appears to be caused by the Appellant adopting an Ic of ``redacted`` whereas, according to the CA's Annual CIL rate summary 2025, this should be ``redacted``.

10. There appears to be no dispute in relation to the net chargeable area, indexation or the actual CIL calculation itself, therefore I am of the opinion the CIL payable in this connection should be £``redacted`` [``redacted``].

Award of costs

11. The Appellant has requested an award of costs on the grounds that:

- a) the CA's actions have caused the Appellant's expense in making this appeal. The Appellant submits the CA:
 - (i) has behaved unreasonably by categorising the subject proposal within the "Residential" Charging Rate set out within the Charging Schedule.
 - (ii) had the opportunity to include a specific PBSA CIL charging rate within its charging schedule at the time it came into effect.
 - (iii) had opportunities to review and update its charging schedule since it took effect ``redacted`` to include a differential charging rate for PBSA development.
- b) showed a lack of inclination to engage with the Appellant in a reasonable discussion or to provide detailed reasoning regarding the approach to the calculation of the chargeable amount during the Regulation 113 review process.

12. The purpose of such costs awards is to encourage responsible and reasonable use of the appeal system by Appellants and action by Collecting Authorities, by introducing financial consequences for unreasonable behaviour. 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.

I have considered the facts of this case, the evidence submitted and the conduct of the Parties. In this case, I am of the opinion:

- a) the CA could have made more effort when engaging with the Appellant to explain its reasoning and justification for its application of the "Residential (including all residential 'C' use classes)" chargeable rate to the "student accommodation (Sui

Generis)” proposed accommodation, especially as the proposed use was not specified on the CA’s charging schedule.

- b) Regulation 113. Review of chargeable amount - (7) states “Within 14 days of the review start date the collecting authority must notify the person requesting the review in writing of (a) the decision of the review; and (b) the reasons for the decision.” Considering the correspondence between the Appellant and CA ``redacted`` and ``redacted``, The requirements of Regulation 7(b) were not met because no reasoning was provided by the CA until responding to the Appellant’s email of ``redacted`` on ``redacted``.
- c) Further, based on the CA’s responses provided by the Appellant, the CA was in my opinion quick to recommend the Appellant appeals, before engaging in detailed discussion.
- d) As the CA did not provide representations directly, I can only base my findings on the material submitted as part of this Regulation 114 process, which the CA was supplied with and given opportunity to make representation on.
- e) Therefore, in these circumstances, I consider the CA to have acted unreasonably. Based on the attributes of the proposal and facts presented, the CA was too quick to encourage the appeal whilst making insufficient effort to fully explain its reasoning. In the context of there being no explicit reference to “student accommodation (Sui Generis)” in its charging schedule, I am of the opinion that it should be a reasonable expectation that an interested party like the Appellant would query and challenge the CA’s decision.
- f) Under Regulation 121, I therefore uphold the Appellant’s claim for costs in respect of making this Regulation 114 Appeal and that these costs should be paid by the CA.

``redacted`` BSc FRICS
Valuation Office Agency
3 April 2025