

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: Use of premises as a place of worship

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

Decision

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

Reasons

1. On [REDACTED] granted planning permission for the use of premises at [REDACTED] as a place of worship (Class D1).

2. As background to the above, the appellants made the planning application to [REDACTED] on [REDACTED] for 'continued use of premises as a place of worship (D1)'. Background notes to that application show that the appellants had previously been granted planning permission on [REDACTED] for the continued use of the premises as a place of worship (D1) until [REDACTED]. The premises appear to have been in use as a place of worship since [REDACTED].

3. A Community Infrastructure Levy (CIL) Liability Notice was issued by [REDACTED], as the CIL collecting authority, on [REDACTED]. The notice informed the appellant that the collecting authority calculated the CIL liability to be £[REDACTED] based on gross/new floor space of [REDACTED], with NIL netting off of existing floor space to give a chargeable area of [REDACTED] @ £[REDACTED] per sqm.

4. The appellant asked the collecting authority to review the charge on [REDACTED], and they responded on [REDACTED].

5. The appellants submitted a CIL appeal under Regulation 114 (chargeable amount) and Regulation 116 (charitable relief).

6. The VOA acknowledged the appeal on [REDACTED] accepting the Regulation 114 appeal as valid, but stating that an appeal under s116 (charitable relief) was not valid because no apportionment of the CIL charge had been carried out or was appropriate.

7. On [REDACTED] VOA wrote to [REDACTED] and the [REDACTED] advising them of the CIL appeal (under Reg 114) and seeking any representations.

8. Representations were received from [REDACTED] dated [REDACTED] as follows:-

(a) The representations from [REDACTED] included earlier correspondence between the appellant and the Council in connection with the request for a review of the CIL liability on [REDACTED]

(b) [REDACTED] had responded on [REDACTED] as follows:

"Regulations

[REDACTED] as this is a permission is for the "Use of premises as a place of worship (Class D1)" and it was granted permission on the [REDACTED]

CIL Regs 28, the [REDACTED] charging schedule has taken effect on chargeable development from the [REDACTED].

CIL Regs 6 does not exclude the proposed use from it being development and therefore it is a chargeable development under Regs 9.

CIL Reg 42 does not exclude the proposed use from its size or nature.

CIL Regs 40 explains the calculation of any chargeable amount.

Here under Reg 40 (10) it says that you can only off-set existing floor space if it has been lawfully (any type of law) used (actively) for 6 of the last 12 months at the time planning permissions first permits the development. In this case it is a full planning permission with no pre-commencement conditions therefore that date is the [REDACTED]. For over a 6 month period before then it has not been in lawful use. For that period it was not in planning lawful use as D1.

Calculations

As there is no lawful existing use offset, the proposed floor space (from your application form) of [REDACTED] is the chargeable area.

There has been no increase in the indexation amounts as yet, so the amount due is [REDACTED] x £ [REDACTED] (the [REDACTED] rate for [REDACTED]) which is [REDACTED].

I therefore concluded that the calculations and amounts set in the [REDACTED] CIL Liability Notice dated the [REDACTED] are correct and stand.

Should you still disagree you can dispute mine and the Council decision within 60 days of the date of the Liability Notice dated the [REDACTED], if it is yet to be implemented.

I would direct you to the Planning Portal for more details.

[REDACTED] said that this remained their position.

9. Representations were received from [REDACTED] on [REDACTED]. [REDACTED]

████ agreed with █████ interpretation stating that Reg 40(6) clearly states that to be taken into account, buildings have to be situated on the relevant land on the day planning permission first permits development and in lawful use. Para 40 (10) merely defines what 'use' means for the purposes of the Regulation

10. Comments were received from the appellants on the representations from █████ and the █████ stating that the interpretation of regulation 40 is for the VOA to review, and also making further comments as to the history of the planning application.

11. As I see it, regulation 42 of the Community Infrastructure Levy Regulations 2010 (as amended by regulation 8 of the Community Infrastructure Levy (Amendment) Regulations 2011) provides that:

Exemption for minor development

"(1) Liability to CIL does not arise in respect of development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

(2) But paragraph (1) does not apply where the development will comprise one or more dwellings.

(3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings."

12. The planning application records the total gross internal floor space proposed (including change of use) as █████m². However, it is clear from the papers submitted that there was no new build arising from this planning permission. The property had previously enjoyed a temporary planning consent for use of the premises as a place of worship (D1) by a consent granted on █████, and it is understood that the style and size of the church then was largely the same as it is now after the grant of planning permission on █████, apart from some minor works such as repositioning of the entrance to the building. I conclude that there were no 'new buildings' or 'enlargements to existing buildings' arising from this development.

13. On the evidence before me I consider that Regulation 42 is applicable in this case as there has been no new build greater than 100m², and also the development does not comprise any dwellings. I therefore agree with the appellant that there should be no CIL liability payable in respect of the above development.

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RICS Registered Valuer
District Valuer
████████████████████ 2012