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]

Address: [redacted].

Development: [redacted] *change of use from* [redacted] *(sui generis) to* [redacted] *dwelling.*

Planning permission details: *Granted by the* [redacted] *on* [redacted] *under ref* [redacted].

Decision

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

Reasons

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

2. Retrospective planning permission was granted for the development described above on [redacted].

3. The CA advised issued a CIL Liability Notification dated [redacted] in the sum of £[redacted]. This was based on net a chargeable area of [redacted] square metres @ £[redacted] per square metre.

4. The appellant requested a review of this charge under regulation 113 of the CIL Regulations 2010 (as amended) and the CA issued a revised notice on [redacted] in the sum of £[redacted] based on an adjusted net chargeable area of [redacted] square metres @ £[redacted] per square metre.

5. On [redacted] an appeal was made to the Valuation Office Agency under regulation 114 (chargeable amount) of the CIL Regulations contending that the chargeable amount should be nil.

6. The appellant contends that the existing building from which the dwelling was created had been in legitimate lawful use for a period exceeding 6 months in the period of 3 years before the relevant date. This was supported by documentation showing that non-domestic rates were paid for the [redacted] premises on the land acquired by the appellant, for a total of nine months in 2014 and 2015. A copy of the Valuation Office Agency valuation of the garage premises for non-domestic rating was also submitted and it was stated that areas 6, 7 and 8 in that valuation were the areas that had now been utilised for the creation of the new residential unit. As there is no increase in the floor space resulting from the change of use the appellant contends that there should be no CIL liability. In addition, it is maintained that if there were to be a CIL charge the appropriate gross internal area (GIA) of the residential unit created in this case should be [redacted] sq. m because it should not include any of the attic/roof void as this does not have permanent access, has no flooring and has no area of sufficient height which might allow an actual habitable use of the space. It is claimed that the CA's interpretation of GIA is not consistent with that adopted by other CAs.

7. The CA contend that the property which is the subject of the appeal was not part of the [redacted] premises but was previously part of a property known as [redacted] which has been in residential use since 1993 before being divided into two residential units ([redacted]) in [redacted]. As planning permission for change of use was not granted until the subject permission was approved in [redacted] any residential use of the property during the 3 years before the relevant date was unlawful. In addition, they refer to an e-mail from the Appellant to their Council Tax team that refers to the property as formerly being a derelict shop (the e-mail does also state that the property is incorrectly named as '[redacted] and it should be '[redacted]'). The CA contend that as there is insufficient information, or information of sufficient quality, to establish whether the relevant building was in lawful use they have applied regulation 40(10) – which allows them to deem the GIA of the existing building to be zero. The CA have based their calculation of the GIA of the new dwelling on the definition of GIA contained in the RICS Code of Measuring Practice (6th Edition) which indicates that areas with a headroom of less than 1.5m should be included. As the CIL Regulations do not define GIA, they acknowledge that other CAs may choose to interpret GIA in a different way [redacted]

8. In response to the CA's representations on the lawful use issue the appellant contended that '[redacted]' does not form any part of the building under consideration. The Appellant stated that the reduced area of the remaining [redacted] premises is now [redacted] square metres, which represents a reduction of [redacted] square metres from its previous area, and this corresponds to the area of the part that has been used to create the new dwelling.

9. With regard to the first issue, whether the existing building had been in use for a period of 6 months in the 3 years prior to the relevant date, the factual evidence contained in the parties' representations and comments is conflicting. The Appellant's evidence is not in my opinion conclusive. Non-domestic rates may well have been paid on the [redacted] premises but, based on the evidence submitted, without a plan, it is not clear that the areas identified in the rating valuation as being the relevant part of the building are indeed the relevant parts. Areas 6, 7 and 8 in the valuation add up to [redacted] square metres which is significantly less than the appellant's ground floor GIA of [redacted] square metres. However, conversely there was no hard evidence in the CA's representations to prove that they were correct in their assertion that the building was in fact the building that was known as [redacted]. As a consequence, in order to try and establish the facts, I considered it was appropriate to introduce evidence from the VOA's records and write to both parties inviting further comments on this particular issue, setting a deadline for receipt of [redacted]. In my letter to the parties I confirmed that the VOA records indicated that the subject property was

indeed part of the building originally known as [redacted], was known as [redacted] from [redacted] and was not included in the non-domestic rating assessment of the [redacted].

10. In response to my request, further comments were received from both the appellant and the CA. The appellant provided part of a copy of sales particulars which indicated that prior to the appellant's acquisition of the premises (understood to be [redacted]) part of the building (i.e. [redacted]) was in residential use by the vendor and part (i.e. [redacted]) was a 'redundant retail unit'/'former shop' that was used for storage purposes by the vendor's business. There is a photograph that shows some items in what is described as the former shop. The CA provided further details of the history of the Council Tax banding for the building, telephone conversations with the appellant regarding the use of the building between [redacted] and [redacted], a copy of a letter to the appellant dated [redacted] regarding the need for planning permission for use of the [redacted] as a dwelling and details of a planning application made in [redacted].

11. For the existing floor space to be taken into account when calculating the chargeable amount under regulation 40, the subject building (i.e. the part of [redacted] formerly known as [redacted] and now known as [redacted]) must have been in lawful occupation for a continuous period of at least 6 months within the period of 3 years before the relevant date (i.e. between [redacted] and [redacted]). From all the evidence now submitted it would seem that the subject building was vacant from [redacted], when the appellant acquired the property, until after it was converted to a dwelling and then first occupied as a dwelling on [redacted]. As the residential use from [redacted] was unlawful the use of the building from [redacted] up to [redacted] cannot be taken into account. However, what also needs to be considered is whether the subject building was in lawful occupation for a continuous period of 6 months at any time between [redacted] and [redacted] prior to the appellant's acquisition of the property. The only evidence submitted by the appellant of any relevance to this question is the copy of part of the sales particulars, presumably prepared sometime in early [redacted], which indicate that the subject property was at that time used for storage purposes by the vendor's business. In my opinion the evidence submitted is insufficient to demonstrate that the subject building was actually occupied for a continuous period of 6 months during the relevant period. The existing floor space should not therefore be taken into account when calculating the chargeable amount under regulation 40.

12. With regard to the issue of the appropriate GIA, the CIL Regulations do not define GIA so it is necessary to adopt a definition. The definition of GIA provided in the RICS Code of Measuring Practice (6th Edition) is the generally accepted method of calculation and I have applied this definition in considering the extent of the floor space in this case.

GIA is the area of a building measured to the internal face of the perimeter walls at each floor.

Including:-

1. Areas occupied by internal walls and partitions
2. Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
3. Atria and entrance halls, with clear height above, measured at base level only
4. Internal open-sided balconies walkways and the like
5. Structural, raked or stepped floors are to be treated as level floor measured horizontally
6. Horizontal floors, with permanent access, below structural, raked or stepped floors
7. Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
8. Mezzanine floors areas with permanent access
9. Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level

10. Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
11. Projection rooms
12. Voids over stairwells and lift shafts on upper floors
13. Loading bays
14. **Areas with a headroom of less than 1.5m**
15. Pavement vaults
16. Garages
17. Conservatories

Excluding:-

18. Perimeter wall thicknesses and external projections
19. External open-sided balconies, covered ways and fires
20. Canopies
21. Voids over or under structural, raked or stepped floors
22. Greenhouses, garden stores, fuel stored, and the like in residential property.

However, whilst I consider it appropriate to have regard to floor areas with a headroom of less than 1.5m, I do not consider it appropriate to treat the roof space in this particular case as a floor in its own right. In the plans provided there is no fixed access way shown to the attic/roof space and the evidence submitted is that there is no flooring. I consider that the chargeable amount should therefore be based on the appellant's GIA of [redacted] sq.m for the ground floor only, which does not appear to be disputed by the CA.

13. On the evidence before me I consider that the chargeable amount in this case should be [redacted] square metres @ £[redacted] = £[redacted]

14. The appellant has claimed that the CA have ignored representations and is seeking reimbursement of unreasonable and unnecessary costs incurred. The CA dispute this and maintain that correspondence submitted demonstrates that they considered the representations made but rejected them for the reasons set out in the correspondence. Although I do not agree with the CA's calculation of the GIA I do not consider that they have acted unreasonably in arguing their position in this case. Each party should in my view bear their own costs in this matter and I do not therefore make any order as to costs.

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