

Appeal Decision

By [REDACTED] MRICS FAAV

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

Valuation Office
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Appeal Ref: 1889718

Planning Permission Ref. [REDACTED]

Proposal: Householder application for single storey front extension to form a porch and part two storey, part first floor side and part two storey, part single storey rear extension (part-retrospective).

Location: [REDACTED]

Decision

1. I dismiss this appeal.

Reasons

2. I have considered all the submissions made by the appellant, [REDACTED] of [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 [REDACTED].
- b) CIL Liability Notice [REDACTED] dated [REDACTED].
- c) Planning Decision [REDACTED] granted on [REDACTED].
- d) Approved plans and elevations, part of [REDACTED].
- e) CIL Liability Notice [REDACTED], dated [REDACTED].
- f) Regulation 113 Request dated [REDACTED].
- g) Regulation 113 response from the CA dated [REDACTED].
- h) CIL Liability Notice [REDACTED], dated [REDACTED].
- i) Regulation 114, CIL Appeal form, dated [REDACTED].
- j) Site visit photos of [REDACTED], dated [REDACTED].

- k) Representations from the Appellant received [REDACTED], additional representations received [REDACTED] and Appellant comments received [REDACTED].
- l) Representations from the CA received on [REDACTED].
- m) Additional representations received from the CA on [REDACTED] and from the Appellant on [REDACTED].
- n) Comments received from the Appellant on [REDACTED].

Grounds of Appeal

- 3. The primary ground of appeal relates to the calculation of the chargeable amount under Schedule 1, Part 1, with the appellant contesting the adopted Gross Internal Area's (GIA's):
 - a) Existing Floorspace offset; the appellant contests the figure adopted by the CA, opining it should be [REDACTED] sq.m. (square metres) and not [REDACTED] sq.m. (as adopted by the CA.)
 - b) Proposed development: the appellant believes the internal areas of the development identified as "void" space should be excluded from Gross Internal Area (GIA) and thus not attract any CIL charge. The appellant asserts that these areas are physically unusable and inaccessible and as such, should not form part of the chargeable floorspace.
- 4. The appellant also raises an alleged prior agreement with the CA as to the treatment of such "void" areas. The principal issue for determination however is whether the identified "void" areas are excluded from or included within the GIA.

Background

- 5. Planning permission [REDACTED] was issued by [REDACTED] on [REDACTED] for 'Householder application for a proposed erection of a single storey front extension to form a porch and part two storey, part first floor side and part two storey, part single storey rear extensions.'
- 6. The CA issued CIL liability notice [REDACTED] on [REDACTED]. This was calculated on a chargeable area of Residential development of [REDACTED] sq.m. at the rate of £[REDACTED] per sq.m. plus indexation at [REDACTED]. (Total development [REDACTED] sq.m. less [REDACTED] sq.m. of existing use).
- 7. As a result of the works breaching Condition 2 of the planning permission, the appellant was advised, via an email from a planning officer ([REDACTED]) to submit a revised, retrospective householder application.
- 8. The appellant appointed [REDACTED] to act on their behalf in [REDACTED].
- 9. The appellant understood [REDACTED] liaised with the planning department to agree a revised approach, the aim being to mitigate CIL payment. The agreed approach was to separate the development into two applications; the first to be less than 100 sq.m. but fully self-contained on the ground floor, with voids and uninhabitable areas clearly delineated. The second application would then relate to the upper floor, once the ground floor had been materially completed.

10. A planning application, for mostly retrospective works, was submitted on [REDACTED]. The accompanying plans showed accommodation totalling [REDACTED] sq.m. at ground floor level and [REDACTED] sq.m. at first floor level, (but this excluded significant areas delineated “void” at both ground and first floor levels). In other correspondence the appellant states the existing area was deemed to be [REDACTED] sq.m., so if deducted it left a balance of [REDACTED] sq.m.
11. Correspondence between [REDACTED] and the appellant indicates the appellant was led to believe the balance would not be CIL chargeable as it totalled less than 100 sq.m.
12. Planning was granted for [REDACTED] on [REDACTED], for ‘Householder application for single storey front extension to form a porch and part two storey, part first floor side and part two storey, part single storey rear extension (part retrospective).
13. This planning triggered CIL Liability Notice [REDACTED], dated [REDACTED]. The charge was calculated on a chargeable area of Residential development of [REDACTED] sq.m. at the rate of £[REDACTED] per sq.m. plus indexation at [REDACTED], producing a total CIL Charge of £[REDACTED].
14. A Regulation 113 Request dated [REDACTED] was submitted by [REDACTED] on behalf of the Appellant.
15. The appellant states two main grounds of appeal, within their Regulation 113 review request:
 - a) The existing floor space should be taken into consideration.
 - b) The “void” areas should be excluded from CIL liability.
16. The appellant considered the net existing floor space to total [REDACTED] sq.m. ([REDACTED] sq.m. ground floor and [REDACTED] sq.m. first floor).
17. The appellant also considered the proposed ground floor to measure [REDACTED] sq.m. (excluding voids) and the first floor [REDACTED] sq.m. (again excluding voids). Deducting the existing floor space, a total net increase in floor space of [REDACTED] sq.m. was left.
18. The CA issued their Regulation 113 review request response on [REDACTED], with a recalculated, revised CIL charge of £[REDACTED]. Their response to the two main grounds being:
 - a) Existing floorspace offset; the circumstances of the application were taken into account by the CA who chose to exercise discretion in allowing offset of existing floorspace. They did not adopt the figures provided by the appellant (which totalled [REDACTED] sq.m.) but instead measured the pre-existing floor plans arriving at a total existing floorspace of [REDACTED] sq.m.
 - b) In respect of the “voids”, the CA disagreed with the appellant and opined the void deductions were not permissible under the CIL Regulations or RICS Code of Measuring Practice (6th Edition).

- c) The CA pointed out that the areas on the plans shown as “void” are bounded by walls at the same floor level and fall within the building envelope. The plans and elevations indicate the presence of windows and doors providing direct access to the void areas which suggests the spaces are intended to function as part of the dwelling rather than inaccessible voids.

19. A new CIL Liability Notice [REDACTED], dated [REDACTED] was issued as a result of the Regulation 113 Appeal. The CA’s calculation and revised CIL Liability Notice was based upon a total floorspace of [REDACTED] sq.m., retained existing, in use floorspace of [REDACTED] sq.m. and a resultant, total net liable/chargeable floorspace of [REDACTED] sq.m. This was charged at £ [REDACTED] per sq.m. with indexation of [REDACTED] ([REDACTED]), giving a total charge of £ [REDACTED].

20. A Regulation 114, CIL Appeal form, dated [REDACTED] was received by the Valuation Office. On the form the appellant contests the CIL Charge; they consider no CIL should be payable.

Measurement of the GIA

21. Whilst the CIL Regulations 2010 do not define GIA, the industry standard definition is as published by the RICS (code of Measuring Practice 6th Edition). 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.

22. Having measured the areas in accordance with the RICS Code of Measuring Practice (6th Edition) and considered the plans, elevations and site photographs, I am satisfied that the total GIA of [REDACTED] sq.m. adopted by the CA is correct. This GIA forms the appropriate basis for calculating the chargeable amount under Schedule 1 Part 1(4).

23. I refute the appellants’ argument that areas labelled as “void” should be excluded from the GIA. Site photographs and plan and elevation drawings (which show door and window openings) support the CA’s treatment of these areas as chargeable floorspace (GIA) which accords with the RICS Code of Measuring Practice (COMP). To confirm, the areas:

- a) are fully enclosed within the building envelope, bound by perimeter and internal walls;
- b) all have floors, are fully accessible and are not double height spaces;
- c) are labelled “void” but do not qualify to be assessed as such, as they do not accord with the RICS COMP. RICS guidance allows exclusion only where a void is open to the floor below, such as a double-height space.

In-Use buildings / Lawful use

24. I note that there is no dispute between the parties as to the principle of an in-use deduction and the CA has used its discretion in allowing this. The appellant has presented differing figures for GIA across their submissions; the GIA's stated within the Regulation 114 Appeal Form vary from those stated in their accompanying representation.

- a) 'Our calculation is based on; the original house was [REDACTED] square metres (lived in since [REDACTED] until start of the development in [REDACTED]), an increase in extension is [REDACTED] square metres Less Void area of [REDACTED] square metres therefore no CIL is payable as the extension is less than 100 square metres.'
- b) Within their representation text page accompanying the Regulation 114 Appeal Form however they state 'We believe that the void area cannot be chargeable using the RICS definition as the void area is physically unusable and has no access from the inside of the development. The void area in this case is [REDACTED] sq.m. which equates to a chargeable area of [REDACTED] sq.m. This equals a chargeable area of [REDACTED] sq.m. which is exempt from CIL.' This contradicts the figure they have stated on the Appeal Form.

25. Additional representations were sought to confirm the appellant's GIA's. In their response dated [REDACTED], they state they consider the existing, in use GIA is [REDACTED] sq.m., the proposed total GIA of the development is [REDACTED] sq.m. and the CIL Charge should therefore be based upon a total GIA of [REDACTED] sq.m. They exclude the areas in the proposed development labelled "voids".

26. The retained, existing, in use floorspace of [REDACTED] sq.m. (GIA) allowed for by the CA was calculated based upon the original, existing floorplans with allowances of [REDACTED] sq.m. for the ground floor and [REDACTED] sq.m. for the first floor. CIL LN [REDACTED] includes an allowance for existing in use GIA of [REDACTED] sq.m. The original CIL LN [REDACTED] included a higher existing, in use figure of [REDACTED] sq.m. as it included the garage (that was demolished prior to the calculation of CIL Liability for LN [REDACTED]).

27. The CA allowed for [REDACTED] sq.m. GIA offset in their latest CIL calculation, on an ex gratia basis. The garage, plus other areas had been demolished yet they only deducted the garage GIA from the total "existing, in use" GIA in the CIL calculation. The appellant opines in their representations of [REDACTED] that the existing, in use areas totalled [REDACTED] sq.m. ([REDACTED] sq.m. at ground floor and [REDACTED] sq.m. on the first floor) as at the date the relevant planning permission was granted.

28. 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."

29. "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.

30. "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.

31. The appellant and CA have stated different figures for the 'existing/ in use' element of the building. The appellant has stated within their Regulation 113 Appeal that the total 'existing/in use' was [REDACTED] sq.m. The CA have based their calculations however on the pre existing plans which they measure to total [REDACTED] sq.m.

32. I have retained the CA's figure of [REDACTED] sq.m. for the existing GIA, as it results in a lower CIL charge for the appellant, so have assumed they would not wish to contend this figure.

Calculation of Chargeable Amount

33. 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."

34. The development is liable for [REDACTED] CIL charges. [REDACTED] CIL ([REDACTED]) charges £ [REDACTED] per sq.m., the Index rate is [REDACTED], the total development is [REDACTED] sq.m. and the chargeable area is [REDACTED] sq.m. (which allows for the offset of [REDACTED] sq.m. of "existing use" GIA.

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

Decision

36. The appeal concerns the calculation of the chargeable amount under Schedule 1, specifically (i) whether the areas identified as “void” should be excluded from GIA, and (ii) the appropriate deduction for existing floorspace. Having considered the evidence, I find as follows:
37. I do not accept that the areas identified by the appellant as “voids” should be excluded from the GIA. Gross Internal Area is measured in accordance with the RICS Code of Measuring Practice, which defines GIA as the area of a building measured to the internal face of the perimeter walls, including all enclosed space capable of occupation or use. The Code makes clear that GIA includes internal partitions, structural elements and enclosed areas within the building envelope, with only limited exclusions such as open voids (for example, stairwells and double-height spaces), external areas and genuinely inaccessible voids.
38. The “void” areas are enclosed within the structure of the building and form part of the internal envelope. They are not open voids of the type envisaged by the RICS guidance, nor are they excluded because of limited access or their use being constrained. On that basis, they are included within GIA and are correctly treated as chargeable floorspace for CIL charge calculation purposes.
39. I note the appellant’s submission that the net increase in floorspace would fall below 100 sq.m. and therefore would not be chargeable. However, this conclusion is dependent upon the exclusion of the areas described as “void”. As I have found those areas form part of the GIA, this argument does not succeed.
40. Under Schedule 1, paragraph 1(10) a deduction may only be made where a relevant building has been in lawful use for the required period. The CA has adopted a deduction of [REDACTED] sq.m. for existing floorspace on an ex gratia basis. This is more favourable than the appellant’s position of [REDACTED] sq.m. and results in a lower chargeable amount. I consider it appropriate to maintain this figure.
41. I have considered the appellant’s reliance on discussions with the CA. However, CIL liability must be assessed in accordance with the CIL Regulations 2010 (as amended) and any informal agreements cannot alter that position.

Conclusion

42. The areas identified as “void” do not qualify for exclusion from GIA.
43. I therefore do not consider the chargeable amount stated within LN [REDACTED] to be excessive and I dismiss this appeal.

[REDACTED] BSc (Hons) MRICS FAAV
Valuation Office Agency
17 June 2026