

# Appeal Decision

by [REDACTED]

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

[REDACTED]

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

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**Appeal Ref:** [REDACTED]

**Address:** [REDACTED]

**Development:** *Retention of use as Residential (C3).*

**Planning permission details:** *Planning permission [REDACTED] granted [REDACTED]*

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## Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the development is to be assessed in the sum of £ [REDACTED]

## Reasons

1. I have considered all the submissions made by the appellants, [REDACTED], and I have also considered the representations made by the Collecting Authority (CA), [REDACTED]
2. Planning permission was granted by [REDACTED] on [REDACTED] for Retention of use as Residential (C3).
3. On [REDACTED] the CA issued a Regulation 65 Liability Notice [REDACTED] based on a chargeable area of [REDACTED] square metres (sqm) as follows:-

[REDACTED]

██████████

4. The appellants requested a review of the calculation of the chargeable amount and the CA issued their decision on the review on ██████████ confirming the amounts in the Liability Notice dated ██████████.

5. ██████████ submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing the CIL charge should be £██████. The grounds of the appeal are as follows:-

- (a) The building ██████████, also known as the ██████████, was purchased in ██████████ and was assumed to be residential as it had been used as residential premises for the ██████████ incumbent of the attached property which was a ██████████ ██████████.
- (b) The ██████████ was subsequently sold to a developer who applied for a change of use to offices and renamed the ██████████ to ██████████. Planning permission was granted and ██████████ mistakenly included ██████████ in the planning approval, ██████████ having not been informed or notified of the application.
- (c) In ██████████ was sold off and planning permission granted for change of use to a live-work unit.
- (d) On ██████████ applied for a change of use for ██████████ ██████████ to residential, but this was refused on the basis the building had been in employment use for many years. However, the building had been in residential use despite the fact that business rates had to be paid.
- (e) ██████████ have been unable to provide the requisite evidence to prove the residential use and therefore could not apply for an established use certificate. The building was occupied by their ██████████ but they paid all the bills for the premises, although ██████████ is registered at the address on the electoral roll.
- (f) As a result of a change in government policy planning permission was granted in ██████████ for a change of use from B1 to residential. As a result a CIL charge has been raised for a property which has been providing housing since before CIL was introduced.

6. The CA submitted representations on ██████████ which can be summarised as follows:-

- (a) The residential use of the property did not become lawful in planning terms until ██████████ ██████████, the date when planning permission was granted. The existing floorspace could not be deducted as there had been no use as an office for a continuous period of six months within the three years prior to permission being granted.
- (b) With regard to ██████████ statement that ██████████ mistakenly converted ██████████ from residential to office use; Council Tax records dating back to 1956 do not show that ██████████ has ever been a domestic dwelling. In addition, Business Rates have been paid on the property since 1992 and small business rate relief was applied for and granted in 2005.
- (c) ██████████ letter attached to a planning application for a change of use from offices to residential in ██████████ demonstrates the use class was not residential. The change of use to residential was because of the 'loss of valued clients'.

7. The appellant submitted comments on the CA's representations, dated ██████████ as set out below:-

- (a) The building has been in residential use since the end of ██████████ when ██████████ of the building ceased as ██████████ and lived at my house in ██████████. Our ██████████ and ██████████ used the building as their home from that time and this use has persisted continuously since that time.
- (b) The ██████████ was purchased in ██████████ and was registered in title from that time. Prior to this the building had formed part of the original ██████████ building. As a result,

the search for the [REDACTED] by [REDACTED] could not succeed as it did not exist between 1956 and 1990.

- (c) I lived and worked in the [REDACTED] from [REDACTED] until [REDACTED].
- (d) The vendors of the [REDACTED] applied for a planning use to offices but this should not have applied to the [REDACTED] as it was a separate hereditament in title.
- (e) We applied for change of use to residential in [REDACTED] and were refused. We were unable to find anybody who wished to use the premises as an office at that time and from then on we had no use of the building other than for the residential use by [REDACTED] [REDACTED] which has been continuous for the last fifteen years. [REDACTED] still lives there.
- (f) We were informed that the building was being rated as an office in 1995 and paid the appropriate rates from that time. There was no alternative other than to pay the business rates applied by [REDACTED] but in order to reduce our costs we applied for small business relief in 2005.
- (g) As a result of the way in which this building has been used over the last fifteen years we consider that we have not created any new residential floor area within the building. As a result we should not have to pay the CIL charges.
- (h) We did seek advice from the planning department in [REDACTED] in respect of the use of the building and were advised that we should apply for a change of use. We were not advised at this time that this would result in a charge for the CIL. We were shocked to receive the demand notice as we have not undertaken any development or changed our use of the building in any way.

8. Having fully considered the representations made by the appellant and the CA, I would make the following observations:-

9. The existing floor space can be taken into account in the calculation under regulation 40 if it was in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development, i.e. it is netted off from the area of the chargeable development. It is the question of lawful use which forms the substance of this appeal.

10. The planning history of the property prior to around the early [REDACTED] is unclear from the information that has been provided. The appellants appear to consider that it was granted planning permission as offices around [REDACTED] by mistake; the CA have not specifically commented on this statement. In addition, the use during the same period is also uncertain. The appellants consider that it was last used prior to 1990 for residential purposes in connection with the adjoining [REDACTED]. However, the CA do not accept there was a previous residential use as their records do not show that the property was a domestic dwelling.

11. In [REDACTED] planning permission was refused on an application for a change of use to residential. In terms of the use of the property [REDACTED] appears to have 'lived and worked at the [REDACTED] as a [REDACTED] [REDACTED]' according to a letter he submitted with the planning application. In addition, the CA state that Business rates have been paid from 1992, whereas the appellants state it was rated as an office from 1995 and they paid the appropriate rates from that time.

12. From the information provided I am of the opinion that on balance the property would have been considered to have been in use as an office for at least 5 years prior to 2000 and that would have been its lawful use in planning terms, and it was supported by the appellants' need to apply for planning permission for a change of use to residential in [REDACTED].

13. Since 2000, the appellants have stated that initially the building was occupied by their [REDACTED] as their home, with their [REDACTED] currently living there. However, they have not provided any evidence other than their own statements to support this contention

together with the planning application in [REDACTED] where they indicated that the property was used for residential purposes since [REDACTED]. They also indicated in their grounds of appeal that 'we have been unable to provide the requisite evidence to prove this fact and therefore could not apply for an established use certificate'. Their explanation for the lack of evidence is that they paid all the bills for the property on their [REDACTED] behalf as he had [REDACTED] and was not financially independent.

14. There is common consent between the parties that the property has been assessed for business rates since at least 1995 with the appellants having applied for and been granted small business relief in 2005. This information is clearly contradictory with the appellants' statements regarding the residential use of the property. The appellants' have explained this by saying they had no alternative but to pay the business rates and applied for small business relief to reduce their costs. However, they could have asked for the property to be assessed for Council Tax purposes as there is not a requirement for planning permission to be granted, but they may not have known this was the case.

15. Given the property had an existing legal planning use as offices, if the property or any part of it had been occupied as offices for a continuous period of 6 months within the previous three years before planning permission was granted it would clearly have been netted off from the area of the chargeable development. However, there has been no evidence put forward by either party suggesting any office use, quite the contrary, with the CA specifically stating the lawful test was not met as the property had not been in use as offices during the relevant three year period. It is clear that business rates were paid during the relevant period and small business rate relief claimed, but this would not prove that the property was actually used for office purposes.

16. As regards the use of the property for residential purposes, for such a use to be lawful in planning terms then under the Town and Country Planning Act 1990 Section 191(2)(a) a use is lawful if no enforcement action can be taken and under Section 171B(2) no enforcement action can be taken if the breach took place over 4 years ago. If I were to accept the appellants' contentions then as they state that the residential use commenced around 14 years before the date planning permission was granted and continues to the present day I consider that it would have been lawful both in planning terms and for the purposes of Regulation 40. However, the appellants have not provided any factual evidence to support their statements. They have referred to their [REDACTED] being on the electoral roll at the property, but they have not provided copy of his entry and such evidence would not necessarily be proof of [REDACTED] occupation.

17. In arriving at my decision I can only base it on the evidence put forward by each of the parties during the course of the appeal and unfortunately the factual evidence is very limited. It is clear that the parties agree that there was no lawful use as offices, but this does not mean that I am then able to accept that there was a residential use for a continuous 6 month period in the three years prior to planning permission being granted, in the absence of any factual supporting evidence. In addition, I am not able to accept that if there was such a use it was lawful. The appellants have clearly stated that they did not have the 'requisite evidence' to apply for an 'established use certificate' which I assume is why a full planning application was made; the appellants have indicated that [REDACTED] advised them to apply for planning permission.

18. On the evidence before me I consider that on balance the appellant has not provided sufficient evidence to prove that any part of the property was in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development. Therefore, I conclude that the chargeable amount has been correctly calculated.

[REDACTED]  
RICS Registered Valuer  
Valuation Office Agency  
[REDACTED]