

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]

[REDACTED]

Development: Proposed conversion to create 2 X [REDACTED] dwellings, 2 storey rear infill extension, loft conversion, 1 no car parking space, 4 cycle spaces and refuse area

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

Decision

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

Reasons

1. I have considered all the submissions made by the appellant [REDACTED] and I have also considered the representations made by the Collecting Authority (CA), [REDACTED]. In particular, I have considered the information and opinions presented in the following documents:-

- (a) Planning permission decision letter dated [REDACTED].
- (b) The CA's Liability Notice dated [REDACTED].
- (c) The CA's Decision Notice on review of CIL chargeable amount dated [REDACTED].
- (d) Completed CIL Appeal form dated [REDACTED] with covering letter containing the Grounds of Appeal.
- (e) Additional supporting documents submitted with the CIL Appeal:-

(i) Copies of all approved plans and elevations as listed at Condition 2 of the planning permission dated [REDACTED].

(ii) Copies of parts of tenancy agreements covering the period [REDACTED] to [REDACTED].

(iii) Copies of the appellant's bank statements covering the period [REDACTED] to [REDACTED].

(iv) Copy of a Licence issued by [REDACTED] under the Housing Act 2004 – part 3 – section 88 – Selective Licensing of other Residential Accommodation, dated 2 [REDACTED].

(v) A copy of an email from [REDACTED] the managing agents for the appellant in respect of [REDACTED] including confirmation of the names of the tenants and their dates of occupation from [REDACTED] to the date of the email [REDACTED].

(vi) A copy of a Valuation Tribunal decision dated [REDACTED] in respect of a Council Tax Liability appeal – house in multiple occupation.

(vii) A copy of part of a Water Rates bill dated [REDACTED] for the period [REDACTED] to [REDACTED].

(f) The CA's representations in the form of a Statement of Case dated [REDACTED] with 8 appendices including:-

(i) A copy of an Article 4 direction effective [REDACTED].

(ii) A copy of a Houses of Multiple Occupation use classes discussion document.

(iii) A copy of an Enforcement Notice issued [REDACTED] in respect of use of property as a large house in multiple occupation.

(iv) A copy of Supplementary email information of Gross Internal Area dated 7 July 2015.

(g) The appellant's comments on the CA's representations received on [REDACTED]. However, these comments also included new evidence in the form of attached documents. Therefore, as the completed appeal form comprises the appellant's representations in relation to the appeal, Regulation 120(4), I have disregarded these additional documents in arriving at my decision.

2. Planning permission was granted by [REDACTED] on [REDACTED] for the 'Proposed conversion to create 2 X 3 bed dwellings, 2 storey rear infill extension, loft conversion, 1 no car parking space, 4 cycle spaces and refuse area'.

3. On [REDACTED] the CA issued a Regulation 65 Liability Notice CIL [REDACTED] and CIL [REDACTED] (this Liability Notice superseded 2 earlier Liability Notices understood to be dated [REDACTED]) in the sum of £ [REDACTED] based on net additional floorspace of [REDACTED] square metres (sqm) as follows:-

[REDACTED]

[REDACTED] sqm @ £ [REDACTED] = £ [REDACTED]

Plus indexation = £ [REDACTED]
£ [REDACTED]

[REDACTED]

[REDACTED] sqm @ £ [REDACTED] = £ [REDACTED]

Plus indexation = £ [REDACTED]
£ [REDACTED]

4. The appellant requested a Review of the calculation of the chargeable amount on [REDACTED]

5. The CA issued their decision notice on the review on [REDACTED] and confirmed the net additional floorspace at [REDACTED] sqm, but revised the CIL liability to £ [REDACTED] as a result of updating the indexation as follows:-

[REDACTED]

[REDACTED] sqm @ £ [REDACTED] = £ [REDACTED]

Plus indexation = £ [REDACTED]
£ [REDACTED]

[REDACTED]

[REDACTED] sqm @ £ [REDACTED] = £ [REDACTED]

Plus indexation = £ [REDACTED]
£ [REDACTED]

The CA determined that the existing floorspace of the building should not be included in KR or E in the formula for the chargeable amount set out in regulation 40(7), i.e. it should not be netted off from the GIA of the chargeable development. They were of the view that the 'quality' of the evidence was not sufficient to prove lawful use on the basis the information was 'piecemeal, not applicable to the relevant period and did not include whole documents'. They felt this raised questions as to the 'legitimacy of the submissions' and no assurance that 'each document submitted is genuine'.

6. On [REDACTED] the appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) stating that 'this is an existing building and CIL is calculated incorrectly for this property'. No alternative figure has been provided although it is assumed the appellant is proposing a CIL calculation based on netting off the GIA of the existing building from the GIA of the chargeable development.

7. The grounds of the appeal were contained in a covering letter the contents of which can be summarised as follows:-

(a) Numerous emails were sent to the CA together with various documents to prove that the property had been rented out since 2009, together with supporting evidence of existing lawful use for a continuous period of 6 months within the previous 36 months from the date of the decision.

(b) The supporting evidence included various tenancy agreements for the period [REDACTED], a utility bill in the name of one of the tenants, a Housing Act 2004 Part 3 Licence and a bank statement from the appellant showing the rent received from the property.

(c) All the evidence has been sent that is required to prove that this is an existing building and CIL has been calculated incorrectly.

8. The CA submitted representations on [REDACTED] which can be summarised as follows:-

(a) They did not have sufficient information, or information of a sufficient quality to demonstrate that a relevant building had been 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 development.

(b) [REDACTED] had an Article 4 Direction restricting the permitted development rights for conversion from a Class C3 (dwelling house) to Class C4 (houses in multiple occupation) effective from [REDACTED].

(c) The property was unlawfully operating as a large House in Multiple Occupation (HMO) between [REDACTED]. A planning enforcement notice was issued on [REDACTED] and subsequent compliance visits determined that full compliance of the enforcement notice was not achieved until [REDACTED]. Therefore, the period of time from [REDACTED] to [REDACTED] cannot provide for a consecutive period of 6 months of lawful use.

(d) The CA has made considerable efforts to support and facilitate the appellant in providing information to demonstrate existing lawful use and suggested the appellant submitted an affidavit. However, the CA considers that the information submitted is not of a sufficient quality to demonstrate existing lawful use and therefore, for the purposes of the CIL calculation KR should be zero.

9. The appellant submitted comments on the CA's representations, dated [REDACTED] which can be summarised as follows:-

(a) All the requested documents were sent to the CA to support lawful use.

(b) The Valuation Tribunal did not say the property was used as a large HMO while the property was occupied. It did state that the property was rented out for lawful use during the period of the single tenancy and was not classed as an HMO.

(c) The documents submitted with the appeal were the same as used at the Valuation Tribunal and the Crown Court enforcement notice hearing.

(d) Further information was provided which I considered to be new evidence which I have disregarded when making my decision.

10. Having fully considered the representations made by the appellants and the CA, I would make the following observations regarding the grounds of the appeal.

11. I have read through the various documents relating to the tenancy agreements that cover the relevant period and my comments on these are as follows:-

(a) A 12 month assured shorthold tenancy from [REDACTED] from the appellant to [REDACTED] at £[REDACTED] per calendar month (pcm). There would appear to only be a single copy of a page setting out the basic terms of the tenancy on [REDACTED] (understood to be the appellant's managing agent) headed paper.

(b) A 12 month assured shorthold tenancy from [REDACTED] from the appellant to [REDACTED] at £[REDACTED] per calendar month (pcm). There would appear to be a single copy of a page setting out the basic terms of the tenancy on [REDACTED] headed paper, together with six pages of what would appear to be the detailed terms of the tenancy, numbered Page 2 of 9 to Page 7 of 9 and including the signatures of three of the tenants dated [REDACTED], and the signature of the appellant.

It would appear that similar information was provided to the Valuation Tribunal as set out in their decision. In addition, the Valuation Tribunal decision refers to [REDACTED] having received 'student certificates' for the four tenants indicating that their courses finished at various dates between [REDACTED] and [REDACTED] and [REDACTED] did not suggest these were not genuine.

12. Further supporting evidence includes an email from [REDACTED] indicating that the tenants named at 11(a) and (b) above were in occupation from [REDACTED] up to the date of the email, [REDACTED]. In addition, the appellant has provided copies of his bank statement which he states shows the sum of £[REDACTED] pcm he received in respect of the property for the months of [REDACTED] through to [REDACTED] from [REDACTED].

There is also a copy of the first page of a Water Rates bill dated [REDACTED] in the name of [REDACTED].

13. I am of the opinion that although the information provided is not complete and there are some inconsistencies, there is still sufficient weight of evidence when all taken together to reasonably conclude that part of the property was in lawful use for a continuous period from the [REDACTED] to at least [REDACTED], a period in excess of six months.

14. The CA has stated that the three year period within which to prove 6 months continuous lawful use should exclude the period from [REDACTED] to [REDACTED] on the basis the property was being used as a large HMO for which planning permission had not been granted. However, as this is outside the period [REDACTED] to [REDACTED] referred to above I shall not comment further on the CA's representation. There is also an argument to say that the property would have required planning permission for a change of use on [REDACTED] when [REDACTED] removed the permitted rights in respect of a change of use to an HMO. However, as this is also outside the period [REDACTED] to [REDACTED] referred to above I shall not comment further.

15. As I am of the opinion that the existing property is an 'in-use building' I consider that the GIA of the existing building should be deducted from the GIA of the chargeable development. There are three separate figures stated for the existing GIA within the representations of the parties. The most up to date figure is [REDACTED] sqm as stated on the plan [REDACTED] drawn by [REDACTED] dated [REDACTED] and referred to in Condition 2 of the planning permission. The basis of measurement is not on the plan, but it is stated to be GIA in the email from [REDACTED] to the CA dated [REDACTED]. However, I have checked the measurements and it would appear that [REDACTED] sqm is the Gross External Area (GEA). I have calculated the GIA from the plan and it is approximately [REDACTED] sqm. Therefore, I am of the opinion that the net additional area is [REDACTED] sqm - [REDACTED] sqm = [REDACTED] sqm.

16. I conclude that the appropriate charge in this case should be based on a net additional area of [REDACTED] sqm as set out below:-

[REDACTED]

[REDACTED] sqm @ £ [REDACTED] = £ [REDACTED]

Plus indexation = $\frac{£ [REDACTED]}{£ [REDACTED]}$

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[REDACTED]

[REDACTED] sqm @ £ [REDACTED] = £ [REDACTED]

Plus indexation = $\frac{£ [REDACTED]}{£ [REDACTED]}$

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