

Appeal Decision

by ``redacted`` BSc FRICS

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

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VOA Appeal Ref: 1883218

Planning Application Reference: ``redacted``

Proposal: Proposed subdivision of the existing unit to create two new units within unrestricted use in Class E (Use Class E(a) (b) (c) (d) (e) (f) (g) and Sui Generis (drinking establishments hot food takeaways launderettes and dry cleaners). Replacement of existing two-leaf door with telescopic sliding door and additional swing door to create an emergency exit.

Address: ``redacted``

Decision: Appeal allowed. I determine the correct revised chargeable amount to be £0.00.

Reasons

1. I have considered all of the relevant submissions made by ``redacted`` [the Appellant] and ``redacted`` - the Collecting Authority [CA] in respect of this matter. In particular, I have considered the information and opinions which are pertinent to this Regulation 114 appeal presented in the following documents:
 1. Planning Permission reference ``redacted``.
 2. CIL Liability Notice: ``redacted`` dated ``redacted``, for £``redacted``.
 3. CIL Appeal form dated ``redacted``, along with supporting documents referred to as attached.
 4. Representations from the Appellant.
 5. Representations from the CA.
 6. Comments from the Appellant on the CA's Representations.

2. Planning Permission reference [REDACTED] was granted as detailed [REDACTED].
3. The CA issued Liability Notice [REDACTED] dated [REDACTED], for £[REDACTED], based on:
 - Chargeable area: [REDACTED] sqm
 - CIL rate: £[REDACTED]/sqm [REDACTED], [REDACTED] CIL rate and £[REDACTED]/sqm [REDACTED] All Other Uses', the CA CIL rate.
 - Indexation: [REDACTED] applicable to [REDACTED] and [REDACTED] CA respectively.
4. The Appellant did not agree with the CA that there was any CIL liability. On [REDACTED], the Appellant requested a Regulation 113 Review.
5. Regulation 113, where a valid request is made, places the CA under a statutory obligation to undertake a review and notify the Appellant, in writing, of its decision and reasons within 14 days of the review start date. In this case, the CA did not issue a review decision within the prescribed period and confirmed that it would not undertake the review, citing the prioritisation of other workload pressures.
6. On [REDACTED], the VOA received a Regulation 114 Appeal submitting that **no chargeable development arises under Regulation 42** and that this should have been apparent at an earlier stage.

The Appellant's grounds of appeal can be summarised as follows:

7. No CIL Liability was created under **Regulation 42** as there would be no new build. The Appellant submits the approved development would not create new buildings nor enlarge existing buildings, therefore the change in Gross Internal Area [GIA] is zero sqm.
8. The Appellant highlights that under **Regulation 42(1)**, minor development under 100 sqm is not liable for CIL and reiterates no dwellings are created under the permission, therefore, the **Regulation 42** exemption applies in full.
9. CA's Interpretation Is Wrong in Law – it claims that a building vacant for three years should be treated "similar to new build" for CIL purposes. The Appellant submits this is not supported by the wording of **Regulations 40 or 42**, nor by **Schedule 1**. The Appellant submits that their legal Counsel considers the CA's interpretation wholly unlawful, as it imports policy intention not reflected in statutory wording.
10. VOA Guidance & Previous Appeal Support Appellant - A VOA Regulation 114 appeal (15/12/2013) confirmed that uses involving no new build incur £0 CIL liability. Further, the Appellant submits that the VOA CIL Manual (Example 8) shows that even long-vacant buildings attract £0 liability where no new build occurs. Appellant submits the current case is directly comparable.
11. Costs Application - **Under Regulation 121**, the Appellant seeks an award of costs because the CA advanced to Regulation 114 stage, having not replied to the Regulation 113 review request and misapplied the Regulations inconsistently with its planning requirements. The Appellant submits that these delays affect implementation and increase appeal management costs. The Appellant submits their legal Counsel recommends allowing the appeal, awarding costs, and setting the chargeable amount at £0.

12. Procedural Concerns – The Appellant submits the CA indicated it was “not minded” to respond to the R113 review within statutory time due to workload, leaving the Appellant unable to obtain a review outcome before the Regulation 114 deadline. CA did not provide a full justification when asked to reference the Regulations directly. Appellant submits this behaviour is unreasonable and prejudicial.

The CA has submitted representations which I have summarised as follows:

13. The CA confirms that, following further review of the legislative framework, it withdraws the Liability Notice ``redacted`` and accepts that the **correct chargeable amount is £0.00**. The CA invites the Appointed Person to treat the appeal as resolved on that basis, subject to any procedural steps required by the VOA.
14. The CA explains the procedural background – the Liability Notice was issued on ``redacted``, detailing a CIL liability of £``redacted``. A Regulation 113 review was requested by the Appellant, however, no decision was issued within the statutory period. The appeal was therefore validly brought under Regulation 114.
15. The CA explains its revised position on liability - it accepts that the planning permission authorises subdivision of an existing unit and minor door alterations, with no increase in GIA and no creation of dwellings. Regulation 42 (minor development exemption) applies because no new buildings are created, no enlargements to existing buildings occur and the development does not comprise one or more dwellings. As liability does not arise under Regulation 42, no chargeable development is created for the purposes of Regulation 40. Accordingly, the chargeable amount is £0.00 and the Liability Notice is withdrawn.
16. Correction of the “Vacancy / Three-Year” Issue - The CA expressly acknowledges that its earlier reliance on vacancy over three years was legally flawed - the three-year / six-month test arises in Schedule 1 Part 1 and relates to whether existing floorspace qualifies as an “in-use building” for deductions within a chargeable calculation. That test **does not determine whether liability arises at all**. The CA accepts it incorrectly treated vacancy as determinative of liability, rather than (if relevant) as **part of a Schedule 1** deductions exercise. This correction is described as the core legal reason for withdrawing the Liability Notice.
17. Clarification of the CA’s broader interpretation - while withdrawing the Liability Notice on the facts of this case, the CA clarifies that CIL liability is not confined to residential development. Non-residential development can be chargeable where sufficient new build exists. A change of use permission can be chargeable where it is accompanied by new build exceeding the Regulation 42 threshold or forms part of a wider chargeable development assessed under Schedule 1. What is not lawful is to treat vacancy as a proxy for new build in order to create liability where no new building or enlargement exists.
18. Disposition Sought - the CA formally withdraws Liability Notice ``redacted``, confirms the chargeable amount is **£0.00** and requests that the Appointed Person record the appeal as resolved or issue any necessary direction to regularise the position on the CIL register.

The Appellant submitted comments on the CA’s representations which I summarise as follows:

19. The Appellant welcomes the CA's confirmation that the development does not give rise to a chargeable amount and that the correct CIL liability is **£0.00**. However, the Appellant expresses significant frustration that it took the CA approximately three months to accept a position that was first set out on ""redacted"", the same day the now-withdrawn Liability Notice for £""redacted"" was issued. The Appellant submits that earlier engagement would have avoided substantial delay and unnecessary expenditure.
20. The Appellant states that, as a result of the CA's approach, they have incurred legal and consultant costs totalling £""redacted"" plus VAT, together with the time and resource burden of pursuing the appeal.
21. The Appellant further claims that had the CA properly engaged with the Regulation 113 review process in accordance with the legislation, the matter would likely have been resolved earlier and at materially lower cost. For these reasons, and for those already set out in the Grounds of Appeal, the Appellant maintains that an award of costs should still be considered. Accordingly, despite the withdrawal of the Liability Notice and acceptance of a £0.00 chargeable amount, the Appellant chose not to withdraw the appeal.

Having fully considered the representations made by the Parties, I make the following observations regarding the grounds of the appeal:

22. Liability and Chargeable Amount - This appeal is made under Regulation 114 of the Regulations on the ground that the chargeable amount stated in Liability Notice ""redacted"" was calculated incorrectly.
23. The development authorised by planning permission ""redacted"" comprises the subdivision of an existing ground-floor commercial unit, associated minor door alterations, and confirmation of a broad range of lawful commercial uses.
24. It is common ground between the parties that the subject planning permission does not authorise the construction of any new building, any enlargement to an existing building or the creation of one or more dwellings.
25. Regulation 42 states that CIL liability does not apply if, after development, the GIA of "new build" is under 100 sqm, except where Regulation 42(2) applies to dwellings (where the development comprises one or more dwellings). "New build" refers to new structures and extensions, as defined in Regulation 42(3).
26. On the facts of this case, I am satisfied that the development does not include any "new build" within the meaning of Regulation 42(3). Accordingly, the GIA of new build is 0 sqm. As the development does not comprise a dwelling, Regulation 42 applies and liability to CIL does not arise. Where liability does not arise under Regulation 42, there is no chargeable development for the purposes of Regulation 40, and it is neither necessary nor appropriate to undertake a Schedule 1 calculation.
27. Concepts such as lawful use, vacancy, or the six-month / three-year test arise only where a Schedule 1 calculation is first engaged and do not operate to create liability where Regulation 42 otherwise disapplies it.
28. The CA, in its Regulation 114 representation dated ""redacted"", accepts this position and has formally withdrawn Liability Notice ""redacted"", confirming that the correct chargeable amount is £0.00. I agree with that conclusion for the reasons set out above. I therefore allow this appeal of the grounds set out above.

29. Costs (Regulation 121) – Regulation 121 confers a discretionary power on the Appointed Person to make orders as to costs. That discretion must be exercised sparingly and only where a party has acted unreasonably, such that the other party has been put to unnecessary expense. The mere fact that an appeal succeeds, or that a Liability Notice is withdrawn, does not of itself justify an award of costs.
30. In this case, the Appellant submits that costs should be awarded on the basis that the CA initially adopted an **incorrect interpretation of the Regulations** and that the matter could have been resolved earlier, particularly through the Regulation 113 review process, and that they incurred professional costs because progression through the appeal process was required by the CA's conduct.
31. The purpose of such costs awards is to encourage responsible and reasonable use of the appeal system by Appellants and action by CA's, by introducing financial consequences for unreasonable behavior. Regulation 121 gives the Appointed Person authority to make orders as to the costs of the appeal. Guidance on awarding costs states that costs will normally be awarded where the following conditions have been met: a party has made a timely application for an award of costs; the party against whom the award is sought has acted unreasonably; and the unreasonable behavior has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Appointed Person, or part of the expense because of the manner in which a party has behaved in the process.
32. I have considered the facts of this case, the evidence submitted and the conduct of the Parties. In this case, I am of the opinion the CA could have made more effort when engaging with the Appellant to explain its reasoning and justification for its application of CIL, especially as the Appellant appeared to have identified the source of the error by highlighting the development should be exempt under Regulation 42 and requesting rescission of the Liability Notice.
33. Whilst the evidence of email exchanges submitted by the Appellant show that the CA did initially respond promptly to the Appellant's emails challenging the validity of the Liability Notice, said initial responses merely stated the CA's position which it subsequently revisited and changed. Subsequent to the initial email responses, the correspondence appears to have been one sided with the Appellant repeatedly requesting a response and / or update from the CA, culminating in the CA's email ``redacted`` confirming the Appellant should proceed to request a Regulation 113 review. As above, the Regulation 113 review was made ``redacted``.
34. Regulation 113 - Review of chargeable amount - (7) states "Within 14 days of the review start date the collecting authority must notify the person requesting the review in writing of (a) the decision of the review; and (b) the reasons for the decision." Considering the correspondence between the Appellant and CA, specifically the CA's email to the Appellant ``redacted`` which included the statement "The Charging Authority is minded not to provide a response to the Regulation 113 Review Request within the statutory timeframe, due to varying priorities and current workload pressures. In accordance with the regulations, you are therefore able to proceed with the case and submit a Regulation 114 appeal to the VOA. The Authority will provide a full and detailed response as part of that process. As you are already aware of the statutory deadlines for the review and appeal stages, please proceed in whichever way you consider appropriate."
35. Therefore, the requirements of Regulation 7(b) were not met because no decision and reasoning was provided by the CA until submission of its representations ``redacted`` at the Regulation 114 stage.

36. The evidence submitted shows that the Appellant queried CIL liability following receipt of the Liability Notice. The CA maintained its position when queried, recommended progression to the Regulation 113 review stage then did not undertake a review, amend or withdraw the Liability Notice at that time. The Liability Notice was subsequently withdrawn during the Regulation 114 stage. The Appellant submits that as a result of the CA's conduct in this connection, they incurred costs in preparing and pursuing the Regulation 114 appeal that would not otherwise have been necessary.
37. Therefore, in these circumstances, I consider the CA to have acted unreasonably. Based on the attributes of the proposal and facts presented, the CA erred both in the application of Regulations, then failed to effectively engage in correspondence or carry out its obligations at the Regulation 113 stage, combined with being too quick to encourage the Regulation 114 appeal whilst making insufficient effort to fully explain its reasoning. I am of the opinion that it should be a reasonable expectation that an interested party like the Appellant would query and challenge the CA's decision.
38. Under Regulation 121, I therefore uphold the Appellant's claim for costs in respect of making this Regulation 114 Appeal and that these costs should be paid by the CA.

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Valuation Office Agency
4 March 2026