

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: 1882101

Address: ``redacted``

Proposed Development: Replace existing shopfront and convert rear part ground floor, first floor and second floors from office to eight person HMO, alter elevations and layout amenity space and bin/cycle storage to rear (amended proposal).

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 the sum of £``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) Conditional Grant of Planning Permission ``redacted``, dated ``redacted``.
- 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) Planning Application of subject property, dated ``redacted``.
- g) The Appellant's submitted evidence in support of continuous use, comprising various utility bills and invoices.
- h) The CA's Statement of Case document dated ``redacted``, which includes various appendices.
- i) The Appellant's comments on the CA's Statement of Case document, which are contained in an e-mail received on ``redacted``.

Grounds of Appeal

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

"Replace existing shopfront and convert rear part ground floor, first floor and second floors from office to eight person HMO, alter elevations and layout amenity space and bin/cycle storage to rear (amended proposal)."

2. 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 (Classes C3 & C4) Zone 1), plus including indexation. The CA's Charging Schedule is effective from 27 July 2015. As part of its representations to me, the CA submitted a table of its Annual CIL rate for 2025, which reflects indexation and which is effective from 1 January 2025; reflecting indexation the CIL rate per m² for Residential (Classes C3 & C4) Zone 1) for 2025 is shown as £``redacted``.
3. On ``redacted``, the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect and that no CIL should be payable.
4. The Appellant's appeal can be summarised to a single core point:-

The Appellant opines that the CIL calculation should reflect 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the Appellant considers is an eligible deduction, which can be offset against the chargeable area). It is the Appellant's case that the building has been in lawful use for a continuous period of 6 months within the past 3 years, which results in there being a zero charge as there is no increase in the gross internal area of the property.

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.

Approved Development in Dispute

5. The property subject to this Appeal comprises a three storey mid-terraced building, built circa ``redacted`` of brick construction. The development proposal is to replace the existing shopfront and to convert the rear part ground floor, the first and the second floors from offices, to an eight person House in Multiple Occupation (HMO). The ground floor front of the accommodation is to be retained as offices.

Decision

6. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:-
7. 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.
8. "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.
9. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "the development for which planning permission is granted".
10. Schedule 1 of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 (which refers to "Calculation of Chargeable amount") states in paragraphs 8 and 9 respectively:-

"(8) 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."

"(9) Where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish—

 - a) whether part of a building falls within a description in the definitions of KR and E in sub-paragraph (6); or
 - b) the gross internal area of any part of a building falling within such a description, it may deem the gross internal area of the part in question to be zero."
 11. Accordingly, from the CIL Regulations, to meet the criteria for lawful use the subject building (``redacted``) would need to have been in a lawful use for a continuous period of six months between ``redacted`` and ``redacted``.
 12. In support of the Appellant's contention that the building has been in continuous use, the Appellant has provided various utility bills and invoices; specifically:-

``redacted`` Gas supply invoice ``redacted`` – ``redacted``

``redacted`` Gas supply invoice ``redacted`` – ``redacted``

``redacted`` Gas supply invoice ``redacted`` – ``redacted``

``redacted`` Gas supply invoice ``redacted`` – ``redacted``

``redacted`` Gas supply invoice ``redacted`` – ``redacted``

``redacted`` Gas supply invoice ``redacted`` – ``redacted``

``redacted`` Gas supply invoice ``redacted`` – ``redacted``

``redacted`` Electricity supply invoice ``redacted`` – ``redacted``

``redacted`` Electricity supply invoice ``redacted`` – ``redacted``

``redacted`` Electricity supply invoice ``redacted`` – ``redacted``

13. Of note, for the Regulation 113 Review, the Appellant's submitted evidence to the CA (at that time) did not include all the above utility invoices; only invoices for the months of ``redacted``, ``redacted``, ``redacted`` and ``redacted`` were provided to the CA. The Appellant cited that there was a misunderstanding of the evidence submission timeline and subsequently provided additional utility invoices as part of his representations to me on this Appeal.

Within the CA's representations, the CA considers that the additional utility invoice evidence advanced by the Appellant should be inadmissible. I do not agree; the Community Infrastructure Levy (CIL) Appeal process permits the submission and consideration of fresh evidence (including material not previously reviewed), where relevant. Accordingly, as the Appointed Person, I have accepted the additional utility invoice evidence in arriving at my determination.

14. As part of their representations to me and as cited in its Regulation 113 Review, the CA opines that in accordance with paragraphs 8 and 9 of Schedule 1, that the Appellant's submitted evidence does not constitute sufficient evidence (or evidence of sufficient quality) to enable it to deem the relevant building to be in continuous use.
15. The CA opines that the in-use evidence provided is not for a continuous period of at least six months within the period of three years. The CA opines that Evidence has only been provided for the months of ``redacted``, ``redacted``, ``redacted`` and ``redacted``. It does not show that the premises have been in 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.
16. The Appellant has submitted utility bills only. I have not been provided with any other supporting evidence – e.g. date stamped photographs, business rate records, lease details, licences, or environmental protection inspections etc. Whilst the submitted utility bill evidence does suggest some in-use for the property, in my view, the submitted material in isolation, does not satisfy the evidential threshold to confirm occupation for the relevant period. Whilst I recognise the Appellant's efforts to establish continuous use and I recognise the Appellant's practical difficulty in obtaining such evidence, when, (as at ``redacted``) it appears he has yet to acquire the subject property, I agree with the CA that the evidential threshold has not been met. In conclusion, am of opinion that the CA's application of paragraphs 8 and 9 of Schedule 1 of the CIL Regulations 2019 is not unreasonable
17. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the CA that the Appellant has failed to demonstrate that the building (``redacted``) has been in lawful use for the required period.
18. 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
 3rd February 2026