Appeal Decision

by [redacted] MRICS FAAV

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

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Appeal Ref: 1891560

Planning Permission Ref. [redacted] (as later amended by [redacted])

Proposal: Planning permission [redacted] granted for "Replacement of eighth floor structure and construction of a two storey extension at main roof level in connection with the use of part basement, ground and nine upper floors as student accommodation (Sui Generis) and two retail units (Class E) at ground level; external alterations including partial façade replacement and new/rearranged entrances and retail frontages; cycle parking; soft landscaping on roof and terraces; roof plant and solar panels; and all associated engineering and ancillary works."

Location: [redacted]

Decision

I dismiss this appeal and determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

Reasons

1. I have considered all the submissions made by the Appellant's agent, [redacted] on behalf of the Appellant, [redacted] ([redacted], on behalf 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 on [redacted].
   b) CIL Liability Notice [redacted], dated [redacted].
   c) Regulation 114, CIL Appeal form, dated [redacted].
   d) Representations from the Appellant received [redacted] (originally

submitted in respect of previous CIL Appeal reference 1860926) including:

  i. Regulation 113 review request to the CA dated [redacted].
  ii. Regulation 113 review response from the CA dated [redacted].
  iii. Full plans, elevations and site plan for the subject development
  iv. [redacted] ([redacted]) CIL Charging Schedule, [redacted] Info and Evidence document, [redacted] CIL Charging Schedule 2.
  v. Two redacted CIL Appeal Decisions.

e) Court Order [redacted], dated [redacted] quashing CIL Appeal Decision, reference 1860926.

f) Representations from the CA, received [redacted].

g) Appellants further comments received [redacted].

Background

2. Planning permission [redacted] was granted on [redacted] for: "Replacement of eighth floor structure and construction of a two storey extension at main roof level in connection with the use of part basement, ground and nine upper floors as student accommodation (Sui Generis) and two retail units (Class E) at ground level; external alterations including partial façade replacement and new/rearranged entrances and retail frontages; cycle parking, soft landscaping on roof and terraces; roof plant and solar panels; and all associated engineering and ancillary works."

3. The CA issued CIL liability notice [redacted] on [redacted]. This was calculated on a chargeable area of [redacted] square metres (sqm) at the rate for 'residential prime' of £[redacted] per sqm plus indexation ([redacted]), plus [redacted] charge, [redacted] CIL for [redacted] sqm at a rate of £[redacted] per sqm plus indexation of [redacted]. The total charge after allowances for demolition and existing use being £[redacted].

4. This liability notice forms the basis of this CIL Appeal and a previous CIL Appeal decision (1860926, which has subsequently been quashed). The Appellant disagrees with how the CA have calculated the CIL Liability. They dispute the application of [redacted] ([redacted] CIL Charging Schedule 'Residential' CIL Charging rate, believing instead the Sui Generis, purpose built, student accommodation (PBSA) should be categorised under 'All other uses' (which attracts a nil rate).

5. The CIL Appeal Decision issued for 1860926 was quashed at Judicial Review on [redacted] following a signed consent order whereby it was agreed that the Appointed Person erred in law as he failed to produce an adequately reasoned decision.

6. Hence the CIL Appeal has been re-presented to be re-determined.

7. A 'Non Material Amendment' application, reference [redacted] was approved on [redacted]; this allowed for " Amendments to planning permission dated [redacted] ([redacted]) for Replacement of eighth floor

structure and construction of a two storey extension at main roof level in connection with the use of part basement, ground and nine upper floors as student accommodation (Sui Generis) and two retail units (Class E) at ground level; external alterations including partial façade replacement and new/rearranged entrances and retail frontages; cycle parking; soft landscaping on roof and terraces; roof plant and solar panels; and all associated engineering and ancillary works. Namely, to secure amendments to the number and size of PBSA units, the relocation and reconfiguration of the consented rooftop plant to the areas already containing plant at the back of the building facing [redacted] and [redacted], amendments to delivery and servicing management plan."

8. The NMA application does not form part of this appeal. A separate Regulation 114 CIL Appeal was submitted by the Appellant regarding CIL Liability Notice [redacted] (which was served following the granting of the NMA permission).

Grounds of Appeal

9. The Appellants' main grounds of appeal can be summarised as follows:

   a) The Appellant considers the CA have incorrectly applied the [redacted] CIL Charging Schedule "Residential (including all residential 'C' use classes)" CIL charging rate to the Sui Generis, purpose built, student accommodation (PBSA) floorspace within the development.
   b) Instead of "Residential" the Appellant believes the PBSA floorspace should be charged at the "All Other Uses" charging rate, on the basis that the development constitutes a sui generis land use (not a residential use which is not explicitly defined within the [redacted] CIL Charging Schedule).

10. The CA maintain that the chargeable amount must be calculated using the correct "relevant rate" from [redacted] CIL Charging Schedule, which they deem to be "Residential (including all residential 'C' use classes)".

Matters not in dispute

11. Both parties agree:

   a) The Development qualifies as CIL chargeable development for [redacted] CIL and [redacted] CIL.
   b) The Gross Internal Area ('GIA') of the approved building is [redacted] sqm.
   c) The Index Rate for Ip (indexation for planning permission) is [redacted].
   d) The Index Rate for Ic (indexation for [redacted] CIL Charging Schedule) is [redacted].
   e) The Index Rate for Ic (indexation for [redacted] CIL Charging Schedule 2) is [redacted].
   f) The GIA of in-use demolition floorspace is [redacted] sqm.
   g) The GIA of existing in-use retained floorspace is: [redacted] sqm.
   h) The total chargeable area is [redacted] sqm.

Representations

12. The development comprises predominantly PBSA, together with ground floor retail (Class E) units. The total GIA, deductions for demolition and existing floorspace and resulting chargeable area of [redacted] sqm are agreed. The only issue not agreed is the categorisation of the PBSA and the resultant CIL Charging rate.

13. The Appellant's primary ground of appeal is that the CA have incorrectly applied the "Residential" charging rate to the PBSA floorspace, as PBSA is a "sui generis" planning class use and is not within the 'C' use classes identified in the Charging Schedule. On that basis, they consider it falls within "All other uses", which attracts a nil charging rate.

14. The Appellant considers the Charging Schedule should provide clarity and predictability. They state that the Charging Schedule defines 'Residential' by reference to 'C' planning class uses and PBSA is not mentioned. The Appellant therefore considers it reasonable to assume PBSA is excluded from that CIL Charging Class.

15. The Appellant contests the lack of viability evidence in respect of CIL charging (from [redacted]) to support the inclusion of PBSA within the "Residential" rate, justifying that there is no evidential basis for applying a residential charge to it.

16. The Appellant contends that if PBSA was intended to be charged at the "residential" rate, it should have been expressly stated in the adopted Charging Schedule and supported by evidence. They highlight other [redacted] boroughs have taken this approach by setting specific PBSA rates. The CA's failure to do so indicates to them that PBSA was not intended to fall within the Residential category.

17. The Appellant rejects the CA's defence in relying on the word "including" in "Residential (including all 'C' use classes)". They argue this wording was introduced to reflect that Residential applies to 'C' uses, as opposed to expanding the category.

18. The Appellant states that PBSA is treated as a separate category by planning policy and it is materially distinct from conventional residential use. They highlight differences; it is a sui generis form of accommodation with shared facilities, management and more limited or transient occupation.

19. The Appellant draws upon consistency of approach, citing other [redacted] cases where PBSA has been treated as falling within "All other uses" and therefore not subject to residential CIL charges. They claim this evidences an inconsistent approach adopted by the CA.

20. The Appellant opines that the CA is effectively trying to expand the Charging Schedule beyond its adopted scope; if PBSA is to be brought within a chargeable category, this should be done through formal review, supported by evidence and subject to consultation, not by reinterpretation.

21. The Appellant submits that the Charging Schedule must be interpreted having

regard not only to the wording used, but also to its evidence base, consistent with the approach in Trump International Golf Club Scotland Ltd v Scottish Ministers [2015] UKSC 74, Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30 and DB Symmetry Ltd v Swindon BC [2022] UKSC 33, which they argue require interpretation in context rather than by expansive reading of individual words.

22. In particular, they contend that: there is no viability evidence demonstrating that PBSA was considered when setting the “Residential” rate in the 2016 Charging Schedule and accordingly, PBSA cannot properly be brought within the residential charging category with the absence of such evidence.

23. The Appellant further submits that the wording “Residential (including all residential ‘C’ use classes)” should be interpreted as referencing and aligning with Use Class C, rather than expanding beyond it. They argue that “including” in this context is descriptive and not expansive.

24. The Appellant further argues that:

a) The High Court judgment quashing the previous appeal decision addressed only deficiencies in reasoning and did not endorse the CA’s interpretation.
b) The CA’s reliance on subsidy control considerations is irrelevant to the proper interpretation of the Charging Schedule;
c) If PBSA is to be charged at a residential rate, this should be achieved through formal review of the Charging Schedule, supported by evidence and examination, rather than reinterpretation.

25. The CA reject the Appellants’ reliance on officer reports or previous practice suggesting nil rates or inconsistency of approach, stating these reflect misinterpretation and cannot govern the proper application of the Charging Schedule.

26. The CA maintains that the Appellant’s interpretation would produce an irrational outcome, creating a nil-rate category for substantial residential-type development, which would be contrary to the purpose of CIL.

27. The CA contest that the chargeable amount has been correctly calculated in accordance with Regulation 40 and Schedule 1 of the CIL Regulations 2010, using the appropriate “relevant rate” from the [redacted] CIL Charging Schedule.

28. The CA submits that charging schedules, as public documents with legal effect, must be interpreted objectively using the ordinary meaning of the words in context, applying the approach in Trump International Golf Club Scotland Ltd v Scottish Ministers [2015] UKSC 74, Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30, and DB Symmetry Ltd v Swindon BC [2022] UKSC 33, such that “residential” plainly includes PBSA as accommodation in which people live.

29. The CA further contend that the word “including” is expansive rather than limiting, so the reference to Use Class C does not restrict the category but

clarifies it. They rely on the purpose of CIL under s.211 Planning Act 2008 and supporting PPG guidance (Refs: 25-010-20190901 and 25-031-20190901), arguing that excluding PBSA would produce an irrational and unintended outcome by creating a nil-rate "windfall" for a form of development that generates infrastructure demand, as well as potential subsidy control concerns under s.2(2)(c) Subsidy Control Act 2022.

30. The functional characteristics of the scheme, which includes self-contained units meeting the definition of a "dwelling" under Regulation 2(1) of the CIL Regulations 2010, comparative practice in other authorities and the absence of any express exclusion in the Charging Schedule, are held by the CA to support their position that PBSA is chargeable as residential development.

31. The CA reject reliance on previous officer reports suggesting nil liability as erroneous and maintain that interpreting "including" as restrictive is legally flawed and that a correct, common-sense reading leads to PBSA falling within the residential charging category. The CA consider the PBSA, although 'sui generis', is properly characterised as residential in nature and therefore falls within the "Residential" category of the Charging Schedule. They emphasise that the wording "Residential (including all 'C' use classes)" is non-exhaustive and does not restrict the category solely to 'C' class uses. On that basis, they opine that specialist residential developments such as PBSA are considered to fall within the scope of 'residential'.

32. The CA rely on the wider planning and policy context to support their interpretation. The [redacted], [redacted] and the [redacted] PBSA Guidance, treat PBSA as a form of specialist housing rather than commercial floorspace. [redacted] Plan adopts the same approach, dealing with PBSA under housing policies. This policy context is relied upon as a legitimate aid to interpreting the Charging Schedule where PBSA is not expressly referenced.

33. The CA state it is established practice to treat PBSA as residential for CIL purposes. They too evidence their interpretation as being both reasonable and consistent with wider practice by reference to VO appeal decisions where student accommodation has been accepted as residential in character when applying a charging schedule.

34. The Appellant's interpretation would, in the opinion of the CA, produce an irrational outcome, if PBSA were treated as "All other uses", as opposed to "Residential". This would mean substantial residential developments would make no CIL contributions. The CA argues this would undermine the purpose of CIL under the Planning Act 2008 and create an unintended loophole within the Charging Schedule.

35. The CA emphasise the functional characteristics of the scheme; the accommodation comprises self-contained studios and cluster flats with private facilities, occupied for extended periods. In its view, these operate in practice as dwellings, with the only distinction being management and occupation controls, a distinction that does not alter the essential residential character for CIL purposes.

36. Applying that interpretation, the CA conclude that the "Residential" rate is the correct "relevant rate" for the PBSA floorspace. It then applies the Schedule 1

formula, using the agreed inputs for areas (GIA's) and indexation. This results in a [redacted] CIL liability of £[redacted], together with [redacted] liability of £[redacted], giving a total of £[redacted] as set out in the Liability Notice.

37. In summary, the CA consider that PBSA is residential in nature, falls within the "Residential (including all residential 'C' use classes)" category of the Charging Schedule on a proper interpretation, and has been correctly charged at that rate. The calculation itself is not disputed and has been correctly undertaken in accordance with Regulation 40 and Schedule 1.

38. The previous CIL Appeal Decision reference 1860926 relating to [redacted] arising from planning permission [redacted] was quashed on [redacted]. The High Court, by consent order dated [redacted], quashed the Regulation 114 appeal decision and remitted the matter for redetermination, on the basis that the original decision was affected by an error of law.

39. The previous decision turned on the interpretation of the charging schedule entry "Residential (including all residential 'C' use classes)" and whether student accommodation fell within it; the Appointed Person concluded it did not, resulting in a nil CIL charge. However, it was accepted in a signed consent order by both parties that the reasoning of the decision was legally inadequate and did not provide intelligible or sufficient reasons on the principal issue. The Court therefore quashed the decision.

Decision

40. The development comprises predominantly purpose-built student accommodation (PBSA) with ancillary Class E retail. The parties agree the Gross Internal Area, deductions and resulting chargeable area of [redacted] sqm. The sole issue in dispute is the correct categorisation of the PBSA for the purposes of the [redacted] CIL Charging Schedule.

41. This appeal is made under Regulation 114 and concerns the correctness of the chargeable amount stated in the liability notice. The task is to therefore apply the adopted Charging Schedule, not to reconsider its underlying evidence base or policy merits.

42. I have considered the Appellant's submissions that PBSA was not assessed within the Charging Schedule evidence base and that Planning Practice Guidance requires viability testing for differential rates.

43. However, the CIL Regulations provide no mechanism within a Regulation 114 appeal to revisit or challenge the evidential basis of an adopted Charging Schedule. That is a matter for examination at the time of preparation. Accordingly, whilst I acknowledge the submission, it does not affect the interpretation or application of the adopted Schedule in this appeal.

44. I have carefully considered the evidence relied upon by both parties, including Trump, Hillside and DB Symmetry, which establish that planning instruments should be interpreted objectively, by reference to the language used, read fairly and in context.

45. The outcome of this decision depends upon the proper interpretation and application of the Charging Schedule in accordance with the CIL Regulations 2010.

46. In respect of charging rates**, Regulation 13** states:

‘Differential rates:

13.—(1) A charging authority may set differential rates—

a) for different zones in which development would be situated;
b) by reference to different intended uses of development;
c) by reference to the intended gross internal area of development;
d) by reference to the intended number of dwellings or units to be constructed or provided under a planning permission.’

47. The CIL Regulations **do not** state that they **require a CA to set charging rates in accordance with Planning Class Uses.** There is a clear, disconnect between the CIL Charging Schedule and Planning Class Uses. Whilst CA’s may choose to reference Planning Class Uses as a guide to CIL Classification Class, the Planning Use Class does not always determine the CIL Charging Class categorisation.

48. Regulation 13 allows a charging authority to set differential rates by reference to the intended use of development. In applying the Charging Schedule, it is therefore necessary to determine into which category the development properly falls by reference to that intended use. The [redacted] Charging Schedule categories are not defined by planning use classes and the correct approach is to consider the substance of the development and how it aligns with the categories in the adopted Schedule.

49. I accept that PBSA is a “Sui Generis” use class. However, Regulation 13 makes it clear that differential rates are set by reference to intended use, not planning use class. Planning use class is therefore not determinative of CIL category. The correct approach is to consider the substance and function of the development. I note the planning permission does not refer to the development as ‘residential’; however, this does not determine its categorisation for CIL purposes.

50. I have considered the Appellant’s submission that PBSA is materially distinct from residential use. Whilst it has distinct management and occupation characteristics, I find that:

a) It provides accommodation for living purposes;
b) Occupiers reside for extended periods;
c) The accommodation includes facilities for day-to-day domestic living.

51. I conclude, the term “Residential” denotes development used for living purposes and is not confined to planning use classes within Class C. The use of the word ‘including’ is illustrative and expansive, confirming that Use Class C forms part of, but does not limit, that category within the CIL Charging Schedule.

52. I have had regard to planning policy, including the [redacted] and [redacted], which treat PBSA as part of housing supply. Whilst not determinative, this provides relevant context supporting the classification of PBSA as residential in character. I accept the Appellant's submission that policy classification is not identical to Charging Schedule categorisation; however, it is a relevant contextual indicator of how such development is regarded.

53. I have considered the Appellant's reliance on previous officer reports and examples said to show that PBSA has been treated as nil-rated. However, these do not form part of the adopted Charging Schedule; errors or inconsistencies in application cannot alter the meaning of the Schedule and my role is to correctly apply the Schedule, not to replicate earlier decisions.

54. Whilst I acknowledge the Appellant's submission that it acted reasonably in relying on such materials, there is no basis within the Regulations to disapply the Charging Schedule on grounds of reliance or expectation. My decision must be determined in accordance with the CIL Regulations and the borough charging schedule, as opposed to other decisions that may have been made by the CA.

55. I acknowledge the CA's reference to subsidy control considerations and the Appellant's submission that these are irrelevant. I agree that such considerations are not determinative of the interpretation of the Charging Schedule and I place no weight on them in reaching my decision.

56. To determine **the intended use of the development** I have had regard to the following:

    a) Planning Class Use; PBSA falls within a Sui Generis use class and not within Use Class C; however, planning use class is not determinative of CIL categorisation.
    b) The word "including" as used within the Charging Schedule is illustrative and expansive, not limiting and the reference to Use Class C within the Charging Schedule does not create a closed list.
    c) The [redacted] ([redacted]); contradictory to the Planning Use Class, includes PBSA within its 'housing supply'.
    d) Definition of 'Residential'; used for living in as a residence. A place where people live or dwell which includes sleeping, living and domestic occupation.
    e) The intended use of the development and its purpose.

57. As per Regulation 13, it is the **intended use of the development that determines the differential rate.** The Sui Generis category which PBSA falls within, is in accordance with Regulation 13 of the CIL Regulations, **"is not determinative of the intended use of the development."**

58. The 'intended use' of the development is as 'accommodation' as per its description. I determine that the Student Accommodation is accommodation that will be used as multiple residences for students. They will live, sleep and eat within the development.

59. I accept that Charging Schedules should provide clarity and predictability for

developers. However, clarity does not require that every possible form of development be expressly listed. Where a development is not specifically identified, **it must be categorised by reference to its ordinary and functional characteristics.** In this case, the PBSA development provides living accommodation and falls within the ordinary understanding of the Residential category in the Schedule.

60. Whilst the management structure of the accommodation and arrangement of accommodation are clearly aligned with the intended user group, it remains nonetheless, residential accommodation for students.

61. I conclude the PBSA development has been **correctly categorised within the CIL charging category of 'residential'** and does not fall within 'all other chargeable development' for CIL calculation charge purposes, which accords with Regulation 13 of the CIL Regulations.

62. Having considered the evidence presented I therefore dismiss this appeal and determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

[redacted]

[redacted] BSc (Hons) MRICS FAAV
Valuation Office
06 July 2026