

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``.

Appeal Ref: 1875822

Address: ``redacted``

Proposed Development: Change of use of office unit (Class E) to dwellinghouse (Class C3) including external alterations.

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 of the submissions made by ``redacted`` (the Appellant) and by ``redacted`` (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 dated ``redacted``;
- d) Regulation 113 Review Request (``redacted``) and Response (``redacted``);
- e) CIL Appeal form dated ``redacted``, including Grounds of Appeal and various evidence to support the Appellant's case (listed under paragraph 17);
- f) Representations from CA dated ``redacted`` including:
 - Planning Decision Notice dated ``redacted``
 - CIL Liability Notice dated ``redacted``
 - ``redacted`` Council Regulation 113 Review Reply (dated ``redacted``)
 - Additional correspondence and evidence following Regulation 113 submission
- g) Appellant's Final Comments on CA representations dated ``redacted`` and further comments dated ``redacted`` with additional evidence supplied.

Grounds of Appeal

2. Planning permission was granted under Planning decision ref ``redacted`` dated ``redacted`` for, "Change of use of office unit (Class E) to dwellinghouse (Class C3) including external alterations."
3. I understand that a CIL liability notice was issued ``redacted`` for £``redacted`` based on a chargeable area of ``redacted``m². This was based on the "C3 Residential Non SHR" rate of £``redacted``, plus indexation. A Regulation 113 review was requested ``redacted`` by the Appellant. The CA responded ``redacted`` concluding that the CIL charge should remain at the figure initially proposed.
4. On ``redacted``, the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability stated by the CA was incorrectly calculated. The Appellant considers the chargeable GIA created by the development is 0 sq. m. thus providing a CIL Charge of £0.
5. The Appellant's single ground of appeal is that the whole building was in lawful use and should be offset.
6. There is no dispute around the charging rate or indexation adopted.

Background

7. The core dispute between the parties in this case relates to the interrelated CIL Regulation concepts of 'relevant building' and lawful use in accordance with Schedule 1 Part 1 1. (6) of the CIL Regulations 2010 (as amended). In addition to the correct application of calculating the gross internal area (GIA) for the chargeable development.
8. Schedule 1 (6). of the 2019 Regulations "KR" allows for the deduction of floorspace of certain existing buildings from the gross internal area (GIA) of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. The deductible floorspace of buildings that are to be retained includes;
 - i. retained parts of '**in-use buildings**', and
 - ii. 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.

In this particular case "KR (i)" is the relevant part to consider.

9. Further clarification under Schedule 1 (10) is provided. An "**in-use building**" means a building which—
 - (i) is a **relevant building**, and
 - (ii) 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.

"Relevant building" means **a building which is situated on the relevant land on the day planning permission first permits the chargeable development.**

10. Both parties have advanced to me evidence in support of their respective viewpoints.
11. Planning permission was granted on ``redacted``. Therefore, the period to consider the lawful use for a continuous period of at least six months within the preceding three years is between the ``redacted`` to ``redacted``.

Appellant's Evidence

12. The Appellant provides contradictory information regarding their occupation of the subject property within their Grounds of Appeal. The Appellant opines the subject address has been actively operated by ``redacted`` (the Appellant's own business) for the past 10 months and based on this active use, the Appellant is requesting that the existing gross internal area (GIA) be deducted, resulting in zero net additional floorspace and no CIL liability. However, in the same Grounds of Appeal the Appellant further opines that since acquiring the property in ``redacted``, the premises has been actively utilised as the office for ``redacted`` 5 days a week, over the past six months (from ``redacted``, to ``redacted`` – dates provided by the Appellant in their Grounds of Appeal). The Appellant states Empty Business Rates Relief was applied for by the previous owner, ``redacted`` in ``redacted``.
13. In support of their case, the Appellant has submitted the documentation previously provided to the CA as part of the Regulation 113 Review, along with supplementary evidence intended to further substantiate their position. These can be summarised as follows:
- a) A Business Rate Bill dated ``redacted`` for a billing period ``redacted`` – ``redacted``. This bill details the Empty Property Rate at £0.00 with transitional relief of £``redacted``.
 - b) Four screenshots confirming payments made to ``redacted`` on the following dates ``redacted``, ``redacted``, ``redacted`` and ``redacted``. No year is provided and there are no details of what the payment relates to.
 - c) Payment detail dated ``redacted`` for business rate payment of £``redacted`` to ``redacted``.
 - d) Photograph 1 of desk with work station set up dated ``redacted``. No year provided.
 - e) Photograph 2 of desk with work station and part kitchen provision dated ``redacted``. No year provided.
 - f) Invoice dated ``redacted`` from ``redacted`` for SAP Calculations/EPC.
 - g) Invoice dated ``redacted`` from ``redacted`` relating to drawings produced.
 - h) Various ``redacted`` (water) Utility Bills for billing period ``redacted`` – ``redacted``;
 - i) A screenshot of the Appellant's Business' website (``redacted``) citing the subject address by means of a pin drop location.

CA Representations

14. The CA opines the business rates bills, bank payment screenshots, invoices, and utility bills do not demonstrate lawful use for six continuous months within the relevant timeframe for the following reasons:

- a) Business Rates Payments: Bills indicate an Empty Property Rate of £0.00 for ``redacted`` – ``redacted``. The Business Rates team confirmed the property was charged as empty since purchase on ``redacted``. Payment of business rates does not constitute lawful planning use.
- b) Bank Payment Screenshots: Payments dated ``redacted`` do not specify purpose and do not establish continuous occupation.
- c) Invoices Addressed to Property: Two invoices (``redacted`` and ``redacted``) show correspondence but do not confirm lawful use or continuity.
- d) Utility Bills: Limited coverage (``redacted`` and ``redacted``), with some correspondence addressed to another property. These documents do not demonstrate six continuous months of lawful use, and payment of utility bills does not indicate any specific use of the property, therefore failing to substantiate the appellant's claims.
- e) Images of Office Setup (``redacted``): Presence of furniture does not confirm lawful use in planning terms.
- f) Website Screenshot: Shows property address listed but does not confirm physical occupation or continuity.
- g) Additional Utility Bills: Cover short periods and fail to demonstrate six continuous months of lawful use. Furthermore, payment of utility bills does not indicate any specific use of the property and therefore does not substantiate the appellant's claims.

15. The CA states that after reviewing all evidence submitted before and after the Regulation 113 review and confirming with their Business Rates Team, they concluded the property was charged as empty with no record of regular occupation or use. Therefore, in the CA's opinion the evidence does not meet the threshold under Regulation 40 to deduct existing floorspace from the CIL calculation.

Decision

16. In this case, the Appellant does not agree with the CA's stated chargeable area used in the calculation of CIL. The Appellant considers the whole of the existing GIA should be excluded from the calculation of the chargeable area for CIL because the office has been in-use for a continuous period of at least six months within the relevant three year period.

17. Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal.

18. I have considered all the evidence submitted by the Appellant alongside the CA's representations. While some material suggests the property may have been in use, I am not satisfied that it meets the evidential threshold required to confirm occupation for the relevant period. My assessment is based on the following points:

a. Business Rates Payments and Bank Screenshots:

The Appellant argues that payment of business rates demonstrates occupation. The CA's business rates team confirmed that ``redacted`` paid the rates; however, their records classify the property as empty and not in regular use. While I acknowledge these payments, it is important to note that liability for full business rates continues after the initial relief period, even where a property remains vacant.

b. Invoices Addressed to the Property:

Invoices addressed to the Appellant at the property confirm that services were provided but do not, in themselves, demonstrate occupation or operational use.

c. Utility Bills:

The ``redacted`` Utility invoices for ``redacted`` to ``redacted`` largely consist of standing charges, with minimal water and sewerage usage—levels that appear inconsistent with expected consumption for a building of this size. Invoices from ``redacted`` onwards show higher usage, which is more indicative of active occupation. To establish six months of continuous occupation, billing evidence would need to cover the period from ``redacted`` through to the date of planning application approval.

d. Images of Office Setup:

While the photographs suggest the premises were furnished, the presence of furniture alone does not confirm occupation or operational use.

e. Website Screenshot:

The screenshot shows a pin drop near ``redacted`` as the company's base but does not provide a specific address for the property in question.

19. This decision is based on an objective review of all evidence provided. While I recognise the Appellant's efforts to demonstrate occupation, the documentation does not sufficiently establish continuous use for the relevant period under the applicable criteria. In order to meet the evidential threshold to satisfy this requirement, more comprehensive supporting documentation—such as sworn

statements or statutory declarations, additional utility bills, or insurance certificates—would be necessary in addition to the evidence provided.

20. Schedule 1 Part 1 1.(8) of the Regulations states, **“where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building.”** I do not consider the evidence sufficient to demonstrate that the property was in active use during the relevant period for the reasons I have set out above.
21. The Appellant asserts that the subject property has been actively operated by “redacted” (the Appellant’s own business) for the past ten months. However, within the same Grounds of Appeal, the Appellant further states that, since acquiring the property in “redacted”, the premises has been utilised as the office for “redacted” five days per week over the past six months (from “redacted” to “redacted”, as specified by the Appellant). If occupation commenced on “redacted”, this would not satisfy the requirement of an “in-use building” under Schedule 1(10) of the Regulations. Active occupation would have needed to commence on “redacted” and continue up to the date of the relevant planning application approval. Notwithstanding this point, I do not consider the evidence provided sufficient to demonstrate active use during the relevant period. My determination must be based on the facts submitted and assessed in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).
22. In summary, I am of the opinion that the criteria for demonstrating that the property has been in active lawful use for the required period of six months within the relevant three year period as detailed above has not been met. As no other components of the CIL charge have been challenged, I therefore conclude that the chargeable amount contained within the Liability Notice dated “redacted” is correct.
23. On the basis of the evidence before me, I consider that the CIL charge of £“redacted” (“redacted”) is acceptable and I hereby dismiss this appeal.

“redacted”

“redacted” MRICS
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
Date: 27 November 2025