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: 1891894

Address: [redacted]

Proposed Development: Demolition of existing commercial units and construction of a two storey residential development, plus roof space, to provide 14no. residential units, with associated landscaping, parking and other ancillary works.

Planning permission: Granted by [redacted] (Application Ref: [redacted]) on the [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 Approval [redacted], associated Planning Application Documents, Site Plan of Existing Units, Statutory Declaration of [redacted], documentary evidence relating to the properties, the Regulation 113 request and response correspondence between the Appellant and CA ([redacted] – [redacted]).

c. The CIL Liability Notice (Reference: [redacted]) dated [redacted]
d. The CA's representations to the Regulation 114 Appeal dated [redacted] with appendices including pre-appeal correspondence, chronology, CA's response and full email chain, a unit by unit summary of the Appellant's evidence with cross reference to the Appellant's Schedule 1 Documents, documents not before the CA prior to the Regulation 114 appeal, a Schedule 1 chargeable amount calculation and relevant extracts from the planning case file.
e. The Appellant's comments on the CA's representations received by the Valuation Office (VO) on [redacted] & [redacted].

2. Planning permission was granted by [redacted] (Application Ref: [redacted]) on the [redacted] for, "Demolition of existing commercial units and construction of a two storey residential development, plus roofspace, to provide 14no. residential units, with associated landscaping, parking and other ancillary works."

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 3' and the '[redacted]' rate.

4. The Appellant initially queried the figure stated on the Liability Notice on the [redacted] and then requested a review on the [redacted] under Regulation 113 and then subsequently provided additional information and [redacted] following the CA's initial response. The CA responded to the Appellant on [redacted], [redacted].

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.

6. The CA has stated in their appeal representations dated [redacted] they did not receive all of the information from the Appellants that formed their appeal representation's bundle and has responded to that additional evidence within their representations. The Appellant provided an additional response to the CA's representations and included additional information to be considered during this appeal.

Grounds of Appeal

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

   The Appellant contends that the commercial units qualify as in-use buildings, having been in continuous lawful use for at least six months within the three years preceding the grant of planning permission for the chargeable development.

8. There are no disputes concerning the Gross Internal Area (GIA) or indexation for the calendar year in which the charging schedule took effect. However, the Appellant originally claimed that [redacted] sqm qualified for deduction.

Following a measured survey, the Appellant revised its position and now contends that the GIA of existing commercial floorspace to be demolished is [redacted] sqm. The revised schedule comprises four principal commercial units, three rear ancillary commercial areas and a communal circulation area. The Appellant's revised gross internal areas are:

Unit [redacted] ([redacted]): [redacted] sqm

Unit [redacted] ([redacted]): [redacted] sqm

Unit [redacted] ([redacted]): [redacted] sqm

Unit [redacted] ([redacted]): [redacted] sqm

Rear ancillary areas: [redacted] sqm combined.

Communal area: [redacted] sqm

Total claimed deductible floorspace: [redacted] sqm

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

Reasoning

10. 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.

E = the aggregate of the following—
(i) the gross internal areas of parts of **in-use buildings** that are to be demolished before completion of the chargeable development;

In this particular case "**E**" 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 <u>part</u> 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**.*"*

11. 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].

12. The Appellant appeals against the chargeable amount specified in Liability Notice ([redacted]) under Regulation 114 of the Community Infrastructure Levy Regulations 2010 (as amended). The Appellant accepts that the chargeable area of the existing buildings to be demolished is [redacted] sqm (originally stated GIA, now amended to [redacted] sqm) and that each existing building was physically present on the relevant land on [redacted]. The dispute relates solely to whether the existing commercial buildings qualify as "in-use buildings" under paragraph 1(10) of Schedule 1 and, therefore, whether existing floorspace should be deducted from the chargeable development.

13. The Appellant argues that the correct evidential standard is the balance of probabilities and that there is no hierarchy of evidence prescribed by the CIL Regulations. The Appellant contends that all evidence must be assessed cumulatively and that the CA has incorrectly applied a higher evidential threshold by seeking "clear and robust" or "clear and convincing" evidence.

14. The Appellant further submits that, as a landlord rather than occupier, its ability to produce tenant-held documents is necessarily limited and that statutory declarations, tenancy records, rent ledgers and other landlord-held records are legitimate and probative forms of evidence.

15. The evidence they submit for each unit is as follows:

Unit [redacted] **–** [redacted] – The Appellant contends that Unit [redacted] plainly satisfies the in-use test. Reliance is placed upon electricity and water consumption records, utility-provider correspondence, rent records, planning application documents, professional correspondence and the statutory declaration of [redacted]. The Appellant notes that the Council itself now accepts that Unit [redacted] presents the strongest case. The Appellant seeks deduction of [redacted] sqm.

Unit [redacted] – [redacted] – The Appellant argues that Unit [redacted] was in continuous use throughout the relevant period. Reliance is placed on:

- The Geo-Environmental Desk Study recording active use of the building adjacent to Unit [redacted].
- The CA's Planning Officer's report noting that some units remained in use.
- Rent payments.
- Notices to vacate.
- Termination documents.
- Solicitors' correspondence.
- Photographic evidence.

The Appellant submits that the cumulative effect of this evidence demonstrates actual use and occupation. The Appellant seeks deduction of [redacted] sqm.

Unit [redacted] – [redacted] – The Appellant submits that the legislation requires use for only one continuous six-month period within the relevant three-year window. Reliance is placed on rent ledger entries showing regular payments between late [redacted] and mid-[redacted], WhatsApp correspondence relating to machinery on site, licensing documentation, rates relief evidence and evidence from neighbouring occupiers. The Appellant argues that even if use later diminished, the statutory test had already been satisfied. The Appellant seeks deduction of [redacted] sqm.

Unit [redacted] – [redacted] – The Appellant contends that Unit [redacted] remained occupied until redevelopment and that documentation demonstrates occupation exceeding six months within the relevant period. Reliance is placed upon the licence agreement, notice to vacate, termination document, statutory declaration and other occupation records. The Appellant submits that discrepancies in names, rent accounts and descriptions of the premises are administrative matters that do not affect the substantive issue of use. The Appellant seeks deduction of [redacted] sqm.

Ancillary Areas and Communal Space – The Appellant additionally argues that three rear ancillary areas associated with occupied parade shops and an enclosed communal servicing area formed part of in-use buildings. The Appellant relies upon commercial licences, fire risk assessments, electrical certificates, landlord statements, rent schedules and photographs. It contends that back-of-house accommodation used in connection with actively trading commercial premises is itself in use for the purposes of Schedule 1.

16. The Appellant's primary case is that all [redacted] sqm (amended GIA) qualify for deduction, resulting in a net chargeable area of [redacted] sqm and a revised CIL liability of £[redacted]. Alternatively, the Appellant submitted that the Appointed Person (AP) can determine the deduction on a unit-by-unit basis using the measured schedule now provided.

17. The CA accepts that each building was physically present on the site on [redacted] and, therefore, satisfies the first limb of the in-use building definition. However, it disputes that the Appellant has demonstrated continuous lawful use of all claimed floorspace during the relevant three-year period. The CA submits that:

- The burden of proof rests with the Appellant.
- The assessment should be carried out on a unit-by-unit basis.
- Occupation agreements, licences and retrospective statements are not, without more, sufficient evidence of actual use.
- Greater weight should be attached to independently verifiable contemporaneous evidence such as utility records, business rates records and third-party documentation.

18. The CA responds as follows to the evidence supplied by the Appellant:

Unit [redacted] – [redacted] – The CA acknowledges that Unit [redacted] is supported by materially stronger evidence than was previously available. It accepts that utility records, water accounts, professional correspondence and planning documents provide significant evidence of occupation and invites the AP to determine Unit [redacted] on the totality of that evidence.

Unit [redacted] – [redacted] – The CA contends that Unit [redacted] is supported primarily by a historic licence, rent payments and landlord documentation. Whilst a rent payment was recorded in [redacted], the CA argues that payment of rent is not determinative evidence of active use. It also identifies an inconsistency between the termination document and rent ledger entries. Accordingly, the CA maintains that continuous lawful use has not been demonstrated.

Unit [redacted] – [redacted] – The CA accepts that rent payments occurred during part of the relevant period but argues that the evidence is consistent with declining occupation and eventual cessation. It relies upon rent arrears, reduced payments, solicitor correspondence describing the tenant as "very rarely at the Property", and WhatsApp correspondence relating to vacating the premises. The CA contends that actual continuous use has not been satisfactorily established.

Unit [redacted] – [redacted] – The CA maintains that Unit [redacted] presents the weakest evidential case. It identifies inconsistencies between the names appearing on the licence and rent ledger, differences between licence rent and ledger rent, conflicting evidence regarding the date of vacation and uncertainty about the precise extent of the premises occupied. It, therefore, contends that no deduction should be granted in relation to Unit [redacted].

19. The CA argues that the statutory declaration of [redacted] should be afforded limited weight because it was prepared after the appeal was lodged, contains what the CA considers to be a date error, and comments upon units not occupied by [redacted].

20. The CA acknowledges that the planning application documents contain references to active use but notes that the same documents also refer to parts of the site being vacant, underutilised or in poor repair. The CA submits that the planning evidence supports a unit-by-unit approach rather than a deduction of the entire site-wide floorspace.

21. The CA criticises the original appeal for relying on a single aggregate floorspace figure of [redacted] sqm (previous GIA provided, now [redacted] sqm) without a breakdown by individual unit. It contends that any deduction should only be applied to those individual units proven to satisfy the in-use test and that a unit-specific floorspace schedule is required.

22. The CA accepts that a Regulation 113 review request was made on [redacted] but contends that a substantive response was issued on [redacted] and that the procedural objectives of Regulation 113 were met. The CA maintains that the Appellant suffered no prejudice.

23. In Conclusion, the CA submits that:

- Unit [redacted] may qualify.
- Units [redacted], [redacted] and [redacted] have not been proven to satisfy the in-use test.
- The full claimed deduction should be rejected.
- Any deduction should be limited to the floorspace of units specifically shown to qualify.

24. Following receipt of the CA's representations, the Appellant's principal criticism is that the CA has applied the wrong evidential standard. It submits that the correct test is whether the evidence establishes use on the balance of probabilities and that the CA's references to "clear and convincing" or "clear and robust" evidence effectively impose a higher threshold than the legislation requires.

25. The Appellant argues that the CA's approach unfairly disadvantages landlord-developers because landlords do not normally hold tenants' trading records, utility accounts or operational documents. The Appellant contends that statutory declarations, tenancy records and rent ledgers are recognised forms of evidence that must be assessed cumulatively alongside other material.

26. The Appellant responds to the CA's case for each unit as follows:

Unit [redacted] – [redacted] – The Appellant maintains that Unit [redacted] plainly satisfies the in-use test and disputes the CA's suggestion that the statutory declaration contains an error. The Appellant explains that [redacted] has occupied the premises since [redacted] and that the [redacted] licence merely formalised the most recent occupation arrangement.

Unit [redacted] – [redacted] – The Appellant submits that the CA has failed to give sufficient weight to the geo-environmental report, CA's Planning Officer's report, continuing rent payments, landlord notices, professional correspondence and photographs. It argues that these documents collectively demonstrate actual use and not merely a contractual entitlement to occupy.

Unit [redacted] – [redacted] – The Appellant contends that the CA's analysis overlooks the fact that the statutory test only requires a single qualifying six-month period within the three-year window. It argues that rent ledger evidence from late [redacted] to mid-[redacted] demonstrates precisely such a period and that later decline in occupation is irrelevant once the statutory requirement has been met.

Unit [redacted] – [redacted] – The Appellant argues that the CA's concerns regarding names, addresses, rent levels and record keeping are administrative issues that do not address the statutory question of use. It explains that two of the Tenants in occupation ([redacted] and [redacted]) operated together and that the accounting arrangements reflected the manner in which rent was administered rather than any absence of occupation.

Ancillary Areas – The Appellant responds to the CA's focus on the principal units by introducing extensive evidence relating to the ancillary rear areas and communal space. It submits that these areas formed part of trading commercial premises and that use of those areas should be regarded as use of the building for Schedule 1 purposes.

27. In direct response to the CA's criticism regarding floorspace, the Appellant has now provided a detailed measured unit-by-unit schedule. It submits that this schedule allows the AP to determine the appropriate deduction for any combination of qualifying units and ancillary floorspace. The revised primary case is that [redacted] sqm should be deducted, producing a CIL liability of [redacted].

Decision

28. A dispute has arisen regarding the correct application of Regulation 40 and Schedule 1 of the Community Infrastructure Levy Regulations 2010 (as amended). Schedule 1 prescribes the method for calculating the net chargeable area of a development and permits deductions from the GIA where an in-use building is demolished as part of the development. The principal issue in this appeal is whether the existing commercial units satisfy the definition of an 'in-use building' for the purposes of those deductions.

29. Paragraph 1(6) of Schedule 1 establishes the basis upon which the chargeable amount is to be calculated, whilst paragraph 1(10) defines an 'in-use building'. The requirement contained within paragraph 1(10)(i) is not disputed by the CA. However, the CA contends that the requirement contained within paragraph 1(10)(ii) has not been entirely satisfied, on the grounds that insufficient evidence has been provided to demonstrate lawful use for the requisite period for each individual unit.

30. The Regulations make no express requirement for individual units within a larger structure to be assessed separately, referring instead to the "relevant building". However, both parties agree that each individual commercial unit should be assessed separately when determining compliance with paragraph 1(10)(ii).

31. In reaching my decision, I have considered the evidence in the round rather than in isolation. Applying the civil standard of proof, namely the balance of probabilities, I note that the statutory test requires only that a part of the relevant building has been in lawful use for the requisite period. Whilst I accept that individual items of evidence, viewed separately, may not be sufficient to conclusively demonstrate continuous lawful use throughout the relevant period, the Regulations do not require each piece of evidence to do so. Instead, it is necessary to assess the totality of the evidence available. The planning application documents, statutory declarations, signed letters from various persons associated with the units, commercial licences, rent records, termination notices, correspondence, photographs and other supporting material collectively establish a consistent and coherent picture of ongoing occupation and use. When considered cumulatively, these sources corroborate one another and provide sufficient evidence to satisfy me, on the balance of probabilities, that the relevant buildings contained parts that were in lawful use for a continuous period of at least six months within the relevant three-year period. I, therefore, find that the evidential threshold required by paragraph 1(10)(ii) of Schedule 1 has been met. I, therefore, conclude that the buildings qualify as 'in-use buildings' and that the existing floorspace is eligible for deduction when calculating the chargeable amount.

32. Accordingly, on the basis of the evidence before me, I conclude that the appeal should be allowed. I determine that the chargeable amount specified within Liability Notice [redacted] has not been calculated correctly and should be amended to reflect the deduction of [redacted] square metres of qualifying in-use floorspace.

33. I have calculated the CIL charge as follows:

[redacted] CIL £[redacted] x [redacted] sqm x [redacted] = £[redacted]

[redacted] CIL £[redacted] x [redacted] sqm x [redacted] = £[redacted]

34. The resulting Community Infrastructure Levy liability is, therefore, **£[redacted] ([redacted]).**

[redacted] BEM MRICS
RICS Registered Valuer
Valuation Office Agency
7 July 2026