Appeal Decision

by [redacted]

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

Valuation Office Agency

[redacted]

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

Appeal Ref: [redacted]

Planning Permission Ref. [redacted] **granted by** [redacted]

Location: [redacted]

Development: Substitution of approved block of 5 No. holiday units into a single 9 No. bedroom holiday unit [redacted]

Decision

I determine that there should be no Community Infrastructure Levy payable in respect of the above development.

Reasons

1. I have considered all the submissions made by [redacted] on behalf of the appellants and [redacted] in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

a. The application for planning permission dated [redacted] together with associated plans and drawings.
b. The Design and Access Statement prepared by [redacted].
c. The [redacted] Development Management Report.
c. The Decision Notice issued by [redacted] on [redacted].
d. The Community Infrastructure Levy (CIL) Liability Notice issued by [redacted] on [redacted].
e. The e-mail dated [redacted] from [redacted] requesting [redacted] to review the CIL Liability Notice together with the attachment being the decision of the Court of Appeal in the case of Sheila Moore v Secretary of State for Communities and Local Government and Suffolk Coastal District Council (2012).
f. The letter from [redacted] to [redacted] dated [redacted] setting out the review decision.

g. The CIL Appeal form dated [redacted] submitted by [redacted], on behalf of the appellants, under Regulation 114.
h. The Statement of Case prepared by [redacted] dated [redacted].
i. The [redacted] Statement dated [redacted].
j. The Reply to [redacted] Statement of Case dated [redacted] submitted by [redacted].

I have also had reference to the CIL Charging Schedule of [redacted] and the Town and Country Planning (Use Classes) Order 1987 (as amended)..

2. In summary, [redacted] consider that the proposed development, being a single 9 bedroom holiday unit, is development falling within Use Class C3 and as such, under the adopted Charging Schedule, is liable to a CIL charge in the sum of £[redacted] (based on a charge of £[redacted] per sq m).

3. [redacted] ('the appellants') contend that the development is not liable to CIL because "it is almost certain that the use will fall as a sui generis use, a commercial activity outwith the confines of Use Class C3."

4. The area of the chargeable development has been calculated by [redacted] as being [redacted] sq m. This calculation of the area would appear to be accepted by the appellants – they consider that the chargeable amount has been calculated incorrectly because no part of the development is liable to CIL under [redacted] Charging Schedule.

5. In support of their view that the likely use of the building is outside Use Class C3 the appellants have referred to the decision given in the case of Sheila Moore v Secretary of State for Communities and Local Government and Suffolk District Council (2012).

6. [redacted] has also referred to case law to justify their contention. In particular it has referred to the cases of Gravesham BC v Secretary of State for Environment (1980), Moore v Secretary of State for Environment (1998) and R v Tunbridge Wells BC ex parte Blue Boys Development (1990).

7. In the case of Sheila Moore v Secretary of State for Communities and Local Government and Suffolk District Council (2012), LJ Sullivan said:

> *"whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation. Neither of the two extreme propositions - that using a dwellinghouse for commercial holiday lettings will always amount to a material change of use, or that use of a dwellinghouse for commercial holiday lettings can never amount to a change of use - is correct."*

The Court of Appeal upheld the Inspector's decision that the particular use as holiday accommodation in that case was not use as a dwellinghouse because the Inspector had:

> *"carefully examined the characteristics of the lettings in the present case and concluded that, as a matter of fact and degree, they were a material change of use from the permitted use as a dwelling- house."*

9. I note that in paragraph 3.7 of their Statement dated [redacted] have accepted that "each case must be assessed on its merits". In paragraph 3.9 of the their Statement the [redacted] go on to state that there is *"no clear cut off point at which the proportion of lettings tip from C3 use into sui generis use but rather it is a matter of 'fact and degree'."* Having considered the 27 enquiries submitted with the Design and Access

Statement the [redacted] consider that "a sufficiently significant number of future occupiers are likely to occupy the proposed accommodation as 'people living together as a family' for it to be considered a C3 use." The [redacted] also note in paragraph 3.6 of their Statement that the occupancy and management arrangements of any property can change rapidly over time.

10. In paragraph 28 of their Statement of Case dated [redacted] the appellants contend that holiday lets will fall into Use Class C3 if they are on a domestic scale but if they are 'commercial' they will probably not. However, it is also acknowledged that "the dividing line between the two is not always going to be easy". In paragraph 8 of the appellants' Reply to [redacted] Statement of Case they contend that the test applied by the [redacted] of 'a sufficiently significant number of future occupiers [being] likely to occupy the accommodation "as people living together as a family" ' is not a test that is supported by any authority or principle of law, is too vague and is not a test that can be met from the evidence. The appellants contend that it is necessary to have regard to evidence at today's date and how their clients intend to run their operation.

11. I consider that it is necessary to consider, as has [redacted], the likely use of the proposed building at [redacted] and to consider, as a matter of 'fact and degree' if that use is sufficient to arrive at the 'tipping point' described by [redacted].

12. The added difficulty in this case is that (unlike all the decided cases) the building at [redacted] has not yet been built and thus there is no evidence relating to the "particular characteristics of the use as holiday accommodation" or "the characteristics of the lettings". The only facts are that we have a planning permission for a nine bedroom building (that has the physical characteristics of a dwellinghouse) and that planning permission is subject to a condition that the accommodation shall be used solely for holiday use and not for permanent residential purposes. We also have evidence from the appellants as to how their client envisage the building will be used but the property could of course be sold tomorrow to someone who may use it in a different manner.

13. As referred to above the Design and Access Statement accompanying the Planning Application was accompanied by 27 e-mails from potential clients enquiring as to the availability of accommodation for large groups of people. Of the 27 submitted e-mails 6 referred to the presence of children and 4 were from those referring to a family gathering. One referred to a 'corporate' weekend. The rest were silent on the reasons for the enquiry. Several appeared to relate to staying over the New Year period. The length of stay requested varied from one night to a maximum of seven with the majority (14) being for two nights. Where stated the reasons for occupation included family events, reunions and parties. Whilst some of the occupiers of the building may well be living together as a family, having regard to all the facts, it is likely that a significant number will be unrelated groups.

14. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I consider that it is likely that a significant number of future occupiers will not be occupiers living together as a family and consequently the use of the building is likely to fall outside of Use Class C3. Based on the particular facts of this case I therefore conclude that the proposed development at [redacted] is not liable for the payment of any Community Infrastructure Levy.

[redacted]
RICS Registered Valuer
District Valuer