

# Appeal Decision

by [REDACTED] MRICS FAAV

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

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**Appeal Ref: 1883164**

**Planning Permission Ref. [REDACTED]**

**Proposal: Change of Use from Office (Class E) to Dwellinghouses (Class C3) to provide 1 No. residential unit.**

**Location: [REDACTED]**

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED] ([REDACTED]).

## Reasons

1. I have considered all of the submissions made by the appellant's agent, [REDACTED] (acting on behalf of the Appellant, [REDACTED]) and by [REDACTED], the Collecting Authority (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], decision date [REDACTED];
  - b) CIL Liability Notice [REDACTED] dated [REDACTED];
  - c) CIL Appeal form dated [REDACTED], including representations;
  - d) Representations from CA dated received [REDACTED].
2. Planning permission was granted under application no [REDACTED], on [REDACTED] for 'Change of use from office (Class E) to dwellinghouses (Class C3) to provide 1 No. residential unit.
3. The CA issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m<sup>2</sup> at the rate of £[REDACTED] m<sup>2</sup> plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], upholding their original decision.

5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contesting that the CIL liability should be £0 as the appellant considers the existing GIA of [REDACTED] should qualify as an ‘in use’ building under Regulation 40 of the CIL Regulations and GIA offset should therefore be applied to the CIL charge.

### Grounds of Appeal

6. The Appellant cites three grounds of appeal which can be summarised as follows:
- Misapplication of Regulation 40 and failure to apply the ‘in use’ deduction.
  - The inconsistent approach of the CA, who confirm that residential use prior to the granting of planning permission, was unlawful, yet they disregarded the potential lawful use of the building as an office, when applying Regulation 40.
  - The delay in the granting of planning permission (arising from the delay in issuing the [REDACTED] requirements imposed under the Habitat Regulations), which affected the date planning permission was granted and thus also the dates of the three-year qualifying period for Regulation 40 purposes.
7. The CA has submitted representations that can be summarised as follows:
- The CA contest that the building was in continuous lawful use for six months within the relevant three-year period and dispute the appellants claims otherwise.
  - The appellants argument and assumption that as residential use was unlawful, office use must have been lawful is dismissed by the CA as they consider the building fails the Statutory Test under Regulation 40 (11). They believe that evidence of actual continuous lawful use is required, as opposed to theoretical permissibility (as per the appellants view).
  - The date planning permission was granted was dictated by standard planning process and has no bearing on the CIL calculation or the statutory definition of an ‘in use building’.

### Reasoning

8. Calculation of chargeable amount; Regulation 40 states that the CA ‘must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with the provisions of Schedule 1.
9. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 provides guidance on the calculation of the chargeable amount. This states:

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

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

where—

A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);

IP = the index figure for the calendar year in which planning permission was granted; from “the gross internal area of the chargeable development.”

10. "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.
11. Neither party disputes the dates of the relevant three-year period ( [REDACTED] to [REDACTED] ), which ended on the day planning permission first permitted the chargeable development.
12. The appellant submitted a Regulation 113 review request on [REDACTED] to the CA and provided them with documents to evidence the use of the building as an office. These documents included:
  - a) A lease agreement dated [REDACTED] naming [REDACTED] as the tenant.
  - b) Two utility bills dated [REDACTED] (£ [REDACTED] ) and [REDACTED] (£ [REDACTED] )
13. In addition to the above documents, Planning Portal application (ref PP-[REDACTED]) signed by the appellants agent on [REDACTED] ) which states the building is a 'redundant office', that the site is 'vacant' and that unauthorised building works commenced on [REDACTED], has also been provided to the VOA as part of the Regulation 114 Appeal.
14. The appellant considers the building qualifies as an 'in use building' and the GIA should be deducted from the CIL charge, because they state it was lawfully and continuously used as offices by the previous owner up to [REDACTED] (as evidenced by business rate records, commercial correspondence and occupation documentation) and following this the appellant continuously used the building as an office.
15. The appellant considers that by confirming the building could not be used lawfully for residential purposes (prior to the grant of planning permission), that the only remaining lawful use of the property was as an office, yet the CA have disregarded this for CIL purposes.
16. Aside from their two other grounds of appeal, the appellant also opines that a delay in the planning system and granting of planning permission resulted in a later three year qualifying period for 'in use' and offset purposes.
17. The lease agreement that has been provided, dated [REDACTED] is between [REDACTED] (the Landlord) to a subsidiary company, [REDACTED] (the tenant). The permitted use is 'personal office space, which does not conflict with the improvement works on going'.
18. There appears to be no dispute between the parties regarding the charging rate, the measurement of the areas or the applied indexation.

## Decision

19. Any delays within the planning system fall outside of the scope of this CIL Appeal. The relevant period within which a minimum of 6 months continuous lawful use must apply is from [REDACTED] to [REDACTED].

20. I opine that the permitted use stated within the lease as 'personal office **which does not conflict with the improvement works on going**', casts doubt over the extent and continuous nature of 'office use' during the tenant's occupation (which was from [REDACTED]).
21. The planning portal application, submitted by the appellant, confirms that building works had commenced prior to the submission of the planning application and states the building was a **redundant office and vacant**. This conflicts with the claimed use of the building as an office (by [REDACTED]).
22. The utility bills that have been provided dated of [REDACTED] and [REDACTED] are for £[REDACTED] and £[REDACTED] respectively. I do not consider these evidence the continuous lawful use of the building as an office. The earlier bill shows very low consumption and building works commenced on [REDACTED], so the bills may also have included energy consumption arising from 'improvement works'.
23. The CA confirm the property has been assessed as a Band F dwelling from [REDACTED] and Council Officers attended the property on [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. On all occasions the officers considered the building domestic in its appearance with a large domestic kitchen and two bathrooms (with baths). There was no evidence to support (continuous) office use of any part of the building.
24. The appellants view that office use must have been lawful as it was the only available potential, lawful use of the building does not satisfy the requirements of Regulation 40. Potential lawful use is not actual, active, lawful use.
25. Schedule 1, paragraph **1(8)** provides that: where the collecting authority **has not received sufficient information** to establish that a building is an *in-use building*, it **may treat the gross internal area of that building as zero** for the purposes of the CIL calculation.
26. Having considered all representations made by both parties, I opine that in accordance with paragraphs 8 of Schedule 1, the Appellant's submitted evidence does not constitute sufficient evidence to enable me to deem the relevant building to have been in continuous, lawful use as an office for the required period.
27. As per Schedule 1 of the Regulations the floorspace of the existing building **can not** therefore be deducted from the gross internal area of the chargeable development to arrive at a net chargeable area upon which CIL liability is based.
28. I therefore determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED] ([REDACTED]) and dismiss this appeal.

[REDACTED]  
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Valuation Office Agency  
11 February 2026