

# Appeal Decision

by [REDACTED] MRICS

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

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**Appeal Ref: 1878298**

**Planning Permission Ref. [REDACTED]**

**Proposal: The application sought planning permission for ‘use as a large HMO (sui generis use) and associated external and internal alterations’ without complying with conditions attached to planning permission Ref [REDACTED], dated [REDACTED]**

**Location: [REDACTED]**

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (zero pounds)

## Reasons

1. I have considered all of the submissions made by [REDACTED] (the Appellant) 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] dated [REDACTED];
  - b) Approved planning consent drawings, as referenced in planning decision notice;
  - c) CIL Liability Notice [REDACTED] dated [REDACTED] and LN [REDACTED] dated [REDACTED].
  - d) CIL Appeal form dated [REDACTED], including appendices;
  - e) Representations from CA dated [REDACTED], and
  - f) Appellant comments on CA representations, dated [REDACTED].

2. Planning permission was granted under application no [REDACTED] on [REDACTED] for permission to use as a large HMO and associated external and internal alterations. This was approved following an appeal to the S73 permission.
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. This was consequently amended by the CA to reflect the correct formula following the amended planning application. The new liability notice issued on [REDACTED] in the sum of £[REDACTED]. This was calculated adopting part 2 of the regulations as it was subject to an amended planning application.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED] stating that they disagree with the appellant's arguments and CIL is correct and payable.
5. On [REDACTED], the Valuation Office received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £0.
6. The Appellant's grounds of appeal can be summarised as follows:
  - a) No CIL liability arose from the Original Permission  
Planning permission [REDACTED], granted on [REDACTED], did not give rise to any Community Infrastructure Levy (CIL) liability.
  - b) The reason planning permission was required initially was due to an earlier agreement between the Council and the Appellant that, despite the fact that the premises had been converted to a large House in Multiple Occupation ('HMO') prior to 1950 and used as such since that time, the premises had also been used for hotel purposes for a brief period. It was agreed that this intervening use prevented the premises lawfully reverting to an HMO use without planning permission. The agreed position between the appellant and the Council therefore was that the premises had a 'nil' use.
  - c) No liability notice was issued for the Original Permission  
In accordance with CIL Regulation 65, the Council did not issue a liability notice for the development approved under the Original Permission.  
The Council confirmed this in its letter dated [REDACTED].
  - d) The s73 Permission also does not give rise to CIL Permission [REDACTED] (the *s73 Permission*), granted on appeal on [REDACTED], also does not attract CIL liability.
  - e) No increase in floorspace  
The s73 Permission results in no increase in floorspace, which is a necessary condition for any CIL liability to arise in relation to a s73 permission.
  - f) The Council's calculation under Part 1 of Schedule 2 was incorrect  
It is accepted between the parties that the Council erred by applying Paragraph 1, Part 1 of Schedule 2 ("Standard Cases") when issuing Liability Notice LN1.

- g) LN2 incorrectly applies Part 2 of Schedule 2  
Although LN2 purports to apply the Part 2 (“Amended planning permissions”) calculation method, it fails to recognise that:
- I. A s73 permission only attracts CIL where there is a change in floorspace between the original permission (A) and the s73 permission (B). No such change or increase has occurred.
  - II. Part 2 requires a liability notice (or revised liability notice) to have been issued for the Original Permission. No such notice exists, and any such notice would fail to comply with CIL Regulation 65.
  - III. The Original Permission did not give rise to chargeable development—or, if it did, it would be exempt under CIL Regulation 42

7. The CA has submitted representations that can be summarised as follows:

- a) Calculation Methodology: The CA accepts that the correct methodology is under Paragraph 3 of Schedule 1 and a revised liability notice was issued accordingly.
- b) Interpretation of Paragraph 3: The CA argues that as there is unsupported case law or statutory guidance regarding the absence of a prior liability notice it would not invalidate the use of Paragraph 3.
- c) The CA has referenced R (Trent) v Hertsmere BC [2021] EWHC 907 (Admin) as the High Court determined a liability notice must be issued as soon as practicable after permission is granted. However they did not preclude retrospective calculation for the purposes of paragraph 3 assessment.
- d) Liability Notice [REDACTED] was issued within 10 days of the S73 permission and complies with Regulation 65.
- e) The CA contests that the exemption under Regulation 42 only applied where the gross internal area of new build is under 100 sqm and does not comprise one or more dwellings. The CA maintains that the development comprises [REDACTED] sqm and does not meet the exemption criteria.
- f) The charging schedule applies £[REDACTED]/sqm to residential use cases. Large HMOs are residential in nature and fall within the scope of the residential rate.
- g) The reference to [REDACTED] in the liability notice is standard practice and does not affect the validity of the notice.

### **GIA/Chargeable Development**

8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the “retained parts of in-use buildings” can be deducted from “the gross internal area of the chargeable development.”
9. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. No approved plans have been provided and we have therefore not calculated the floor space.

10. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice 6<sup>th</sup> edition definition is used. GIA is defined as “the area of a building measured to the internal face of the perimeter walls at each floor level.” The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

### **In-use buildings / Lawful use**

11. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the “retained parts of in-use buildings” can be deducted from “the gross internal area of the chargeable development.”

12. “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.

13. “Relevant building” means a building which is situated on the “relevant land” on the day planning permission first permits the chargeable development. “Relevant land” is “the land to which the planning permission relates” or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.

### **Regulation 42 – Exemption for minor development**

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

#### **Regulation 42**

(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

### **Calculation of Chargeable Amount**

15. The CIL Regulations Part 2 Chargeable Amount, Schedule 1 provides guidance on the calculation of the chargeable amount. This states:

16. Where a planning permission (B) for a chargeable development, which is granted under section 73 of TCPA 1990, changes a condition subject to which a previous planning permission (A) for a chargeable development was granted, then—
  - (a) where the notional amount for B is the same as the notional amount for A, the chargeable amount for the development for which B was granted is the chargeable amount shown in the most recent liability notice or revised liability notice issued in relation to the development for which A was granted;
  - (b) where the notional amount for B is larger than the notional amount for A, paragraph 4 applies; and
  - (c) where the notional amount for B is smaller than the notional amount for A, paragraph 5 applies.

## Decision

17. The original planning permission which was granted in [REDACTED] under reference [REDACTED]. This permission was to make the use of the property lawful as a large HMO as well as the associated external and internal alternations being a grade listed building.
18. The S73 which was granted following an appeal, which was made to vary conditions 1 and 2 under the original application.
19. The appellant has confirmed that the S73 permission did not lead to any increase or change in floorspace compared to the original permission.
20. The CA have confirmed in their Regulation 113 response that the floor space and chargeable area of the chargeable developments following the S73 permission of the two development remains the same.
21. Following the original planning permission in [REDACTED], the appellant completed 'CIL-determining whether a development may be CIL liable' on [REDACTED].
22. This provided additional information to confirm why CIL would not be attracted as part of the permission granted.
23. The CA has agreed that following the Regulation 113 appeal made by the appellant, a second LN was issued referenced LN [REDACTED] which adopted the calculation based on Schedule 1 part 2. This would be the correct approach following the grant of a S73 permission. The CA confirmed in their response to the Regulation 113 appeal that the latter liability notice is a revised one which would supersede the previous notice issued.
24. The CA have also referenced R (Trent) v Hertsmere BC [2021] EWHC 907 (Admin) however, this case was in relation to the CA not complying to regulation 65(1). The courts determined that serving a notice one year late is unlawful.
25. The CA suggest this case held that a liability notice should be issued as soon as practicable after permission is granted but did not preclude retrospective calculation for the purposes of paragraph 3 assessment.
26. It is my view that this case is irrelevant as the matter in question was not similar to the appeal being dealt with.
27. The CA have confirmed that where an earlier LN has not been issued, the CA will calculate CIL amount for the original chargeable development in retrospect and input

those figures into the schedule 1 part 2 calculation.

28. It is my view that if no liability notice had been issued in respect of the original permission, schedule 1 part 2 cannot be adopted as there would be no original notice to reflect as part of the calculation. Moreover, as the CA have confirmed they have simply calculated the CIL for the original chargeable development and used the figure respectively. This would not comply with regulation 65
29. If the CA had issued a liability notice in respect of the [REDACTED] permission, then the quoted case would support that issuing four years after the original permission would not be considered 'as soon as practicable'.
30. The CA have also as part of their representation confirmed the floor area of [REDACTED] sqm however have not supported this measurement but referencing where this has been adopted from.
31. The appellant disputes this area as being the gross internal are of the property.
32. Neither party has provided any plans to determine the size of the property.
33. My conclusion is that the council has not provided a CIL liability notice in a reasonable time frame following the original permission and as such schedule 1 part 2 cannot apply. As a result there is no CIL charge applicable to this development and I hereby allow this appeal.

[REDACTED] MRICS  
Valuation Office  
26 March 2026