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 Refs: 1897675, 1897676 and 1897677

Planning Permissions: [redacted], [redacted] and [redacted]

Development:
1897675; Determination as to whether the prior approval of the local planning authority is required for Change of use of 1st floor (part) from Use Class E to 25no, flats (13no x 1 bed/1 person, 8no. x 1 bed/2 person and 4no. x 2bed/3 person.) – [redacted]
1897676; Determination as to whether the prior approval is required of the local authority for the change of use of upper ground floor (part) from Use Class E to 23no flats (12no x 1 bed/1 person, 7no. x 1 bed/2 person and 4 no. x 2 bed/3 person. As stated in Article 2 of the Town and Country (General Permitted Development) Order, 2015 (as amended) (the GPDO) "building" includes any structure or erection and includes any part of a building. The "building" subject to this application has a gross floorspace of [redacted] sqm. – [redacted]
1897677 – Determination as to whether the prior approval of the local planning authority is required for the proposed change of use of part upper ground floor and part first floor from Use Class E to 5no. flats (5 x 1 bed/2 person). – [redacted]

Location: [redacted]

Decision
I determine that the Community Infrastructure Levy (CIL) payable is £[redacted] in appeal 1897675 ([redacted]); £[redacted] in appeal 1897676 ([redacted]); £[redacted] appeal 1897677 ([redacted]). The three appeals are dismissed.

Reasons
1. I have considered all of the submissions made by [redacted] on behalf of [redacted] of [redacted] (the Appellant) and [redacted], the Collecting Authority (CA), in respect of these three related appeals. The appeals concern separate chargeable developments within the same building and arise from the same

factual and evidential scenario. I have therefore considered them together, while determining the chargeable amount for each appeal separately.

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

   a) Prior approval [redacted], granted on [redacted], for the change of use of part of the first floor from Use Class E to 25 flats.
   b) Prior approval [redacted], granted on [redacted], for the change of use of part of the upper ground floor from Use Class E to 23 flats.
   c) Prior approval [redacted], granted on [redacted], for the change of use of part of the upper ground floor and part of the first floor from Use Class E to 5 flats.
   d) The three Notices of Chargeable Development (CIL Form 5) submitted to the CA on [redacted].
   e) CIL Liability Notice [redacted], (CIL Appeal Reference, 1897675) dated [redacted], issued in respect of planning application [redacted] for [redacted]. The notice relates to the proposed change of use of part of the first floor from Use Class E to 25 residential flats. The development generated a total chargeable floorspace of [redacted] m², resulting in a total CIL liability of £[redacted] (inclusive of indexation).
   f) CIL Liability Notice [redacted] (CIL Appeal Reference 1897676), dated [redacted], issued in respect of planning application [redacted] for [redacted]. The notice relates to the proposed change of use of part of the upper ground floor from Use Class E to 23 residential flats. The development generated a total chargeable floorspace of [redacted] m², resulting in a total CIL liability of £[redacted] (inclusive of indexation).
   g) CIL Liability Notice [redacted] (CIL Appeal Reference 1897677), dated [redacted], issued in respect of planning application [redacted] for [redacted]. The notice relates to the proposed change of use of part of the upper ground floor and part of the first floor from Use Class E to 5 residential flats. The development generated a total chargeable floorspace of [redacted] m², resulting in a total CIL liability of £[redacted] (inclusive of indexation).
   h) The Regulation 113 review request submitted on [redacted], together with documents and correspondence.
   i) The CA's Regulation 113 review decision dated [redacted].
   j) The Regulation 114 appeal forms and the Appellant's Statement of Case dated [redacted], together with documents and correspondence.
   k) The CA's representations, together with documents and correspondence.

Background

3. [redacted] is a large former office building. The three prior approvals relate to separate areas within the building. Each appeal depends upon the Appellant's contention that part of [redacted] was in lawful office use for a continuous period of at least six months within the relevant three-year period.

4. The Notices of Chargeable Development were submitted on [redacted]. Although the forms themselves bear the date [redacted], the covering email records that they were sent on [redacted]. The relevant three-year period therefore ended on [redacted].

5. The CA issued CIL Liability Notices on [redacted] in the following amounts:
   a) Appeal 1897675, planning reference [redacted]: £[redacted].
   b) Appeal 1897676, planning reference [redacted]: £[redacted].
   c) Appeal 1897677, planning reference [redacted]: £[redacted].

6. The Appellant requested reviews under Regulation 113 on [redacted], contending that part of the building had been lawfully occupied as offices for at least six months during the relevant period. The CA replied and confirmed on [redacted] that the original amounts were correct.

Grounds of Appeal

7. The Appellant's principal ground of appeal concerns the calculation of the chargeable Gross Internal Area (GIA) for CIL charging purposes.

8. The Appellant contends that [redacted] qualifies as an "in-use building" within Schedule 1, Part 1, paragraph 1(10) of the CIL Regulations and that the existing floorspace should therefore be deducted in full, resulting in nil CIL charges.

9. The key issue is whether any part of [redacted] was in actual lawful use for a continuous period of at least six months within the three years ending on [redacted].

10. The Appellant relies upon a lease to [redacted], electricity bills, supplier documents, a photograph, a statutory declaration and rating list evidence. It also relies upon R (Hourhope Ltd) v Shropshire Council [2015] EWHC 518 (Admin).

11. The CA maintains that the evidence does not establish actual, consistent and continuous lawful office use.

Matters not in dispute

12. [redacted] was situated on the relevant land when each development was first permitted.

13. The three Notices of Chargeable Development were received on [redacted].

14. The relevant three-year period ended on [redacted].

15. If [redacted] qualifies as an "in-use building", retained existing floorspace may be taken into account in the Schedule 1 calculation.

Summary of Evidence

CA's Evidence

16. The lease did not require monetary rent and expressly required the tenant to act as caretaker and guardian of the building. The lease is dated [redacted].

17. The lease and statutory declaration did not identify the particular rooms used or provide detailed evidence of the business activities conducted from them.

18. [redacted] was removed from the rating list with effect from [redacted].

19. The supplier documents were limited and did not demonstrate sustained office occupation.

20. Construction of the upper floor began in [redacted]. The CA considered that electricity consumption and the IT support invoice during the construction period were also consistent with building works.

21. The photograph provided showing an office arrangement was not dated and did not identify the part of the building shown.

Appellant's Evidence

22. The commercial lease to [redacted] was for a term commencing on [redacted] and ending on [redacted], continuing monthly thereafter unless terminated. The tenant was required to maintain a regular daily presence and use and occupy the office on a normal working-day basis. The lack of rent is not prohibitive to the use of the building as a legitimate office for the tenant.

23. The photograph included with the lease showed a person seated at a desk in a room containing office furniture and files to evidence office use.

24. Electricity bills were provided for [redacted] to [redacted] showing electrical usage which increased in the later months.

25. Supplier material comprised a delivery note dated [redacted] for one desk and one chest of drawers, and an IT support invoice dated [redacted].

26. A statutory declaration, signed by [redacted], the sole director of [redacted], submitted to the CA on [redacted] stated that [redacted] occupied rooms on the ground floor and that members of staff were present daily carrying out office and general administrative work, to further evidence office use. A lease was signed from [redacted] and despite the term ending in [redacted], the company apparently continued to occupy the property on the same basis.

27. Business Rates; [redacted] remained in the rating list until [redacted], which the Appellant considers to evidence over 6 months lawful occupation during the relevant period, which started on [redacted].

The CA's Representations

28. The CA maintains that the Appellant has failed to provide sufficient information, or information of sufficient quality, to establish that [redacted] an “in-use building” for the purposes of Schedule 1.

29. It submits that the lease primarily records a caretaking and guardianship arrangement and is not proof of actual continuous office occupation.

30. It says the statutory declaration contains general assertions but does not identify the rooms, staff, business functions or a clearly defined six-month period.

31. It submits that the electricity and supplier evidence is also consistent with construction and other site-related activity and does not establish sustained office use.

The Appellant’s Representations

32. The Appellant submits that the Council’s Regulation 113 decision is unsound and that the three CIL liabilities have been incorrectly calculated.

33. It contends that the lease expressly required office occupation on a normal working-day basis and that there is no requirement for monetary rent to be paid.

34. It relies upon the statutory declaration as direct evidence of daily office and administrative use.

35. It says the electricity bills and supplier evidence support occupation and that the rating list history independently supports lawful use within the relevant period.

36. The case of Trent v Hertsmere Borough Council (2021) EWHC 907 (admin) is raised to support the Appellants view that the balance of probabilities is the correct test to apply in CIL Cases. They do not consider that lawful use beyond reasonable doubt needs to be satisfied but rather the evidence needs to be sufficient to demonstrate lawful use on the balance of probabilities.

37. Overall, it submits that the evidence demonstrates on the balance of probabilities that part of the building was in lawful continuous use for at least six months and that the three charges should be reduced to nil.

Decision

38. To qualify as an “in-use building” for the purposes of Schedule 1 to the Community Infrastructure Levy Regulations 2010 (as amended), the building must be in existence on the relevant land on the day planning permission first permits the chargeable development and a part of that building must have been in lawful use for a continuous period of at least six months within the three years ending on that day.

39. For these general consents, the relevant date is the date on which the CA received

each Notice of Chargeable Development. I therefore assess whether a part of [redacted] was in actual lawful use for a continuous period of at least six months within the three years ending on [redacted].

40. The issue for determination is whether the Appellant has demonstrated, on the balance of probabilities, that a part of [redacted] was in actual lawful use for a continuous period of at least six months within the relevant three-year period.

41. Paragraph 1(8) of Schedule 1 permits the CA to treat a building as not being an "in-use building" where it does not have sufficient information, or information of sufficient quality, to establish that the building qualifies. Paragraph 1(9) further permits the CA to deem the relevant GIA to be zero where it does not have sufficient information, or information of sufficient quality, to establish whether a part of a building falls within the definitions of KR or E, or to establish the GIA of that part. The evidential burden therefore rests on the Appellant.

42. The Appellant relies upon R (Trent) v Hertsmere Borough Council [2021] EWHC 907 (Admin) in support of the application of the balance of probabilities. That case concerned the validity and service of CIL notices rather than the meaning of an "in-use building" or the evidence required to establish continuous lawful use. I have nevertheless determined the factual issues in these appeals on the balance of probabilities.

43. As confirmed in R (Hourhope Ltd) v Shropshire Council [2015] EWHC 518 (Admin), lawful use in this context requires actual use in fact. It is not sufficient to demonstrate that the building retained an authorised planning use, that a lease existed, or that the premises were available for occupation. Whether a building was in use, and whether that use was continuous, are matters of fact and degree to be assessed from the evidence as a whole. Continuous use does not require physical activity at every moment, and ordinary interruptions such as weekends, holidays or short closures will not necessarily break continuity. Nevertheless, the evidence must demonstrate a genuine continuing use over a period of at least six months within the relevant three-year period.

44. I have considered the Appellant's evidence cumulatively, including the lease, statutory declaration, photograph, electricity records, supplier documents and rating list history. I accept that this material is relevant and capable, in principle, of supporting the Appellant's case. Taken as a whole, it makes it likely that some activity occurred at [redacted] during the relevant period. However, the statutory question is not merely whether some activity occurred, or whether office occupation was contractually required or commercially possible. The question is whether the evidence demonstrates actual lawful use of an identifiable part of the building for a continuous period of at least six months.

45. The lease establishes a legal framework under which [redacted] was entitled, and contractually required, to attend and occupy part of the building. I do not discount the lease merely because no monetary rent was payable. However, the existence and terms of the lease do not, without sufficient evidence of implementation, establish that an identifiable part of the building was actually and continuously used as an office for the statutory period.

46. The caretaking and guardianship obligations do not prevent the tenant from also

making actual office use of part of the building. However, they provide an alternative explanation for attendance at the premises and for some of the electricity consumption. It is therefore necessary for the remaining evidence to demonstrate that the attendance amounted to genuine and continuing office use, rather than presence principally associated with security, monitoring, maintenance or construction. In my judgement, the evidence does not establish that distinction with sufficient clarity.

47. I have given the statutory declaration appropriate weight as sworn evidence. It provides direct evidence that rooms on the ground floor were occupied and that members of staff attended for office and administrative work. However, sworn evidence must still be assessed against the evidence as a whole. The declaration is expressed in general terms and does not identify the particular rooms occupied, the staff attending, the nature or frequency of the work undertaken, or the supporting objective indicators of continuing genuine business activity rather than construction related activity or guardianship.

48. I do not consider that the Appellant was required to nominate an isolated six-month period if its case is that continuing use was established over a longer period. Nor was it required to provide daily attendance records. The difficulty is that the evidence does not provide a sufficiently clear account of the location, extent, frequency and continuity of the asserted office use over any qualifying six-month period.

49. The supplier evidence is limited to a desk and chest of drawers delivered in [redacted] and IT support invoiced in [redacted]. It supports the presence or provision of some office equipment, but does not establish the frequency, extent or continuity of office use.

50. The photograph depicts an office-like arrangement, including desks, a filing cabinet, chairs, a printer and lever-arch files. However, it is undated and does not identify the room or floor within [redacted]. It provides some support for office-related activity at an unidentified point, but does not establish when, where, how often or for how long that activity occurred.

51. The electricity records demonstrate that electricity was consumed at [redacted] during the period covered by the bills. They therefore provide some support for the contention that activity occurred at the property. However, the records relate to the building as a whole and do not identify the parts in which electricity was consumed or the purposes for which it was used.

52. The CA submits that electricity consumption during the construction period is also consistent with building works. The lease additionally imposed caretaking and guardianship obligations which provide a further possible explanation for a continuing electrical load. The records do not distinguish between electricity attributable to office occupation, building works, caretaking or other property-management activity.

53. I have not treated the level or pattern of consumption as proving either occupation or vacancy. I find only that, without corroborating evidence linking the consumption to identifiable office activities within a particular part of the building, the electricity records do not establish actual and continuous lawful office use for the required

period.

54. [redacted] was removed from the rating list with effect from [redacted], before the commencement of the lease relied upon by the Appellant. I accept that deletion from the rating list does not establish that the building was vacant and that the reason for deletion is not before me. I have therefore not treated the rating-list position as determinative.

55. However, the rating history does not independently corroborate the asserted office occupation commencing under the later lease. In the absence of evidence explaining the deletion or demonstrating a subsequent change to occupied status, it provides limited support for the Appellant's case. I take it into account only as one part of the overall evidential picture.

56. The Appellant also submits that [redacted] presence in the rating list until [redacted] establishes more than six months' lawful occupation during the relevant period. I do not accept that the rating entry alone establishes actual use. A rating-list entry records the existence and assessment of a hereditament but does not, without further evidence, demonstrate that an identifiable part of the building was actually and continuously occupied for the use asserted. No separate evidence has been identified demonstrating qualifying office use throughout the earlier period upon which the Appellant relies.

57. The Regulations do not prescribe the particular documents by which qualifying use must be established. The Appellant was not required to produce any single category of business record or a daily account of activity. Nevertheless, an asserted period of regular working-day office use might reasonably be expected to generate some contemporaneous records identifying the business conducted from the premises. Such records might include correspondence bearing the site address, staff or visitor records, telephone or internet contracts, insurance documentation, deliveries, parking records, health and safety records or dated internal photographs. I do not draw a decisive conclusion from the absence of any individual document. The significance of the evidential gaps is that the material provided, taken cumulatively, does not give a sufficiently clear and reliable account of actual continuing office use.

58. I have considered all of the evidence cumulatively and not in isolation. Taken at its highest, the evidence establishes that [redacted] had a contractual right and obligation to attend the property, that office furniture and equipment were present at some point, that electricity was consumed and that some activity occurred within [redacted].

59. However, it does not sufficiently establish, on the balance of probabilities, which identifiable part of the building was committed to office use, the nature and frequency of the office activities undertaken there, or that those activities continued for at least six months within the relevant three-year period. The difficulty is not the absence of a particular form of evidence or a separately nominated six-month period. It is the absence of sufficiently persuasive evidence demonstrating the location, extent and continuity of the asserted lawful use.

60. In light of the evidence before me, I conclude that the Appellant has not provided sufficient information, or information of sufficient quality, to establish that [redacted] qualifies as an "in-use building" within the meaning of Schedule 1 to

the CIL Regulations.

61. No deduction for retained existing floorspace is therefore available. The CA was entitled to calculate the chargeable amounts without offsetting the existing building, in accordance with Schedule 1, paragraphs 1(8) and 1(9).

62. I therefore dismiss all three appeals and determine that the Community Infrastructure Levy payable is £[redacted] in appeal 1897675 ([redacted]); £[redacted] in appeal 1897676 ([redacted]); and £[redacted] in appeal 1897677 ([redacted]).

[redacted]

[redacted] BSc(Hons) MRICS FAAV
Valuation Office
07 October 2026