

Appeal Decision

by [REDACTED] BSc FRICS

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

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VOA Appeal Ref: 1865393

Planning Application: [REDACTED]

Proposal: Submission of reserved matter details relating to Condition 1 (Landscaping) of outline planning permission [REDACTED], accompanied by a 'Bat Survey' (Condition 5) and 'Biodiversity Net Gain Assessment' (Condition 6).

Address: [REDACTED]

Decision

Appeal dismissed.

Reasons

1. I have considered all of the relevant submissions made by [REDACTED] of [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 in respect of Application No: [REDACTED] dated [REDACTED].
 - b) CIL Liability Notice CIL – [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] stating this was levied under the CA's CIL Charging Schedule and s211 of the Planning Act 2008, based on a chargeable area of [REDACTED] sq. m. The Proposed Floorspace area is stated as [REDACTED] sq. m. from which Existing Floorspace of [REDACTED] sq. m. was deducted to calculate the Net Floorspace [Gross Internal Area or GIA] of [REDACTED] sq. m.
4. On [REDACTED] the Appellant emailed the CA to request a Regulation 113 Review.
5. A Regulation 113 Review was undertaken by the CA and on [REDACTED] the CA emailed the Applicant explaining the review found that the CIL Liability Notice was correct and that the CIL payment should be as stated in CIL Liability Notice CIL – [REDACTED], dated [REDACTED], £[REDACTED].
6. The Appellant did not accept this outcome.
7. On [REDACTED], the Valuation Office received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming they disagree with the CA's Regulation 113 Review decision on the basis that the chargeable amount has been calculated incorrectly, with supporting documents attached.
8. **The Appellant's grounds of appeal can be summarised as follows:**
 - a) The Appellant does not agree with the CA's calculation of the chargeable area.
 - b) The Appellant submits that the commercial workshop premises, [REDACTED], extends to an internal space of [REDACTED] square metres, has remained fully let and therefore should also be taken into account [deducted as an in-use building] in the calculation of chargeable area, whereas the CA has refused to do so.
 - c) The Appellant states the commercial premises are leased and has submitted a Non Domestic Rates Demand Notice, two Licence to Occupy documents and a CIL Form 1, completed by the Appellant's Agent, as evidence.
 - d) A request for a Regulation 113 Review was made by email to the CA on [REDACTED]. On [REDACTED] the CA responded explaining the review found that the CIL Liability Notice was correct and that the CIL payment should be as stated. The Appellant did not accept this outcome.
 - e) The Appellant submits that ample evidence has been submitted to establish that the commercial premises was in use and that the CA is incorrect by excluding it.
9. **The CA has submitted representations that I have summarised as follows:**
 - a) The CA summarises the existing floor space as a ground floor flat and top floor flat at [REDACTED], a house at [REDACTED] and a workshop, garage and shed at [REDACTED]. The CA clarifies that whilst the workshop is attached to the residential properties, it considers it to be a separate building due to its commercial nature.
 - b) The CA confirms it is satisfied the residential properties meet the CIL 'in use' requirements and their Gross Internal Area [GIA] has been included in the calculation of the chargeable floor space.

- c) The CA advises that, in accordance with the RICS Code of Measuring Practice [CoMP], it has excluded the shed from the calculation of chargeable floor space because it is not a permanent building.
- d) The CA submits the workshop was not occupied by a tenant and was shown in listing for rent on the property marketing website, Rightmove.
- e) The CA references the submission of CIL Form 1 stating the Agent has split the commercial area into three areas of [REDACTED], [REDACTED] and [REDACTED] square metres, totalling [REDACTED] square metres and that it is stated all three areas are in use.
- f) The CA addresses the Non Domestic rates bill for the commercial premises submitted by the Appellant as part of their evidence – the CA states it is not satisfied that this document constitutes sufficient evidence to satisfy the CIL in use test of six continuous months of lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended).
- g) The CA addresses the 'Licence to occupy on short term basis' in the name of [REDACTED] submitted as evidence to confirm the use of the workshop and submits it is not dated nor signed correctly so is therefore not a valid evidence document and has been discounted.
- h) The CA addresses the 'Licence to occupy on short term basis' in the name of [REDACTED] / [REDACTED] / [REDACTED], dated [REDACTED], explaining that as it ends on [REDACTED], it has been discounted as evidence for the CIL 'in use' test for this development. Additionally, the CA states no Business Rates information has been submitted in respect of this business.
- i) The CA states it considered the case of 'Hourhope Ltd V Shropshire Council [2015] EWHC 518 (Admin)', submitting that despite the fact that an employee had continued to live in the premises in the hope the public house would reopen for trade, and the furniture and fittings had remained – the Court held that this was not sufficient to establish lawful use and that in order to qualify, the use had to be active and on-going, the fact that it had not been abandoned was not enough.
- j) The CA states it had discussed the issue with the Appellant and their Agent between [REDACTED] and [REDACTED], prior to the granted planning permission.
- k) The CA states that following review of the documents submitted in respect of the workshop, it is satisfied the use has not been 'active and on-going'. Therefore the CA considers the information provided by the Appellant insufficient in order to determine the in lawful use criteria has been met for the commercial premises.
- l) The CA confirms its calculation of chargeable floorspace by referencing the formula detailed within the Regulations at schedule 1 Part 1 Standard Cases. Most pertinent of the calculation inputs are the CA's adopted net chargeable area [A] arrived at by deducting what the CA regards as the in-use buildings [the residential properties [REDACTED] and [REDACTED]] extending to a GIA of [REDACTED] square metres from the GIA of chargeable development of [REDACTED] square metres, which calculates as [REDACTED] square metres.

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

- a) The Appellant advised they are an overseas based landlord and always use letting agencies to rent their properties. The Appellant does not find the tenants. The agencies rented out the workshop at [REDACTED]. The Appellant reiterated they have supplied contracts for rental and states that the letting agencies are happy to write letters to confirm the same.

11. Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal:

- a) In this case, the Appellant does not agree with the CA's stated net chargeable area used in the calculation of CIL. The Appellant submits the whole of the existing GIA should be offset in the calculation of the chargeable area for CIL because the "commercial workshop" remains in use [effectively claiming the qualifying period criteria is met].
- b) In-use buildings / Lawful use – The CIL Regulations Part 5 Chargeable Amount, defines how to calculate the net chargeable area. This includes statement that "the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development" can be deducted from the GIA of the chargeable development.
- c) "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.
- d) Regulation 8 "Time at which planning permission first permits development" states at (4) "In the case of a grant of outline planning permission which is not a phased planning permission, planning permission first permits development on the day of the final approval of the last reserved matter associated with the permission." In this case, the day planning permission first permitted the chargeable development was [REDACTED] upon the approval of Reserved Matters. Therefore, in this case, the relevant time period within which at least six months of use is required to be proven is [REDACTED] to [REDACTED].
- e) I am of the opinion the two Licence to Occupy documents the Appellant has submitted do not prove actual use of the commercial premises at [REDACTED]. Whilst they may prove that the tenants had a right to occupy the building, they do not demonstrate that that the occupation actually took place. I note these documents were supplied in isolation and not accompanied by corroborating information like proof of rental payments or utility bills. Additionally, the Licence to occupy granted in favour of [REDACTED], [REDACTED] and [REDACTED] is dated [REDACTED] and stated a term expiring [REDACTED]. The overlapping time period within the relevant time period of [REDACTED] to [REDACTED] of the Licence to Occupy to [REDACTED], [REDACTED] and [REDACTED] was therefore only a [REDACTED] month period [REDACTED] to [REDACTED]. The Licence to Occupy granted in favour of [REDACTED] was undated and appears to cover the time period [REDACTED] to [REDACTED]. The overlapping time period of the Licence to Occupy to [REDACTED] was therefore a [REDACTED] month period [REDACTED] to [REDACTED].

- f) I am of the opinion the Non Domestic Rates Demand Notice the Appellant has submitted does not prove actual use of the commercial premises at [REDACTED]. I note this document was supplied in isolation and not accompanied by corroborating information like proof the business rates were paid
- g) The Appellant's Agent stated on 'Community Infrastructure Levy (CIL) – Form 1: CIL Additional Information' the subject property was in use. However, I note it is dated [REDACTED] which is more than two years prior to the commencement of the relevant time period, from [REDACTED], within which actual use of the commercial premises at [REDACTED] is required to be proven.
- h) CIL Regulation Schedule 1 (9) states that where the collecting authority [the CA] 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.
- i) The Appellant's contention is that the property is occupied and leased by tenants as arranged by Letting Agents on the Appellant's instruction. Unfortunately, no evidence to demonstrate these instructions nor receipt of rental payments by either a Letting Agency or the Appellant has been provided.
- j) In my opinion, the Appellant has not provided evidence which is sufficiently strong to prove continuous use of the commercial premises during the requisite time period. There has been opportunity to consider the Regulations and the guidance provided by the CA and collate evidence that could include actual payments for rent, non-domestic rates, photographic evidence of the property being used, sworn statements of people who can confirm the use claimed, utility or other bills incurred by occupation and use. The evidence in relation to use of the property during the period in question is inconclusive in my opinion and insufficient evidence has been provided to demonstrate continuous use for the required six months within the relevant qualifying period.
- k) In summary, I am of the opinion that the criteria for demonstrating that the commercial workshop premises known as [REDACTED] were in active lawful use for the required six months within the relevant three year period as detailed above has not been met.
- l) I have stated above that I am of the opinion the lawful use of the commercial premises has not been proven as required and therefore its precise GIA is not relevant in connection with this appeal. However, in the interests of clarity, my reading of the entries on CIL Form 1 document is the total "C3" [residential] GIA to be demolished is [REDACTED] + [REDACTED] sqm = [REDACTED] square metres and the total "(B2)" [commercial] GIA is [REDACTED] sqm. It appears to me that the CA has confused the Agent's chosen wording in the column headed "Brief description of existing building/part of existing building to be retained or demolished." "[REDACTED] Commercial (C3)" and "[REDACTED] Commercial (C3)" to mean commercial as in non-residential and not as it appears to me the Agent intended being short for [REDACTED]. Subsequently, the Appellant has adopted the erroneous [REDACTED] square metres GIA of commercial space reference whereas it is stated as [REDACTED] square metres GIA. I have undertaken my own measurement checks on the plans submitted and concur with the CA's area as indicated on the plans.
- m) There appears to be no dispute in relation to the remaining chargeable area, CIL rates adopted or indexation and I therefore dismiss this appeal.

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Valuation Office Agency
9 July 2025