

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: 1893355

Planning Permission: [REDACTED]

Description:

Application to vary conditions 1 (Approved drawings) and 18 (M4(2) requirements) of planning permission Ref: [REDACTED] for the 'Application to vary condition 1 (approved drawings) of planning permission Ref: [REDACTED] for the 'Part demolition and change of use of former care home (Use Class C2) to form 20 residential dwellings (Use Class C3), erection of two-storey side/rear extensions with accommodation at roof level, erection of front boundary wall with railings and piers and pedestrian and vehicle access gates, provision of cycle and car parking and landscaping.' to allow change in materials on the link building between the old and new parts and balconies balustrades to the rear wing building, creation of flat roof dormer on the front elevation to allow the addition of lift overrun space at loft level, alterations to front, side and rear fenestrations and alterations to flats layouts,' to allow new balconies at first floor rear, removal of dormer to rear, part increase to ridge height, removal of wall pier, removal of air source heat pump, provision of additional parking space, alteration to parking, refuse and cycle store layout, removal of existing chimney stacks, provision of bat and bird bricks, alterations to fenestrations and internal layout.

Location: [REDACTED]

Decision

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

Reasons

1. I have considered all of the submissions made by [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) Planning permission reference [REDACTED] granted on [REDACTED] for: "Application to vary conditions 1 (Approved drawings) and 18 (M4(2) requirements) of planning permission Ref: [REDACTED] for the 'Application to vary condition 1 (approved drawings) of planning permission Ref: [REDACTED] for the 'Part demolition and change of use of former care home (Use Class C2) to form 20 residential dwellings (Use Class C3), erection of two-storey side/rear extensions with accommodation at roof level, erection of front boundary wall with railings and piers and pedestrian and vehicle access gates, provision of cycle and car parking and landscaping.' to allow change in materials on the link building between the old and new parts and balconies balustrades to the rear wing building, creation of flat roof dormer on the front elevation to allow the addition of lift overrun space at loft level, alterations to front, side and rear fenestrations and alterations to flats layouts,' to allow new balconies at first floor rear, removal of dormer to rear, part increase to ridge height, removal of wall pier, removal of air source heat pump, provision of additional parking space, alteration to parking, refuse and cycle store layout, removal of existing chimney stacks, provision of bat and bird bricks, alterations to fenestrations and internal layout."
 - b) CIL Liability Notice [REDACTED] dated [REDACTED] and issued in relation to [REDACTED].
 - c) Regulation 113 Review Request submitted to the CA on [REDACTED].
 - d) The CA's Regulation 113 Review Decision dated [REDACTED].
 - e) Regulation 114 CIL Appeal Form dated [REDACTED], together with documents and correspondence received on [REDACTED].
 - f) CA's representations received [REDACTED], together with documents and correspondence.
 - g) Further representations from the Appellant, received on [REDACTED].

Background

2. Planning permission reference [REDACTED] was granted on [REDACTED] for "Part demolition and change of use of former care home (Use Class C2) to form 20 residential dwellings (Use Class C3), erection of two-storey side/rear extensions with accommodation at roof level, erection of front boundary wall with railings and piers and pedestrian and vehicle access gates, provision of cycle

and car parking and landscaping.”

3. Included within the planning documents for this planning application were a ‘site layout plan’ showing the site boundary with a red line and a ‘site location and block plan’ showing the existing application area outlined in red and the ownership boundary outlined in blue.
4. Planning permission [REDACTED] was granted on [REDACTED] which was an application to vary conditions attached to permission [REDACTED].
5. Planning permission [REDACTED] was granted on [REDACTED] which was an application to vary conditions attached to permission [REDACTED].
6. Following the granting of [REDACTED], the CA issued CIL Liability Notice [REDACTED] on [REDACTED]. This was calculated on a chargeable area of [REDACTED] square metres (sqm) at the residential rate (£73*) to produce a total charge of £[REDACTED] and the [REDACTED] CIL [REDACTED] General charge for [REDACTED] sqm to produce £[REDACTED]. The total combined charge was £[REDACTED]. This CIL Liability Notice was addressed to [REDACTED].
7. The Appellant requested a Regulation 113 review on [REDACTED], including the following within their submission to the CA:
 - a. [REDACTED] CIL Liability Notice
 - b. [REDACTED] CIL Liability Notice
 - c. CIL Statement
 - d. CIL Appeal Case No. 1878298
 - e. Planning Permission [REDACTED]
 - f. HMO Licence granted by [REDACTED]
 - g. [REDACTED] Property Inspection Report
 - h. Letter to Bungalow Residents
 - i. CIL Appeal Case No. 1793245, CIL Appeal Case No. 1793622, CIL Appeal Case No. 1786516
 - j. Application Form for [REDACTED]
 - k. [REDACTED] CIL Rate Summary 2026
8. The CA responded to the Regulation 113 request on [REDACTED] and concluded that the CIL charge was correct. They considered the ‘relevant land’ to be just the care home as outlined in red on the site plan attached to the planning application. They also did not consider the property had been lawfully used; its lawful use was as a care home (Planning class use C2) and not as a house in multiple occupation (HMO).
9. A revised CIL Liability Notice, [REDACTED] was issued on [REDACTED], addressed to [REDACTED]. This was for the same amount and calculated on the same basis as [REDACTED].
10. The Appellant submitted a Regulation 114 appeal on [REDACTED]. In summary, the Appellant contends that the ‘retained parts of in use buildings’ have not been deducted from ‘the gross internal area of the chargeable development’.

Grounds of Appeal

11. The Appellant's principal ground of appeal concerns the calculation of the chargeable gross internal area (GIA) for CIL charging purposes.
12. The Appellant contends that the existing buildings qualify as "in-use buildings" within Schedule 1, Part 1, paragraph 1(10) of the CIL Regulations and that their floorspace should therefore be deducted in full, resulting in a total CIL charge of £[REDACTED] (£[REDACTED] to [REDACTED] and £[REDACTED] to the [REDACTED]).
13. The key issues to be considered in this appeal:
 - a) What is the relevant land;
 - b) Which are the relevant buildings;
 - c) Were the relevant buildings in continuous, lawful use for a period of at least six months within the three years ending on the day planning permission first permitted the development, to enable their floorspace to be offset against the CIL Charge.

Summary of Grounds of Appeal – The Appellant

14. The Appellant contends that the CA has incorrectly calculated the CIL liability by failing to recognise the existing care home buildings as qualifying in-use buildings for the purposes of existing floorspace offset.
15. The Appellant argues that the entirety of the care home site, including the main care home building and the nine ancillary bungalows, constitutes the "relevant land" for the purposes of the CIL Regulations. As the bungalows form part of the same planning unit, are in the same ownership, share the same address and have a functional and planning dependency on the main care home building.
16. The Appellant maintains that both the main care home building and the bungalows are relevant buildings situated on the relevant land when planning permission first permitted the chargeable development. As such, their GIA should be capable of deduction from the chargeable floorspace if they satisfy the "in-use" test.
17. The Appellant argues that both the main building and the bungalows were in continuous use throughout the relevant period ([REDACTED] to [REDACTED]). The bungalows remained occupied and operational throughout. The main building remained occupied through a [REDACTED] arrangement, which the Appellant contends was merely incidental to the continuing care home use and did not amount to a material change of use in planning terms.
18. The Appellant notes that the CA were aware of the [REDACTED], had granted the associated HMO licence and did not demand a planning application for a change of use.

19. They argue that the care home use remained extant, all care home facilities and equipment remained in place, the building remained operational and there was always an intention to continue the care home use if redevelopment permission was not obtained.
20. The Appellant raises previous CIL appeal decisions which they say establish that:
- a) only part of a building needs to have been in use to satisfy the in-use test; and
 - b) occupation or activity connected with the lawful operation of the site is sufficient to demonstrate continuous lawful use.
21. On the basis that the main building and bungalows were relevant buildings in lawful use, the Appellant argues that the existing care home floorspace of [REDACTED] sqm should be deducted from the proposed development floorspace of [REDACTED] sqm. The Appellant contends that the correct net chargeable area therefore is [REDACTED] sqm ([REDACTED] sqm less [REDACTED] sqm). Applying the indexed [REDACTED] CIL rate of £ [REDACTED]/sqm and the [REDACTED] CIL rate of £ [REDACTED]/sqm, the Appellant calculates the total CIL liability should be £ [REDACTED].
22. In their response to the CA's representations, dated [REDACTED], the Appellant maintains that the Council has failed to produce evidence to justify refusing the existing floorspace deduction and largely repeat their position that the care home remained in lawful use throughout the relevant period.
23. The Appellant's principal submissions are that the CA has not produced evidence to rebut the Appellant's factual evidence that the main building was occupied and in use for more than six months during the relevant three-year period; the CA asserts that the building was operating as an HMO, but has produced no evidence that a material change of use occurred and the CA were aware of the [REDACTED] arrangement but did not invite a planning application for change of use and did not commence enforcement action. The Appellant argues this therefore indicates that the CA did not consider a material change of use to have occurred at the time.
24. The Appellant maintains that occupation by [REDACTED] was merely incidental to the existing care home use and did not amount to a change of planning use.
25. The Appellant believes that the bungalows remain relevant; the CA have not disputed that the bungalows remained occupied and in care-related use, nor that they were functionally dependant on the main building. The Appellant argues that this dependency continued throughout the relevant period and part of the main building was undoubtedly in use.
26. Therefore, irrespective of the position regarding the [REDACTED], it is not disputed that "a part of that building has been in use" for the purposes of Regulation 40(10).

27. The Appellant's further comments focus on the lack of evidence supporting the CA's position. They argue that the CA has failed to demonstrate that the [REDACTED] arrangement constituted an unlawful planning use, failed to explain why no enforcement action was taken if that were the case, and has not disputed that the bungalows remained occupied and functionally dependent on the main building.

Summary of Collecting Authority's Case

28. The CA consider that no existing floorspace deduction should be allowed because the former care home building does not satisfy the definition of an "in-use building" within Schedule 1 of the CIL Regulations.

29. The former care home building was not in lawful planning use during the relevant period. The building was formerly used as a care home (Planning Use Class C2) and the CA state they rely on evidence indicating that the care home use ceased in [REDACTED].

30. The building has been subsequently occupied by [REDACTED] under an HMO licence granted in [REDACTED]. The CA argue that an HMO licence granted under the Housing Act 2004 is separate from planning legislation and does not authorise a planning use or make an otherwise unlawful use, lawful for planning purposes.

31. Accordingly, the CA contends that occupation by [REDACTED] was not the building's lawful planning use and does not establish continuous lawful use for the purposes of the CIL Regulations. On that basis, the main care home building does not qualify as an "in-use building" and no offset should be applied.

32. The other argument is that the bungalows fall outside of the planning site (as delineated in red on the site plan included with the planning application documents) and are not therefore within the relevant land.

33. Under Regulation 2 of the CIL Regulations, the "relevant land" is the land to which the planning permission relates. As the bungalows are not within that area, they are not situated on the relevant land.

34. Consequently, the bungalows do not meet the definition of a "relevant building" under Schedule 1 of the Regulations. Their occupation, lawful use, or functional relationship with the care home is therefore irrelevant to the CIL calculation. The CA contends that the bungalows cannot be relied upon to establish continuous lawful use or generate any floorspace offset.

35. The CA rejects the Appellant's assertion that various principles are established by "case law". They consider previous CIL appeal decisions are not binding court judgments and that each appeal must be determined on its own facts. They do

not consider that previous appeal decisions establish principles applicable to the current appeal.

36. The CA considers:

- a) The former care home building was not in continuous lawful planning use during the relevant period because occupation by [REDACTED] did not amount to lawful C2 use.
- b) The bungalows are outside the relevant land and cannot be taken into account.
- c) No part of the existing floorspace qualifies as deductible "in-use building" floorspace.
- d) Therefore, the chargeable amount in the Liability Notice has been calculated correctly and no existing floorspace offset should be granted.

Reasoning

37. This appeal has been made under Regulation 114 of the Community Infrastructure Levy Regulations 2010, as amended, on the basis that the chargeable amount has been calculated incorrectly. The issue is whether credit should be given for existing floorspace on the basis that the former care home building, and/or the bungalows, constituted in-use buildings for the purposes of the CIL calculation.

38. Regulation 9 of the CIL Regulations provides that the "chargeable development" is the development for which planning permission is granted. In this case, the chargeable development is therefore the development authorised by planning permission [REDACTED], read with the relevant approved plans. The scope of the chargeable development and the land to which the permission relates, must be determined from that permission and the plans forming part of it.

39. Schedule 1 to the CIL Regulations sets out the calculation of the chargeable amount. The recalculation of CIL following the grant of planning permission under section 73 TCPA 1990 is governed by Part 2 of Schedule 1 to the Community Infrastructure Levy Regulations 2010 (as amended). Paragraphs 3 to 6 set out the method for determining whether the notional chargeable amount has increased, decreased or remained unchanged and prescribe the calculation of the revised chargeable amount accordingly.

40. The CA have stated that the notional amount has increased and have therefore applied Paragraph 4 of Part 2 of Schedule 1.

41. Under Schedule 1, the GIA of retained parts of in-use buildings, and the GIA of parts of in-use buildings to be demolished before completion of the chargeable development, may be taken into account in calculating the deemed net area chargeable. For a building to qualify as an in-use building, it must first be a **relevant building** situated on the **relevant land** and must have been in **lawful use for a continuous period of at least six months** within the relevant three-year period.

42. The principal issue in this appeal is whether the existing bungalows form part of the "relevant land" for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended), and consequently whether they can be treated as "relevant buildings" capable of generating an existing floorspace deduction.
43. The Appellant submits that the bungalows should be regarded as part of the relevant land because they are held within the same ownership as the care home, form part of the same Land Registry title, share the same postal address, have historically operated as part of the same planning unit and are subject to a planning condition requiring them to function as ancillary accommodation to the care home. The Appellant further argues that there was a clear functional interdependency between the bungalows and the care home through the provision of care, servicing, maintenance, parking and other facilities.
44. I have carefully considered these submissions. However, the appeal must be determined by reference to the statutory provisions of the CIL Regulations rather than wider planning concepts relating to ownership, planning units or operational dependency.
45. Regulation 9 of the Community Infrastructure Levy Regulations 2010 (as amended) provides that the "chargeable development" is the development for which planning permission is granted. The Regulations also define the "relevant land" as the land to which the planning permission relates.
46. Accordingly, the starting point must be the planning permission itself and the plans approved pursuant to that permission. Having examined the approved location plan and site plans associated with planning permission [REDACTED], I am satisfied that the red-line application boundary clearly delineates the care home site and does not include the bungalows. Whilst the wider ownership may extend beyond the red-line boundary, and whilst one might reasonably question why the application site did not echo the Land Registry title, the fact remains that the planning permission relates only to the land contained within the approved red-line boundary. Whilst the location plan also shows land within a blue ownership boundary, the planning permission was not granted in respect of that wider area. The blue line denotes ownership only and does not extend the land to which the planning permission relates
47. I therefore find that the bungalows are not situated on the relevant land for the purposes of this appeal. It follows that they are not relevant buildings within the meaning of Schedule 1 and cannot be relied upon for the purposes of reducing the chargeable area. Their historic occupation, functional relationship with the care home, or planning condition tying them to the care home use does not bring them within the relevant land where they are outside the approved red line boundary of the planning permission.
48. I have then considered whether the former care home building itself qualifies as an in-use building. The parties do not dispute that the planning use of the main

building was historically as a care home within Use Class C2. The Appellant submits that the building remained in lawful use during the relevant period by virtue of occupation by [REDACTED], which it says was incidental to the continuing care home use. The Appellant also relies on the fact that care home equipment remained in the building, that there was an intention to continue the care home use if redevelopment did not proceed, and that the CA was aware of the [REDACTED] occupation and did not require a planning application or take enforcement action.

49. The CA's position is that the former care home use ceased in [REDACTED] and that subsequent occupation by [REDACTED] was not the lawful C2 care home use. It further submits that the grant of an HMO licence under separate housing legislation did not confer planning permission, did not regularise any planning use, and did not make the occupation lawful for planning purposes.

50. I accept the CA's position on this point. An HMO licence is granted under separate housing legislation and is concerned with the regulation and management of housing occupation. It is not a planning permission and does not determine the lawful planning use of land or buildings. The grant of an HMO licence therefore does not, of itself, establish that the main building was in lawful planning use for CIL purposes.

51. I do not accept the Appellant's submission that the absence of planning enforcement action, or the CA's knowledge of the occupation, is sufficient to demonstrate lawful use. The CIL Regulations require the Appellant to establish that the relevant building, or part of it, was in lawful use for the required continuous period. It is not for the CA to prove that the use was unlawful, nor is the CA's failure to take enforcement action determinative of lawful planning use. The absence of enforcement action may be a relevant factual matter, but it does not amount to a grant of planning permission or a confirmation of lawfulness.

52. Where an Appellant seeks an offset for existing floorspace, the evidential burden rests upon them to demonstrate, on the balance of probabilities, that the relevant building satisfies the statutory definition of an in-use building. The CA is entitled to proceed on the basis that a building is not an in-use building where insufficient information, or information of insufficient quality, has been provided to establish otherwise.

53. Schedule 1, Part 1, paragraph 1(8) of the Community Infrastructure Levy Regulations 2010 (as amended by the 2019 Regulations): "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."

54. I have considered the Appellant's evidence, including the [REDACTED] arrangement, the HMO licence, the continued presence of care home facilities and equipment, the stated intention to resume or continue care home use if

redevelopment did not proceed, and the asserted continuing relationship with the bungalows. However, I do not consider that this evidence demonstrates that the main building was being used lawfully as a care home during the relevant period. The evidence shows occupation of the building, but occupation alone is not sufficient. The use must be both actual and lawful for planning purposes.

55. I have considered the Appellant's reliance on previous appeal decisions. While previous appeal decisions may be informative, they are fact-specific and do not displace the statutory wording of the CIL Regulations. The present appeal must be determined on the evidence before me and by applying the Regulations to the planning permission and approved plans in this case.
56. The Appellant further submits that only part of a building needs to have been in use and that use connected with the lawful operation of the site can be sufficient. I accept that, as a general proposition, Schedule 1 paragraph 1(10) provides that a building may constitute an in-use building where part of that building has been in lawful use for the requisite period. However, that does not assist the Appellant unless the use relied upon was lawful planning use and the building relied upon is a relevant building on the relevant land. For the reasons set out above, the bungalows are not relevant buildings and the evidence does not establish that the main building, or any part of it, was in lawful C2 care home use for the necessary period.
57. The evidence demonstrates occupation of the building by residential [REDACTED] rather than the provision of residential care. No evidence has been produced that care services continued to be provided from the main building during the relevant period. The occupation relied upon was therefore materially different from the lawful C2 care home use.
58. The Appellant has argued that the main building remained capable of care home use and that there was no intention to abandon that use. However, the test is not simply whether a lawful use could have resumed, or whether equipment remained in place. The test is whether the relevant building, or part of it, was actually in lawful use for the required continuous period. On the evidence before me, I am not satisfied that this has been demonstrated.
59. I therefore find that the Appellant has not discharged the burden of proving, on the balance of probabilities, that the former care home building was an in-use building for the purposes of Schedule 1 to the CIL Regulations. I also find that the bungalows fall outside the relevant land and are not relevant buildings. Accordingly, no deduction for existing floorspace is available.
60. It follows that the CA was correct not to offset the existing GIA of the former care home building or the bungalows against the chargeable development. The CIL liability has therefore been calculated correctly.
61. The parties do not dispute the GIA of the proposed development, the applicable

CIL charging rates, the indexation applied, the relevant planning permission date, the section 73 calculation methodology (including the notional liabilities), or the arithmetic of the calculation itself. The sole issue in dispute is whether any existing floorspace qualifies for deduction under Schedule 1 to the Community Infrastructure Levy Regulations 2010 (as amended).

Decision

62. Having considered all the evidence and representations submitted by both parties, I find that the Appellant has not demonstrated that the requirements for an existing floorspace deduction under the CIL Regulations 2010, as amended, have been met. The bungalows are outside the relevant land identified by the approved planning permission and are not relevant buildings. The main former care home building has not been shown, on the balance of probabilities, to have been in lawful planning use for the required continuous period. The occupation by [REDACTED] and the existence of an HMO licence do not establish lawful planning use for CIL purposes.

63. I therefore dismiss the appeal and determine that the CIL payable in this case is £[REDACTED] ([REDACTED]).

[REDACTED]

[REDACTED] **BSc(Hons) MRICS FAAV**

Valuation Office

27 July 2026