

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: 1873237

Planning Application: [redacted]

Proposal: Demolition of existing Squash Club and construction of a residential building containing 8no flats, including the provision of 14no parking spaces, private outdoor amenity space and landscaping (Amended Plans).

Address: [redacted]

Decision

Appeal dismissed.

Background

1. I have considered all of the relevant submissions made by [redacted] ([redacted]) as Agent acting on behalf of [redacted] (the Appellant) and by [redacted] - the Collecting Authority (CA), in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:
 - a) Planning permission decision in respect of Application reference [redacted], dated [redacted].
 - b) CIL Liability Notice reference [redacted] in respect of [redacted], dated [redacted] for £[redacted].

- c) CIL Appeal form dated [redacted], along with supporting documents referred to as attached.
 - d) Representations from the Appellant.
 - e) Representations from the CA.
 - f) Comments from the Appellant on the CA's Representations.
2. Planning Permission for the Proposal was granted as detailed [redacted].
3. The CA issued a CIL Liability Notice reference [redacted], dated [redacted] for £[redacted] stating this was levied under the CA's CIL Charging Schedule, and S211 of the Planning Act 2008. The CIL is based on a chargeable area of [redacted] square metres, Rate of £[redacted] per square metre and Index of [redacted] [rounded].
4. On [redacted] the CA replied to the Appellant's request for a Regulation 113 Review, advising the outcome of the review was to uphold the original chargeable amount, along with the reasons for the decision.
5. On [redacted], the Valuation Office Agency received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming they disagree with the CA's chargeable amount, with supporting documents attached.

Appellant's grounds of appeal

6. The Appellant does not agree with the CA's calculation of the chargeable area.
7. The Appellant's grounds of appeal can be summarised as one pivotal issue which, they submit, the CA has erred in by not deducting the Gross Internal Area [GIA] of the squash club as a relevant, in-use building from the chargeable area of the proposed building.
8. The Appellant submits the squash club was in continuous lawful use for a period of at least six months within the period of three years ending on the day planning permission permitted the chargeable development, [redacted].
9. The Appellant further submits that the accepted level of proof for establishing whether a building was in-use is on the balance of probabilities.
10. In support of the Appellant's claim, they have provided information as evidence of the building's continuous lawful use in, comprising:
- a) Lease document
 - b) Statutory Declarations
 - c) CIL' Additional Information Requirement form
 - d) Water bill
 - e) Electricity bill

11. The lease document is between [redacted] [Landlord] and [redacted] [Tenant]. The lease is dated [redacted] although the Term is [redacted] to [redacted]. The Rent is £[redacted] per annum, payable 1st January each year. The Use clause permits use of the property as a gym with ancillary use as an office under Use Class E.
12. The Statutory Declarations - the first of two is dated [redacted] and in the name of [redacted]. I note this document refers to the lease of [redacted] [[redacted]] to "(2) [redacted]..." which differs from the lease between [redacted] and [redacted]. However, subsequent reference to the Tenant being [redacted] is made. [Redacted] declaration is in support of the lease and its use, and also states the lease was backdated in recognition of the Tenant's first occupation of the Property. The second of the two Statutory Declarations is dated [redacted] and made by [redacted] who confirms they have been in continuous occupation of the Property and using it in accordance with "the Class E gym and ancillary office use....since the start of the term being [redacted]". Also, refers to the lease being backdated as above.

The Statutory Declarations therefore attest to the continuous use of the Squash club premises for a 22-month period within the relevant time period of [redacted] to [redacted].

13. The CIL' Additional Information Requirement form - CIL Additional Information form – the Appellant refers to this withing their Grounds of Appeal. The form is dated [redacted] and is completed / signed in the name of [redacted] (Agent).
14. The Water bill in the form of Business stream (a [redacted] Water Company) documents for dates:
 - a) [redacted] to [redacted] ([redacted] days) Water service charges plus VAT £[redacted].
 - b) [redacted] to [redacted] ([redacted] days) Water service charges plus VAT £[redacted].
 - c) [redacted] – [redacted] ([redacted] days) Water service charges plus VAT £[redacted].

The copy water bills provided are within the relevant time period of [redacted] to [redacted] and appear to show water consumption across a continuous [redacted] month period.

15. The Electricity bill - [redacted] document listing:
 - a) [redacted] kwh of Electricity used between [redacted] and [redacted]
 - b) [redacted] kwh of Electricity used between [redacted] and [redacted]
 - c) [redacted] kwh of Electricity used between [redacted] and [redacted]
 - d) [redacted] kwh of Electricity used between [redacted] and [redacted]
 - e) [redacted] kwh of Electricity used between [redacted] and [redacted]

The copy electrical bills provided are within the relevant time period of [redacted] to [redacted] and appear to show electricity consumption across a continuous [redacted] month period.

16. The Appellant submits the correct amount of CIL is £[redacted] based on the same Rate and Indexation as the CA's calculation within the CIL Liability Notice, however, adopts a different chargeable area of [redacted] square metres, being the proposed GIA of [redacted] less the GIA of the [redacted] club premises, [redacted] square metres.

CA Representations

17. The CA first addresses the Appellant's point that the CA's calculation of the chargeable amount before any applicable deductions contains an arithmetic error. The CA clarifies the figure for the Index (I) shown on the Liability Notice is a rounded number and demonstrates when applying the Index using a greater number of decimal places that the figure in the CIL liability notice is produced. [Chargeable Amount = £[redacted] – Note: The Appellant subsequently notes and accepts this in Comments].
18. Secondly, the CA addresses the in-use status of the existing building to be demolished. The CA states that the CIL Additional Information Form submitted with the planning application dated [redacted] confirmed that the existing building had last been occupied for its lawful use on [redacted]. Further, the CA states that the case officer's report confirmed that the Squash Club had closed, and no information had been submitted to the CA to demonstrate the building was or had been in-use. Therefore the CA deemed the existing building not to be an in-use building for CIL purposes.
19. The CA states that in [redacted] whilst the subject planning application was under consideration, the Appellant contacted the CA to ascertain whether the floorspace of the existing Squash Club could be deducted from the chargeable area. The CA states it explained to the Appellant that as the building had not been 'in-use', it would not be possible to discount the existing floorspace. The CA states the Appellant did not offer an alternative position regarding the in-use status of the building. The CA confirms that as planning permission was subsequently granted [redacted], to be an in-use building for CIL purposes, the existing building to be demolished would have to have been used for its lawful purpose for a continuous period of six months between [redacted] and [redacted]. The CA states that its records indicate that the lawful use of the existing building is Use Class E.
20. The CA states that on [redacted] the Appellant advised the CA that the existing building had been in continuous lawful use since [redacted] under a commercial lease, a copy of which was provided. The CA advised the Appellant that a lease alone is insufficient to demonstrate actual building use for its lawful purpose. Further, the CA states the Appellant was invited to submit additional information, including details of what business, commercial or service uses were being conducted at the building for the period in question and to provide accompanying documentary evidence to demonstrate that use.

21. The CA refers to the Appellant's request for a review of the chargeable amount under Regulation 113 on [redacted] and that the Appellant provided information, being the same as summarised above - the Lease, two Statutory Declarations, copy water and electricity bills.
22. The CA highlights that the Statutory Declarations state that the above-mentioned lease has been backdated in recognition of the Tenant's first occupation of the Property.
23. The CA submits the water and electricity bills show water and electricity consumption for a continuous period of six months within the three years ending on the day planning permission first permitted the chargeable development, they do not demonstrate the actual use to which the building has been put in that period.
24. The CA submits that the evidence provided to date indicates a lease enabling the building to be used for a purpose within use class E, but not that the building was actually put to such a use. Further, although they carry some weight, the statutory declarations on their own do not demonstrate an actual use of the building for a purpose within use class E.
25. The CA refers to the judgment in the case of R (Hourhope Ltd) v Shropshire Council (2015), paraphrasing that, for the purposes of establishing whether a building meets the definition of "in-use" in the regulations, it is not sufficient just to show there is a lawful use to which a building could have been put during the relevant period - for a building to qualify for a reduction in the levy, actual lawful use needs to be demonstrated within the relevant period.
26. The CA states it invited the Appellant to submit additional information to demonstrate the actual use of the building as a gym and ancillary office for the required period, suggesting records of bookings, date stamped photographs of the gym and ancillary office in use, evidence of contracts with suppliers, membership contracts, evidence of transactions between the gym facility and its users, details of the number of members / usage figures and evidence of the use of marketing materials / social media to promote the facility, however these were not provided.
27. The CA concludes by submitting that the onus is on the Appellant to provide sufficient information to demonstrate the building is an in-use building for CIL purposes and that the CA remains of the view that the information submitted does not sufficiently demonstrate the building has actually been used as a gym and ancillary office for a continuous period of six months between [redacted] and [redacted].

Appellant Comments

28. The Appellant firstly notes and accepts the CA's comments on the discrepancy in the CIL calculation.
29. The Appellant reiterates the proof they have provided that the premises were in continuous lawful use for at least six months in the period of three years prior to the grant of planning permission.

30. Appellant submits the above evidence amply satisfies the balance of probabilities test for proving active and continuous use, that the utility bills show electricity and water usage and therefore prove use. Additionally, the Appellant submits that had the premises not been in use, the utilities would have been disconnected, which they were not.
31. The Appellant refers to the evidence the CA had previously suggested be produced to demonstrate the actual use of the building as a gym and ancillary office for the required period. The Appellant submits that the unavailability of that evidence results from the nature of the active use as described in the Appellant's submission, a modest business without digital infrastructure, and the nature of the use was not such that it would typically generate this type of evidence.
32. Further, the Appellant references what they describe as a minor error in one of the statutory declarations, submitting it does not reduce the weight carried by the swearing of these documents by both parties to the Lease.
33. The Appellant submits that there was sufficient time between [redacted] and [redacted], the date planning permission was granted, for the premises to have been in use for at least six months.
34. The Appellant advises it has requested the Valuation Office Agency [VOA] correct the status of the premises, submitting it was incorrectly recorded as vacant and that the VOA has confirmed the premises will be recorded as occupied since the start of the Lease.
35. The Appellant concludes by submitting they have shown that on the balance of probabilities, the premises were in active and continuous use.

Decision

36. Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal.
37. In this case, the Appellant does not agree with the CA's stated chargeable area used in the calculation of CIL. The Appellant submits the whole of the existing GIA should be excluded from the calculation of the chargeable area for CIL because the squash club premises had been in-use for a continuous period of at least six months within the relevant three year period.
38. In-use buildings / Lawful use - The CIL Regulations Part 5 – Regulation 40 - Calculation of chargeable amount - 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."
39. "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.

40. Part 2 Regulation 8 “Time at which planning permission first permits development” states at (2) “Planning permission first permits development on the day that planning permission is granted for that development” In this case, the day planning permission first permitted the chargeable development was [redacted] upon the approval of planning application. Therefore, in this case, the relevant time period within which at least six months of use is required to be proven is [redacted] to [redacted].
41. I note the CA refers to the case of R (Hourhope Ltd) v Shropshire Council (2015) to emphasise the importance and distinction between there being a lawful use and actually being used, as in actively used, for the lawful use in order to satisfy the regulation criteria.
42. There are slight similarities between the subject property of this Appeal and the Hourhope case, in that the latter concerned a closed public house, and the subject property is a Squash club, gym and bar, however, the contention in both is a matter of what constitutes the properties being in lawful use. Specifically, the Hourhope case judgement clarifies that the intention of the “in use” or “in lawful use” criteria is whether a property was actively being used for its lawful use or not. In both cases, consideration of what constitutes lawful use is most relevant.
43. The Hourhope judgement provides further clarification that in that case the principal activity of a public house was being open to the public for the sale of drink and other services which could include food and / or use of function space if applicable, drawing comparison with other property types where the use is an active one like factory, office or shop and that it is appropriate to consider the degree of activity reasonably expected for each use.
44. In the subject case, there is declared date of last occupation for its lawful use, [redacted], as referenced above. Whilst not a public house as in the Hourhope case, the lawful use of the Squash club premises is nonetheless similar in that it is an active use when used lawfully.
45. I am of the opinion the lease document in isolation does not prove actual lawful use of the squash club premises. It may prove that the Tenant had a right to occupy the building, it does not demonstrate that that the occupation actually took place. I also note the lease was backdated, being dated / signed more than [redacted] months past the stated term commencement date and was not accompanied by proof of rental payments.
46. The Statutory Declarations confirm the existence of the lease and that the lease was backdated in recognition of the Tenant’s first occupation of the Property. The opportunity to further corroborate the Statutory Declarations with evidence of payments for invoices, non-domestic rates bills, rent and the like does not appear to have been taken up.
47. The CIL’ Additional Information Requirement form - CIL Additional Information form - referred to above - the responses on the form state the date the building was last occupied for its lawful use was [redacted] which precedes the relevant three-year period within which actual use of the premises is required to be proven.

48. The electricity and water bills provided show consumption respectively however do not prove the building was being used for its lawful use.
49. I note the Appellant's comment that they have requested the VOA correct the status of the premises as it was incorrectly recorded as vacant and that the VOA has confirmed that the premises will be recorded as occupied since the start of the Lease. I am of the opinion the timing of this information being provided in the context of this appeal does not contribute to proving the actual lawful use of the premises.
50. Unfortunately, the Appellant has not, in my opinion, provided evidence which is sufficiently strong to prove continuous use during the requisite time period. There has been ample opportunity to collate evidence that could include actual payments for rent, bills and / or other occupational costs that would be incurred, other than the electricity and water bills I have referred to above.
51. The evidence in relation to use of the property during the period in question is inconclusive in my opinion and insufficient evidence has been provided to demonstrate continuous use for the required six months within the relevant qualifying period.
52. In summary, I am of the opinion that the criteria for demonstrating that the squash club premises were in active lawful use for the required six months within the relevant three year period as detailed above has not been met.
53. There appears to be no dispute between Parties regarding Rate, Index, existing GIA and proposed GIA, therefore I dismiss this appeal.

[redacted] BSc FRICS
Valuation Office Agency
19 September 2025