Appeal Decision

By [redacted] MRICS VR

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: 1867342

***Address**:* [redacted]

Proposed Development: Demolition of existing buildings and construction of a multi-storey plus basement building to be used as self-storage (Class B8), and associated landscaping, vehicle manoeuvring and car parking, and refurbishment of the Locally Listed Building to the front of the site.

Planning Permission details: Granted by the [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 the Appellant's agent, [redacted] of [redacted] (acting on behalf of the Appellant, [redacted] of [redacted]), and the submissions made by the Collecting Authority (CA), the [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) Various plans and photographs of the subject development.

g) The Appellant's Statement of Case document dated [redacted] (no exact date in [redacted]).

h) The Appellant's citation of a previous VOA CIL Appeal Decision in respect of a self-storage building with seven floors – CIL Appeal Decision Reference 1845942.

i) The CA's Statement of Case letter, which is dated [redacted] .

j) The Appellant's comments on the CA's Statement of Case letter, dated [redacted] .

Grounds of Appeal

2. Planning permission was granted for the development on [redacted] , under [redacted] . The approved planning permission was:-

   Demolition of existing buildings and construction of a multi-storey plus basement building to be used as self-storage (Class B8), and associated landscaping, vehicle manoeuvring and car parking, and refurbishment of the Locally Listed Building to the front of the site.

3. On [redacted] , the CA issued a Liability Notice (Reference: [redacted]) for a sum of £[redacted] . This was based on a net chargeable area of [redacted] m² and a Charging Schedule rate of £[redacted] per m² ([redacted] CIL [redacted] – All other uses), including indexation. The stated [redacted] CIL indexation was [redacted] and the calculations shown in the Liability Notice are as follows:- .

   [redacted] CIL ([redacted] CIL)

   [redacted] m² @ £[redacted] per m² [redacted] (CIL*) x index [redacted] = £[redacted]

   [redacted] m² @ £[redacted] per m² ([redacted] CIL*) x index [redacted] = £[redacted]

   [redacted] CIL ([redacted])

   [redacted] m² @ [redacted] per m² ([redacted]) x index [redacted] = £[redacted]

   [redacted] m² @ £[redacted] per m² ([redacted]) x index [redacted] = £[redacted]

   Total CIL ([redacted] CIL & [redacted] CIL) £[redacted]

   *[redacted] CIL [redacted] – All other uses

4. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). Within the

Regulation 113 review, the Appellant opined that the CIL charge should be £[redacted] . The CA responded on [redacted] , stating that it was of the view that its original decision was correct and should be upheld.

5. On [redacted] , the Valuation Office Agency received a CIL Appeal from the Appellant, contending that the CA has calculated the CIL charge incorrectly and opines that the CIL charge should be £[redacted] . The CA is of the opposite view and stands by its decision in the Liability Notice dated [redacted] .

6. It would appear that there is no dispute between the parties in respect of the Charging Rate, the listed (existing use) offset accommodation of [redacted] m² or the applied indexation.

Approved Development in Dispute

7. The site subject to this Appeal comprises an irregular linear shaped site, which is understood to comprise of brick warehouse commercial buildings, formerly used by a removals and storage company ([redacted] Removals and Storage). The area surrounding the site boundary is characterised as predominantly residential. The subject site extends to approximately [redacted] m² ([redacted] acres). Vehicular access to the site is via [redacted] , with additional pedestrian access from two separate points, via a footpath from [redacted] or from [redacted].

Decision

8. The primary dispute between the parties relates to their respective different viewpoints on the constitution of the chargeable area. Specifically, the parties have a disagreement over the constitution of the GIA/floorspace of the proposed development, in relation to the development's potential mezzanine floor area. Before I go into the detail of the dispute, I believe it is of benefit to all concerned to first explain the legislation, which underpins this appeal decision:-

9. 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."

10. Furthermore, Schedule 1 of the 2019 Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;

    a. retained parts of 'in-use buildings', and

    b. for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

11. The CIL Regulations do not define Gross Internal Area (GIA), so it is necessary to adopt a definition. The definition of GIA provided in the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6th Edition) is the generally accepted method of calculation.

    GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.

Including:-

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

Excluding:-

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fire escapes
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential property

12. The parties appear to be in agreement in accepting the Royal Institution of Chartered Surveyors (RICS) definition of Gross Internal Area (GIA) as per the definition of GIA provided in the RICS Code of Measuring Practice (6th Edition) (RICS COMP). As indicated above, the disputed mezzanine floorspace is within definition of GIA and its inclusion in the chargeable area is at the core of this Appeal.

13. I shall now elaborate on the parties' disagreement over the floorspace of the chargeable area. The Appellant disagrees with the CA's floorspace opinion and opines that the development's chargeable area should not include any potential additional mezzanine floorspace; the Appellant opines that CIL should be based on [redacted] m² of floorspace, which comprises of :-

[redacted] m² Class E floorspace (office)
m² Class B8 floorspace (self-storage)

At the heart of the dispute, the Appellant points to Condition 2 of the grant of planning permission, which states:-

(a) The total floorspace provided for the development hereby approved and shown on drawings as referenced in Condition 3 hereby approved shall not exceed [redacted] *sq.m (GIA) and shall consist of the following:*

i *Up to* [redacted] *sq.m Class E(g)(i)(Office) floorspace*
ii *Up to* [redacted] *sq.m Class B8 (Self Storage) floorspace*

(b) Any mezzanine levels inserted into the development hereby approved that are in addition to the floorspace set out in part (a) above shall not exceed [redacted] *sq.m (GIA) of B8 (Self Storage) and related ancillary floorspace.*

The CA disagrees and opines that the mezzanine levels under Part (b) of Condition 2 form part of the wider permission, and this was a material consideration when determining the planning permission; accordingly, the CA opines that the potential mezzanine floorspace forms part of the chargeable development.

14. I will now respond to the parties points and issues, which they have raised to me in this Appeal.

15. The Appellant opines that Condition 2 Part (b) is intended to place a limit on the amount of floorspace that could be provided via additional mezzanine and represents in the Appellant's view, a 'worst-case scenario' assessment of the future potential floorspace of a maximum of [redacted] m².

In support, the Appellant points to paragraphs 5.5 - 5.6 of the Planning Statement submitted with the planning application, which states:-

5.5 Built floorspace within the development will comprise a total [redacted] *sqm GIA (including* [redacted] *sqm Use Class E floorspace). However, a maximum of* [redacted] *sqm GIA could be accommodated within the building through the use of demountable mezzanine floors, installed subsequently to the development.*

5.6 In accordance with Section 55(2)(a) of the Town and Country Planning Act 1990, planning permission is not required for the carrying out of maintenance, improvement or other alteration to a building where works only affect the interior of the building and do not materially affect the external appearance of the building, this includes mezzanine floors for non-retail use. As such additional floors can be installed subsequently upon the completion of the building / as occupancy increases.

The Appellant opines that neither the planning statement nor supporting documents are intended to suggest that the development comprises mezzanine levels as part of the proposed development.

16. The Appellant compares and contrasts the subject development with that cited in VOA CIL Appeal Decision 1845842 – "erection of a 7 storey self-storage building". The Appellant opines that when read alongside the approved plans, which comprise basement, ground and first floor plans, the planning permission is for a three-storey building.

17. The Appellant points to Condition 3 of the grant of planning permission, which states that the development must be carried out in accordance with the following approved plans, inclusive of Basement Floor Plan ([redacted]), Ground Floor Plan ([redacted]), First Floor Plan ([redacted]), and Roof Plan ([redacted]), which show a total approved floorspace of [redacted] m². The Appellant offers that no other floor plans have been submitted in relation to the proposed development, nor have been assessed (nor approved) by the Local Planning Authority. Given this, the Appellant infers that any mezzanine accommodation does not form part of the permission.

18. The CA points to page 32 of the Design and Access Statement of the planning application. Page 32 states that the volume of the building has been designed to allow for intermediate upper floors to be installed as demountable mezzanine floors. This volume strategy is reflected in the approved section drawing [redacted] , which shows two upper floors of accommodation with generous heights, designed to accommodate the addition of mezzanine floors. These are factors that would have been taken into account when the CA determined the application. As a rebuttal, the Appellant opines that the CA's viewpoint on the building's volume is misunderstood – the Appellant contends that the height allowances of the subject industrial building serve a strategic purpose by providing space for current operational necessities, whilst also future proofing the facility for potential expansion and evolving needs.

19. The Appellant also points to November 2016 the Planning Practice Guidance (PPG), which states that mezzanine floors, when inserted into an existing building, are not liable for the Community Infrastructure Levy (CIL).

20. In making my determination, I am guided by the basic principle of Regulation 9(1) :-

    Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means *"the development for which planning permission is granted"*.

    Given the above, it is clear to me that the description of the approved planning permission is my primary starting point. However, given that the language of the development's description …*construction of a multi-storey plus basement building*… is somewhat vague and unhelpful, the only recourse I have is to consider the supporting documentation in support of the planning permission. Both parties have opposing views on the inclusion of the mezzanine in the chargeable area. From the content of Condition 2 Part (b), it is clear to me that the granted permission *allows* additional mezzanine levels of up to [redacted] m² and one of the questions I have to address is :- What supporting planning application documentation and its weighting as evidence, underpins the actual planning approval, that *allows* additional mezzanine levels?

21. Firstly, I would address the Appellant's point of the November 2016 Planning Practice Guidance (PPG), which states that mezzanine floors, when inserted into an existing building, are not liable for the Community Infrastructure Levy (CIL). I have dismissed this argument as it would appear that the Appellant misinterprets the legislation. As the proposed development is a <u>new</u> building and not an existing building, the Appellant's argument on this point fails.

22. In respect of the Appellant's argument on Condition 3 (the approved plans of the development), where the Appellant infers that any mezzanine accommodation does not form part of the permission, I find the Appellant's argument unpersuasive. In my view, the lack of mezzanine plans in the planning application is clearly undermined by the language and text of Condition 2 Part (b).

23. In respect of the parties' disagreement over the intention and meaning of page 32 of the Design and Access Statement of the planning application, I am inclined to agree with the CA. The sentence on page 32 –

    *"The intermediate upper floors **<u>will</u>** be installed at a later date with demountable mezzanines. This will allow the business to grow organically, inserting the space as and when it is required*."

    is clear in its language. [my emphasis is underlined]

24. The CA also points to the supporting planning application document of the Economic Statement (dated [redacted]). In support of its argument, the CA cites paragraphs 1.12 and 1.13 of the Economic Statement :-

The Site measures approximately [redacted] ha and the proposed development will have an overall gross internal area ('GIA') of sqm.

This GIA will include the following floorspace:

Floor	Floorspace (GIA – sqm)
Basement	[redacted]
Ground Floor	
GD &1st - Shop	
First Floor	
Second Floor	
Third Floor	

Table 1: Proposed floorspace (GIA)

The above GIA table (from paragraph 1.13) totals [redacted] m², which in my view indicates the presence of the mezzanine accommodation.

25. The CA also points to the supporting planning application document of the Air Quality Assessment (dated [redacted]), which relates to Transport Emission Benchmarks (TEBs). The CA opines that at paragraph 5.37, that there is an intention to deliver the additional mezzanine floorspace:-
26.

Table 5 – 2: Proposed Development TEBs

Land Use	No. Dwellings or GIA (m2)	Standard Benchmark Trip Rate (trips / dwellings or GIA (m2) / annum)	TEB (trips / annum) a
Storage and Distribution	[redacted]	[redacted]	[redacted]

a Calculations are based on unrounded numbers and only rounded numbers are presented.

I find the proposed GIA of [redacted] m² cited in this table, reasonable evidence to support the CA's argument.

27. The CA also points to the supporting planning application document of the Transport Assessment (dated [redacted]), which states at paragraph 3.1 :-

The proposed scheme seeks to redevelop the site to provide a self-storage facility with a floor area of [redacted] sqm under Use Class B8.

In addition, the CA cites the below table from paragraph 3.1 of the Transport Assessment, which along with paragraph 3.8, states 18 car spaces, based on up to [redacted] m² of floorspace :-

Use Class	Long Stay	Short Stay
B2–B8 general industry and research development	*1 space per* [redacted] *sqm (GEA)*	*1 space per* [redacted] *sqm (GEA)*

I find the CA's citation of the evidence in the Transport Assessment persuasive in supporting the CA's argument that there is an intention to deliver the additional mezzanine floorspace.

28. The CA also points to the Section 106 (s106) agreement of the development, to evidence that the mezzanine floors form an integral part of the subject planning permission. The CA states that the s106 agreement has a condition that states a financial contribution must be paid, if the mezzanine floors are installed. The CA further opines that this clearly links the mezzanine floors to the subject permission in question. The CA points to Schedule 3 of the s106, which states :-

"Mezzanine [redacted] *Contribution means the sum of £*[redacted] *indexed to be paid by the owner to the council as a contribution towards* [redacted] *for the proposed Mezzanine Floors should they be delivered as part of this development requires the developer to inform* [redacted] *on the implementation of the mezzanine floors and outline that a* [redacted] *contribution would be payable should the mezzanine floors be* ***delivered as part of the development****"*

[the CA emphasis is underlined]

The Appellant's rebuttal to the CA's s106 argument is twofold :-

1. The Appellant opines that the reference to a "Mezzanine [redacted] Contribution" in the s106 was included at the insistence of the CA, during s106 negotiations and was initially objected to by the Appellant. It was ultimately accepted by the Appellant following confirmation from planning officers that the contribution would only be payable, if additional mezzanine floorspace was delivered as part of the development, which was not the Appellant's contention. The Appellant further opines it was considered that the clause was irrelevant to the proposed development and could be agreed in the interests of expediting a determination of the planning application.

2. The nature of the "Mezzanine [redacted] Contribution" being conditional on the construction of the mezzanine, with the wording specifying that the payment is required only if the mezzanine is constructed, directly supports the appellant's position. If mezzanine floors were an integral part of the development, then the contribution would be structured as a fixed obligation.

[the Appellant emphasis is underlined]

Whilst I note that the Appellant's representations on the negotiations of the s106 clause, it is nevertheless a factual matter that there is a clause, which is clearly conditional. From the language of the s106, I agree with the Appellant that there is no intention to deliver the additional mezzanine floorspace. However, in my view, the actual presence of a negotiated s106, when considered with the wider evidence on a holistic basis, provides some weight to the CA's argument that the proposed mezzanine accommodation forms part of the planning consent.

Commented [JT1]: Do you? If you accept they are not intending to deliver it then does this not effect the outcome? Or are you saying it's irrelevant whether they deliver it because it's part of the planning permission regardless?

Commented [JT2]: I'm not entirely convinced on this point but I accept the wider point

29. Having fully considered the representations made by both parties, I agree with the CA that the content of Condition 2 Part (b) forms part of the chargeable development and the mezzanine floors are very much part of the planning application and future intended usage.

    I disagree with the Appellant's view that the planning permission is for a three-storey building. It is clear to me that the grant of permission allows additional mezzanine levels of up to [redacted] m² - the language in the planning consent is clear. Indeed, it would seem to me from the construction of the text and language of Condition 2, that the clauses of Part (a) and Part (b) are given equal weighting – they are in logical order, but no hierarchy between them is implied in my view.

    One may argue that the actual descriptive text of the grant of permission is somewhat ambiguous (in relation to the number of floor levels) but nevertheless, given a holistic view of the submitted evidence and its weighting, it is clear to me that the potential mezzanine accommodation forms an integral part of the planning consent and thus forms part of the chargeable area.

30. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the CA that the potential mezzanine accommodation forms part of the planning consent and thus forms part of the chargeable area.

31. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated and hereby dismiss this appeal.

[redacted]

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
8th July 2025