

# Appeal Decision

by [REDACTED] BSc (Hons) MRICS FAAV

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

Valuation Office Agency  
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**Appeal Refs:** 1880138

**Planning Permission Reference:** [REDACTED]

**Address:** [REDACTED]

**Development:** Retention of existing change of use from C3 to C4 small HMO (6 Occupants) and modifications to the single-storey rear extension as per approved planning permission [REDACTED].

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## Decision

I uphold this Appeal and determine that the Community Infrastructure Levy (CIL) in this case should be a total of £0 (zero).

## Reasons

### Background

- 1 I have considered all the submissions made by [REDACTED] on behalf of [REDACTED] and [REDACTED], the Collecting Authority (CA). In particular I have considered the information and opinions expressed in the following submitted documents:-
  - a. Planning decision ref [REDACTED] dated [REDACTED]
  - b. Approved planning consent drawings, as referenced in the planning decision notice.
  - c. CIL liability Notice [REDACTED] dated [REDACTED].
  - d. CIL Appeal Form dated [REDACTED].
  - e. Representations from the agent for the appellant, received [REDACTED] and [REDACTED].

- f. Representations from the CA received [REDACTED].
  - g. Additional Appellant comments received [REDACTED].
2. Planning permission was granted on [REDACTED], application reference [REDACTED] for the erection of a single storey rear extension with side infill and rear roof extension at [REDACTED].
  3. The extension was built, but not as per the approved plans for [REDACTED].
  4. Planning permission reference [REDACTED] to which this CIL Appeal relates, was granted on [REDACTED]. The application was for “Application for the retention of existing change of use from C3 to C4 small HMO (6 occupants) and modifications to the single-storey rear extension as per approved planning permission [REDACTED].”
  5. The CA issued a CIL liability notice on [REDACTED] for the sum of £ [REDACTED]. This was calculated on a chargeable area of [REDACTED] sqm at the ([REDACTED] CIL) Residential Zone 1 rate of £ [REDACTED] per sqm plus indexation at [REDACTED], plus the [REDACTED] CIL2 rate of £ [REDACTED] psqm, with indexation rate [REDACTED].
  6. 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.
  7. On [REDACTED] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL Liability should be zero.
  8. The Appellants grounds of appeal can be summarised as follows:
    - a. The development is not chargeable under Regulation 6 (1) (d); there is no material change of use and the lawful transition between planning class uses C3 to C4 would be allowed through permitted development. The change does not constitute creating a new dwelling.
    - b. The CA’s CIL charging schedule is for ‘new dwellings’ which the appellant contests excludes the subject property as it is not a new dwelling.
    - c. Minor Development Exemption should apply; the extension is to an existing dwelling and measures less than 100sqm ([REDACTED] sqm).
    - d. The agent states that the [REDACTED] sqm should be ‘offset’ from the CIL liability but KRi or KRii are not raised as grounds within their representations.
    - e. Two CIL Appeal Decisions 1841008 and 1851887 are quoted in respect of Minor Development Exemption to support the appellants case.
  9. The CA has submitted representations that can be summarised as follows:

- a. Regulation 6 (1) (d) is not applicable because the planning permission relates to not just change of use but includes extensions which form part of the HMO.
- b. The planning permission grants works which are deemed 'chargeable development' in accordance with Regulation 9 (1) and are therefore subject to CIL charge.
- c. The CA consider that the HMO is a 'residential development' and thus qualifies for CIL charge in accordance with their payment schedule.
- d. In respect of Regulation 42, the CA hold that the development must be considered in its whole form (change of use with extensions) which they state is 'development comprising a dwelling' so the 100sqm exemption does not apply in accordance with R42 (2).
- e. The CA disagree that the [REDACTED] sqm can be 'offset' as it does not meet the tests within the CIL Regulations, to qualify as KRi or KRii.
- f. Planning permission was granted under S70 of the Town and Country Planning Act 1990 and the CIL Regulations provide for S70 consents to be liable under R5 (1) and chargeable development under R9 (1). The CA therefore dispute the appellants claim, that CIL is not triggered as the 'change of use' is covered by permitted development.
- g. In reference to the two CIL Appeal Decisions quoted by the appellants, the CA provide a different interpretation of 1841008 and deem 1851887 irrelevant.

10. I have considered the above points, as follows.

### **Small HMO (House of Multiple Occupation)**

11. Although only two main grounds of appeal are cited, the appellant has included a number of issues under each umbrella heading, some of which overlap between the two main grounds.
12. The issue of establishing whether the creation of an HMO under the consent granted, creates an additional, new dwelling straddles both grounds.
13. The change of Planning Class Use from C3 to C4 is raised by the Appellant who contests this is a lawful transition and does not constitute a 'new development' for the purposes of CIL.
14. The appellant also states Permitted Development Rights would allow the lawful transition between the use classes and planning permission is not required. CIL is therefore not applicable to the change of use.
15. The dwelling has shared, communal facilities and does not include separate self-contained accommodation. It can accommodate a maximum of six occupants. It remains a single dwelling.

16. The CA considers the appellant is incorrect in stating that CIL is not triggered because this change of use is allowed by permitted development.
17. They consider R.5 (1) (g) states that CIL is payable for developments that have been granted planning permission under general consent (including permitted development). The consent was granted under Section 70 of the Town and Country Planning Act 1990 and the CIL Regulations provide for S70 consents to be liable for CIL separately under R5 (1).
18. Under planning law, small HMO's are within Use Class C4 (small HMO's). Small HMO's are treated as a dwelling house for Permitted Development Rights. The definition of Use Class 4 is 'the use of a dwelling house by not more than six residents as a house in multiple occupation'.
19. I do not consider the dwelling to be comprised of separate dwellings; it was single dwelling prior to the granting of planning permission and remained a single dwelling.

### **Regulation 6 (1) (d) and Regulation 9**

20. Regulation 6 states:

Meaning of "development"

6. - (1) The following works are not to be treated as development for the purposes of section PA 2008 (liability)-:

d) the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses.

21. The appellant considers the development is not chargeable under the provisions of R.6 (1) (d) as the application does not refer to a material change of use and due to the lawful transition between C3 and C4 does not constitute a 'new dwelling. ' repeating that the change of use would benefit from a valid 'permitted development' fallback position, irrespective of planning consent being obtained.
22. [REDACTED] is a single, residential property. A planning application was submitted to build an extension in [REDACTED]. Change of Use from Use Class C3 to C4 did not form part of the application. Planning permission [REDACTED] granted consent for "the erection of a single storey rear extension with side infill and rear roof extension."
23. The extension was constructed but did not adhere to the approved plans attached to consent [REDACTED]. Thus a further planning application was submitted for the retrospective work. The retrospective planning permission granted then triggered the CIL Liability Notice that is the subject of this CIL Appeal.
24. Planning permission [REDACTED] granted consent for "the retention of existing change of use from C3 to C4 small HMO (6 occupants) and modifications to the single storey rear extension as per approved planning permission [REDACTED]."
25. Regulation 6 defines what is not treated as development for CIL chargeable purposes.

26. I opine that Regulation 6(1)(d) does not apply as the exemption only applies where the change of use creates two or more separate dwellings (eg flats). The dwelling was and remains a single dwelling. The HMO is not 'two or more separate dwellings'.
27. The meaning of "chargeable development" under Regulation 9, is 'The chargeable development is the development for which planning permission is granted.'
28. The CA consider the planning permission [REDACTED] relates to the whole scheme and therefore in accordance with R 9(1) is regarded as development.
29. The appellant considers permitted development would have authorised the same outcome and therefore the grant of planning permission does not convert the development into chargeable development.
30. I refer to the Planning Officers report as quoted below in determining my assessment of what the chargeable development includes and relates to.

### **Planning Permission**

31. The planning officer report for [REDACTED] relates to 'application for the retention of existing change of use from C3 to C4 small HMO (6 Occupants) and modifications to the single-storey rear extension as per approved planning permission [REDACTED].
32. The report states 'the internal changes per se do not require planning permission had they not been sought as part of a variation of a Householder application which sought to change the use whilst extending the property and included internal changes that were not present in the original application. The change of use from C3 to C4 Use Class is classified as 'permitted development' under the Town and Country Planning Order 2015.... On the condition that occupation is limited to six unrelated persons.... Given the right of the applicant to use the premises for this purpose which is facilitated by the internal changes already made, it would not be proportionate to refuse the application, and the applicant can simply change the use at any time'.
33. The plans attached to the application include a site location plan which denotes the whole demise and plans for pre existing and existing show the ground, first and second floors of the property (with internal layouts and roof detail of the extension).
34. The change of use of the dwelling as an HMO was lawful and did not require planning permission, as stated within the planning officers report.
35. Planning permission was however required for the extension to be lawful.
36. I opine that the planning permission does constitute development within the meaning of the CIL Regulations as the planning permission grants consent for the extension and as such it is chargeable development under Regulation 9.

37. However, I do not consider [REDACTED] created permission for another dwelling. Planning consent was not required for the lawful, continued use of the property as a small HMO. This lawful use could have continued irrespective of the granting of the permission.

#### **Regulation 42. Minor Development Exemption**

38. The provisions of Regulation 42, Exemption for Minor Development are set out below:

(1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

(2) But paragraph (1) does not apply where the development will comprise one or more dwellings.

(3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings

39. The CA consider the exemption does not apply as the development 'comprises a dwelling', stating that R42 (2) removes the exemption:

'(2) But paragraph (1) does not apply where the development will comprise one or more dwellings.'

40. The appellant disagrees with the CA and considers the development qualifies for the exemption; the extension is less than 100 sqm ([REDACTED] sqm GIA) and the development is not a new residential dwelling.

41. The development comprises an extension of less than 100sqm. The requirement for Regulation 42 to apply is that the GIA of the **new build** will be less than 100m<sup>2</sup>. I have considered the approved plans and confirm the new build element is less than 100m<sup>2</sup>.

42. The important consideration for Regulation 42 is whether the development comprises a dwelling.

43. "Dwelling" is defined in the CIL regulations as "a building or part of a building occupied or intended to be occupied as a separate dwelling (other than for the purposes of Part 7)"

44. In this case, the development is an extension of an existing single dwelling and the use of the property as a small HMO. The HMO does not comprise separate dwellings; the continued use of the property is as a single dwelling. The development of the single storey extension does not comprise a dwelling, as the existing dwelling remained a single dwelling.

45. I therefore consider the requirements of Regulation 42 and minor development exemption apply.

#### **KR Offset**

46. The development qualifies for Minor Development Exemption and thus the issue of KR offset does not require further consideration in the appeal decision.

### **CIL Charging Schedule**

47. The CA state the residential rate of their adopted CIL Charging Schedule applies as the HMO is a residential development.

48. The appellant contests this. They consider no new dwelling has been created, therefore the adopted Charging Schedule, which applies only to new residential development (or retail warehouses or superstores) is not applicable.

49. I opine the consent granted, does relate to residential development, as per R.9. The CIL Charging Schedule is therefore enforceable.

50. However, this is irrelevant as I consider Minor Development Exemption applies.

### **Other CIL Appeal Decisions**

51. The appellant references two Appeal Decision within their appeal:

- a. Reference 1841008 is raised to inversely support the appeal. The appeal was dismissed as the development created a new dwelling and it was held that R 42 (2) did not therefore apply.
- b. Reference 1851887 is also raised as it involves minor development exemption and a new dwelling with the Appointed Person deciding that R42 did not apply as the development did not constitute a dwelling.

52. In the light of Minor Development Exemption being applicable, analysis of the CIL Appeal Decision is superfluous to the decision

### **Conclusion**

53. To conclude, on the basis of the evidence before me and having considered all of the information submitted, I uphold this appeal and conclude the CIL charge should be zero.

 MRICS FAAV  
RICS Registered Valuer  
Valuation Office Agency  
15 January 2026