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```

Appeal Ref: 1876864

Address: ```redacted```

Proposed Development: Conversion of 1st & 2nd floors of existing vacant commercial unit to 10 No 1-bed residential apartments, with access from the ground floor.

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 the Appellant, ```redacted```, and the submissions made by the Collecting Authority (CA), ```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```; the planning application was determined by the CA as a prior approval application under the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

   c) The CIL Liability Notice (ref: ```redacted```) dated ```redacted``` in respect of planning application reference ```redacted```. The Liability Notice stated that the CIL amount which was due, was the sum of £```redacted```.

   d) The CA's Regulation 113 Review, dated ```redacted```.

e) Various plans of the subject development.

f) The CA's Statement of Case document (undated document, but received in the VOA on ```redacted```).

Grounds of Appeal

2. Conditional Planning Permission was granted for the development on ```redacted``` , under reference ```redacted```. With the address of "```redacted```", the approved prior approval planning consent was:-

   Conversion of 1st & 2nd floors of existing vacant commercial unit to 10 No 1-bed residential apartments, with access from the ground floor.

   Whilst the address on the planning consent merely states ```redacted```, it would appear from the supplied plans and other documentation advanced to me, that the actual address of the development encompasses the building footprint of ```redacted```.

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 (Residential High) with indexation at 1.00.

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). The CA responded on ```redacted```, stating that it was of the view that its original decision was correct.

5. On ```redacted``` , the Valuation Office Agency received a CIL Appeal from the Appellant, contending that the CA's calculation is incorrect. The Appellant opines that the CA has misapplied the CIL Regulations in calculating the chargeable amount. Furthermore, the Appellant states that the CA has previously confirmed in writing to the Appellant that no CIL was payable. The Appellant contends that the CIL amount is excessive but has not advanced to me his exact opinion of the payable amount; however; he opines that the CIL charge should exclude the area of six flats within the scheme.

   It would appear that there is no dispute between the parties in respect of the Charging Rate, the measurement of constituent areas or the applied indexation.

6. At the heart of this Appeal is a dispute between the parties in respect of the constitution of the chargeable development under the CIL Regulations.

Approved Development in Dispute

7. The property subject to this Appeal comprises a circa 1970s built three-storey retail building, which is located on a pedestrianised retail pitch in central ```redacted```. The building is situated opposite the ```redacted``` and near the ```redacted``` and ```redacted```. It is situated approximately 110 metres north-east of the centre of ```redacted``` /```redacted``` along with ```redacted``` the core retail zones of ```redacted```, which have the highest concentration of national retailers and footfall.

   It is understood that the former occupier of No. ```redacted``` was ```redacted``` (a rent-to-own retailer), whilst the previous occupier of No. ```redacted``` was ```redacted``` (a Polish food business).

The development proposal comprises a Change of Use to Mixed-Use Accommodation (COUMA), which involves the conversion of the upper, first and second floors into 10 residential units, while retaining the ground-floor retail element.

Decision

8. The background of this appeal stems from a previous planning application to the subject property in ```redacted``` (```redacted```), which was granted approval on ```redacted```. The prior approval prior application permitted under application reference ```redacted``` was for:-

   Change of use to the first and second floor from class E space to 10 residential flats

   The Appellant opines that the CA explicitly confirmed in writing that no CIL was payable in respect of planning application ```redacted```. Due to Building Regulation requirements (fire safety), a further application was submitted by the Appellant (the subject ```redacted``` application). The Appellant points out that the only material amendment to ```redacted``` in comparison to ```redacted```, was the addition of a second stairwell and minor reconfiguration of the rear units to satisfy fire escape compliance. The Appellant further points out that six of the flats remain identical in layout to the original prior approval. Given this, the Appellant opines that the CIL charge should exclude the six flats that remain unchanged from the prior non-CIL-liable scheme. Furthermore, the Appellant contends that the chargeable amount should be reduced proportionally to reflect only the four modified units, rather than the full 10 unit development.

9. The subject Appeal decision relates to planning permission (```redacted```), which was granted on the ```redacted```. The approved planning permission to which this Appeal relates and which was determined by the CA as a prior approval application is:-

   Conversion of 1st & 2nd floors of existing vacant commercial unit to 10 No 1-bed residential apartments, with access from the ground floor.

10. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:-

11. The calculation of the chargeable amount is contained in the provisions of Schedule 1 of the 2019 Regulations. In this case (which is a 'Standard Case' under Schedule 1) the provisions of paragraphs (3) and (4) of Part 1, Schedule 1 are key; they state:-

    (3) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

    (4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_P}{I_C}$$

    where—

A = the deemed net area chargeable at rate R, calculated in accordance with sub-paragraph (6);
Ip = the index figure for the calendar year in which planning permission was granted; and
Ic = the index figure for the calendar year in which the charging schedule containing rate R took effect.

12. Of primary import to this case is 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".

13. 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.

14. "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.

15. The Appellant opines that the CA explicitly confirmed in writing that no CIL was payable in respect of planning application ```redacted```. Although this appears to be a matter of fact; the parties disagree on the CIL liability of this scheme, which is a separate matter. Of note, the CA points out that due to an administrative oversight on its part, application ```redacted``` had not been marked as CIL liable, and no notices were issued to the Appellant. The CA's oversight came to light approximately 10 months post receipt of application ```redacted``` and points to the provisions of Regulation 65(1) which states that:-

    "The collecting authority must issue a liability notice as soon as practicable after the day on which a planning permission first permits development."

    Given the provisions of Regulation 65(1), the CA did not consider it appropriate to issue a CIL charge. The Appellant opines that application ```redacted``` was exempt from CIL; the CA disagrees and contends that CIL was liable, but did not consider that it had met the requirement of Regulation 65(1) and therefore decided not to issue a Liability Notice in ```redacted``` (when the CA's oversight came to light). The CA points to an e-mail reply sent to the Appellant, stating that the subject property was in a high CIL charging zone and that other planning permissions may be liable for CIL.

16. In respect of any GIA off-set for retained accommodation, there is none in this case; the CA does not consider that there is a lawful use of the building and it would appear that the Appellant does not dispute this.

17. In reviewing the submitted evidence, it is apparent to me that the CA made an administrative error in not issuing a CIL charge, under ```redacted```, the initial application. This first application was indeed liable for CIL, but due to the error on its

part, the CA elected not to issue a Liability Notice in ```redacted```, due to the provisions of Regulation 65(1).

18. I will now turn to the heart of this Appeal – the CIL liability of the development under ```redacted```. It is clear to me that the development is liable for CIL in accordance with the Regulations; it is undisputed that the planning permission granted relates to residential development within a designated CIL charging zone and the provisions of Schedule 1 of the 2019 Regulations apply.

    From the Appellant's perspective, it is unfortunate that the Appellant was unable to take advantage of the CA's error under ```redacted```; application ```redacted``` was clearly a catalyst to trigger a 'new' CIL charge of the scheme under the CIL Regulations. The Regulations do not allow a CIL charge which excludes the six flats that remain unchanged, as the Appellant suggests; the material amendment may arguably be minor, but nevertheless, it is a factual matter that the subject ```redacted``` was applied for, and approved by the CA. Indeed, the underlying Regulation of Regulation 9(1) is a key principle, which clearly states that chargeable development means "the development for which planning permission is granted". In this instance, it is clear to me that 'the development for which planning permission is granted" is the grant ```redacted```.

19. Given the evidence submitted, I determine that the CA has not misapplied the CIL Regulations in its calculation of the CIL charge. Given the circumstances of the case, I am not unsympathetic to the situation that the Appellant finds himself in, in respect of CIL liability; however, in arriving at my decision, I must make my determination based upon the submitted facts of the case, determined under the Community Infrastructure Levy Regulations 2010 (as amended).

20. 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 ```redacted``` and hereby dismiss this appeal.

```redacted```
```redacted``` MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
12th November 2025