

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: 1877081

Address: ``redacted``

Proposed Development: Alterations including erection of lower and upper ground floor rear and side extensions, erection of first floor rear extension; internal alterations and changes to the side elevation in connection with the conversion of the single dwelling (Class C3) into two flats (2 x 2 bed) and extend storage space to cafe (Class E(b)).

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``, on behalf of the appellant, ``redacted``, and the submissions made by the Collecting Authority (CA), ``redacted``.

2. In particular, I have considered the information and opinions presented in the following documents:-
 - a) Appeal Form
 - b) Grounds of Appeal
 - c) CA's Decision Notice granting planning permission ``redacted`` (dated ``redacted``)
 - d) Liability Notice from the collecting authority (``redacted``) dated ``redacted``
 - e) Regulation 113 Review Request (dated ``redacted``) and review response (``redacted``)
 - f) CA's Representations dated ``redacted`` including a number of appendices, in particular a comparison of the Existing and Proposed Floorplans and Sections used to arrive at their CIL calculation
 - g) Appellant's Response to the CA's Representations dated ``redacted``.

Background

3. Planning permission was granted for the development on ``redacted``, under reference ``redacted``. The approved planning permission was:-

Alterations including erection of lower and upper ground floor rear and side extensions, erection of first floor rear extension; internal alterations and changes to the side elevation in connection with the conversion of the single dwelling (Class C3) into two flats (2 x 2 bed) and extend storage space to cafe (Class E(b)).

4. The CA issued a CIL Liability Notice dated ``redacted`` in the sum of £``redacted``. This was based on a net chargeable area of ``redacted`` m² @ £``redacted`` per m² under ``redacted`` and @ £``redacted`` per m² under the ``redacted`` for the proposed residential floorspace and ``redacted`` m² @ £0 per m² under ``redacted`` and @ £``redacted`` per m² under the ``redacted`` for the proposed commercial (office/retail) floorspace.
5. The Appellant requested a review of this charge under Regulation 113 of the CIL Regulations 2010 (as amended) on ``redacted`` and the CA issued their response dated ``redacted`` confirming the amount as set out in the Liability Notice.
6. On ``redacted``, the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) contending that the chargeable amount had been incorrectly calculated. The Appellant contends that the CIL payable should be £``redacted`` based on a net chargeable area of ``redacted`` m² for the residential floor area and ``redacted`` m² for the commercial floor area being created by the approval.

Approved Development in Dispute

7. The dispute between the parties relates to ``redacted``. The subject consists of a mid-terraced three-storey property located on ``redacted`` (``redacted``); just off the ``redacted`` (``redacted``).
8. The ground floor comprises commercial floorspace in the form of retail/cafe. No further details have been provided for the use of the upper floors. Similar properties surround the site. The property is in a good location with ``redacted`` Junction to the north east, ``redacted`` to the west and ``redacted`` to the south west.

Grounds of Appeal

9. The Appellant has set out their Grounds of Appeal as follows:
 - a. The Council has not given retained use credit for the First Floor and Loft Floor Level
 - b. The Appellant considers the external space at Lower Ground Floor should not be included as part of the Gross Internal Area.
10. The CA submitted representations dated ``redacted``, with three supporting appendices. The CA opines they have assessed the Gross Internal Area in line with the RICS Code of Measuring Practice as per the CIL Regulations. In terms of the First Floor and Loft Area, they opine the details they have received to date, by way of photographs, shows the First Floor as having no ceiling covering and the loft area with no roof covering as at the date of approval. Therefore, they have concluded both floors are unusable. In addition, the CA considers insufficient evidence of permanent access has been provided to the loft area and consequently cannot be credited.
11. In summary, I consider the issues before me are in relation to the calculation of the GIA of the chargeable area; specifically, the treatment of the First Floor and Loft Area to the property and the area described as an external space to the Lower Ground Floor.

12. There is no dispute around the charging rate or indexation adopted.

Decision

13. For ease I will deal with each issue in turn.

a). The treatment of the First Floor and Loft Area and whether or not this should be deducted from the chargeable area

14. 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.

15. 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.

16. In terms of (i) “**relevant building**”, the CA is not disputing the usage of the Lower Ground and Ground Floor, just the First Floor and Loft Area. They opine... “The Council does not consider that retained use credit can be given at first floor and loft floor level as the existing building has no roof nor structural floor to the loft”.

17. The Appellant has provided photographs within their Grounds of Appeal Statement. These photographs show, what appears to be, the roof space covered with a temporary roof system in the form of a scaffold roof covering.

The roof frame appears present in the main, but there is no roof covering. In another photograph the timber joists are exposed and in another there appears to be temporary sheeting placed over the joists in part, which indicates to me there is no ceiling present to the area which would be identified as the first floor.

18. For **“in-use building” (ii)**, the Regulations require the building to have **a part** in lawful use for at least six continuous months within the three years before planning permission first allows the chargeable development. Since the CA accepts that part of the building meets (i) and (ii), the entire building is deemed the **relevant building**.
19. 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 (May 2015) when considering all CIL appeals.
20. The measurements adopted by the CA have been stated as being in accordance with the Code of Measuring Practice. The Appellant does not dispute the measurements.
21. Under 2.0 Gross Internal Area (GIA) of the Code of Measuring Practice, the GIA is defined as **“The area of a building measured to the internal face of the perimeter walls at each floor level.”** There is clear guidance on what is included and excluded from the GIA’s calculation.

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 fires
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential property.

22. There is no information provided by the Appellant to confirm how the Loft Area was accessed. In addition, the existing plans have limited information pertaining to the access of the Loft Area. Therefore, having regard to the RICS guidance, I do not consider that the Loft Area should be included as part of the existing GIA for the purposes of the calculation of the chargeable area forming "KR (i)". The presence of a permanent staircase is a general acceptance for access to different floor levels.

b) The consideration of the Lower Ground Floor area described as the external space and whether this should be included within the chargeable area.

23. Again, I refer to the RICS Code of Measuring Practice and what is included within the calculation of GIA (see paragraph 21).

24. From the Proposed Plans provided, the area described as an external space appears to be no more than a covered way and/or a fire escape. Under 2.19 of the RICS Code of Measuring Practice, areas described as this are excluded from the GIA calculation. Therefore, I will be excluding this area from the GIA calculation when calculating the CIL charge.

25. A summary of the GIA recalculation adopting the CA's measurements is set out below.

GIA calculations- Commercial	Sq. M.
Existing	```redacted```
Proposed	```redacted```
Difference in GIA	```redacted```
GIA calculations- Residential	Sq. M.
Existing	```redacted```
Proposed	```redacted```
Difference in GIA	```redacted```

26. I have calculated the CIL charge as follows:

Commercial - £```redacted```

```redacted``` CIL £```redacted``` x ```redacted``` sq. m. x ```redacted``` =  
£```redacted```

```redacted``` £0 x ```redacted``` sq. m. x ```redacted``` = £0

Residential - £```redacted```

```redacted``` CIL £```redacted``` x ```redacted``` sq. m. x  
```redacted``` = £```redacted```  
```redacted``` £```redacted``` x ```redacted``` sq. m x ```redacted``` =  
£```redacted```

**Total CIL Liability - £```redacted```**

27. 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```

```redacted``` MRICS  
Principal Surveyor  
RICS Registered Valuer  
Valuation Office Agency  
Date: 19 November 2025