Appeal Decision

[redacted]

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

[redacted]

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

Appeal Ref: [redacted]

Address: [redacted].

Proposed Development: Erection of a single storey side extension to relocate existing '[redacted].

Planning permission details: Granted by [redacted] on [redacted] under reference [redacted].

Decision

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

Reasons

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

2. The facts are essentially as follows:-

   a. The proposed development comprises an extension to an existing [redacted] increasing the size of the [redacted] from [redacted] square metres to [redacted] square metres. The extension is to be used to accommodate the relocation of an existing [redacted]. The extension is said to be designed for loading goods onto delivery vans for distribution to customers but customers will have no access to this area of the store. As a result of the extension, [redacted] of the store's existing customer car parking spaces will be lost.

   b. [redacted] implemented its CIL Charging Schedule on [redacted] and planning permission for the above development was granted on [redacted]. In this location, the Charging Schedule provides for a CIL charge of £[redacted] per square

metre for development comprising '[redacted]. [redacted] m2 gross internal floorspace'. A footnote states that "[redacted] are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of good, catering for mainly car-borne customers".

c. Following the grant of planning permission the CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted]. This is essentially based on a net chargeable area of [redacted] square metres @ £[redacted] per square metre.

d. The appellant requested the CA to review this charge under regulation 113 of the CIL Regulations 2010 (as amended) on [redacted] and the CA issued their decision on the review on [redacted]. The CA confirmed that in their view the correct charge was £[redacted].

e. On [redacted] the appellant made an appeal to the Valuation Office Agency under regulation 114 (chargeable amount) of the CIL Regulations 2010 (as amended), contending that the chargeable amount should be nil.

6. The appellant contends that the CIL charge calculated by the CA is incorrect because:-

a. The CA cannot charge CIL for a use other than the use for which consent was applied for and has been granted.

- The planning application form described the extension as "Use class B8 Storage and Distribution".
- The 'chargeable development' for the purposes of CIL is defined as "the development for which planning permission is granted".
- Planning permission was not granted for retail use and it is the use of the area for which planning permission was granted that is relevant, not the use of the wider site.
- The permission is for a distribution use falling within use class B8.
- The CA's decision is incorrectly based on the use of the planning unit rather than the use of the chargeable development and the use for which planning permission was sought.

b. The development does not fit within the category "[redacted]. Net retailing space over [redacted] m2 gross internal floorspace" within the Charging Schedule.

- The development for which planning permission has been granted does fall within the above description, as defined in the Charging Schedule.
- The floorspace will be used for the loading of delivery vehicles, the public will have no access to this area, it does not form part of a shopping destination, it is not for car borne customers and it does not constitute retailing space.
- During the course of considering the application the Council did not mention that they intended to determine the application as an A1 rather than a B8 use and they did not apply the requirements of their policy when considering applications for retail uses in out of town locations.

Under the Charging Schedule the charge for development falling within a B8 use is nil.

7. The CA contend that their calculation of the chargeable amount is correct because the chargeable development is an extension to the existing [redacted] with direct internal access

to it. It is functionally dependent upon the presence of the [redacted] and facilitated by the direct internal access. It is in the CA's view part and parcel of the [redacted] operation. In response to the appellant's contentions the CA make the following points:-

a. The [redacted] is not a stand-alone facility that could operate separately from the [redacted].

b. The [redacted] is ancillary to the [redacted] use and is not a separate planning unit with its own use.

c. Although the use of the extension was indicated as B8 on the planning application form, the application did not include any reference to changing the existing use of the site, which is firmly A1.

d. For the chargeable development to have a B8 use it would either have to form a separate planning unit or form part of a mixed use site, neither of which is the case.

e. The Council considers that the proposed use of the floorspace would be more accurately described as use for the receipt and holding of goods prior to loading onto vehicles for distribution to customers.

f. During the course of considering the application the Council did not mention that they intended to determine the application as an A1 rather than a B8 use because this did not affect the determination of the application. The planning decision notice makes no reference to B8 use.

g. The Council did not consider it necessary or appropriate to apply the requirements of their policy when considering applications for retail uses in out of town locations because the site had an established retail use and the application did not introduce a new use or create a separate planning unit.

h. No planning application has been submitted for a B8 use for the existing [redacted], because this is clearly part of the retail use of the existing [redacted].

8. In response to the CA's points in paragraph 7 above the appellant's further contend that:-

a. The [redacted] will have a use distinct from the [redacted], there will be no customer access and no retails sales will take place. The [redacted] will include operational facilities for the distribution business and will temporarily store goods which have already been sold before they are delivered.

b. The CA's reference to planning units is not relevant.

c. As the application was for a B8 use this was the permission granted so the site is therefore now a mixed use site.

d. In addition to proposed use of the floorspace, the [redacted] includes a canopy and service area which will be used for operational purposes.

e. If the Council did not consider the use class stated on the planning application form to be accurate the appellant would have expected them to have informed the applicant.

f. When considering a previous application for an extension of the [redacted] area at the [redacted] the Council did consider application of the retail planning policies to be relevant. To argue that the [redacted] is additional retail space and then not apply the policies to this application is illogical.

g. Whilst the decision notice does not state that the development is B8, this is the use for which planning permission was applied.

h. Although [redacted] are currently provided from within the store, this can be considered to be an ancillary function of the [redacted]. However, the new [redacted] would occupy a separate area, be operationally separate and deal with a different scale of orders.

9. In my opinion the key question in this appeal is whether or not the 'chargeable development' falls within the description contained in the Charging Schedule. In other words, can the development for which planning permission was granted on [redacted] reasonably be described as falling within '[redacted]. *Net retailing space over* [redacted] *m2 gross internal floorspace'*.

Whilst the appellant described the development as falling within B8 (Storage or Distribution) use class in the planning application form I do not think that is the end of the matter. Although the Council failed to inform the appellant that they did not agree that the proposed development fell within B8 use class at any stage during the application process, it is clear from the 'Delegated Report' dated [redacted] that they did not accept this view. In my opinion it is necessary to look at what the planning decision notice actually says.

The planning decision notice granted planning permission for the 'erection of a single storey side extension to relocate existing '[redacted].' It does refer to B8 use class. The permission is not for a stand-alone [redacted] building it is for an extension - an extension to an existing [redacted]. As an extension to an existing building I think it is appropriate to consider how in reality this part of the building may be used. In reality the extension will be used by the occupier of the [redacted] in connection with their business and in size and function it's use is in my opinion clearly ancillary to the main use of the existing building to which it is an extension.

If planning permission were granted for a new [redacted] with ancillary storage and other uses then I do not consider it would be appropriate to apply the £[redacted] per square metre CIL charge to just the retail sales part of the building, it should be applied to the whole floorspace including ancillary accommodation. I therefore consider that it is sensible to treat an extension to be used as ancillary accommodation in a consistent manner.

In my opinion the chargeable development in this case can reasonably be described as an extension to an existing [redacted] that falls within the definition contained in the Charging Schedule. I therefore agree with the CA that the additional floorspace should attract a CIL charge based on £[redacted] per square metre.

11. On the facts of this particular case and the evidence before me I conclude that the appropriate charge should be £[redacted].

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