

# Appeal Decision

By [REDACTED] BSc FRICS

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

Correspondence address:

Valuation Office (VO)  
Wycliffe House  
Green Lane  
Durham  
DH1 3UW

[The Valuation Office is now part of HM Revenue and Customs. Please note Durham is our national postal centre, contact by digital channels is preferred.]

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

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**VOA Appeal Ref:** 1888993

**Planning Application:** [REDACTED]

**Proposal:** "Construction of a residential building consisting of three self-contained residential flats (Use Class C3), refuse storage, cycle parking and associated works"

**Address:** [REDACTED]

**Decision:** The appeal is allowed in part. I determine the correct revised chargeable amount to be £[REDACTED] ([REDACTED]).

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## Reasons

1. I have considered all of the relevant submissions made by [REDACTED] of [REDACTED] on behalf of [REDACTED] (the Appellant) and [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 in respect of Application No: [REDACTED], dated [REDACTED], granting permission for the proposal referenced above.
  - b) CIL Liability Notice: [REDACTED], dated [REDACTED] for £[REDACTED].
  - c) CIL Appeal form dated [REDACTED], along with supporting documents referred to as attached.
  - d) Representations from the Appellant.
  - e) Representations from the CA.

## f) Comments from the Appellant on the CA's Representations.

2. Planning Permission for the proposal was granted as detailed [REDACTED].
3. The CA issued a CIL Liability Notice reference: [REDACTED], dated [REDACTED] for £[REDACTED], based on:
  - Chargeable area: [REDACTED] sqm
  - CIL rate: £[REDACTED] / sqm ([REDACTED] – Residential Zone 2') and £[REDACTED] / sqm ([REDACTED] – All Other Uses – [REDACTED]).
  - Index Ip (year planning permission granted): Not explicitly stated.
  - Index Ic (charging schedule year): Not explicitly stated.
  - Indexation multipliers: [REDACTED] and [REDACTED] (respectively)
  - Deductions: £0.00
  - Total: £[REDACTED]\*

\* Note: There is a de minimis difference when calculating manually due to rounding.

4. On [REDACTED] the Appellant wrote to the CA which was an effective request for Regulation 113 Review.
5. On [REDACTED], the CA provided its response to the Appellant, confirming its decision of the review and reasons for the decision not to alter the amount of CIL liability of £[REDACTED].
6. On [REDACTED], the Valuation Office received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming the Appellant disagrees with the CA's Regulation 113 Review decision on the basis that the chargeable amount has been calculated incorrectly, with supporting documents attached.

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

7. The Appellant does not agree with the CA's calculation of CIL within the subject Liability Notice [REDACTED].
8. The Appellant does not dispute the CIL chargeable rates or Indexation, it is only the CA's Gross Internal Area (GIA) calculation that the Appellant is challenging.
9. The Appellant submits the GIA should be [REDACTED] sqm with a total CIL figure of £[REDACTED].
10. The Appellant submits the CA has erred in its calculation of GIA by categorising as internal floor areas referred to as external access decks (circulation walkways), private balconies and recessed terraces.

11. The Appellant submits the CA has incorrectly applied the RICS Code of Measuring Practice (6<sup>th</sup> Edition) (CoMP) in that the following area has been included incorrectly in the GIA calculation:

- floor areas referred to as external access decks (circulation walkways), private balconies and recessed terraces.

12. The Appellant contends that these areas are open-sided and not fully enclosed, and are therefore properly to be treated as external features, falling to be excluded from GIA under the CoMP.

13. Specifically, the Appellant states that the external access decks (referred to as Grounds of Appeal 1) are:

- Open-sided and unenclosed structures;
- Located outside the primary structural envelope of the building;
- Expressed as external elements rather than internal floorspace.

14. The Appellant contends that:

- GIA is determined by physical enclosure rather than function;
- External access or circulation use does not convert open-sided structures into internal floorspace;
- The access decks do not form part of enclosed habitable volume.

15. Specifically, the Appellant states that the private balconies and recessed terraces should be considered in the context of the CoMP, stating that:

- External open-sided balconies, covered ways and fire escapes are excluded from GIA.
- private balconies and recessed terraces remain open on at least one side;
- these elements are external in nature and are not fully enclosed;
- they are expressed as external projections or recesses rather than internal accommodation;
- such areas would only fall within GIA if subsequently enclosed (e.g. by glazing), which is not proposed.

16. In particular, the Appellant argues that:

- the disputed areas are located outside the thermal or enclosed envelope of the building;
- their open-sided nature is determinative of their external status; and
- the CA has misapplied the distinction between internal open-sided circulation areas and external elements, resulting in the inclusion of areas which should properly be excluded.

17. On that basis, the Appellant submits that the GIA has been overstated, and that the chargeable amount should be recalculated on a reduced floor area.

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

18. The CA confirms a verified GIA of [REDACTED] sqm, based on approved drawings [REDACTED], compared to the Appellant's [REDACTED] sqm (difference: [REDACTED] sqm).

19. The CA submits the appropriate legislative framework must be relied upon in that CIL is calculated under Regulation 40 using GIA measured in accordance with the CoMP.

20. The following RICS clauses are cited:

- Clause 2.4: includes "internal open-sided balconies, galleries, walkways and the like";
- Clause 2.19: excludes "external open-sided balconies, covered ways and fire escapes".

21. The CA address the Appellant's Ground 1 – external access decks, claim that these are:

- (these are) open-sided, unenclosed, and outside the structural envelope;
- GIA requires full enclosure.

22. The CA responds to the Appellant's claim by submitting GIA does not require full enclosure under RICS methodology. Clause 2.4 (of the CoMP) applies to internal open-sided walkways, even where one side is open.

23. The CA states that the external access decks:

- are permanently constructed as part of the building's means of access;
- are covered continuously by oversailing slabs at each level;
- form the primary internal circulation route;
- sit within the building's load-bearing structural frame.

24. The CA states that classification is based on:

- Structural position;
- Covered nature;
- The RICS definition of internal open-sided walkways.

25. Further, the CA submits the external access decks are stated to be internal open-sided walkways and not comparable to:

- Bridges;
- External fire escapes;
- Open external galleries.

26. The CA address the Appellant's Ground 2 – private balconies and recessed terraces, claim that these are:

- Open-sided terraces are external;

- recessed terraces should be treated as balconies/loggias;
- these areas are external projections

27. The CA responds to the Appellant's claim by submitting the Appellant misapplies RICS Clause 2.19 in that the recessed areas are:

- not projecting balconies;
- enclosed on three sides by structural walls;
- located within the building's structural frame;
- forming part of the primary floorplate.

28. The CA states that:

- GIA does not require full enclosure;
- Clause 2.4 (of the CoMP) includes internal open-sided areas;
- internal plant areas, voids, galleries and walkways may not be fully enclosed but are included in GIA.
- the recessed amenity space is classified as part of the internal floorplate and therefore GIA.

29. In conclusion across both Grounds' / all disputed areas, the CA states that the Appellant's arguments rely on:

- misinterpretation of RICS Clause 2.19;
- incorrect assertion that GIA requires full enclosure;
- mischaracterisation of access decks as external;
- incorrect classification of recessed terraces.

30. The CA states its position is consistent with Regulation 40, the CoMP and verified measurements undertaken and independently reviewed.

31. The CA submits that this Regulation 114 appeal be dismissed and the Liability Notice [REDACTED] be upheld without amendment.

**The Appellant submitted comments on the CA's representations which I summarise as follows.**

32. The Appellant states that it does not repeat the detailed submissions set out in its original Regulation 114 appeal, which it maintains should be read in full.

33. The Appellant sets out its understanding that, within the CoMP, the term:

- "Internal" refers to space within the building's enclosed (thermal) envelope;
- "External" refers to space outside that envelope.

34. The Appellant states that the CA's interpretation places weight on structural arrangement and floorplate position and results in open-sided areas being treated as internal.
35. The Appellant states that they disagree with this approach.
36. The Appellant states that the CA's representations do not introduce new evidence or reasoning nor do they justify departing from the position set out in the original appeal.
37. The Appellant therefore maintains its position that the appeal should be allowed for the reasons previously given.

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

38. The Appellant does not agree with the CA's calculation of GIA.
39. The CA's Liability Notice states at "How we calculated this figure":
- "CIL Total Area Charge = Chargeable Area (A) x Rate (R) x Index (I).
40. Clarification of GIA is provided in the form of:
- "The Chargeable Area is the gross internal area of the total development less the floorspace of any existing buildings which are eligible deduction."
41. The CIL Charging Schedule Rate "Rate" and associated indexation "Index" are not disputed between the Parties.
42. Schedule 1 Part 1 of the Regulations state at (6) that GIA is the basis for quantifying the part of the development to which the Rate is applied and is the generally accepted method of GIA calculation.
43. Regulation 40 – Calculation of chargeable amount – of the Community Infrastructure Levy Regulations 2010 (as amended) now contained in Schedule 1 Part 1 of the Community Infrastructure Regulations (amendment)(England) (No.2) 2019 details the formula to be used in the calculation of chargeable amount – this is effectively the same as the equation summarised in the "How we calculated this figure" section of the CIL Liability Notice.
44. The term Gross Internal Area (GIA) is not defined in the CIL Regulations however the Guidance Note, RICS Code of Measuring Practice (CoMP) is the principle guidance available. The prevailing edition of the RICS Code of Measuring Practice, at the date the subject Planning Permission was granted, [REDACTED], was the 6th edition. The purpose of the Code is to "provide succinct, precise definitions to permit the accurate measurement of buildings and land, the calculation of the sizes (areas and volumes) and the description or specification of land and buildings on a common and consistent basis. This may be required for valuation, management, conveyancing, planning, taxation, sale, letting, or acquisition purposes."
45. The CoMP defines GIA as:

"...the area of a building measured to the internal face of the perimeter walls at each floor level (see note GIA 4)."

✓ **Including**

✗ **Excluding**

- ✓ Areas occupied by internal walls and partitions
  - ✓ Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
  - ✓ Atria and entrance halls, with clear height above, measured at base level only
  - ✓ Internal open-sided balconies, walkways, and the like
  - ✓ Structural, raked or stepped floors are to be treated as a level floor measured horizontally
  - ✓ Horizontal floors, with permanent access, below structural, raked or stepped floors
  - ✓ Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
  - ✓ Mezzanine floor areas with permanent access
  - ✓ Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
  - ✓ Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms, and the like
  - ✓ Projection rooms
  - ✓ Voids over stairwells and lift shafts on upper floors
  - ✓ Loading bays
  - ✓ Areas with a headroom of less than 1.5m (see APP 6)
  - ✓ Pavement vaults
  - ✓ Garages
  - ✓ Conservatories
- ✗ 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
  - ✗ Greenhouses, garden stores, fuel stores, and the like in residential property

Note GIA 4 referenced above is a "how to use" note, clarifying:

"Internal face – means the brick/block work or plaster coat applied to the brick/block work, not the surface of internal linings installed by the occupier"

46. The parties appear to agree in accepting the CoMP definition of GIA, however, the Parties both submit that each other has erred in its application when calculating the GIA of the development.

47. I have considered the elements of the development which the Parties remain in dispute over, and considered these by examining the plans and other documents submitted by the Parties, and as listed in the 'Documents and Drawings' section of the subject planning permission schedule, including the Design and Access Statement and Visualisations.

48. As I have referenced above, the CoMP's purpose is to guide by providing precise definitions to permit the accurate measurement of buildings and land, the calculation of the sizes (areas and volumes) and the description or specification of land and buildings on a common and consistent basis.

49. I accept that some of the disputed elements are significantly open to the elements, however, the purpose of the CoMP is not to apply a strict binary test of "internal" or "external" based solely on enclosure. Rather, it provides defined categories of inclusion and exclusion which must be applied by reference to the physical characteristics and function of the space, including (where relevant) its structural integration and whether it falls within the examples listed under inclusion or exclusion.

50. I do not adopt the GIA calculations of either party. Having reviewed the approved plans, I have undertaken an independent measurement exercise in accordance with the CoMP. I calculate the GIA of the proposed building to be [REDACTED] sqm and summarise how my areas compare with the Parties in the table below:

1888993	Appointed Person check on GIA   Updated: [REDACTED]		
Floor Level	CA	Appellant	AP – [REDACTED]
Ground		[REDACTED]	[REDACTED]
First		[REDACTED]	[REDACTED]
Second		[REDACTED]	[REDACTED]
Third		[REDACTED]	[REDACTED]
Fourth		[REDACTED]	[REDACTED]
Fifth		[REDACTED]	[REDACTED]
<b>Chargeable Area (sqm)</b>	[REDACTED]	[REDACTED]	[REDACTED]

51. In summary, this is greater than the Appellant's figure mainly because at Second, Third and Fourth floor levels, additional floor areas are included in GIA. Specifically, the area of the stairs and landings at Second, Third and Fourth floor levels are enclosed and therefore categorised as internal for GIA purposes. At Third floor level, the balcony is

within and formed by the building structure, and lies within the internal face of the perimeter wall. It is therefore most akin to “internal open-sided balconies, walkways and the like” and is included within GIA.

52. I determine that the fifth floor balcony falls within the exclusion for “external open-sided balconies”, as it is not covered by a permanent structure above and is positioned outside the internal face of the perimeter wall.
53. My GIA is lower than the CA’s mainly because, at Ground and First Floor levels, the internal face of the perimeter wall is behind the balcony / walkway areas. These areas therefore sit outside the principal structure and present as sitting outside the internal face of the perimeter wall and do not form part of the principal floorplate. I therefore determine that the balcony / walkway areas at Ground and First Floor levels fall within the category of “external open-sided balconies, covered ways and fire escapes”, as defined by the CoMP, and must be excluded from GIA.
54. In reaching this conclusion, I have applied the CoMP by assessing each disputed area against the inclusion at Clause 2.4 and exclusion at Clause 2.19. This assessment has been undertaken by reference to the physical configuration of the development as shown on the approved plans, including the location of the internal face of the perimeter walls and the relationship of each area to the principal structure.
55. Where areas are structurally integrated and fall within the examples of internal open-sided walkways or balconies, they are included within GIA. Where they are positioned outside the internal face of the perimeter wall or present as sitting outside the internal face of the perimeter wall, and do not form part of the principal floorplate, they are excluded.
56. There is no dispute between the Parties over the CIL Charging Schedule Rates or Indexations applied, therefore the appeal is allowed in part and I determine the correct revised chargeable amount to be £ [REDACTED] ([REDACTED]).

[REDACTED] BSc FRICS  
Appointed Person

[REDACTED] BSc FRICS  
Valuation Office  
26 May 2026