

Appeal Decision

by [REDACTED] MRICS FAAV

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

Valuation Office Agency
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Appeal Ref: 1886344

Planning Permission Ref. [REDACTED]

Proposal: Reserved matters application (following the approval of Planning permission [REDACTED]) to include access, appearance, landscaping, layout and scale, for a Local Centre east of [REDACTED].

Location: [REDACTED]

Decision

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

Reasons

1. I have considered all 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 [REDACTED], granted on [REDACTED].
 - b) CIL Liability Notice [REDACTED], dated [REDACTED].
 - c) Regulation 114, CIL Appeal form, dated [REDACTED].
 - d) Representations from the Appellant received [REDACTED] including:
 - i. Site plan, plus plans and elevations for Unit [REDACTED] and Unit [REDACTED].
 - ii. Proposed street scene and visualisation for development.
 - iii. [REDACTED] CIL Charging Schedule.

- iv. The Councils outline decision notice for [REDACTED].
 - v. The Councils planning decision notice dated [REDACTED] for [REDACTED].
 - vi. Email dated [REDACTED] from [REDACTED] to the Appellant refusing the non-material amendment application (NMA) which sought the introduction of an additional condition to the reserved matters approval, to control the use of units [REDACTED] and [REDACTED] so that they could not be used for convenience retail.
 - vii. Planning Application Form dated [REDACTED].
 - viii. Regulation 113 review request dated [REDACTED].
 - ix. The CA's response to the Regulation 113 review request dated [REDACTED].
- e) The response and representation received from the CA on [REDACTED].
- f) Further representations from the Appellant dated [REDACTED].

Grounds of Appeal

2. The Appellants' ground of appeal is based upon the CA's decision to charge CIL on all three retail units. There are no planning use restrictions in place and all three units therefore fall within the 'convenience retail' category of the CIL Charging Schedule. The appellant considers only one unit should be in this category and thus liable for CIL charge (Unit [REDACTED]); the other two units (unit [REDACTED] and Unit [REDACTED]) should have planning use restrictions applied (via an NMA) which would then remove them from the 'convenience retail' category of the CIL charging schedule, resulting in zero charge for those units.

Background

3. Planning permission [REDACTED] was granted on [REDACTED] for 'Residential development of up to 630 dwellings, a new local centre, a replacement and extended [REDACTED] School, public open space and new allotments together with new access, streets and other related infrastructure (All Matters Reserved).'
4. Reserved matters application [REDACTED] was approved [REDACTED]; 'Reserved matters application (following the approval of Planning Permission [REDACTED]) to include access, appearance, landscaping, layout and scale, for a Local Centre east of [REDACTED].
5. The CA issued CIL liability notice on [REDACTED] on [REDACTED], which forms the basis of this appeal. This was calculated on a chargeable area of [REDACTED] square metres (sq. m.) at the rate of £[REDACTED] per sq. m. (convenience retail rate) plus indexation.
6. The Appellant emailed the Council on [REDACTED] requesting their consideration of a Non Material Amendment (NMA), the introduction of a use restriction, to Units [REDACTED] and [REDACTED] and a new CIL Liability Notice be issued accordingly. The request was rebutted. The Council comments being: 'I can confirm it is not considered necessary to apply a condition restricting retail in units [REDACTED] and [REDACTED]. We wouldn't entertain an application where it

doesn't meet the tests for conditions, and such a restriction could potentially have a negative impact on the viability of the local centre.'

7. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], upholding their original decision.
8. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contesting that the CIL liability should be £[REDACTED].

Reasoning

9. **Regulation 13** of the CIL Regulations 2010 state:

'Differential rates:

13.—(1) A charging authority may set differential rates—

- a) for different zones in which development would be situated;
- b) by reference to different intended uses of development;**
- c) by reference to the intended gross internal area of development;
- d) by reference to the intended number of dwellings or units to be constructed or provided under a planning permission.'

10. The Regulations clearly state (Regulation 13) it is the **intended use of the development that determines the differential rate.**

11. The CIL Charging Schedule for [REDACTED] Councils states:

- a) 'A convenience unit is a shop or store where the planning permission allows selling 'wholly or mainly' everyday essential items, including food, drinks, newspapers/magazines and confectionery.
- b) A comparison unit is a shop or store selling 'wholly or mainly' goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods.'

12. The Appellant states there is a commercial agreement in place for Unit [REDACTED] to be occupied by a convenience retailer, but no occupiers have been identified for Units [REDACTED] and [REDACTED]. They consider it is highly unlikely for these units to be used for convenience retail purposes and state if that were the case, CIL could be charged at a later point.

13. The CA asserts that it is correct in issuing a CIL liability charge for all three units as they have no restrictions in use and could be used for convenience retail in the future.

14. The CA's response to the Regulation 113 review stated 'The planning permission permits the development of three commercial units. There are no restrictions within the permission which restricts units [REDACTED] and [REDACTED] to a certain type of commercial use. Which means they could be used for retail convenience at any time in the future. As a result we have to apply the CIL rate for retail convenience use, as set out in the [REDACTED] Area Charging Schedule, to all three units'.

15. The Gross Internal Area (GIA) of the three units has not been challenged, and it is assumed to be agreed between the parties.
16. The charging rate has also not been challenged and is assumed to be agreed.
17. Taken within context the three retail units form part of a wider development; 'Residential development of up to 630 dwellings, a new local centre, a replacement and extended [REDACTED] School, public open space and new allotments together with new access, streets and other related infrastructure', so I can understand why the Council rebutted the introduction of use restriction.
18. As the Appointed Person, the scope of my consideration within this appeal is limited to the application of the CIL Regulations and calculation of the CIL charge, as opposed to providing comment or opinion in respect of planning matters (NMA applications and introduction of planning use restriction).
19. The planning permission includes no use restrictions; the intended use of the three retail units can therefore include commercial retail purposes. The categorisation of the development and the CIL charge has therefore been correctly calculated in accordance with the categorisation description within the [REDACTED] CIL Charging Schedule.
20. The GIA has not been challenged.

Decision

21. Having considered the evidence presented I confirm the three retail units are not subject to any planning use restrictions and the CA have therefore correctly categorised and calculated the CIL charge. The three units fall within the category of 'convenience retail' which attracts a CIL charge of £[REDACTED] per sqm, as detailed in the [REDACTED] CIL Charging Schedule.
22. I therefore determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED] ([REDACTED]) and dismiss this appeal.

[REDACTED] BSc (Hons) MRICS FAAV
Valuation Office Agency
24 March 2026