

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: 1868691

Address: [REDACTED]

Proposed Development: Alterations to [REDACTED] to include the erection of a single storey mansard roof extension and changes to the fenestration on [REDACTED] elevation, partial demolition and rebuilding of [REDACTED] and amalgamation with [REDACTED]; all to enlarge existing flats (Class C3). Creation of a courtyard at rear ground floor level of [REDACTED] and a terrace to the rear of [REDACTED] at fifth floor level, installation of green roof areas to the main roof of [REDACTED] and the rear of [REDACTED] at part fifth floor level. Installation of plant in the pavement vaults and within the internal lightwell at first floor level with associated screening. [SITE INCLUDES [REDACTED]].

Planning Permission details: Granted by [REDACTED] on [REDACTED], under reference [REDACTED].

Decision

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

Reasons

Background

1. I have considered all the submissions made by [REDACTED] of [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) CIL Appeal form dated [REDACTED].
 - b) Grant of Planning Permission [REDACTED], dated [REDACTED].
 - c) The CIL Liability Notice (ref: [REDACTED]), dated [REDACTED].
 - d) The Appellant's Regulation 113 Review request dated [REDACTED].
 - e) The CA's Regulation 113 Review dated [REDACTED].
 - f) The CA's response to Regulation 113 dated [REDACTED].
 - g) The Appellant's representations dated [REDACTED] including a recalculation of the existing and proposed GIA dated [REDACTED] as well as plans showing areas excluded to the lower ground floor and ground floor (Drawing ref [REDACTED] - [REDACTED] - [REDACTED] - [REDACTED] - [REDACTED] - [REDACTED] - [REDACTED] - [REDACTED]).
 - h) A set of 'approved' existing and proposed floorplans, sections, elevations and demolition plans. Including the location plan, planning statement, design and access statement and the area schedule (with drawing number reference included).
 - i) The [REDACTED] Off Plan Area Measurement Report [REDACTED].
 - j) Receipt from [REDACTED] dated [REDACTED] confirming previous CIL Liability payment.
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for, "Alterations to [REDACTED] to include the erection of a single storey mansard roof extension and changes to the fenestration on [REDACTED] elevation, partial demolition and rebuilding of [REDACTED] and amalgamation with [REDACTED]; all to enlarge existing flats (Class C3). Creation of a courtyard at rear ground floor level of [REDACTED] and a terrace to the rear of [REDACTED] at fifth floor level, installation of green roof areas to the main roof of [REDACTED] and the rear of [REDACTED] at part fifth floor level. Installation of plant in the pavement vaults and within the internal lightwell at first floor level with associated screening. [SITE INCLUDES [REDACTED]].
3. The CA issued a CIL liability notice reference number [REDACTED] dated [REDACTED] in the sum of £[REDACTED]. The Appellant requested a review of this charge on [REDACTED] setting out inaccuracies in their GIA calculations which were discovered following the commission of a RICS Measured Survey of the Approved Plans.

4. The response to the review was received [REDACTED] from the CA and determined there will be no change to the CIL sum. The CA concluded, for a change to take effect, a revised planning application would be required. The CIL would then be calculated on the approved plans and, therefore, the **chargeable development**.
5. The Appellants refer to a previously paid CIL liability of £[REDACTED] relating to a consent ([REDACTED]), which has since been implemented and paid in full. The Appellant states they are seeking to ensure that the floor area built (under [REDACTED]) and to be built (under [REDACTED]) is charged appropriately.
6. The Appellant has not put forward a revised CIL calculation, however, has set out what they consider the difference in GIA is in comparison to the previous payment made.

Grounds of Appeal

7. The Appellants grounds of appeal can be summarised as follows:
 - a) The information supplied by the Appellant and relied upon by the CA relating to the approved planning application [REDACTED] () was inaccurate. The CA's GIA calculations were taken from inaccurate plans and information supplied to calculate the CIL liability.
 - b) The Appellant disputes the necessity of submitting a fresh application and considers Regulation 65 of The Community Infrastructure Levy Regulations 2012 (as amended) allows for a collecting authority, at any time, to issue a revised liability notice in respect of a chargeable development.
 - c) The Appellant contends there is nowhere in the regulations requiring a new planning application to be submitted. The Appellant opines that when new (more accurate) information comes to light, the collecting authority is completely at liberty to issue a revised liability notice.
8. In summary, I consider the issues before me are:
 - a) Whether the new, and more accurate information submitted since the application was approved, can be considered as the **chargeable development** as per the meaning set out within (9) of the CIL Regulations 2010 (as amended); and
 - b) Whether the CA could have issued a revised liability notice in respect of a chargeable development under Regulation 65 of the CIL Regulations 2010 (as amended).
9. There is no dispute around the charging rate or indexation adopted.

Approved Development in Dispute

10. The dispute between the parties relates to No. [REDACTED] and no. [REDACTED] which are located within the administrative area of [REDACTED] and comprises a site area of approximately [REDACTED] sqm.
11. The Site is located in [REDACTED], on the north side of [REDACTED]. The Site is bounded by no. [REDACTED] to the west and [REDACTED] to the east. No. [REDACTED] is a residential building of six storeys (one of which is a lower ground floor). No. [REDACTED] is a four storey building (one of which is a basement), including a ground floor garage and is used as a single residence with storage in the basement. At present, no. [REDACTED] and no. [REDACTED] contain 13 residential units.

Decision

12. The CIL Regulations Schedule 1 define 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.” Consequently it is important to base the areas correctly to enable a reflective CIL Liability.
13. The **chargeable development** is defined in the CIL regulations as follows.

Meaning of **chargeable development**

9.—(1) The chargeable development is the development for which planning permission is granted.

14. The CA opines as follows:
- a) CIL is charged on the **chargeable development** following grant of a planning permission. The granted permission relates to among other factors, the plans submitted with the planning application to support the decision making process.
 - b) On determining a permission, a Decision Notice is issued. Within the Decision Notice, are various conditions which set controls on how the development should be constructed. To accept the inaccuracies and amend the remeasured GIA would require a condition(s) in a granted permission regarding change of approved drawings/plans to correct an error.

The CA then referred to the relevant condition on the approval [REDACTED].

Condition(s):

(1). The development hereby permitted shall be **carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council** as local planning authority pursuant to any conditions on this decision letter.

15. In their representations the CA recognised that clear errors were made during the planning process. However, they concluded that there were the strict provisions in planning law that govern amendments to a granted permission and referred to an example of an application for a non-material amendment, a section 73 application or a new application to supersede a previous permission. The CA advised the Appellant that in order to make their suggested changes they would be required to make a fresh application.
16. From the information supplied, it would appear the GIA calculations were provided by [REDACTED], the architects for the approved scheme, on behalf of the Appellant. The Drawing Register labelled, [REDACTED] – Area Schedule, sets out the floor areas along with related drawing numbers. However, it is not clear from the information provided, and the Appellant's representations, what type of measuring tool [REDACTED] has based their area calculation of GIA upon. By contrast, the Off Plan Area Measurement Report produced in [REDACTED] confirms that Computer-Aided Design (CAD) software was used to construct accurate area drawings from the information collected. The measurements have been stated as being in accordance with the Sixth Edition (September 2007) of the Royal Institution of Chartered Surveyors Code of Measuring Practice and the Globally applicable 6th Edition (May 2015).
17. Gross Internal Area (GIA) is not defined within the Regulations. The VOA use the definition of GIA contained within the RICS Code of Measuring Practice, 6th Edition when considering all CIL appeals.
18. It is clear from Regulation (9), the **chargeable development** is the development for which planning permission is granted. The CA is correct here. However, I have studied the approved plans cited in the relevant decision notice and supplied as part of the CIL appeal documents. I am satisfied the plans which were used to measure the GIA and shown within the Off Plan Area Measurement Report have not deviated from the approved plans. It is merely a more accurate form of measurement.

19. It is very apparent, even from the approved plans submitted, there are vast areas of GIA that were missed during the calculation and should have been raised prior to the application's determination from both parties, in my view.
20. If the Off Plan Area Measurement Report produced in [REDACTED] differed from the approved plans, I would accept the CA's view that they could not be used to determine the GIA of the chargeable development.
21. In summary, based on the facts of the case, I therefore consider that, in accordance with the CIL Regulations - **Liability notice 65.**—(5), the CA could have issued a revised liability notice in respect of the chargeable development based upon the revised measurements provided by the Appellant.
22. In reviewing the plans, I also noticed the Appellant has included areas which were not part of the scheme within their existing calculation of GIA in order to offset. This was cited within the Appellant's representation labelled [REDACTED] -Area Schedule – Existing. In addition, when assessing/comparing the plans within the Report against the previously measured plans, I noted one more area which should have been included on the Lower Ground Floor. It was therefore necessary to review and recalculate the GIA.
23. For ease I have set out in the tables below my recalculation of both the existing and proposed GIA using the information I have been supplied.
24. Table 1 shows the Existing GIA recalculation and where the information was sourced.

Item as per Existing floor plans description	Floor	GIA Sq M.	Floor GIA Sq. M.	Comment/source of measurement
Plant room and storage LGF	Lower Ground floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] report - GIA stated considered the same as existing plans
Corridor, lift, flat [REDACTED]	Lower Ground floor	[REDACTED]		Taken from [REDACTED] report - GIA stated considered the same as existing plans
Corridor	Lower Ground floor	[REDACTED]		AP measured from [REDACTED] - - B: hall = [REDACTED] sq m

Mews, garages, flat [REDACTED] (part) & flat [REDACTED], corridor, stairwell	Ground floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] report - GIA stated considered the same as existing plans. Noted: on the existing plan [REDACTED] the garage is in a different location and shown as 'outside of ownership'
Mews	First floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] - Area Schedule - Existing, due to lack of plans to scale off
Flat [REDACTED] (Part), Flat [REDACTED], stairwell	First floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] report - GIA stated considered the same as existing plans
Flat [REDACTED] (part)	First floor - Mezz	[REDACTED]	[REDACTED]	Taken from [REDACTED] - Area Schedule - Existing, due to lack of plans to scale off
Mews	Second floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] - Area Schedule - Existing, due to lack of plans to scale off
Flat [REDACTED] (part) & [REDACTED]	Second floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] report - GIA stated considered the same as existing plans, less the area included as Flat 3, accounted for above
Flat [REDACTED] (part)	Second floor - Mezz	[REDACTED]	[REDACTED]	Taken from [REDACTED] - Area Schedule - Existing, due to lack of plans to scale off
Flats [REDACTED] & [REDACTED], staircase	Third floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] report - GIA stated considered the same as existing plans
Flat [REDACTED] & [REDACTED], staircase	Fourth Floor	[REDACTED]	[REDACTED]	Taken from [REDACTED] report - GIA stated considered the same as existing plans
	Total	[REDACTED]	[REDACTED]	

25. Table 2 shows the Proposed GIA recalculation and where the information was sourced.

Flat	Floor	Original GIA	Remeasured GIA	Comments on additional measurements adopted.
11	Lower ground floor			Existing GIA did not include the internal ancillary rooms nor concierge. Measurement of [REDACTED] sq m taken from GIA provided on [REDACTED] survey. AP measured from [REDACTED] - [REDACTED] - B: hall = [REDACTED] sq m
2 & 13	Ground floor & mews lower			Included 2 x garages and stairwell. Measurement taken from GIA provided on [REDACTED] survey.
4	1st			Excluded balcony [REDACTED] sq m and included stairwell [REDACTED] sq m. Measurement taken from GIA provided on [REDACTED] survey.
13	1st floor mews			previously included walls to be excluded. Measurement taken from GIA provided on [REDACTED] survey.
3, 5 & 6	2nd			Included restricted headroom [REDACTED] sq m and stairwell [REDACTED] sq m. Measurement taken from GIA provided on [REDACTED] survey.
3	2nd fl mews			Includes landing of [REDACTED] sq m. Measurement taken from GIA provided on [REDACTED] survey.
7 & 8	3rd			Includes the stairwell in remeasurement [REDACTED] sq m. Measurement taken from GIA provided on [REDACTED] survey.
9 & 10	4th			Includes stairwell in remeasurement [REDACTED] sq m. Measurement taken

				from GIA provided on [REDACTED] survey.
10	5th	[REDACTED]	[REDACTED]	Includes restricted headroom [REDACTED] sq m. Measurement taken from GIA provided on [REDACTED] survey.
	Totals	[REDACTED]	[REDACTED]	

26. A summary of the GIA summaries is set out below.

Summary of various GIA calculations - Existing	Sq. M.
Original GIA - Existing	[REDACTED]
Amended GIA following [REDACTED] report - Existing	[REDACTED]
Remeasured GIA by Appointed Person - Existing	[REDACTED]
Summary of various GIA calculations - Proposed	Sq. M.
Original GIA - Proposed	[REDACTED]
Amended GIA following [REDACTED] report - Proposed	[REDACTED]
Remeasured GIA by Appointed Person - Proposed	[REDACTED]
Summary of recalculation by Appointed Person	Sq. M.
Existing GIA	[REDACTED]
Proposed GIA	[REDACTED]
Difference in GIA	[REDACTED]

27. I have calculated the CIL charge as follows:

[REDACTED] CIL
£ [REDACTED] x [REDACTED] sq. m. x [REDACTED] = £ [REDACTED]

[REDACTED] CIL
£ [REDACTED] x [REDACTED] sq. m. x [REDACTED] = £ [REDACTED]

28. On the basis of the evidence before me, I conclude that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

[REDACTED] MRICS
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
Date: 5 August 2025