Appeal Decision

by [redacted] MRICS

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

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

Appeal Ref: [redacted]

Address: [redacted]

Development: Retention of two existing self-contained one bedroom [redacted] flats.

Planning Permission details: Planning permission was granted by [redacted] on [redacted].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £nil.

Reasons

1. I have considered all the submissions made by the agent, [redacted] of [redacted], on behalf of the appellants, [redacted] and [redacted] and by [redacted], the Collecting Authority (CA).

2. Planning permission for the above development was granted on [redacted] following an application for retrospective consent. The CA issued a CIL Liability Notice dated [redacted] in the sum £[redacted]. This was said to be based on a net chargeable area of [redacted] square metres @ £[redacted]. On [redacted] the Valuation Office Agency received a CIL appeal purporting to be made under regulations 114 (chargeable amount), 115 (apportionment of liability) and 116/116A/116B (charitable relief/exemption for residential annexes/exemption for self-build housing). The appellant contends that there should be no CIL liability.

3. The appellants were advised that no appeal could be made under regulation 115 as no apportionment of liability had been made by the CA, nor under regulations 116/116A/116B as

none of the reliefs or exemptions covered by those regulations had been applied for. However, the appeal was accepted as a valid appeal under regulation 114 as the appellants contend that the chargeable amount has been calculated incorrectly.

4. From the evidence submitted, it is understood that the relevant planning history is essentially as follows:-

[redacted] Planning permission was granted for the building within which the two subject flats are situated.

[redacted] The CA began investigations into the use of two former storerooms within the building as flats.

[redacted] During a site visit by the CA's planning officers it is alleged that the existence of the flats was at first denied and entry to inspect was refused. This is disputed by the appellants.

[redacted] The CA wrote to the appellants regarding the need to inspect.

[redacted] The appellants allowed the CA's officers to inspect the two flats.

[redacted] The CA wrote to the appellants to confirm that the use of the former storerooms as two flats required planning permission and that they were seeking advice on whether the breach of planning permission had been deliberately concealed.

[redacted] The appellants wrote to the CA to say that there had been no intention to deliberately conceal the breach of planning permission.

[redacted] The CA served an Enforcement Notice and an appeal against this was made by the appellants.

[redacted] Following discussions with the CA a planning application was made and retrospective planning permission for the two flats was granted.

[redacted] Enforcement Appeal Inquiry – the Enforcement Notice and the appeal were withdrawn because planning permission had been granted.

5. The appellants contend that the CIL charge calculated by the CA is incorrect on five grounds which can be briefly summarised as follows:-

(a) Before adopting their Charging Schedule the CA failed to appropriately consult and apply proper consideration to whether housing for rural workers, other than agricultural and forestry workers' dwellings, should be subject to a CIL charge in their area.

(b) When calculating the chargeable amount under regulation 40 the CA failed to take into account the existing floor space which had been in lawful use for a continuous period of at least 6 months within the previous 3 years ending on the day that planning permission first permits the chargeable development. As the change of use to use as two flats had occurred on [redacted], under Section 171(B) of the Town and Country Planning Act 1990 no enforcement action could be taken after the end of four years beginning with the date of the breach (i.e. the use became lawful from [redacted]).

(c) The Gross Internal Area (GIA) of the flats should exclude the staircases which are external to the flats themselves but inside the main building within which the flats are situated. If the area of the staircases is excluded the chargeable area is reduced to [redacted] square metres.

(d) The CA's Charging Schedule refers to 'qualifying development' but does not define this term so there is no definition of what type of development qualifies to become subject to the charging rates set out in the Charging Schedule.

(e) The CA have not provided any new infrastructure in the locality of the subject property and the subject development neither imposes any pressures on existing infrastructure nor requires any additional infrastructure to be provided.

6. The CA contend that their calculation of the chargeable amount is correct and their response to the appellant's grounds of appeal can be summarised as follows:-

(a) The Charging Schedule was adopted following the normal statutory process, including public consultation and examination in public. The CA responded to representations regarding rural workers' dwellings as part of that process.

(b) The CA have never accepted that the flats were in lawful use before planning permission was granted because the appellant had not demonstrated that the two flats had been in use for an uninterrupted period of four years and were thus immune from enforcement action. If it could be shown that the flats had been in existence for a period in excess of four years the Council was going to contend that the four year rule did not apply because the dwelling units were concealed with the intention to deceive. (This would have been supported by evidence from the CA's planning officers regarding what was said by the appellant during the site meeting on [redacted].)

(c) The RICS definition of GIA includes stairwells. The stairwells are internal to the overall building and are integral to the flats as the flats could not be accessed without them.

(d) The Charging Schedule provides that the qualifying development in this case is 'Residential Development (excluding sheltered housing, extra care housing and residential institutions)' for which the charging rate is £[redacted] per square metre.

(e) The infrastructure that may be funded via the CIL is set out in the CA's Regulation 123 List.

7. The appellants' comments on the CA's representations may be summarised as follows:-

(a) The consultations published by the CA and the Inspector's decision do not indicate any consideration of rural workers' dwellings or occupancy restricted dwellings. It is inconsistent for the CA to apply a £[redacted] per metre CIL charge to dwellings where occupancy is restricted by planning condition or obligation to an essential agriculture or forestry worker but not to other rural workers' dwellings.

(b) The evidence now submitted as part of this CIL appeal show that the flats had existed and been continuously occupied as such since [redacted] and the CA have not submitted any evidence to contest this. The appellants dispute the evidence of exactly what was said during the site meeting on [redacted] and contend that they only sought to delay an inspection for 14 days to allow them time to take advice. The appellants had no intention to deceive the council and allowed an inspection of the subject flats on [redacted]. The view that the appellants had not sought to deceive

the CA was supported by a Counsel's Opinion which had been submitted to the CA during the Enforcement Notice appeal process and as part of this CIL appeal.

(c) The RICS definition of GIA is "the area of a building measured to the internal face of the perimeter walls of each floor level". The staircases are external to the flats and are therefore not within the internal face of the subject building (i.e. the flats).

(d) The CIL rates are set out in Table 1 of the CA's Charging Schedule but Table 1 makes no reference to 'qualifying development'.

(e) The infrastructure works in the CA's Regulation 123 List are nowhere near the subject property.

8. With regard to the first ground of appeal (paragraph 5(a) above), an appeal under regulation 114 can only be made on the ground that the 'chargeable amount' has been calculated incorrectly. Regulation 40 sets out how the CA must calculate the chargeable amount. The CA's Charging Schedule was implemented on [redacted] and this sets out the rates that must be used in the calculation under regulation 40. The views expressed by the appellants regarding the CA's consultation on and consideration of the issue concerning rural workers' dwellings and whether an amendment to the Charging Schedule is required are not relevant to the calculation required by regulation 40. I can only have regard to the Charging Schedule in force at the relevant date.

9. With regard to the second ground of appeal (paragraph 5(b) above), it is common ground that 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. [redacted]). It does not appear to be disputed that the subject flats were in use for the required period, the issue is whether that use was lawful and this rests on the question of whether or not enforcement action could have been taken because the use of the floor space as residential units during the relevant period was in breach of the [redacted] planning permission.

The appellants have submitted evidence that clearly shows the subject flats have been in existence and continuously occupied since [redacted]. The CA have not submitted any evidence to contest this so this does not now seem to be disputed. Therefore, unless it can be shown that the appellants concealed the breach of planning permission with the intention to deceive, the use became lawful on [redacted]. (When the four year period for taking enforcement action under Section 171(B) of the Town and Country Planning Act 1990 expired).

From the evidence submitted it would seem that the dispute over whether there was any intention to conceal and deceive rests solely on what was said or not said at a site meeting on [redacted] and the fact that the CA's officers were not allowed to inspect the flats until 16 days later on [redacted], after the appellants had taken advice. An enforcement notice could of course have been served after the site visit on [redacted] and this would have been within the four year period, but no notice was served until [redacted]. On the evidence submitted I do not consider that it can be said that the appellants clearly intended to conceal or deceive. Consequently I consider that the use of the existing floor space from [redacted] onwards was lawful and can therefore be taken into account when calculating the chargeable amount under regulation 40. The effect of this is to reduce the chargeable amount to nil.

10. With regard to the remaining grounds of appeal, the fifth ground of appeal (paragraph 5(e) above) is, like the first ground, of no relevance to an appeal under regulation 114. As my decision in paragraph 9 above is that the chargeable amount should be nil there is no need

for me to make a decision on the third and fourth grounds of appeal (paragraph 5(c) and 5(d) above).

11. On the evidence before me I consider that the CIL payable in this case should be £nil.

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]