Appeal Decision

By [redacted] BSc (Hons) MRICS

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

Valuation Office Agency
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Appeal Ref: 1875193

Planning Permission Ref: [redacted]

Proposal: Change of use of the public house, restaurant and residential flat to two dwellings, demolition and replacement of existing single storey rear extension, partial blocking up of the cellar, associated internal alterations, car parking and landscaping.

Location: [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case of £[redacted] ([redacted]) is not excessive and I therefore dismiss this appeal.

Background

1. I have considered all of the submissions made by [redacted], 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 decision ref [redacted] dated [redacted];
    b) Approved planning consent drawings, as referenced in planning decision notice;
    c) CIL Liability Notice [redacted] dated [redacted];
    d) CIL Appeal form dated [redacted], including appendices; and
    e) Representations from CA dated [redacted].

2. Planning permission was granted under application no [redacted] on [redacted] for '*Change of use of the public house, restaurant and residential flat to two dwellings, demolition and replacement of existing single storey rear extension, partial blocking up of*

the cellar, associated internal alterations, car parking and landscaping.' The development also received listed building consent under reference no [redacted] with the same date and description.

3. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m² at the 'Zone 4 – Rest of Borough' rate of £[redacted]/m² plus indexation at [redacted].

4. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted], confirming their view that the charge within the Liability Notice was correct.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £[redacted]. This was calculated on a chargeable area of [redacted] m² at a base rate of £[redacted]/m² plus indexation at [redacted].

6. The Appellant's grounds of appeal can be summarised as follows:

    a) The building was in lawful use during the relevant period and therefore the GIA of the existing building should be offset against the CIL charge.

    b) The planning permission was for a phased development and therefore the liability notice has been served prematurely and should be withdrawn.

    c) The GIA as measured by the CA is incorrect.

    d) The appellant should be granted relief under exceptional circumstances

7. The CA has submitted representations that can be summarised as follows:

    a) The public house use had ceased in [redacted] and only the residential use continued. The residential use was ancillary to the pub use and was not the primary planning use. Therefore, the lawful use test is not satisfied.

    b) The planning permission was not granted as a phased permission.

    c) The GIA is correct.

    d) The CA does not have an exceptional circumstances relief policy and therefore this relief is not available.

8. I have considered each of these points in turn.

Lawful use

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. "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.

11. “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.

12. 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.

13. The appellants state that the property was let to a residential tenant from [redacted]. They have supported this with a tenancy agreement and a copy of a council tax bill.

14. The tenancy agreement is for an Assured Shorthold tenancy on a 6 month term starting on [redacted]. The address shown is “[redacted]” and the name of the tenant has been redacted. Paragraph 5 states “This Agreement is for private residential accommodation” and Paragraph 12a states “The Tenant shall use the Property as a single private home and not carry on any trade, profession or business on or from the Property.” The agreement was signed by the Landlord on [redacted] and by the tenant on [redacted].

15. The council tax bill shows the same address of “[redacted]” and is dated [redacted]. The name of the tenant has been redacted but the bill shows a single person discount has been applied.

16. The appellants argue that the use has not been abandoned as demonstrated by the residential letting and therefore the lawful use test has been satisfied.

17. The CA comment that the tenancy agreement and council tax bill do not prove actual occupation but in any case, the residential use is not the lawful use of the building for planning purposes.

18. The CA state that the lawful use of the building is as a public house (sui generis) and that the appellant’s planning statement confirms that the pub ceased trading in [redacted]. The CA opine that the residential accommodation is incidental to the overall public house use and is not a separate independent planning unit. They highlight that access to the bedrooms and bathrooms is only possible via the public bar/restaurant and that the only kitchen and living facilities are shared with the pub.

19. The CA quote the case of R (oao Hourhope Ltd) v Shropshire Council [2015] which they consider supports their view. They also quote a previous CIL Appeal decision reference 1825974. I have discussed both below.

20. The Hourhope case involved a pub with planning permission to demolish and erect residential units. The pub use had ceased in May 2011 and planning permission was granted in March 2014. A director of the company which ran the pub remained living on the premises in the manager’s accommodation but vacated before the pub was repossessed in August 2014. The fixtures and fittings remained in the pub after this time. The judge considered whether the storage of items left at the premises could constitute lawful use.

21. The judge concluded that “The most important characteristic of use as a pub is plainly the opening of the premises to the public for sale of drink and food. It was open to the council to conclude that the use as a pub ceased when such trading came to an end, in the absence of circumstances indicating this was only a temporary expedient such as a

holiday."

22. The judge further stated "Such [storage] use would be lawful for planning purposes as long as the main activity is permitted. In my view however Mr. Cant is right to say these are not separate uses which are themselves authorised for planning, but activities ancillary to and part of the overall permitted use as a public house. The lawful use carried on in such a storage area, for planning purposes, is use as a public house, not use for storage."

23. CIL Appeal decision 1825974 concerned the conversion of a public house to five self-contained flats. The appellant considered that the pub was a single planning unit and that occupation of the pub by live in Security Guards was sufficient to prove lawful use. The Appointed Person was guided by the Hourhope case and determined that the residential occupation by the security guards did not amount to lawful use.

24. The Hourhope case focussed on storage use of a closed pub, rather than residential occupation as in the present case. However, in my opinion the principles are the same. The lawful use of the property is as a public house. I accept the CA's view that the residential use was ancillary to the pub use and was not a separate planning unit.

25. I consider that the use that would need to be demonstrated for CIL purposes would be the use of the pub as open to the public for the sale of drink and food. There is no suggestion that there was any intention to reopen the pub and therefore I conclude that the lawful use of the property ceased in [redacted] when the pub closed to the public. As the lawful use test has not been satisfied, there can be no offset against the CIL charge.

Phasing

26. Phased Planning Permission is defined under CIL Regulation 2 as "a planning permission which expressly provides for development to be carried out in phases."

27. Regulation 8 defines the time at which planning permission first permits development. For most permissions, this is "the day that planning permission is granted for that development." For phased permissions which are not granted in outline, it states at 3A(b) that planning permission first permits a phase of the development either "(i) on the day final approval is given under any pre-commencement condition associated with that phase; or (ii) where there are no pre-commencement conditions associated with that phase, on the day planning permission is granted."

28. The Appellants consider that the development constitutes a phased development. They state that permission was sought for a phased development and the approved floor plan drawings [redacted] and [redacted] shows the approved phases of the development. They refer to specific clauses within the permission as follows:

    a) Clause 1.2 states "This permission may contain pre-commencement conditions which require specific matters to be submitted and approved in writing by the Local Planning Authority **before a specified stage in the development occurs**." [Appellant emphasis] The appellant considers that "phase" and "stage" are intrinsically linked within the dictionary definitions and therefore the staging and sequencing of works results in distinct phases of the development.

    b) Condition 3 of the listed building consent states that a "**schedule [of works] shall detail how each element of the works is to be carried out, in which order** and how historic fabric will be protected, preserved, and re-used in the works." [Appellant emphasis]. The appellant consider this to be a request for a phasing plan to be submitted and therefore it is a phasing condition.

29. The Appellants argue that the Liability Notice for a phased development is not due until all details required by pre-commencement conditions have been approved and as such, the CA have prematurely issued the Liability Notice.

30. The CA state that the appellant was informed at the planning application stage that the application was being determined on the basis that the development would not be phased for CIL purposes. This is evidenced by an email dated [redacted], sent by the case officer to the appellant. They consider that aside from a small omission of floorspace, the application is "identical in every way to the extant permission" [redacted], which is not a phased permission.

31. The CA have submitted the committee report dated [redacted] which considers phasing at paragraphs 9.8 to 9.11. This comments that while the submitted floorplans are colour-coded and labelled as phases, it is not clear how the works required for each phase could not overlap and 'trigger' each other. For example, Phase A works also include Phase D works. The report concludes that the proposal appears to constitute a single project, rather than a genuinely phased development and therefore the development is not considered to be phased for CIL purposes.

32. Regulation 114 allows for an appeal on the grounds that the chargeable amount has been calculated incorrectly. The appeal cannot be used to determine whether a Liability Notice should have been issued or whether it has been issued prematurely. However, the phasing of a development has a direct impact on the chargeable amount and therefore I have considered this matter on that ground only.

33. The Regulations require that a phased planning permission is one which **expressly** provides for development to be carried out in phases. In this case, the CA expressly stated at an early stage that this development was not being granted as a phased permission. It is therefore clear that the CA did not intend to grant a phased permission.

34. The appellant states that some of the conditions within the planning consent and listed building consent specify phasing requirements. They point to paragraph 1.2 under the "notes to applicant" section of the planning permission which states that there **may** be pre-commencement conditions that require actions at a specified stage in the development. These notes are not specific conditions related to this development and I do not consider that they have any bearing on the nature of the development.

35. The Appellant also refers to condition 3 of the listed building consent. However, the listed building consent is not the planning permission. A phased planning permission must refer to the planning permission itself and therefore I do not consider the listed building consent to be relevant. However, even if I were to consider this condition, I am not persuaded that a request to detail the order of the works would amount to a confirmation that the development was phased.

36. In my opinion, this development does not constitute a phased development. There is clear and early indication from the CA that they did not intend to expressly grant a phased permission and there are no conditions within the planning permission that require the phases to be developed in a certain sequence.

GIA

37. 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."

38. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice (6th edition) definition is used. GIA is defined as "the area of a building measured to the internal face of the perimeter walls at each floor level." The areas to be excluded from this are 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; and greenhouses, garden stores, fuel stores and the like in residential property.

39. The appellant claims that the CA have incorrectly calculated the GIA of the development. They state that on a Liability Notice issued on [redacted], the floor area was calculated as [redacted]m², which includes a larger area of the cellar to the plans that have now been approved. They therefore claim that the GIA of [redacted]m² included in the current Liability Notice is excessive, as only part of the basement is now proposed for conversion. However, they have not provided their opinion of the correct GIA.

40. The CA state that the plans for the current permission were measured and then re-measured as part of the Reg 113 review. They comment that on remeasuring the plans, the GIA was in fact slightly higher than stated in the Liability Notice. The CA have provided plans showing their opinion of GIA but there is no outline or calculations to show how this figure has been reached.

41. I have undertaken my own measurements using the approved plans. This has resulted in a GIA slightly higher than that included within the Liability Notice, which accords with the CA comments regarding their Regulation 113 review. I can confirm that my measurements exclude the area of the basement marked on the plans as "blocked off unusable area."

42. As the CA have not issued a new Liability Notice based on their revised GIA and I do not consider the GIA contained within the Liability Notice to be excessive, I have accepted a figure of [redacted]m² as the GIA of the chargeable development.

Exceptional Circumstances

43. Regulation 55 allows discretionary relief for exceptional circumstances. This Regulation includes some requirements for relief to be granted, including at (3)(a) that the CA has made relief for exceptional circumstances available in its area and at (3)(b) that a planning obligation under section 106 of TCPA 1990(b) has been entered into. For a charging authority to make relief available in its area, it must follow certain steps as governed by Regulation 56.

44. The appellant notes that the development does not fall under the express scenario for discretionary relief. However, they state that the payment of CIL would have an unacceptable impact on the economic viability of the development and that had there not been significant delays by the CA during the planning process, the lawful use test would have been satisfied "the first time around."

45. The CA comment that they have not adopted or published an Exceptional Circumstances Relief Policy and therefore this relief is not available.

46. The decision of whether to grant discretionary relief lies with the CA and is not a matter that can be considered as part of a Regulation 114 appeal. As the CA have not adopted an exceptional circumstances policy, this relief is not available to the Appellant.

Decision

47. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case of £[redacted] ([redacted]) is not excessive and I therefore dismiss this appeal.

[redacted]

[redacted] BSc (Hons) MRICS
Valuation Office Agency
22 October 2025