Appeal Decision

By [redacted] MRICS FAAV

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: **1861755 and 1861653**

Address: [redacted]

Proposed Development:

1861755 – Application No: [redacted] **.** Prior Approval - Change of Use from Class E (Office) to Class C3 (Dwellings) on the first floor providing 7 self-contained units.

1861653 – Application No: [redacted] **.** Prior Approval - Change of Use from Class E (Office) to Class C3 (Dwellings) on the second to fifth floors providing 27 self-contained units.

Planning Permission details: Granted by [redacted] . Application [redacted] Decision issued [redacted] .
Application [redacted] Decision issued [redacted] .

Decision

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

Reasons

1. I have considered all the submissions made by the appellant's agent, [redacted] (acting on behalf of the Appellant, [redacted]), and the submissions made by the Collecting Authority (CA), [redacted].

   In particular, I have considered the information and opinions presented in the following documents: -

   a) The two CIL Appeal forms both dated [redacted].

   b) Grant of Planning Permissions; [redacted] granted [redacted] and [redacted] granted [redacted] .

c) The CIL Liability Notices ([redacted]) dated [redacted] and ([redacted]) dated [redacted].

d) The CA's Regulation 113 Review response dated [redacted].

e) The appellants Statement of Case letter dated [redacted] with associated information including:

    (i) [redacted] and [redacted].

    (ii) [redacted] electricity bills for [redacted] to [redacted].

    (iii) [redacted] water bills for [redacted] to [redacted] .

    (iv) Internet Invoices from [redacted] to [redacted].

    (v) Sworn affidavits of [redacted] and [redacted].

f) The CA's Appeal Statement with supporting information including:

    (i) [redacted] Local Committee Meeting addendum dated [redacted].

    (ii) [redacted] full Council Minutes dated [redacted].

    (iii) Google street view dated [redacted]

    (iv) Application form signed [redacted] (App No [redacted]).

    (v) CIL Form 1 signed [redacted].

    (vi) Planning statement dated [redacted].

    (vii) Transport statement dated [redacted].

    (viii) Updated CIL Form dated [redacted].

    (ix) Monitoring photos dated [redacted] and [redacted].

    (x) Site photos dated [redacted].

    (xi) Planning statement ([redacted]) dated [redacted] .

    (xii) Covering letter (from [redacted]) dated [redacted] .

    (xiii) CIL Form and Planning Statement from application [redacted].

    (xiv) Sales Brochure for property produced after [redacted] .

    (xv) Planning Statement dated [redacted].

    (xvi) Council tax email dated [redacted] confirming the building is empty since [redacted].

g) Appellant's comments on the CA's representations, dated [redacted].

Grounds of Appeal

2. Prior Approval Permission was granted for the change of use from Class E (Office) to Class C3 (Dwellings) at [redacted] ; on the second to fifth floors, as granted on [redacted] (Application ref [redacted]), and on the first floor, as granted on [redacted] (Application ref [redacted]).

3. On [redacted], the CA issued two Liability Notices;

    a) [redacted] for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m² at the [redacted] Residential rate of £[redacted] per m² plus indexation ([redacted]) and the CIL CIL2 rate of £[redacted] per m² plus indexation ([redacted]).

b) [redacted] for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m² at the [redacted] Residential rate of £[redacted] per m² plus indexation [redacted] () and the [redacted] CIL [redacted] CIL2 rate of £ [redacted] per m² plus indexation ([redacted]).

4. The Appellant requested a review of this charge on [redacted] , under Regulation 113 of the CIL Regulations 2010 (as amended) (which was 1 day outside of the 28 day review period, but the CA still carried out the review). The CA responded on [redacted], stating that it was of the view that its original decision was correct and should be upheld.

5. 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 to both CIL Liability Notices.

6. 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.

   b) There is extensive evidence that the building was empty and redundant during the relevant period.

Lawful use

7. 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."

8. "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'.*

9. "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.

10. 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.

11. The appellant states that the CIL liability notice is incorrectly calculated as the existing floorspace was excluded. They state that the building was lawfully occupied and satisfied the 'in use' test, for a continuous period of at least 6 months within the three year period, ended on the day that planning permission first permits development.

12. The appellant acknowledges that the supporting documents for the planning permissions relating to the building all reference the building as being vacant since [redacted] (which includes the period they state it was occupied by [redacted]). They explain this contradiction as being in error and that agents made mistakes.

13. The appellant upholds that part of 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.

14. Supporting evidence of the appellants claim has been provided in the form of:

    a) A short form commercial lease, dated [redacted] between [redacted] and [redacted];
    b) Various utility bills (water and electricity) and internet invoices;
    c) Two sworn affidavits from the part owner of [redacted] and a representative of the [redacted].

15. The affidavit of the part owner of the property states the [redacted] occupied the building when inspected in [redacted] and they were using the building as office floorspace. They then vacated the building before re-occupying again on [redacted] for a further [redacted] months. He visited the site periodically over the term of the [redacted] lease and at each visit the property remained in use as office floorspace. The representative of the [redacted] states they have been an occupier of [redacted] since [redacted] , ended [redacted]. Work that took place was predominately administrative work, property management and event co-ordination. During the Term up to three employees and volunteers occupied the 1st floor of [redacted] during normal office hours working 0900 to 1700, Monday to Friday.

16. The water bills provided for the period [redacted] to [redacted] are estimated bills and the three electricity bills for the period [redacted] to [redacted] at £[redacted], £[redacted] and £[redacted] respectively, show irregular, low, usage patterns and are addressed to [redacted]. The appellant has failed to confirm whether there is a link between the bill payer and the [redacted], so it is assumed not.

17. The CA refute the appellants claim that the building was 'in use' as an office for a 6 month period from the [redacted] .

18. The CA consider the appellants current stance to be contradictory to all previous information submitted by them which confirms the building to have been vacant since [redacted]. Planning documents and supporting information, plus the sales particulars all reference the property as having been in use as an office until . [redacted] The CA do not consider the subsequent evidence provided by the appellant to outweigh the body of historical evidence; a short lease agreement has been provided by the appellant, together with supporting information to evidence the letting of the building to [redacted] for a one year term from [redacted].

19. The CA highlight that the building was boarded up during the period when occupied by the [redacted] and attracted anti social behaviour during this time which would not be expected for an occupied, in use building. They also refer to the sales particulars and numerous planning documents which all referenced the building as being vacant since [redacted].

20. The CA arrived at their opinion as a result of the information provided by the owner of the building and representatives of, but they further support their opinion with meeting minutes and photographs taken from Google Street View and site monitoring visits.

21. The evidence presented by the appellant was considered by the CA during the Regulation 113 appeal, but was dismissed as not proving the building was being continuously used as an office (its lawful use) for a 6 month period during the three year relevant period. Thus the existing GIA (Gross Internal Area) was not offset against the CIL liability of the proposed developments.

22. In respect of the short lease, the CA state there is no evidence to suggest that the [redacted] used this office space for administrative purposes in continuous lawful use as all their company records held on the Charities Commission records show their registered address at [redacted].

23. The evidence presented by the CA is all dated within the period the appellant stated the building was in lawful and continuous use by the [redacted] .

    a) [redacted] Local Committee Meeting – Addendum dated [redacted] . The building was referred to as an 'eyesore' and 'empty' by a local person familiar with the area.

    b) [redacted] Full Council Meeting – Minutes dated [redacted]. The local councillor for the area which [redacted] is situated within, raised the issue of the constant piles of rubbish outside the property, which the council had to clear.

    c) Google Street View – [redacted]. Showed concrete blocks in place to prevent access to the forecourt of the property, overflowing waste bin, fly tipped rubbish on the ramp to the front door, all ground floor windows boarded up and graffitied.

    d) Planning Application [redacted].

        i. The Prior Approval application was signed on [redacted]. The form included a question, 'Has the building been vacant for a continuous period of at least 3 months immediately prior to the date of this application?' This box was ticked. The agent for the owner therefore confirmed that the building had been vacant from [redacted]. (For the purposes of this CIL appeal, the appellant opines this was a mistake and the building was actually occupied by the [redacted] .)

        ii. CIL Form 1 signed [redacted] Part 7b indicates the building was last used as an office on [redacted]. This form was submitted on [redacted]. (Again the appellant states this was a 'mistake').

        iii. The planning statement dated [redacted], states 'the building has been vacant for 3 years and the premises have been vacant since [redacted]'. The appellant claims this was a mistake.

        iv. Transport statement dated [redacted] refers to [redacted] as a 'disused office building'.

        v. The Updated CIL form signed [redacted] part 7b indicates the building was last used as an office on [redacted] . This form was emailed to the Council following their receipt of an email regarding CIL Liability.

e) Site monitoring visits- [redacted] and [redacted]. The [redacted] photo shows the ground floor boarded up with cars parked illegally in the forecourt. The [redacted] photo shows bollards installed by the Council to prevent illegal parking whilst the building was vacant. There were problems of ongoing antisocial behaviour at the property during the period the appellant states it was being used continuously, as an office.

f) Planning Application [redacted] - Site photos dated [redacted] show the ground floor rear windows boarded up, similarly to the front windows. The alternative entrance to the office space on the upper floors directly via the stairwell would involve entering through the fire escape. Planning statement dated [redacted] states 'The site constitutes a six storey office building which has been vacant for over [redacted] months'.

g) Planning application [redacted] – Covering letter dated [redacted] states 'The site constitutes a six storey office building which has been vacant for over [redacted] months'.

h) Planning Application [redacted] – CIL Form 1 signed [redacted] Part 7b indicates the building was last used as an office on [redacted]. Planning Statement dated [redacted] states 'The site constitutes a six storey office building which has been vacant for [redacted] years.

i) GLPG Sales Brochure- dated some times after [redacted] was decided on [redacted]. The brochure states ' The property has been in continuous office use since the 1960's but has been vacant since [redacted] .'

j) Planning application [redacted] – Planning Statement dated [redacted] states 'a Contamination Risk was carried out as part of the previous planning application for the site ([redacted]). The site has been vacant since this assessment was carried out, so the conclusions drawn can be used in support of this application'.
The contamination risk assessment referred to is dated [redacted] and the latest report was written by an independent specialist so the continuation of a 'mistake' or factual inaccuracy is unlikely.

k) Council Tax email – dated [redacted] – confirms the building has been recorded as empty by [redacted] Council Tax team since [redacted] .

l) An updated CIL Form signed [redacted] submitted by an agent for the owner of the building, stated the building was last used as an office on [redacted] . This form was signed in[redacted] (post the occupation of [redacted]) but it failed to reference any use of the building in[redacted] , which the appellant now claims to be the case.

24. In accordance with Schedule 1, Part 1 1(8) of the CIL Regulations, the CA does not consider that sufficient information has been provided to establish that the building was an 'in use' building, as it fails to overturn the weight of evidence held by the CA, to the contrary. The CA consider on the balance of probability that if there was use of the building within the relevant three year period it would be too minimal for the building to be considered ' in use' for the purposes of the CIL Regulations.

25. Community Infrastructure Levy (CIL) regulations can offset Gross Internal Area (GIA) in certain situations. Specifically, existing floorspace that has been in continuous lawful use for at least six months within the three years preceding the development can be deducted from the GIA for CIL calculation purposes. This is outlined in Regulation 40 of The Community Infrastructure Levy Regulations 2010. The CA considers the above evidence supports their view that the building was not 'in continuous, lawful use' for at least six months within the three years preceding the development. Thus the existing GIA can not be deducted for CIL calculation purposes.

26. The agent for the appellant, responded to the CA's representations, on [redacted]. Points made included:

    a) The agent stated the occupation of the building by [redacted] was to meet the CIL 'in-use' requirements and that they consider ample evidence has been provided to demonstrate that the building was' used by some of the employees of [redacted]'.
    b) The low power usage was attributed to the limited number of people occupying the office and whilst the electricity bill related to the whole building the meter is located on the ground floor, hence the bill referencing it.
    c) The water bills although estimates were the only ones available.
    d) The building may have appeared vacant but it was occupied by a small number of employees of [redacted] who accessed it from the rear.
    e) With regards to past planning documents and forms submitted which stated the building had been vacant since [redacted] , these were mistakes.
    f) It is accepted the building was in limited use but "*one or two people working within a building is sufficient in order to meet the occupation test." And this could be easily missed by passers by.*
    g) The photographs are disputed as being evidential of no occupation. Blinds are evident on the first floor, as is typical of occupation and whilst the ground floor windows were boarded up due to anti social behaviour, the tenants accessed the building from the rear.
    h) GLPG marketed the site for a number of years and at the time the brochure was prepared the building was vacant.

Approved Development in Dispute

27. The building is a six storey, office building with two car parks, which appears to have been purpose built circa 1960's.

Decision

28. I note that there is no disagreement in relation to the dates of the three-year period under consideration.

29. The level of office use suggested by the Affidavit of the [redacted] I consider to be low; 'up to three employees and volunteers' occupied the first floor. The purpose of granting the short lease could be questioned; I note that the building was not the registered address of the [redacted] and the agent for the appellant freely states within their response to the CA's representations that the occupation of the premises was undertaken to meet the CIL 'in-use' test. The presence of a short term lease is not necessarily evidence of actual occupation and use.

30. The varying electricity bills provided I consider to be commensurate with occasional use, rather than continuous use. I note the water bills are for estimated use, so are of limited value as evidence of occupation. Similarly the payment for a router I do not consider to be evidence of actual occupation and/or use of the building as an office. No evidence has been provided to link the name of the bill payer for the router, to the [redacted] (the tenant).

31. I do not consider the sworn affidavits, the utility bills and the presence of a router to irrefutably confirm the continuous, lawful occupation of part of the building as an office.

32. I opine that that the professionals who submitted documentation in respect of planning applications for the property will have obtained their information from the instructing source, which was likely to be the owner or agent for the building. The balance of probabilities that all were 'mistaken' in stating that the building was unoccupied and unused since [redacted] I consider to be very low.

33. I opine that the degree of occupancy and frequency of occupancy suggested by the appellants evidence does not support a pattern of continuous lawful use of the building as an office.

34. Burden of evidence; having considered the evidence presented by both the appellant and the CA I consider the balance of probabilities to favour the extensive evidence presented by the CA, which is derived from multiple sources and over a period of years. This clearly and unequivocally supports the view that the building was vacant since [redacted].

35. 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] m² for [redacted] and [redacted] m² for [redacted].

36. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]) for application [redacted] and £[redacted] ([redacted]) for application [redacted] and hereby dismiss this appeal.

[redacted] BSc (Hons) MRICS FAAV
Valuation Office Agency
16 April 2025