

Appeal Decision

by [REDACTED] MRICS FAAV

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

Valuation Office
Wycliffe House
Green Lane
Durham
DH1 3UW

e-mail: [REDACTED]@hmrc.gov.uk

Appeal Ref: 1881502

Planning Permission [REDACTED] as amended by [REDACTED]

Proposal:

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.

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] of [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) Grounds of Appeal Statement from Appellant prepared by [REDACTED].
- e) Representations from the Appellant received [REDACTED] including:
 - i. Decision Notice, Non-Material Amendment reference [REDACTED] date amended [REDACTED].
 - ii. CIL Liability Notice [REDACTED] dated [REDACTED].
 - iii. Regulation 113 review request to the CA dated [REDACTED].
 - iv. Regulation 113 review response from the CA dated [REDACTED].
 - v. Full plans, elevations and site plan for the subject development
 - vi. [REDACTED] ([REDACTED] CIL Charging Schedule, [REDACTED] Info and Evidence document, [REDACTED] CIL Charging Schedule 2.
 - vii. Two redacted CIL Appeal Decisions.
 - viii. Application submission pack included with [REDACTED].
- f) The response and representation from the CA dated [REDACTED].
- g) Further representations from the Appellant dated [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], [REDACTED] 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 formed the basis of a previous CIL Appeal (1860926) as the Appellant disagreed with how the CA had calculated the CIL Liability. They disputed the application of [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 which upheld the CIL appeal, 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. A 'Non Material Amendment' application, reference [REDACTED] was approved on [REDACTED]; "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."
7. The CA issued CIL liability notice [REDACTED] on [REDACTED]. This was calculated on a chargeable area of [REDACTED] sqm at the rate for 'residential prime' of £[REDACTED] per sqm plus indexation ([REDACTED]), plus [REDACTED] charge, [REDACTED] 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].
8. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], upholding their original decision.
9. On [REDACTED], the Valuation Office received a CIL appeal made under Regulation 114 (chargeable amount) contesting that the CIL liability should be £[REDACTED].

Grounds of Appeal

10. 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).
11. 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

12. 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 index factor for [REDACTED] CIL Charging Schedule is [REDACTED] ([REDACTED] / [REDACTED]).
- g. The index factor for [REDACTED] is [REDACTED] ([REDACTED] / [REDACTED]).
- h. The GIA of in-use demolition floorspace is [REDACTED] sqm.
- i. The GIA of existing in-use retained floorspace is: [REDACTED] sqm.
- j. The total chargeable area is [REDACTED] sqm.

Representations

13. 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.
14. 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.
15. The Appellant considers the Charging Schedule should provide clarity and predictability. 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.
16. Representations have been included by the Appellant who contests the lack of viability evidence in respect of CIL charging (from [REDACTED]) to support the inclusion of PBSA within the "Residential" rate, means that there is no evidential basis for applying a residential charge to it.
17. 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 PBSA was not intended to fall within the Residential category.

18. The Appellant rejects the CA's reliance 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.
19. The Appellant states that PBSA is treated as a separate category by planning policy and it is materially distinct from conventional residential use. It is a sui generis form of accommodation with shared facilities, management and more limited or transient occupation.
20. The Appellant relies on 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. Thus evidencing and demonstrating inconsistency in the approach adopted by the CA.
21. 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.
22. 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.
23. 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, specialist residential developments such as PBSA are considered to fall within the scope of 'residential'.
24. The CA rely on the wider planning and policy context to support their interpretation. The [REDACTED], Policy [REDACTED] and the [REDACTED] PBSA Guidance, treat PBSA as a form of specialist housing rather than commercial floorspace. [REDACTED] 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.
25. 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 Valuation Office VO appeal decisions where student accommodation has been accepted as residential in character when applying a charging schedule.
26. 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.
27. 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.

28. 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 GIAs 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.
29. 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.

Decision

30. I have carefully considered the evidence that has been presented to support the view of each party. As the Appointed Person for this Appeal however, I rely most heavily upon the CIL Regulations 2010 to guide and determine the Appeal Decision. The outcome of this decision depends on a careful application of the wording in the charging schedule.
31. I have considered the Appellant’s submissions regarding the absence of specific viability evidence for PBSA within the evidence base and Examination in Public. However, this appeal does not provide a mechanism to revisit or challenge the evidence underpinning the adopted Charging Schedule. The Schedule must be applied as adopted. The task before me is to interpret and apply the categories within that Schedule, not to re-examine whether additional development types should have been separately assessed at the time of its preparation.
32. Within representations made, whilst I acknowledge the Appellant’s confusion and frustration that may have been caused by any inconsistencies with other PBSA developments being categorised as “other development” by the CA, my jurisdiction only extends to this Appeal and my decision has to 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.

33. 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.’

34. The CIL Regulations do not state that they **require a CA to set charging rates in accordance with Planning Class Uses**. Thus 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.
35. The proper interpretation of the Charging Schedule is central to this appeal. I disagree with the Appellants reading and interpretation of the Schedule. The Schedule refers to "Residential (including all 'C' use classes)". In my judgement, the use of the word "including" is illustrative and not restrictive. It indicates that 'C' use classes form part of the Residential category but does not limit it exclusively to those uses.
36. 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.
37. 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, therefore secondary to the '**intended use of the development**'.
38. To determine **the intended use of the development** I have had regard to the following:
- Planning Class Use; PBSA falls within Sui Generis and does not sit within any of the C Class, residential uses.
 - The [REDACTED] ([REDACTED]); contradictory to the Planning Use Class, includes PBSA within its 'housing supply'.
 - Definition of 'Residential'; used for living in as a residence. A place where people live or dwell which includes sleeping, living and domestic occupation.
 - The intended use of the development and its purpose.
39. 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.
40. 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.

41. 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.

42. I therefore opine 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.

43. Having considered the evidence presented I therefore dismiss this appeal and determine that the CIL payable in this case should be £ [REDACTED] ([REDACTED]).

[REDACTED]

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