

Appeal Decision

By [REDACTED] MRICS FAAV

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

Valuation Office
Wycliffe House
Green Lane
Durham
DH1 3UW

e-mail: [REDACTED]@hmrc.gov.uk

Appeal Ref: 1886819

Planning Permission Ref. [REDACTED]

Proposal: Demolition of the buildings and redevelopment of the site, involving the erection of 4 storey building to provide commercial unit at ground floor and 7 residential units on the upper floors, together with the provision of cycle and refuse stores, plus ASHP and commercial A/C units at roof top.

Location: [REDACTED]

Decision

1. I uphold part of 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] (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 LN [REDACTED], dated [REDACTED].
 - c) Regulation 114, CIL Appeal form, dated [REDACTED].
 - d) Representations from the Appellant received [REDACTED].
 - e) The response and representations received from the CA on [REDACTED].

- f) Further representations and comments received from the Appellant dated [REDACTED].

Grounds of Appeal

2. The Appellant has cited three main grounds of appeal:
- The classification of the 'commercial unit' within the 'office' category of the CIL Charging Schedule.
 - The measurement of the Gross Internal Area's (GIA) for CIL charging purposes.
 - The non application of 'Lawful Use' offset against the CIL charge.

Background

3. Planning permission [REDACTED] was granted on [REDACTED] for: 'Demolition of the buildings and redevelopment of the site, involving the erection of 4 storey building to provide commercial unit at ground floor and 7 residential units on the upper floors, together with the provision of cycle and refuse stores, plus ASHP and commercial A/C units at roof top.'
4. The CA issued CIL liability notice LN [REDACTED] on [REDACTED], which forms the basis of this appeal. This was calculated on a chargeable area of Zone B Residential development of [REDACTED] square metres (sqm) at the rate of £[REDACTED] per sqm and Zone B Office development of [REDACTED] sqm at a rate of £[REDACTED] per sqm (plus indexation). [REDACTED] CIL was also charged on the same areas at £[REDACTED] per sqm (plus indexation) giving a total CIL liability of £[REDACTED].
5. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], upholding their original decision.
6. On [REDACTED], the Valuation Office [REDACTED] received a CIL appeal made under Regulation 114 (chargeable amount) contesting that the CIL liability should be £[REDACTED].
7. I will now deal with each of the three main grounds of appeal, in turn:

Classification of the Commercial Unit

8. The appellant considers the CA have incorrectly applied the 'Office' use CIL rate to the commercial element of the development and that it should fall under the 'All Other Uses' category of the CIL Charging Schedule, which attracts a zero CIL rate.
9. The CA consider they have applied the correct rate and in the absence of definition of 'office' in their CIL charging schedule, have relied upon 'examination documents' as published on the Councils' website which confirms that office development includes uses which formerly fell within Use Class B1. The CA rely upon the Examiner's Report they have submitted within their representations (and as published on their website), which states that:

“Office development includes all uses formerly within Use Class B1:

- a) Use Class B1 was defined in the Town and Country Planning (Use Classes) Order 1987 as: Use for all or any of the following purposes (i) as an office other than a use within class A2 (financial and professional services), (ii) for research and development of products or processes, or (iii) for any industrial process.
- b) The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which came into force on 01 September 2020, replaced Use Class B1 with use Class E(g); (i) an office to carry out any operational or administrative functions, (ii) the research and development of products or processes, or (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
- c) The collecting authority’s position on this matter is that any development falling under Use Class E(g) (i)-(iii) is chargeable at the rate for office developments under the 2022 Charging Schedule. This approach was applied to [REDACTED] and the collecting authority is therefore correct to charge the commercial floorspace at office rates.”

10. The appellant disagrees and highlights Condition 12, attached to planning permission [REDACTED]:

“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the light industrial floorspace shown on the approved plans shall be used for light industrial and research and development purposes that fall within Use Class E (g) (ii) and (iii) of the Town and Country (Use Classes) Order 1987 (or any provision equivalent to those Classes in any statutory instrument revoking and re-enacting that Order with or without modification) and shall not be used for any other purpose. The light industrial and research and development floorspace within Class E(g)(ii) and (iii) shall not change use by any means under the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any orders revoking and re-enacting those orders with or without modification).”

11. The Council included this Condition:

“To enable the [REDACTED] control the Use. To retain and maintain the supply of light industrial and research and development floorspace and ensure that other uses are not introduced without further assessment in accordance with Policies E2 and E7 of the [REDACTED] Plan (2021) and Policy ED4, of the [REDACTED] Local Plan (2021).”

12. Regulation 13 of the CIL Regulations 2010 states:

“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.”

13. The Regulations clearly state (Regulation 13) it is the **intended use of the development that determines the differential rate.**
14. Offices (Planning Class Use E(g)(i)), research & development (E(g)(ii)) and light industrial (E(g)(iii)) are all within Use Class E and it is ordinarily permitted to move freely within these three categories without requiring further planning consent. However, planning conditions take precedence and the Use Classes Order does not override the planning condition attached to the subject permission.
15. The building cannot therefore be lawfully used as offices, as offices are expressly not permitted by the planning condition.
16. Having considered the evidence presented I opine that the commercial element of the development does not fall within ‘office’ use for CIL charging purposes (as per the planning condition) and therefore must be categorised within ‘all other uses not identified above’ which attracts a nil CIL rate.

Measurement of the GIA

17. The appellant has contested the GIA of the commercial and residential areas and plant room.
18. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice 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.
19. The commercial element of the development attracts a nil CIL charge rate. The GIA is still required to calculate the correct apportionment of the plant room GIA which is shared between the commercial and residential parts of the development.
20. The appellant challenges the inclusion of the area called the ‘[REDACTED]’ within the GIA. It is a covered balcony, enclosed by three walls and it sits within the building envelope. It therefore constitutes internal floorspace for the purposes of GIA measurements. Its floor area is included within the chargeable development in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended), albeit it forms part of the commercial element which attracts a nil CIL rate.

21. Under Regulation 40(3) of the CIL Regulations 2010 (as amended), CIL is charged on the gross internal area (GIA) of chargeable development. There is no separate category for plant rooms. Accordingly, plant space is treated as chargeable floor area unless it falls within a defined exemption (e.g. not forming part of the chargeable development).
22. The plant room is contained within the building and is not a separate block. Where a plant room serves more than one use that attracts different CIL charging rates, the GIA is apportioned on a fair and reasonable basis to the different uses they serve and charged at the corresponding rates. The adopted apportionment in this instance being, pro rata by served floor area, with the apportioned plant GIA in proportion to the GIA of each use it serves.
23. The appellant considers (as per their letter dated [REDACTED]) the correct GIA's to be: residential area [REDACTED] sqm, commercial area [REDACTED] sqm, plant room [REDACTED] sqm. The total of the residential and commercial elements is [REDACTED] sqm. The residential element equates to [REDACTED] % of this area. Apportioned accordingly, [REDACTED] sqm of the plant room therefore needs to be added to the residential area, which brings the total chargeable area to [REDACTED] sqm.
24. The CA consider the correct GIA's to be: residential area [REDACTED] sqm (which includes an apportioned element of the plant room, based upon [REDACTED] % of [REDACTED] sqm) and commercial area [REDACTED] sqm which includes the remainder of the apportioned plant room.
25. Having measured the areas in accordance with the RICS Code of Measuring Practice (6th Edition), I opine the GIA of both the residential and commercial elements accord with the CA's measurements which gives a total chargeable GIA of [REDACTED] sqm (residential area plus apportioned part of the plant room).

In-Use buildings / Lawful use

26. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows "the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development" to be deducted from "the gross internal area of the chargeable development."
27. "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.
28. "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. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of "in-use building" then it can deem the GIA of this part to be zero.

29. The appellant disagrees with the CA and considers the existing building should qualify as an 'in use' building for the purposes of offsetting the existing GIA in the calculation of the CIL charge,
30. Planning permission was granted on [REDACTED], the 'relevant period' is therefore [REDACTED] to [REDACTED]. This is not contested.
31. The appellant has submitted supporting information to evidence the building was 'in use'. This includes photographs (undated) to show storage of window frame samples and a testing chamber to simulate condensation conditions, business rates bills for [REDACTED]/[REDACTED], further photographs, a letter from [REDACTED] confirming the continuous occupation of the site, plus a report which relates to testing undertaken in [REDACTED].
32. The CA dispute the claim of continuous, lawful use. They consider the evidence presented suggests the site may have been in use between [REDACTED] and [REDACTED], but the additional documents submitted with planning application [REDACTED] show the site was in poor condition and refer to it as no longer being in use from [REDACTED] onwards.
33. The CA mention the planning statement describes the building as 'formerly used as a warehouse/storage building for [REDACTED], which operates from other premises along [REDACTED]. However, following the completion of other developments at [REDACTED] and [REDACTED] and provision of additional storage and office space within those buildings, [REDACTED] is no longer required.' They also cite marketing reports for Rightmove and Zoopla which show the premises as unused and in poor condition.'
34. Schedule 1, Part 1 of the CIL Regulations state: 'Where the CA does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building in an in-use building, it may deem it not to be an in-use building'.
35. Having considered the evidence presented I do not consider sufficient evidence of sufficient quality has been submitted to support the 'in use' building claim and I do not therefore consider any offset should be applied to the CIL charge.

Calculation of Chargeable Amount

36. 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—

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

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;

and

IC = the index figure for the calendar year in which the charging schedule containing rate R took effect.”

37. The development is liable for both [REDACTED] CIL and [REDACTED] CIL charges. The [REDACTED] CIL (relevant charging schedule [REDACTED] CIL2 took effect on [REDACTED]) charges £[REDACTED] per sqm for all types of development outside of [REDACTED] Central Activities Zone (CAZ) area. [REDACTED] CIL (relevant charging schedule 2022 Charging Schedule which came into force on 1 January 2022) charges £[REDACTED] per sqm for residential developments in [REDACTED] Zone B CIL Charging Zone. The RICS CIL Index for [REDACTED] is [REDACTED] (Ip). The figure for Ic (Index for CIL charging schedule) is [REDACTED] when calculating [REDACTED] CIL and for [REDACTED] CIL, the figure for Ic is [REDACTED] which is the BCIS index for Quarter 4 2018 applicable to the [REDACTED] CIL2 Charging Schedule which took effect in April 2019. The chargeable area is [REDACTED] sqm which relates to the residential part of the development.

38. The appellant has not contested the indexation rate, or rates applied to the residential element.

39. The CIL calculation is:

- a) For [REDACTED] CIL, this equates to [REDACTED] ([REDACTED] CIL rate) x [REDACTED] (chargeable area) x [REDACTED] / [REDACTED] (Ip/Ic) equivalent to £[REDACTED].
- b) For [REDACTED] CIL, this equates to [REDACTED] ([REDACTED] CIL rate) x [REDACTED] (chargeable area) x [REDACTED] / [REDACTED] (Ip/Ic) equivalent to £[REDACTED].

40. On the basis of the evidence before me, I therefore determine that the Community Infrastructure Levy (CIL) payable in this case should be a total of £ [REDACTED] ([REDACTED]).

Decision

41. Having considered the evidence presented above, I confirm the commercial area should not be classified as an 'office' for CIL charging purposes, the GIA of the proposed development is as stated above (within the CIL calculation) and the 'in lawful use' claim for deduction of the existing building from the GIA of the CIL charge is dismissed, due to lack of evidence of a sufficient quality.

42. I therefore uphold one of the three grounds of appeal and determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

[REDACTED]

[REDACTED] BSc (Hons) MRICS FAAV
Valuation Office
14 April 2026