Appeal Decision

by ```redacted``` BEM BSc (Hons) MRICS

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

Valuation Office
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: ```redacted```@hmrc.gov.uk

Appeal Ref: 1888338

Address: ```redacted```

Proposed Development: Conversion of existing facilities building to one bedroom holiday let and replacement of three ```redacted``` with one one-bedroom and one two-bedroom holiday let

Planning permission: Granted by Appeal (Appeal Ref: ```redacted```) on the ```redacted``` following refusal by ```redacted``` (application Ref ```redacted```) dated ```redacted```.

Decision

I determine that the Community Infrastructure Levy (CIL) chargeable amount in this case should be **£**```redacted``` (```redacted```).

Background

1. I have considered all of the 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. The CIL Appeal form dated ```redacted``` submitted on behalf of the Appellant under Regulation 114.
    b. The Grounds of Appeal including appendices relating to the Appeal Decision (Appeal Ref: ```redacted```) issued by The Planning Inspectorate on ```redacted```, the approved plans, evidence including Non-Domestic Rates Annual Bills, date stamped photographs, the Regulation 113 request

(```redacted```) and CA's response (```redacted```) and email dated ```redacted``` from the Enforcement Contractor for ```redacted```.

c. The CIL Liability Notice (Reference: ```redacted```) dated ```redacted```
d. The CA's representations to the Regulation 114 Appeal dated ```redacted``` including a copy of the ```redacted``` Charging Schedule, copy of the Appeal Decision (Appeal Ref: ```redacted```) issued by The Planning Inspectorate on ```redacted```, the CIL Additional Information Form, a copy of the relevant Liability Notice (Reference: ```redacted```) dated ```redacted```, correspondence between the Appellant and the CA ```redacted``` & ```redacted```, the Regulation 113 Review Request and response, the GIA breakdown and Approved Plans.
e. The Appellant's comments on the CA's representations received by the Valuation Office (VO) on ```redacted```.
f. Comments from an Interested Party (```redacted```) dated ```redacted```.

2. Planning permission was granted by Appeal (Appeal Ref: ```redacted```) on the ```redacted``` following refusal by ```redacted``` (application Ref ```redacted```) dated ```redacted``` for, "Conversion of existing facilities building to one bedroom holiday let and replacement of three ```redacted``` with one one-bedroom and one two-bedroom holiday let."

3. I understand that a CIL liability notice was issued ```redacted``` in the sum of £```redacted```. This is stated as being based on a chargeable area of ```redacted```m² at the 'Residential Zone 2' rate.

4. The Appellant requested a review under Regulation 113 on ```redacted```. The CA responded on ```redacted```, stating that they consider the CIL charge to be correct.

5. On ```redacted```, the Valuation Office received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability stated by the CA was incorrectly calculated. The Appellant considers the approved use of the development is classed as 'all other development' within ```redacted``` Charging Schedule with a Proposed Levy per sq. m. of £0, thus providing a CIL Charge of £0. Alternatively, if the approved use does fall within the 'Use of Development' categorised as 'Residential – Zone 2', the facilities building forming the conversion element of the approval, should be discounted from the GIA calculation.

Grounds of Appeal

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

    1. The Charging Schedule has been incorrectly applied to the approved development
    2. A facilities building was in lawful use and should be offset.

7. There are no disputes concerning the Gross Internal Area (GIA) or indexation for the calendar year in which the charging schedule took effect.

8. Both parties have advanced to me evidence in support of their respective viewpoints.

Reasoning

9. The relevant CIL Regulations 2010 (as amended) are set out below:-

Regulation 9 – Meaning of Chargeable Development

(1) The **chargeable development** is the development for which planning permission is **granted**.

Schedule 1 (6) of the 2019 Regulations "**KR**" allows for the deduction of floorspace of certain existing buildings from the gross internal area (GIA) of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. The deductible floorspace of buildings that are to be retained includes;

i. retained parts of '**in-use buildings'**, and

ii. for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

In this particular case "**KR (ii)**" is the relevant part to consider in this instance.

Further clarification under Schedule 1 (10) is provided. An "**in-use building**" means a building which—

(i) is a relevant building, and

(ii) **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**.

"Relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

Schedule 1 Part 1 1.(8) states, **"where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building**."

Ground 1 – The Charging Schedule has been incorrectly applied to the approved development

10. The Appellant opines that in accordance with the CA's Charging Schedule and what constitutes a residential unit, the development should not be liable in the first instance. The Appellant considers the development should fall under the 'All other development' category which proposes a CIL of £0 per sq. m.

11. The Appellant contends that the CA has incorrectly classified the approved development as Use Class C3 (residential), leading to the unlawful application of the Residential Zone 2 CIL rate. In their view, the approved units are holiday accommodation only due to the planning conditions that explicitly prohibit use as dwellings, occupation as a sole or main residence, or year-round occupation. The lawful use is therefore sui generis visitor accommodation, or alternatively Use Class C1, both of which fall within “all other development” under the Charging Schedule and attract a nil CIL rate.

12. The Appellant relies on the Inspector’s conditions, which legally remove the defining characteristics of residential use. In particular, occupation is limited to part of the year, permanent residence is expressly prohibited and operation is on a managed, commercial basis. In their view the development, therefore, cannot satisfy the Gravesham test of supporting day-to-day private domestic existence as stated by the CA in their Regulation 113 Review response.

13. The Appellant further argues that the CA’s interpretation of the holiday accommodation condition is internally inconsistent and reverses its plain meaning. In their view, a condition prohibiting C3 use cannot be relied upon to justify classification as C3. CIL classification must follow the planning permission as granted, not a generic policy assumption.

14. The Appellant also emphasises the operational characteristics of the site, including managed check-in, housekeeping, provision of linen, guest registers, and curated tourism activities, all of which are typical of visitor accommodation rather than independent residential dwellings. In addition, unlike conventional holiday lets, the units can never revert to residential use.

15. Finally, the Appellant argues it is submitted that the Charging Schedule cannot override the Inspector’s decision or planning conditions, and that independent non-domestic rating by ```redacted``` as a “```redacted``` Site and Premises” further supports the non-residential, commercial nature of the use. The application of the Residential Zone 2 rate is, therefore, said to be without lawful basis.

16. The CA sets out the background to the issue of CIL liability, confirming that its CIL Charging Schedule has been in force since April 2017. Paragraph 10 of that schedule states that residential development includes all Use Class C3 development and expressly includes holiday lets, on the basis that such uses are considered normal homes for CIL purposes and that restrictive occupancy conditions do not provide an exemption from CIL liability.

17. Following receipt of a Regulation 113 review request on ```redacted```, the CA maintains that the liability has been calculated correctly in accordance with its Charging Schedule and the approved plans, which set out the basis for the GIA measurement used in calculating the charge.

18. I have some sympathy with the Appellant’s position in respect of this Ground, particularly given the stringent planning controls imposed on the development. The permission restricts the use of the property to holiday accommodation only

and expressly prohibits any use falling within Use Class C3. Occupation as a sole or main residence is not permitted, a short-stay guest register must be maintained, and occupation is limited to the period ```redacted``` to ```redacted``` only, with permanent residential use, letting, or sale explicitly excluded. Notwithstanding these restrictions, I am satisfied that, for the purposes of the Community Infrastructure Levy Regulations, the disputed development falls to be treated as residential development. I, therefore, agree with the CA that it is chargeable under the ```redacted``` Charging Schedule as per Paragraph 10 of the Schedule.

Ground 2 – A The facilities building was in lawful use and should be offset

19. Planning permission was granted on ```redacted```. Therefore, the period to consider the lawful use for a continuous period of at least six months within the preceding three years is between the ```redacted``` to ```redacted```.

20. Without prejudice to the primary classification argument , the Appellant contends that the chargeable gross internal area has been overstated because the charging authority failed to deduct the floorspace of an existing building that qualifies as an in-use building under the CIL Regulations. The Appellant opines the permanent facilities building measuring ```redacted``` sq m GIA existed on the site prior to the grant of planning permission and has been in continuous lawful use as part of the rural tourism operation.

21. The Appellant submits that the building satisfies both limbs of Regulation 40(7) and Schedule 1 of the CIL Regulations 2010: it was present on the relevant land on the date planning permission was granted (```redacted```), and it had been in lawful use for at least six months within the three years preceding that date. Lawful use is evidenced by non-domestic rating assessments by ```redacted```, classifying the site as a "```redacted``` Site and Premises", together with dated photographic evidence showing the facilities building in active operational use during the qualifying period.

22. The Appellant notes that the CA acknowledged, in their Regulation 113 review response, that a revised Liability Notice would be issued upon receipt of satisfactory evidence. The Appellant opines that evidence is now provided in the form of:
    a. Non Domestic Rates Bill from ```redacted``` dated ```redacted```/```redacted```, ```redacted```/```redacted``` and ```redacted```/```redacted```.
    b. Photograph 1 dated ```redacted``` with facilities building in the background, Photograph 2 dated ```redacted``` showing what appears to be a ```redacted``` laid out on the ground prior to erection with facilities building in the background, Photograph 3 dated ```redacted``` with the subject facilities building in full view surrounded with relevant considered paraphernalia, Photograph 4 dated ```redacted``` showing an internal view of the kitchen area being in use, Photograph 5 dated ```redacted``` showing an internal view of the utility area looking out into the garden area.
    c. An email dated ```redacted``` from ```redacted```, Enforcement Contractor at ```redacted``` confirming the evidence she had gathered in relation to previously served Planning Contravention

Notices, indicates there is no breach of planning occurring on the land.

23. The Appellant contends that, should the primary ground succeed, the deduction is academic; however, if CIL were otherwise chargeable, the required deduction would reduce the chargeable floorspace from ```redacted``` sq m to ```redacted``` sq m, with a corresponding reduction in liability.

24. While acknowledging that evidence has now been provided during the Regulation 114 appeal, the CA contends that the information submitted is insufficient in quality and timing to demonstrate continuous lawful use during the qualifying period. It states that the non-domestic rates evidence relied upon by the Appellant only demonstrates approximately three months of use within the relevant three-year period, and that the photographic evidence dates from ```redacted``` and ```redacted```, outside the statutory timeframe.

25. On this basis, the CA relies on the provision which allows a collecting authority to deem a building not to be an in-use building where sufficient evidence has not been provided. Accordingly, it concludes that the existing facilities building does not meet the regulatory definition of an in-use building and that no offset of existing floorspace is permitted.

26. I agree with the CA on this Ground. I do not consider the evidence sufficient to demonstrate that the facilities building at ```redacted``` was in active use during the relevant period. The Non Domestic Rates Bills from ```redacted``` are dated ```redacted```/```redacted```, ```redacted```/```redacted``` and ```redacted```/```redacted```. It is noted within the Appellant's initial representation (via the Appeal Decision Appeal Ref: ```redacted```) the original consent for five holiday ```redacted``` back in ```redacted``` (paragraph 5 Appeal Ref: ```redacted``` referring to appeal decisions Ref ```redacted``` and ```redacted```.) were only to be occupied from ```redacted``` to ```redacted``` each year. With the planning permission having been granted on ```redacted```, the period to consider the lawful use for a continuous period of at least six months within the preceding three years would have required Non Domestic Rates Bills for years ```redacted```/```redacted```, ```redacted```/```redacted``` and ```redacted```/```redacted``` submitted as evidence.

27. The photographs do not, on the balance of probabilities, establish that facilities building at ```redacted``` was actively in-use for a minimum of six months within the relevant three-year assessment period. As such, it lacks sufficient probative value to confirm that the building was in use during the relevant timeframe.

28. The email from the Enforcement Contractor at ```redacted``` is very vague on its detail and lacks any context to what the Officer's enquiries related to. There is mention of the Planning Contravention Notices, but there is no substance to what breach of planning was purported to have occurred on the land to be considered as supporting evidence for this Appeal.

29. The representation from an Interested Party, ```redacted```, dated ```redacted``` is not a sworn Statutory Declaration and therefore does not meet the evidential standard typically required. As such, it lacks sufficient probative value to confirm that the building was in use during the relevant timeframe.

30. In the absence of more robust supporting documentation relating to the operational commercial holiday enterprise, such as booking/information website, booking logs, utility bills, statutory declarations from unconnected parties in particular, bank statements, insurance certificates, further date-stamped photographic evidence of the facilities building clearly in use; the material provided does not meet the evidential threshold necessary to establish the required period of use.

31. In summary, I am of the opinion that the criteria for demonstrating that the facilities building at ```redacted``` has been in active lawful use for the required period of six months within the relevant three year period as detailed above has not been met.

Decision

32. On the basis of the evidence before me, I conclude that the Community Infrastructure Levy (CIL) payable in this case should be £```redacted``` (```redacted```) and I hereby dismiss this appeal.

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RICS Registered Valuer
Valuation Office
14 May 2026