Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency
[redacted]

Email: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Planning Permission Ref. [redacted]

Location: [redacted]

Development: Provision of mobile home as holiday let.

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 [redacted] (agents for the appellant, [redacted]) and [redacted], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

a. Planning Application dated [redacted]
b. Planning Statement in conjunction with above a) dated [redacted]
c. Planning Appeal decision dated [redacted]
d. CIL Liability Notice dated [redacted]
e. CIL Demand Notice dated [redacted]
f. Review Decision from CA dated [redacted]
g. CIL Appeal Form dated [redacted]
h. Grounds of Appeal from the appellant's agent including a Design and Access statement, a Planning Appeal decision relating to whether siting a mobile home constituted operational development or a use of land, guidance from other CAs relating to CIL on mobile homes and various plans of the subject property with a photograph.
i. CA representations dated [redacted]
j. The appellant's response to the CA reps, dated [redacted]
k. Copy of the CA's CIL Charging Schedule dated [redacted]

2. Planning permission for the above development was granted by [redacted] on [redacted] ([redacted]). The [redacted] implemented its CIL Charging Schedule for this location on [redacted]

3. Following the grant of planning permission the CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted]. This is based on a net chargeable area of [redacted] square meters @ £[redacted] per square metre. The Demand Notice included an additional £[redacted] surcharge for failure to submit a commencement of development notice.

4. I do not hold a copy of the Appellants request for review of the Liability Notice, just the CA response.

5. On [redacted] the CA completed a review of the CIL Charge and did not revise its calculation. The decision was contained in letter of the above date. The CA stated in the decision notice that it was their view that the caravan was a 'building' for the purposes of CIL, reference was made to the 'Measor' case (apparently mentioned in the appellants request for Review) establishing that a static caravan can only be considered a building and thus operational development when there is substantial affixation to the land on which it stands. Further the CA stated their contention that further case law established that the degree of affixation was a matter of fact and degree around size, permanence and physical attachment.

The CA contented in their decision that the caravan on the site was a static caravan as it could not easily be moved and that the degree of affixation was evidenced by the connection of drainage facilities between the land and the caravan. The CA therefore contended that the caravan was a building for CIL purposes.

The CA state that, as the caravan was already on site before planning permission was grante, the planning consent granted, was under Section 73A of the Town & Country Planning Act 1990 (planning permission for development already carried out). Under Reg 7 (5) of the CIL Regulations the deemed date of the development was the date the consent was granted. As no commencement of development notice had been served by the appellant before this date ([redacted]) a surcharge was due.

6. Valuation Office Agency received a CIL appeal dated [redacted], made under Regulation 114 (chargeable amount) contending that CIL should not be charged.

7. In summary the appellant's grounds of appeal are:-

i. That the CIL charge relating to the planning consent ([redacted]) should be nil as the caravan was not a building and that the consent was for a change of use of land to provide an additional holiday let.
ii. That other CAs state in their guidance that CIL is not chargeable on mobile homes
iii. That the caravan on the subject property is a 'caravan' under the definition contained in the Caravan Sites Act 1968.
iv. That the application of case law within the CA's decision in the requested Review of the Liability Notice is incorrect and that a Planning Appeal decision in respect of another property ([redacted] Appeal decision) supported the view that if a caravan is capable of being moved it is not a building and that provision of services does not make it permanently fixed to the ground.
v. That the condition in the planning consent of fixture to the drainage system is still to be discharged, a decision is not yet made to connect such services.
vi. That the planning consent is for use of land and not for a building, the caravan could be replaced with larger or small one at will, or moved elsewhere, and that is not possible if the mobile home was a building.

vii. That the surcharge applied by the CA was not valid as no commencement of development was required to be submitted by the appellant as the use of the land to provide an additional holiday let had not yet commenced

8. The CA made their representations in response to the grounds of appeal; the main points are detailed below:-

- That the CA's Charging Schedule makes specific reference to holiday lets being subject to CIL charge.
- With regard to the appellant's reference to other Local Planning Authorities' guidance stating that mobile homes are not buildings for the purpose of CIL, those statements are qualified by the use of words like 'not normal buildings', they do not categorically state that all are not buildings
- The CA also contend that the status of static caravans for both planning law and CIL is unclear but the definition under planning law should not automatically apply for CIL purposes
- The CA take the view that whether a static caravan or mobile home is liable for CIL is a matter of fact and degree in each case. In this case the caravan is required to be affixed to the land for drainage purposes indicating a degree of permanence. They also note that the caravan was already on site and had been used by the appellant's son as a permanent dwelling. The CA therefore contend that the caravan should be deemed to be a building for the purposes of CIL.
- The CA state that as the caravan was already on site the consent was granted under Section 73A of The Town & Country Planning Act 1990 and therefore the chargeable development should be deemed to have commenced on [redacted], the date planning consent was granted. As no commencement of development notice was served before this date a surcharge was properly due.
- However, the CA pointed out that surcharge matters are not within the scope of appeals made under Regulation 114.

9. The appellant responded to the CA's representations with the following points:-

- The CIL Charging Schedule under paragraph 10 defines residential as including development within Use Class C3 of the Use Class Order but the permitted caravan forms part of a permitted caravan site which does not have a use class. Also, Use Class C3 relates to dwelling houses and a caravan is not a dwelling house.
- It is important to consider the definition of a 'building' and 'building operations' and 'a caravan'. If something is a 'caravan' it cannot be a 'building' as the two definitions are mutually exclusive. The case law referred to by the CA was correct but they were wrong to conclude that the caravan in this case was a building. The Measor case has established that for a static caravan to become a building there must be a substantial degree of affixation to the land on which it stands. The planning Appeal decision for 4 Waterworks Cottage confirmed firstly that if a mobile home is capable of being moved it is still mobile and secondly that the provision of services does not make it permanently fixed to the ground.
- The planning consent as granted was not retrospective under Section 73A T&CPA 1990, as the permission was stated to have a three year implementation period and Section 91 of the T&CPA 1990 excludes such a time limit for any development carried out before the grant of permission.
- The final point made was regarding the actual size of the caravan, the appellants state it was far smaller and that consent allowed up to [redacted] sq m but a generic sized caravan of [redacted] sq m had been used in the application but the actual size of the caravan currently on site was actually only [redacted] sq m. A larger caravan could therefore be placed on the site without any additional CIL.

10. Based on the representations and comments received, it seems to me that the case law referred to by the parties establishes that, for planning purposes, for a static caravan to become a building and thus operational development, there must be a substantial degree of affixation to the land on which it stands. The case law quoted suggests the primary factors to be considered when deciding whether, as a matter of fact and degree, a building exists are size, permanence, and physical attachment. I consider it is reasonable to consider the same factors for the purposes of CIL, i.e. when considering whether or not there is a 'building' that needs to be included in the calculation of the chargeable amount under Regulation 40. In this case the appellant and CA disagree on whether, based on a consideration of the above factors, the caravan on site in this case is a building. The caravan in this case is not particularly large and it would appear that the only affixation to the site will be the drainage connection. It has apparently been on site since [redacted] but it is capable of being moved to another site. Having regard to the above factors and based on all the evidence, plans and photographs submitted, I do not consider that the caravan in this case can be regarded as a 'building'.

The other grounds of appeal detailed above are not pertinent as it is my decision that for CIL purposes the caravan on the site does not constitute a building.

11. With regard to the CA's imposition of a surcharge any appeal relating to a surcharge is not a matter for appointed person when considering an appeal under Regulation 114 so this issue is outside the remit of this appeal.

12. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I am of the view that, on the facts of this case, the CIL charge should be £[redacted].

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