

Appeal Decision

by [REDACTED]

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

[REDACTED]

e-mail: [REDACTED]@voa.gsi.gov.uk.

Appeal Ref: [REDACTED]

Site: [REDACTED]

Development: New [REDACTED] involving raising the height to a section of an existing building within [REDACTED] located on an [REDACTED] elevation of the [REDACTED]

Planning permission details: Planning permission Application ref. [REDACTED] granted by [REDACTED]

Decision

Having considered the submissions made by the parties I conclude that that proposed development at [REDACTED] namely that identified in the planning application [REDACTED] is not development liable to the payment of Community Infrastructure Levy

Reasons

1. I have considered all the submissions made by [REDACTED], the appellants and I have also considered representations made by the Charging Authority. In particular I have considered the information and opinions presented in the following submitted documents:-

- (a) Planning permission decision letter dated [REDACTED] together with associated drawings and plans
- (b) [REDACTED] Liability Notice dated [REDACTED]
- (c) Letter from [REDACTED] dated [REDACTED]
- (d) Completed CIL Appeal Form dated [REDACTED]
- (e) [REDACTED] representations dated [REDACTED]
- (f) Comments on [REDACTED] Representations dated [REDACTED]

1. [redacted] made an application on [redacted] for a [redacted] involving raising the height to a section of an existing building within [redacted] located on an [redacted] elevation of the [redacted] building (Consultation under Schedule [redacted] Part [redacted] of the Town and Country Planning (General Permitted Development) Order 1995 as amended)

2. Permanent planning permission was granted by [redacted] on [redacted]. On [redacted] [redacted] issued a Liability Notice in the sum of £ [redacted] ([redacted] new floor space @ £ [redacted] m2).

3. [redacted] wrote to [redacted] on [redacted] requesting that 'the CIL Liability Notice is withdrawn'. [redacted] claimed that the development didn't create any extra floor space, and further stated that 'On the [redacted] [redacted] confirmed it had no objection to the proposal for the [redacted] [redacted] under the [redacted] Part [redacted] permitted Development rights. The current proposal for the [redacted] relocation is within the building envelope approved by [redacted] in [redacted]. The proposal does not change the building footprint in any way, but encloses two sides of what was originally proposed to be a through road so that the larger [redacted] reaches down to Ground Level. The proposal does not involve the creation of a new building or structure, and does not extend any existing structure.'

4. A CIL appeal form was submitted on [redacted] by [redacted] on the grounds that 'I have not been notified of the decision within 14 Days of the review start date.'

5. The development was identified as constituting permitted development under Schedule [redacted] Part [redacted] of the Town and Country Planning (General Permitted Development) Order 1995, being [redacted]. Specifically the development was said to fall under Class [redacted] of Part [redacted] as the works are on [redacted] land and are directly related to the provision of [redacted] services, being [redacted]

6. Grounds of appeal were that no new floorspace had been created, as the proposal was in the footprint of the existing building. 'The proposal simply enclosed an area known as the [redacted] on two sides.' It was also stated that [redacted] had already acknowledged that no new floorspace would be created as they had accepted the [redacted] fee of £ [redacted] that corresponds to no additional floorspace.

7. [redacted] made representations as to why the grounds for NIL CIL were considered invalid.

8. In support of their view that additional floorspace had been created, they stated CIL Regulations 2010 (as amended) do not define floorspace. The Valuation Office Agency's Code of measuring Practice defined Gross Internal Area as follows:

'Gross Internal area

Broadly speaking the whole enclosed area of a building within the external walls taking each floor into account and excluding the thickness of external walls.

GIA will include :

- *Areas occupied by internal walls (whether structural or not and partitions*
- *Service accommodation such as WCs, showers, changing rooms and the like*
- *Columns, piers, whether free standing or projecting inwards from an external wall, chimney breasts, lift wells, stairwells etc*
- *Lift rooms, plant rooms, tank rooms, fuel stores, whether or not above roof level*
- *Open sided covered areas (should be stated separately)*

GIA will exclude:

- *Open balconies*
- *Open fire escapes*
- *Open-sided covered ways*
- *Open vehicle parking areas, terraces and the like*
- *Minor canopies*

- Any area with ceiling height of less than 1.5m
- Any area under the control of service or other external authorities.

Note

The areas excluded from GIA should be calculated and shown separately.'

9. [REDACTED] considered that the area under the [REDACTED] building would best be described as an open-sided covered way (e.g. it is a roadway which is undercroft but open on 3 sides) which would be excluded under the above definition of GIA. The development would therefore represent additional internal floor area.

10. The appellants consider that the [REDACTED] had always been considered an integral part of [REDACTED]. They had regard to the RICS Code of Measuring Practice. The guidance therein on Gross Internal Area refers to 'external open-sided balconies, covered ways, and fire escapes' which are excluded as GIA, and 'internal open sided balconies, walkways and the like' and 'loading bays' which are both included as GIA. Their view was that both before and after the tunnel could be described as a loading bay, which also contains a road and pedestrian walkway, and that w floor space had been created and therefore there would be no CIL liability.

11. I have inspected the facility. The [REDACTED] building as originally planned comprised a Ground Floor with up to three upper floors. It mainly comprises [REDACTED] for the transfer of [REDACTED]. It has cladding to the upper floors, but on the north western side there is an area known as the [REDACTED]. The upper floors of the building cover the [REDACTED] and indeed there are structural columns along the north side of the original [REDACTED]. The [REDACTED] was enclosed by the remainder of the [REDACTED] building on its south eastern face, and by the [REDACTED] on its north eastern side. It was open on the north western and south western faces apart from the structural columns supporting the upper floors.

12. The [REDACTED] as originally proposed was planned to be a roadway with an entrance for vehicles at the northern end and an exit on the south western face. It was originally planned that vehicles would stop at loading areas within the [REDACTED] to collect/offload [REDACTED]. It is my view that as originally planned the [REDACTED] was more than a through roadway. It was also to contain covered loading docks, and it could reasonably be described as a combined roadway and loading area, albeit one which was open on two sides.

13. The planning permission which gives rise to this appeal envisages new [REDACTED] positions to the north of the building on a relocated roadway which is outside. The existing [REDACTED] would be enclosed mainly to protect the [REDACTED] equipment, some of which is located directly above the [REDACTED] and which is designed to drop [REDACTED] directly into the [REDACTED]. Under the revised plan a raised loading area is to be built along and inside the north western elevation of the [REDACTED]. This will be serviced by the conveyors from above. [REDACTED] will either be loaded into [REDACTED] hauled by [REDACTED] vehicles which will use a narrow roadway within the [REDACTED], or alternatively by other vehicles which will use a new external roadway immediately north of the [REDACTED] building. Access to the external roadway will be via doors which give access to the additional external loading bays.

14. It is my view that the [REDACTED] as originally envisaged was more than a roadway. It could best be described as a combined roadway and [REDACTED] area, which was enclosed on two sides, covered by the upper parts of the [REDACTED] Building, with an open exit at the south west end, and mainly open on the north west face apart from the structural columns supporting the upper floors.

15. Within the VO Code of Measuring Practice, GIA is defined as the 'whole enclosed area of a building within the external walls....excluding the thickness of the outside walls.' There are arguably no external walls on the north western and south western sides to measure to. However, the further definition of GIA inclusions state that GIA will include 'open-sided covered areas' and it seems to envisage that there can be additions to GIA for some partially open areas.

16. I agree with the Appellant that the [REDACTED] as originally envisaged was more than just an 'open-sided covered way' It was to function also as a loading area, and as such would better fall within the definition of an 'open-sided covered area' within the VO Code of Measuring Practice, which would be included within GIA, although such an area might be treated differently for valuation purposes. The

RICS definition of GIA within the Code of Measuring Practice is a little more specific in that it states that the following are specifically included in GIA '*internal open-sided balconies, walkways and the like*' (2.4). At 2.13, it specifically states that loading bays are included within GIA. I consider that either of these inclusions would cover the subject of this appeal.

17. Looking at the building as proposed, I am satisfied that the majority of it would fall within the GIA of the originally proposed building. The planning permission above does show some additions to the building on the north western side. At one point there is to be a canopy over a new [REDACTED] area on the relocated external road to the north of the [REDACTED] whilst at another point there is to be a covered loading dock which projects north from the envelope of the original [REDACTED] building at Ground Floor level. This loading dock will have roller shutter doors onto the relocated roadway. I consider that this area is an addition to GIA within the definitions outlined above. Neither party has quoted this area separately, but I calculate it to be less than 100m² additional area.

18. I therefore agree with the Appellant that no CIL should be chargeable in respect of the development.

[REDACTED]
RICS Registered Valuer
District Valuer
[REDACTED] 2013