

Appeal Decision

by [REDACTED] MRICS

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

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Appeal Ref: 1852181

Planning Permission Reference: [REDACTED]

Location: [REDACTED]

Development: Change of use of upper floor from retail office (use class E) to residential (use class C3) to create 3 flats and alterations with extension to first and second floor to create a further 4 flats and associated works.

Decision

I 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 [REDACTED] (the Appellant) and [REDACTED] as 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 [REDACTED] granted [REDACTED] for “*Change of use of upper floor from retail office (use class E) to residential (use class C3) to create 3 flats and alterations with extension to first and second floor to create a further 4 flats and associated works.*”
 - b. The CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] with CIL Liability calculated at £[REDACTED]
 - c. The CA’s Regulation 113 Review Decision dated [REDACTED].
 - d. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
 - e. The CA’s representations dated [REDACTED] and [REDACTED] together with documents and correspondence attached thereto.
 - f. The Appellant’s further comments dated [REDACTED] together with documents and correspondence attached thereto.

Background

2. Planning permission [REDACTED] was granted dated [REDACTED] for “*Change of use of upper floor from retail office (use class E) to residential (use class C3) to create 3 flats and alterations with extension to first and second floor to create a further 4 flats and associated works.*”

3. CIL Liability Notice [REDACTED] was issued by the CA on [REDACTED] in connection with planning permission [REDACTED] with liability calculated as follows:

Residential dwellings – 10 or less (zone A)

Chargeable GIA [REDACTED] m2

X CIL Rate £[REDACTED] / m2

Indexed at [REDACTED]

= £[REDACTED] CIL Liability

4. The Appellant requested a Regulation 113 review on [REDACTED] and the CA issued its decision on the Regulation 113 review on [REDACTED], confirming their view that “*the Collecting Authority does not have sufficient information, or information of sufficient quality, to enable it to establish the gross internal area of any part of a building*” and that they therefore “*deem the gross internal area of the part in question to be zero.*”
5. An Appeal against the chargeable amount dated [REDACTED] was submitted to the VO on the same date.

Appeal Grounds

6. Appeal Ground a) The Appellant believes that the existing floorspace, which is to be retained and converted, should be taken into account within the calculation of the chargeable amount.
7. Appeal Ground b) The Appellant disagrees with the CA’s calculation of the chargeable area of the proposed development.
8. Appeal Ground c) The Appellant believes that the CA is applying indexing incorrectly within the calculation of the chargeable amount.

Consideration of the Parties’ Submissions

9. Ground a) – Off-set of Lawful in-use building

The Appellant contends that CIL liability must be calculated by reference to Schedule 1 of the CIL Regulations 2010, with GIA off-set for a relevant lawful in-use building.

10. Their view is that the relevant three-year period is [REDACTED] to [REDACTED].
11. The Appellant has provided utility bills/invoices and statutory declarations and also refers to a previous AP CIL decision on a separate matter to support their view that continuing part occupation of the building meets the relevant lawful in-use requirement.
12. Utility Bills provided:

Broadband dated [REDACTED] covering 1 month period £[REDACTED]

Broadband dated [REDACTED] covering 1 month period £[REDACTED]

Broadband dated [REDACTED] covering 1 month period £[REDACTED]

Broadband dated [REDACTED] covering 1 month period £[REDACTED]

Broadband dated [REDACTED] covering 1 month period £[REDACTED]

Broadband dated [REDACTED] covering 1 month period £[REDACTED]

[REDACTED] Electricity Invoice dated [REDACTED] covering [REDACTED] £[REDACTED] plus balance b/f
£[REDACTED] for [REDACTED] kwh
[REDACTED] Electricity Invoice dated [REDACTED] covering [REDACTED] £[REDACTED] plus balance b/f
£[REDACTED] for [REDACTED] kwh
[REDACTED] Electricity Invoice dated [REDACTED] covering [REDACTED] £[REDACTED] plus balance b/f
£[REDACTED] for [REDACTED] kwh
[REDACTED] Electricity Invoice dated [REDACTED] covering [REDACTED] £[REDACTED] plus balance b/f
£[REDACTED] for [REDACTED] kwh
[REDACTED] Electricity Invoice dated [REDACTED] covering [REDACTED] £[REDACTED] plus balance b/f
£[REDACTED] for [REDACTED] kwh
[REDACTED] Electricity Invoice dated [REDACTED] covering [REDACTED] £[REDACTED] plus balance b/f
£[REDACTED] for [REDACTED] kwh

13. A Statutory Declaration dated [REDACTED] and Further Statutory Declaration dated [REDACTED] by [REDACTED], [REDACTED] (the previous occupier) stating they occupied the front first floor of the property continuously from [REDACTED] to [REDACTED]. The whole of the premises were in retail use from [REDACTED] until [REDACTED] when the shop closed. *"After the store closed, we continued trading (without public access) from the property...both throughout the store and first floor offices through to our last deliver in [REDACTED]."* He also states that after closure their Interim MD *"...was in the property typically [REDACTED] days each week over the period to the end of [REDACTED] and then continued in that role a reducing number of days per week through to [REDACTED]."* He also states *"After closure we were flat out full time on deliveries and this slowed down around Xmas and then afterwards it picked up in [REDACTED]...and continued through to our final order...in [REDACTED]."*

14. A Statutory Declaration dated [REDACTED] by [REDACTED] stating his employment began in [REDACTED] and he was at the store for [REDACTED] days between [REDACTED] and [REDACTED].

15. Also the Appellant has submitted a spreadsheet *"[REDACTED] transactions from [REDACTED] to [REDACTED]"* listing stock deliveries and receipts during that timeframe.

16. Also invoices have been submitted from:

[REDACTED] dated [REDACTED] £[REDACTED] *"to collect from ground floor, [of the subject address] destroy and dispose of 1 lot of confidential records..."*

[REDACTED] Waste Management dated [REDACTED] covering the period [REDACTED] to [REDACTED] totalling £[REDACTED] with the majority charged for services between [REDACTED] and [REDACTED].

17. The Appellant has also referenced a previous CIL Appeal decision by the AP where a different property was part occupied and this was taken as representing continued lawful in-use during the relevant period.

18. The Appellant considers that the on-going trading from the premises in fulfilment of orders and deliveries as set out in [REDACTED] Statutory Declaration, albeit with no customer facing activities or 'shop floor', does not become unlawful use of the building. Accordingly, they argue that this fulfilment of orders up until [REDACTED] shows that [REDACTED] months of retail use occurred within the required 3 year period. Additionally, the company continued to operate from the first-floor offices for a further [REDACTED] to [REDACTED] months until the sale of the building to the Appellant. They argue the building was therefore in-use for at least [REDACTED] of the required 36 months.

19. The Appellant believes they have proven that the building contains 'a part' that has been in lawful use for a continuous period of at least 6 months within the period of 3 years

ending on the day planning permission first permits the chargeable development, and so the existing GIA should be eligible for 'off-set' against the proposed GIA so that CIL is only applied to the net chargeable area, calculated by them at [REDACTED]m².

20. The CA agree that the existing building is a relevant building and note that as part of the permitted development a part of the ground floor and the first floor of the existing building will be retained and converted to provide dwellings. In accordance with the above, they agree that the relevant period for at least six months of continuous lawful use must fall between [REDACTED] and [REDACTED].
21. The CA note that documentation submitted alongside the planning application (including CIL Form 1) prescribed that the existing building was vacant and was last in use at the end of [REDACTED]. This aligns with the closure of the department store ([REDACTED]) on [REDACTED], the closure of which is confirmed within the Statutory Declaration.
22. The CA note that references within the Statutory Declaration suggest that the operation of the business continued beyond the closure of the [REDACTED] store, but that it is not clear (even from the revised later Statutory Declaration) to what degree these operations are linked to the continuous lawful use of the building. Although it is stated that directors and a small team were regularly in the building, the CA believe no detail is given as to how often / the frequency or regularity of this occupation was.
23. The CA also express the view that electricity and broadband bills ([REDACTED] – [REDACTED]) provided do not show that the building has been in continuous lawful use for the required period and note that daytime kwh usage appears to be low for a building of this size in continuous use for retail purposes.
24. The CA note the AP's CIL Appeal decision on another development provided by the Appellant, but do not consider it assists in determining the building to be 'in-use' for the matter at hand. They argue there are some fundamental differences between the two developments: the bank mentioned within the other Appeal decision was in use for storage related to banking for a *"very small portion of the overall time provided a full range of banking services from the premises, and it is difficult to envisage that an application for a change in Use Class, as suggested by the CA, would have been made for such a short period of time prior to the bank's departure from the property."* but unlike the bank, the usage of the subject building as a retail store open to members of the public ceased just [REDACTED] days after the beginning of the relevant period for 'in-use'.
25. The CA also comment that since the Appellant argues use of the building (for orders, storage, distribution of orders, and business activities) continued until [REDACTED] ([REDACTED] year and [REDACTED] months) this time-period is of sufficient length for a formal change of use to be considered. They believe it is unclear as to whether some of the uses referenced would fall into a different use class, for which the building did not have permission for, i.e. storage and distribution (Use Class B8).
26. The Appellant notes the CAs reference the *"very small proportion of the overall time"* that the bank (in the other CIL appeal decision) provided banking services – but in that case this point was accepted that the full trading period illustrated the implausibility of that CA's argument in that other case that the trading activity had been unlawful, the point being that over the full period of occupation the period the bank was closed to the public was a very small portion of their banking activity. The Appellant argues that given [REDACTED] occupation of the site for some [REDACTED] years that period between [REDACTED] and [REDACTED] would be an even smaller proportion of [REDACTED] trading period, arguably or [REDACTED]% of their lawful trading period from this property. Hence a period of [REDACTED]% when 'public access' is not available following the store closure cannot be considered a material breach of the prior lawful retail/shop use of the site.

27. The Appellant also notes that in the other CIL appeal decision no change of use was necessary as the activity continued from the property was entirely consistent with the Class E use of Commercial, Business and Service – whether under part a) shop; c)iii) any other services... in a commercial, business or service locality or g)i) as an office. They argue that storage of carpets, furniture, blinds and curtains is not a separate trading activity (as the CA consider requiring a Class B8 permission) but evidently 'ancillary to the retail activities' of a long-standing retail business and pursuant to the engrossed trading arising from their closing down sale necessitating the on-going fulfilment of all of those purchases made within the sale period.

28. Ground b) – Calculation of the chargeable GIA

The Appellant contends that Gross Internal Area (GIA) should be measured strictly in accordance with the RICS Code of Measuring Practice 6th Edition (COMP) May 2015, which defines GIA on page 10 as “the area of a building measured to the internal face of the perimeter walls at each floor level”. As specified by those areas included in the measurement at s2.1 through s2.17 and exclusions under s2.18 through s2.22.

29. From Drawings source/ref: [REDACTED] the Appellant calculates the existing GIA as:

GF retail [REDACTED] m2
FF [REDACTED] m2
Total [REDACTED] m2

30. From Drawings source/ref: [REDACTED] they calculate the proposed GIA as:

GF retail (incl share bin) [REDACTED] m2
GF residential (incl share bin) [REDACTED] m2
[GF bin [REDACTED] & [REDACTED] m2 thus [REDACTED] m2 split into above]
FF residential [REDACTED] m2
SF residential [REDACTED] m2
Total [REDACTED] m2 (incl GF shop) [therefore excl shop = [REDACTED] m2]

31. Thus the Appellant calculates the chargeable area for CIL purposes as:

GIA proposed [REDACTED] m2
Less GIA existing [REDACTED] m2
= [REDACTED] m2 chargeable GIA

32. The CA confirm that they have measured the GIA in accordance with the RICS Code of Measuring Practice (6th Edition).

33. They note that the Appellant has included the areas which are to remain as commercial floorspace within their calculation of the chargeable amount. The CA has only measured the GIA of any floorspace which is to be new build, or which is being converted to residential floorspace. This is because the existing floor space (which is to remain in operation as Class E floorspace and is shown as identical within the existing and proposed for these areas) is not classified as development, and is also not referenced in the development description, and therefore it is considered that such floorspace does not form part of the chargeable development.

34. The CA further comment that the two approaches would not result in a chargeable amount being calculated differently, as using the Appellant's methodology would mean the provision of KR(ii), which takes account of: “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”.

35. The CA note that the Appellant did not dispute the GIA of the proposed development at the Regulation 113 Review, but the CA has taken the opportunity at this Regulation 114 Appeal to check its GIA measurements, and in doing so has re-measured all the relevant plans. As part of this remeasuring of GIA, it has been detected that the CA previously missed the ground floor, which is to be converted to residential use. Marked copies of the CA's GIA measurements are included in Appendix 2.

36. The CA measure the mixed-use bin store at GIA [REDACTED] m2. They state it is not clear how the Appellant has calculated the split of the GIA of the bin store across the uses. The CA has calculated the residential portion of the bin store on the basis that the total building comprises a GIA of [REDACTED] m2, and the residential portion is [REDACTED] m2 (excluding the bin store), thus the residential floor area represents [REDACTED] % of the total floorspace within the building. As such the CA has deemed that [REDACTED] m2 ([REDACTED] % of [REDACTED] m2) of the bin store is chargeable residential floorspace.

37. Following the CA's re-measure and correction of errors, they propose the GIA of the proposed residential floor area as follows:

Ground Floor (including portion of bin store) [REDACTED] m2 ([REDACTED] + [REDACTED])
First Floor [REDACTED] m2
Second Floor [REDACTED] m2
Total [REDACTED] m2

(From the CA's marked plan, the Ground Floor retail area is [REDACTED] m2 GIA)

38. The CA note that from viewing the marked GIA plans provided by the Appellant, it appears the minor differences in the Appellant's and CA's figures for the first floor and the second floor can be attributed to the inclusion/exclusion of the GIA of recessed doorways. This also applies to one doorway at ground floor level, but the majority of the difference for ground floor GIA measurements seems likely to relate to the method used for taking account of the bin store.

39. Taking into account the above, the CA consider the correct chargeable area is [REDACTED] m2 GIA.

40. The Appellant argues that the CA's approach to measuring GIA is contrary to the requirements of the RICS Code of Measuring Practice 6th Edition (COMP), that sets out the measurement is to be from the internal face of the external walls and not to stray into windows or door recesses as the CA has in their measurements across the three floors: ground, first and second.

41. The Appellant argues that the front entrance doorways are external space and thus should not be measured as part of GIA. Furthermore, they had apportioned the bin store area (the CA's measure as [REDACTED] m2 not dissimilar to their own original GIA – albeit now revised) between the two use areas of retail and residential, in proportion and appropriate to facilities of shared use. The split of these shared areas is mathematically weighted to commercial use, as that is the dominant usage of the ground floor. They state that having referred back to their client, it appears the ground floor residential corridor is not exclusively used by the residential element but also provides a statutory fire escape route from the commercial space. Accordingly, they attach at Appendix [REDACTED] a revised GIA and CIL calculation in light of this clarification that confirms the main corridor and bin store are shared facilities - used by both residential and commercial - and the cycle store that is intended for exclusive use by the residential occupants. This changes the pro rata but not the overall CIL.

42. The Appellant contends that the 'recess' measurements into the door and window reveals accumulate across the property to inflate the 'net chargeable area' above that genuinely required and must be excluded from the measurement of GIA. Specifically, they note s2.19 of COMP requires "*open-sided balconies, covered ways and fire escapes*" to be excluded from GIA, which they believe is pertinent to the two recessed store entrance doorways (excluded by their measurement) as clearly beyond the external walls and thus 'exterior space', yet included by the CA.
43. The Appellant also notes the CA admits to ignoring the retail/commercial element in the GIA and yet the required formula in Schedule 1, Part 1 section (1)(6) sets out that the net chargeable area (A) must be calculated by applying another formula –

$$GR - KR - \frac{(GR \times E)}{G}$$

where—

G = the gross internal area of the chargeable development;

GR = the gross internal area of the part of the chargeable development chargeable at rate *R*;

KR = the aggregate of the gross internal areas

44. Ground c) – Indexation of CIL rate R

The Appellant requests the AP to consider whether or not the CA is correctly applying the BCIS indexation factor to their CIL calculation, noting that the CA's Annual Community Infrastructure Rate Summary and current Liability Notice uses an index factor of [REDACTED] as the "*year in which the Charging Schedule took effect*". However, the BCIS published indexation factor (the All-in Tender Price Index (TPI)) for November preceding the year in which CIL took effect (known as *Ic*) suggests this figure should in fact be [REDACTED], as the current "*published figure*" for 4Q18.

45. The Appellant argues that the CA's continued use of an outdated indexation factor effectively builds-in an increase in the CIL uplift of [REDACTED]% before the actual or true indexation factors are applied. Whilst they appreciate the origin of the index figure the CA use, they do not believe it to still be the correct approach once the final published index factor moves from 'forecast' or 'provisional' to the 'locked' fixed figure in perpetuity and the true 'published' version.
46. The Appellant contends that it would appear appropriate, sensible and fair for the CA to migrate to the 'correct' All-in Tender Price Index for *Ic* (which should be the 'final' and published figure) of [REDACTED].
47. The CA notes that in relation to the determination of the *Ic*, Schedule 1 of the CIL Regulations states this to be:

"Ic = the index figure for the calendar year in which the charging schedule containing rate R took effect.

(5) In this paragraph the index figure for a given calendar year is—

(a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors"

48. The CA acknowledges that the Index presents forecast figures, which are updated periodically, but argues that they are correctly applying indexation. They note that the wording of the above refers to an index 'figure' rather than a pluralised 'figures' and argue this acknowledges that the index should be considered as a single factual figure at a

fixed point in time, rather than as a variable figure. For the CA, that fixed point in time was the date of effect of the Charging Schedule (1 March 2019).

49. They state that the All-in Tender Price Index figure for November 2018 (the preceding year in which the CIL took effect in [REDACTED]) on the 1 March 2019 (the date CIL took effect in the CA's area) was [REDACTED]. The CA state their approach to indexation is not unusual or out of step with other Charging Authorities, and nor have the Valuation Office (VO) used a different figure from [REDACTED] within the numerous calculations it has concluded for Regulation 114 Appeals relating to [REDACTED] cases. The CA also note that the CIL Regulations make no reference to the terms or approach presented by the Appellant.
50. The CA contend that it is correctly applying the indexation figure for *lc* (``redacted``) as this was the index figure on the date on which their CIL Charging Schedule took effect.
51. The Appellant argues there are only ever two possible figures to be potentially used and is of the opinion that the live published figure as at the time of the granted permission (the date where a Liability Notice becomes necessary) is the correct and appropriate indexation figure. Whether or not that live figure is a "provisional or estimated" figure (or a "final & locked" figure) but applicable and published at the time a Liability Notice is to be issued, in accordance with Schedule 1.

Consideration of the Decision

52. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

53. Ground a) – Off-set of Lawful in-use building

This aspect of the appeal arises from disagreement surrounding the issue of identifying the lawful in-use building following Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or off-set of the GIA of retained parts of in-use buildings from the GIA of the total development in calculating the CIL charge (a *KR* (i) deduction).

54. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 paragraph 1(10) – standard cases provides that an "in-use building" means a building which contains a part that has been in lawful use for a continuous period of at least 6 months within the period of three years ending on the day planning permission first permits the chargeable development.
55. It is noted that when the CA issued its decision on the Regulation 113 review on [REDACTED] this commented that the relevant period for at least six months of continuous lawful use must fall within [REDACTED] and [REDACTED]. These dates for the relevant period were incorrect and should actually reflect the three year period up to the date planning permission was granted on [REDACTED].
56. The Appellant's contention is that the building was in lawful use for 6 months during the relevant three-year period [REDACTED] to [REDACTED], when planning permission [REDACTED] was granted on [REDACTED].
57. The Appellant has provided documentation regarding the use of the property during this time:

Broadband bills cover the 6 month period [REDACTED] to [REDACTED], and similarly Electricity bills cover the 6 month period [REDACTED] to [REDACTED]. Invoices were also provided for waste management services covering the period [REDACTED] to [REDACTED] along with a single invoice for shredding services dated [REDACTED] that appears to cover one single occasion.

A schedule of [REDACTED] covering the period [REDACTED] to [REDACTED].

A statutory declaration from [REDACTED] confirming attendance at the property averaging [REDACTED] to [REDACTED] days per week from [REDACTED] to [REDACTED] (stated as being when the final deliveries took place) and on a diminishing attendance basis up to [REDACTED].

A statutory declaration by [REDACTED] confirming weekly attendance of varying numbers of days for the [REDACTED] month period [REDACTED] to [REDACTED].

58. The CA argue that use of the subject building as a retail store open to members of the public ceased just [REDACTED] days after the beginning of the relevant in-use period and that since the Appellant argues use of the building for orders, storage, distribution of orders, and business activities continued until [REDACTED] this time-period is of sufficient length for a formal change of use to have been considered.
59. The Appellant argues that no such change of use was necessary as the activity continued from the property was entirely consistent with the original use as a shop or other services in a commercial, business or service locality. They argue that storage of carpets, furniture, blinds and curtains is not a separate trading activity but ancillary to the retail activities of a long-standing retail business and connected with the trading arising from their closing down sale, with the on-going fulfilment of orders and purchases made within the sale period.
60. The building was used as a retail store open to the public and including the storage of carpets, furniture, blinds and curtains up to closure of the store to the public on [REDACTED], but use of the whole premises is confirmed by [REDACTED] declaration for storage of carpets, furniture, blinds and curtains and processing the sales of such items up to the last deliveries being made in [REDACTED]. The storage of carpets, furniture, blinds and curtains had always been an essential part of the retail use that had taken place at the property from [REDACTED] and continued to be during the time period after the customer-facing part of the operation had finished. As the Appellant has argued, this latter period accounts for a very small portion of the overall time [REDACTED] traded from the premises, and it is difficult to envisage that an application for a change in Use Class, as suggested by the CA, would have been made for such a short period of time prior to their full departure from the property.
61. It is my opinion that from all the information provided it can be shown that the property was lawfully "in-use" as a retail store for a period of 6 months within three years of the grant of planning permission on [REDACTED], and the "lawful use" requirement of Schedule 1 of the CIL Regulations 2010 (as amended) is therefore met.
62. The GIA of the existing building must therefore be off-set as a *KR (i)* deduction against the GIA of the development for the purposes of calculating the CIL charge.
63. Ground b) – Calculation of the chargeable GIA
- This ground of appeal regards the measurement of the floorspace of the building: the original Liability Notice issued by the CA on [REDACTED] was calculated with a chargeable GIA of [REDACTED] m2, with which the Appellant disagrees.
64. Both parties are in agreement that GIA should be measured in accordance with the RICS Code of Measuring Practice 6th Edition (COMP) May 2015, which defines GIA on page 10 as "*the area of a building measured to the internal face of the perimeter walls at each floor level*".

65. Both parties have used existing building drawings dated [REDACTED] and [REDACTED] by [REDACTED] and proposed development drawings dated [REDACTED] and [REDACTED] by [REDACTED] to separately establish the GIA.

66. The Appellant calculates the chargeable area for CIL purposes as:

GIA proposed: [REDACTED] m2
Less GIA existing: [REDACTED] m2
= [REDACTED] m2 chargeable GIA

67. The CA initially calculated the chargeable GIA at [REDACTED] m2 and used this in their CIL Liability Notice, but they have now recalculated the chargeable GIA as:

Ground Floor (including portion of bin store) [REDACTED] + [REDACTED] = [REDACTED] m2
First Floor [REDACTED] m2
Second Floor [REDACTED] m2
Total [REDACTED] m2 GIA

68. The CA measure the mixed-use bin store at GIA [REDACTED] m2 and calculate the residential portion on the basis that the total building comprises a GIA of [REDACTED] m2, and the residential portion is [REDACTED] m2 (excluding the bin store), thus the residential floor area represents [REDACTED] % of the total and thus if this percentage is applied to the [REDACTED] m2 for the bin store the latter's residential portion equals [REDACTED] m2 to be included within the chargeable residential floorspace.

69. The Appellant apportioned their bin store area of [REDACTED] m2 GIA between retail and residential uses mathematically weighted towards commercial use, as the dominant use of the ground floor. They state that having referred back to their client, it appears the ground floor residential corridor is not exclusively used by the residential element but also provides a statutory fire escape route from the commercial space of [REDACTED] m2 GIA. Accordingly, they attach at Appendix [REDACTED] a revised GIA and CIL calculation in light of this clarification that confirms the main corridor and bin store are shared facilities totalling [REDACTED] m2 GIA (used by both residential and commercial) and the cycle store that is intended for exclusive use by the residential occupants.

70. The Appellant argues that the front entrance doorways are external space and thus should not be included in GIA and also contends that the 'recess' measurements into the door and window reveals must be excluded from the measurement of GIA.

71. Regarding whether recesses into door and window reveals should be included within GIA, the RICS Code of Measuring Practice 6th Edition (May 2015) s2.0 defines GIA as the "area of a building measured to the internal face of the perimeter walls at each floor level" with further reference to Note GIA 4 regarding what is meant by "internal face" and states GIA:

Includes:-

s2.1 - Areas occupied by internal walls and partitions

s2.2 - Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like

s2.3 - Atria and entrance halls, with clear height above, measured at base level only

s2.4 - Internal open-sided balconies walkways and the like

s2.5 - Structural, raked or stepped floors are to be treated as level floor measured horizontally

s2.6 - Horizontal floors, with permanent access, below structural, raked or stepped floors

s2.7 - Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)

s2.8 - Mezzanine floors areas with permanent access

s2.9 - 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

s2.10 - Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms,

cleaners' rooms and the like

s2.11 - Projection rooms

s2.12 - Voids over stairwells and lift shafts on upper floors

s2.13 - Loading bays

s2.14 - Areas with a headroom of less than 1.5m

s2.15 - Pavement vaults

s2.16 - Garages

s2.17 - Conservatories

Excludes:-

s2.18 - Perimeter wall thicknesses and external projections

s2.19 - External open-sided balconies, covered ways and fires

s2.20 - Canopies

s2.21 - Voids over or under structural, raked or stepped floors

s2.22 - Greenhouses, garden stores, fuel stores, and the like in residential property

72. The RICS Code specifically excludes at s2.18 "...external projections", and at s2.19 "External open-sided balconies, covered ways and fires" but from viewing the floor plans provided, the windows and doors identified by the Appellant comprise a mixture of situations.
73. Reveals for door-openings like those to the ground, first and second floors identified by the Appellant are not specifically mentioned as being either included or excluded from GIA in the RICS COMP, but it would nevertheless seem sensible that as these areas represent floorspace that must be walked upon to gain access to the adjacent doors opening into the footpath for Ground Floor Unit [REDACTED], External Amenity Space for First Floor flats [REDACTED], [REDACTED] and [REDACTED] and Second Floor flat [REDACTED] the GIA in all these situations would naturally be taken up to the door frame, thus including the floor space within the reveal up to that point.
74. For the Ground Floor Entrance to the shared corridor and stairwell the situation would appear to be different however, and GIA would be taken up to the door frame, which appears to broadly match the internal face of the perimeter wall.
75. Regarding the matter of whether the two Ground Floor recessed store entrance doorways should be included within GIA, the Appellant argues these should be excluded following s2.19 of COMP that requires "open-sided balconies, covered ways and fire escapes" to be excluded from GIA. It is noted that the RICS COMP also specifically excludes "Canopies" at s2.20, and whilst these recessed entrances fulfil the same purpose as a canopy each is not, in this case, an "external projection". As such, they must be included in the GIA.
76. Additionally, recessed entrance doorways are not specifically mentioned as being either included or excluded from GIA in the RICS COMP, but it does include an example at Diagram [REDACTED] illustrating how to calculate the GIA of a three-sided loading bay by measuring to the internal face of a supporting pillar. This loading bay has walls to three sides and is open sided to the front, just like the recessed entrance doorways in the proposed development. This example indicates that it is possible to measure GIA to the inside face of a supporting pillar in the absence of a wall. Whilst the recessed entrance doorways do not have any such supporting pillar to their open side, the approach taken in Diagram [REDACTED] would imply that a loading bay would define some form of boundary. Having an area within a boundary does not require walls but only a structure of some

kind that can provide a recognisable form of "boundary". This would seem to be supported by example Diagram [REDACTED], and it is therefore my opinion that the same approach can be applied to the measurement and inclusion of a recessed entrance doorway within the GIA.

77. From a review of the plans, the correct GIA for the proposed development has been recalculated by the AP using drawings dated [REDACTED] and [REDACTED] by [REDACTED] and following the conclusions above as to inclusion/exclusion of specific areas as:-

Ground Floor Residential – cycle store - [REDACTED] m2 GIA

Ground Floor Commercial – [REDACTED] m2 GIA

Ground Floor shared – bin store – [REDACTED] m2 GIA

Ground Floor shared – fire corridor – [REDACTED] m2 GIA

First Floor – [REDACTED] m2 GIA

Second Floor – [REDACTED] m2 GIA

Therefore:

Commercial GIA = [REDACTED] m2 as above

Residential total GIA from above = [REDACTED] m2

Total [REDACTED] m2 GIA

78. The total shared GIA equals [REDACTED] m2 shared bin store + [REDACTED] m2 share of GF corridor = [REDACTED] m2 GIA which is to be apportioned thus:

Commercial total = [REDACTED] m2 / [REDACTED] m2 = [REDACTED] % of [REDACTED] m2 = [REDACTED] m2 GIA

Residential total = [REDACTED] m2 / [REDACTED] m2 = [REDACTED] % of [REDACTED] m2 = [REDACTED] m2 GIA

79. Therefore the correct GIA of the proposed development comprises:-

Commercial: [REDACTED] m2 GF + [REDACTED] m2 shared = [REDACTED] m2 GIA

Residential: [REDACTED] m2 cycle store + [REDACTED] m2 FF + [REDACTED] m2 SF + [REDACTED] m2 shared = [REDACTED] m2 GIA

Total Development GIA = [REDACTED] m2 GIA

80. From a review of the plans, the correct GIA for the proposed development has been recalculated by the AP using existing building drawings dated [REDACTED] and [REDACTED] by [REDACTED] references [REDACTED] and following the conclusions above as to inclusion/exclusion of specific areas as:-

Ground Floor: [REDACTED] m2 GIA

First Floor: [REDACTED] m2 GIA

Total = [REDACTED] m2 GIA

81. Therefore the Chargeable GIA for CIL purposes is calculated thus:

[REDACTED] m2 GIA Proposed

Less

[REDACTED] m2 GIA Existing

= [REDACTED] m2 GIA Chargeable

82. Ground c) – Indexation of CIL rate R

Schedule 1 of the CIL Regulations defines the index as follows:

- (5) In this paragraph the index figure for a given calendar year is—
- (a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;
- (b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;
- (c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;
- (d) if the national All-in Tender Price Index is not so published, the figure for 1st November for the preceding calendar year in the retail prices index.

83. The purpose of indexation is to allow the CIL charging schedule to increase in line with “inflation”, so it would seem sensible that if the index has been revised any subsequent calculations should also be based upon that revised indexation figure.
84. The CIL Regulations are clear that index figures available “(a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index **published from time to time** by the Royal Institution of Chartered Surveyors” **[my emphasis]** should be used, with the words “...published from time to time” suggesting that later revised index rates should be applied, as proposed by the Appellant.
85. At the time CIL took effect in the CA’s area on 1 March 2019 the All-in TPI index rate “for 1 November for the preceding calendar year” (ie at 4Q 2018) is currently shown on their website as “[REDACTED]” based on a sample of 85 schemes – whilst BCIS do not state whether this is “provisional” or “forecast” it would now appear to be confirmed at this rate.
86. It is my decision that the correct index rate to apply is therefore the revised and confirmed rate of [REDACTED] as published on the BCIS website at the time planning permission was granted on [REDACTED].
87. At the time planning permission was granted on [REDACTED] for [REDACTED] the RICS CIL Index is shown as [REDACTED].
88. Therefore the indexation rate is calculated thus:

$$[REDACTED] = [REDACTED] \text{ indexation rate}$$

89. Calculation of CIL Liability

The formula within Schedule 1 Part 1 is:-

$$\text{Net chargeable area} = GR - KR - \frac{(GR \times E)}{G}$$

Where:

G = the gross internal area of the chargeable development;

GR = the gross internal area of the part of the chargeable development chargeable at rate R ;

KR = the aggregate of the gross internal areas 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 gross internal areas 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 *E_x* (as determined under sub-paragraph (7)), unless *E_x* is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

90. Value *G* (the GIA of the chargeable development): [REDACTED] m2

91. Value *GR* (the GIA of the part of the chargeable development to be charged at rate *R*) is [REDACTED] m2 less the commercial element of the development [REDACTED] m2 = [REDACTED] m2.

92. Value *KR(i)* is [REDACTED] m2 less the commercial element of the development [REDACTED] m2 = [REDACTED] m2.

93. Value *KR(ii)* is zero.

94. Value *E(i)* is zero.

95. Value *E(ii)* is zero.

96. Therefore, applying the formula within Schedule 1 Part 1 the net chargeable area is calculated thus:-

$$\begin{aligned} & \text{[REDACTED] m2} - \text{[REDACTED] m2} - \left(\frac{\text{[REDACTED] m2} \times 0}{\text{[REDACTED] m2}} \right) \\ & = \text{[REDACTED] m2 GIA chargeable area} \end{aligned}$$

97. The CIL Liability calculated using the rates and corrected index relevant at [REDACTED] is thus:-

Residential dwellings – 10 or less (zone A)

[REDACTED] m2 GIA chargeable area

@ £ [REDACTED] /m2 CIL Rate indexed at [REDACTED] is £ [REDACTED] /m2

= £ [REDACTED] rounded CIL Charge

Decision

98. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that on the facts of this case the CIL charge should be £ [REDACTED] ([REDACTED]).

[REDACTED] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office
27 February 2025