Appeal Decision

By [redacted] MRICS VR

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

Valuation Office (DVS)
Wycliffe House
Green Lane
Durham
DH1 3UW

E-mail: [redacted]@hmrc.gov.uk

Appeal Ref: 1891221

Address: [redacted]

Proposed Development: Demolition of the existing buildings and redevelopment of site to provide a H shaped building ranging from 2 to 5 storeys in height comprising 24 self-contained residential units (Class C3), together with the provision of three disabled car parking bays, refuse and cycle storage, child play area, landscaping and boundary treatment.

Planning Permission details: Granted by an appointee of the Secretary of State on [redacted], under planning appeal reference [redacted], in connection with the earlier planning application ref: [redacted] to [redacted], dated [redacted].

Decision

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

Reasons

Background

1. I have considered all the submissions made by the Appellant, [redacted], of [redacted], and the submissions made by the Collecting Authority (CA), [redacted].

   In particular, I have considered the information and opinions presented in the following documents:

   a) CIL Appeal form dated [redacted].

   b) Grant of Planning Permission under the Planning Inspectorate Appeal reference [redacted], dated [redacted], in connection with the earlier planning application reference of [redacted] to [redacted], dated [redacted].

   c) A copy of the refusal for permission for development of reference [redacted], dated [redacted].

d) The CIL Liability Notice (ref: [redacted]) dated [redacted] (the second Liability Notice).

e) The CIL Liability Notice (ref: [redacted]) dated [redacted] (the original Liability Notice).

f) The CA's Regulation 113 Review document dated [redacted].

g) Various plans of the subject development.

h) The CA's Statement of Case document, dated [redacted].

i) The Appellant's rebuttal statement to the CA's Statement of Case document, which is dated [redacted].

Grounds of Appeal

2. Planning permission was granted for the development on [redacted], allowed on appeal, under reference [redacted]. The approved planning permission was:

   "Demolition of the existing buildings and redevelopment of site to provide a H shaped building ranging from 2 to 5 storeys in height comprising 24 self-contained residential units (Class C3), together with the provision of three disabled car parking bays, refuse and cycle storage, child play area, landscaping and boundary treatment."

3. On [redacted], the CA issued a Liability Notice (Reference: [redacted]) for a sum of £[redacted].

4. A non-material amendment planning application under section 96A of the Town and Country Planning Act 1990, was sought by the Appellant on [redacted]; this was subsequently approved by the CA on [redacted] (reference [redacted]).

5. On [redacted], the CA issued a second liability notice, Liability Notice (Reference: [redacted]) for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m² and a Charging Schedule rate of £[redacted] per m² ([redacted] CIL – Zone C Residential). The [redacted] CIL indexation was [redacted]/[redacted] and the calculations shown in the Liability Notice are as follows:

   [redacted] CIL ([redacted] CIL)

   [redacted] m² @ £[redacted] per m² (Zone C Residential) x index [redacted] = £[redacted]

   [redacted] CIL ([redacted] CIL)

   [redacted] m² @ £[redacted] per m² ([redacted] CIL Band [redacted]) x index [redacted] = £[redacted]

   Total CIL ([redacted] CIL & [redacted] CIL)
   £[redacted]

6. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on

[redacted], stating that it was of the view that its original decision was correct and should be upheld.

7. On [redacted], the Valuation Office received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect and that the CIL charge amount payable should reflect a demolition credit (offset) area of [redacted] m² in the CIL calculation.

8. The Appellant's Appeal can be summarised into a single core point – a disagreement over the constitution of the net chargeable area. The Appellant opines that the CA has not offset the full 'in-use' floorspace of the buildings to be demolished (in other words, the existing area floor space, which the Appellant considers is an eligible deduction, which can be offset against the chargeable area. Specifically, the Appellant opines that the offset should include all of the full upper floor storage area. The CA opines that not all of the upper floor area is allowable, as part of the upper floors are accessed by ladders and are inaccessible.

   This Appeal turns on whether the full area of the upper floors is allowable for demolition credit; the Appellant opines that the offset is [redacted] m² gross internal area (GIA), whilst the CA opines that the offset is a lower GIA of [redacted] m². In his representations to me, the Appellant has not offered his opinion of the actual CIL calculation.

9. It would appear that there is no dispute between the parties in respect of the Charging Rate, the GIA of the proposed development (of [redacted] m²) or the applied indexation.

Approved Development in Dispute

10. The property subject to this Appeal comprises the demolition and redevelopment of existing buildings, situated in [redacted], within the [redacted]. The Appeal site lies within a long established urban block. [redacted] runs between [redacted] Town Centre and [redacted].

Decision

11. The primary dispute between the parties relates to their respective different viewpoints on the constitution of the net chargeable area. Specifically, the parties have a disagreement over the constitution of the GIA/floorspace of the existing accommodation, in relation to the upper floor storage area. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision.

12. The calculation of the chargeable amount is contained in the provisions of Schedule 1 of the 2019 Regulations. In this case (which is a 'Standard Case' under Schedule 1) the provisions of paragraphs (3) and (4) of Part 1, Schedule 1 are key; they state:

    (3) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

    (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 sub-paragraph (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.

The value of 'A' in the above formula, must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—
G = the GIA of the chargeable development;
GR = the GIA of the part of the chargeable development chargeable at rate R;
KR = the aggregate of the GIA of the following—
(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 GIA of parts of in-use buildings that are to be demolished before completion of the chargeable development; and
(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

13. "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.

14. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "the development for which planning permission is granted".

15. The CIL Regulations do not define GIA, so it is necessary to adopt a definition. The definition of GIA provided in the Royal Institution of Chartered Surveyors Code of Measuring Practice (6th Edition) (RICS CoMP) is the generally accepted method of calculation.

GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level. Including:

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

Excluding:

- 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
- Greenhouses, garden stores, fuel stores, and the like in residential property

I would point out the wording and language of 'floor level', which forms part of the key definition of the RICS CoMP; I shall return to this wording, later in my decision.

16. The parties appear to be in agreement in accepting the RICS definition of GIA as per the definition of GIA provided in the RICS CoMP.

17. I shall now elaborate on the parties' disagreement over the floorspace of the chargeable area – specifically, their disagreement in respect of the existing upper floor area.

    The CA considers that only part of the upper floors is allowable GIA, whereas the Appellant considers that all of the upper floor area is considered to be GIA. The Appellant opines that the offset is [redacted] m² GIA, whilst the CA opines that the offset is a lower GIA of [redacted] m².

    The core dispute between the parties of the allowable GIA, relates to the second floor area, which includes four loft areas. The CA contends that only one loft area is allowable (as it is shown to be permanently accessible via a staircase). As the other three loft areas are only shown to be accessible via a loft hatch, the CA opines that these three areas do not constitute GIA. The Appellant contends that all the loft areas are allowable and should be included in the offset calculation, as the Appellant opines they constitute GIA.

18. In support of the CA's argument that the offset GIA is [redacted], the CA points to approved existing floor plan [redacted] (existing second floor), which the CA opines,

shows that only one area is permanently accessible, via a fixed staircase. The CA further opines that the remaining three areas shown on the plan are accessed solely via individual loft hatches. The CA is of opinion that in order for an area to be regarded as a floor* for the purposes of measuring GIA, the space must benefit from permanent access, typically via a fixed staircase, to form part of the normal internal circulation of the building.

[*emphasis of the CA is underlined]

The CA opines that given the lack of permanent access and the absence of any evidence to demonstrate regular use and access, the areas which are accessed via loft hatches do not meet the definition of GIA and should therefore be excluded from the offset.

19. The Appellant opines that the offset GIA is [redacted] m² and that the CA is not relying on the latest information of the detailed plans and calculation by scheme architect. The Appellant further opines that the original plans are not suitable for measurement purposes and that the CA has elected to rely on those original plan drawings, whilst disregarding more accurate plans supplied by the Appellant. Specifically, the Appellant points to Drawing [redacted], which the Appellant considers supports the contention of an offset GIA of [redacted] m². Furthermore, the Appellant opines that the loft areas that the CA is disregarding, are permanently accessible, have been used for storage, interconnect with one another and areas with a head height of 1.5 metres or more have been included.

20. The Appellant points to the legend on the submitted original plan drawings, which states:

"Area figures in this drawing are approximate and relate to the likely areas of the building at the current stage of design. Any decisions made on the basis of these area figures, whether as to project viability, pre-letting, lease or sale agreements and the like, should make allowance for design development, accurate site survey, site levels and site dimensions, construction methods and building tolerances, Local Authority and Statutory consents. Do not scale from this drawing. This documentation is not for construction."

The Appellant contends that the later submitted plan (in the non-material amendment application of reference [redacted]) of Drawing [redacted] is a much more accurate plan and that the CIL should be based on this plan.

21. The CA argues that the approved existing floor plans are [redacted] (existing ground floor), [redacted] (existing first floor) and [redacted] (existing second floor). The CA further opines that although a non-material amendment (reference [redacted]) was granted by the CA on [redacted], that application did not seek to amend the approved existing floor plans; accordingly, the CA opines that the plans approved under [redacted] remain extant for CIL purposes.

22. The CA also points that the survey plans provided by the Appellant do not evidence that the loft areas in contention benefit from permanent access. In addition, the CA points out that the Appellant has not provided any alternative evidence, such as time-stamped photographs, to demonstrate that such access exists.

23. In respect of the dispute over the second floor loft space, and whether all the loft space constitutes GIA, I agree with the CA that its assessment is correct. I agree with the CA that in order for an area to be regarded as a floor, for the purposes of measuring GIA, the space must benefit from permanent access, typically via a fixed staircase. In both drawing [redacted] (favoured by the CA) and drawing [redacted] (favoured by the Appellant) the loft space is shown as two unconnected sections (although in

[redacted] both sections are also shown as additionally internally subdivided). In both drawings, only one of the sections has a permanent stair access.

In the absence of a fixed staircase, at least 2 of the 4 loft areas cannot be accessed safely or conveniently in a manner consistent with regular day-to-day use. Access via loft hatches is inherently intermittent and non-permanent. As a result, these spaces cannot be said to be capable of use in the way envisaged by the RICS definition of GIA. Furthermore, areas accessed only via loft hatches do not generally comprise a structural floor; based upon the evidence, I conclude that the three disputed loft areas do not comprise a 'floor level'. In accordance with the GIA definition on page 10 of the RICS CoMP, the areas cannot therefore be included.

24. This leaves a question as to whether the entirety of the single section shown with a stair access on drawing [redacted] should be offset or whether the loft has internal partitions and only a portion of it is permanently accessible as suggested by drawing [redacted]. In this regard, I favour the CA's reasoning that the Appellant has not provided any photographic evidence to demonstrate the open loft area with stair access. Furthermore, I favour the plan submitted with the original planning application, which is more detailed, showing internal partitioning on the loft floors; whereas the later plans have been shaded and the internal partitioning may have been blocked by the opaque shading. I therefore conclude that only 1 of the 4 loft areas in question comprises GIA.

25. Having fully considered the representations made by both parties and all the evidence put forward to me, I determine that the CA has not erred and the CIL calculation in the second Liability Notice is correct.

26. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated [redacted], and hereby dismiss this appeal.

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office
14th July 2026