Appeal Decision

by [redacted] BSc(Hons) MRICS FAAV

an Appointed Person under the Community Infrastructure Levy Regulations 2010 as Amended

Valuation Office Agency
[redacted]

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

Appeal Ref: [redacted]

Planning Permission Ref. [redacted] **granted by** [redacted]

Location: [redacted]

Development: Change of use of existing stable building to 2no. Holiday-let units with associated landscaping and parking

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Decision

I determine that the Community Infrastructure Levy payable in respect of the above development is £[redacted] ([redacted]).

Reasons

1. I have considered all the submissions made by [redacted] on behalf of the appellants and [redacted] in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

   a. The application for planning permission dated [redacted] together with associated plans and drawings.
   b. The Design and Access Statement for Holiday let use of stable building at [redacted] - Revised residential scheme responding to an appeal Inspector's reasoning for dismissing a joint appeal for either C3 residential use ([redacted]) or [redacted] use ([redacted]) of the building, prepared by [redacted].

c. The [redacted] issued by [redacted] on [redacted] ref [redacted].
d. The Community Infrastructure Levy (CIL) Liability Notice issued by [redacted] on [redacted].
e. The CIL Appeal form dated [redacted] submitted by [redacted] on behalf of the appellants, under Regulation 114, together with documents attached thereto including the appellants Statement of Case letter dated [redacted]. All of these documents were received by the VOA on [redacted].
f. The letter from the CA dated [redacted] in response to the appellants request for a Regulation 113 Review.
g. The rebuttal to the Council's response dated [redacted] submitted by [redacted] on behalf of the appellants.
h. An Appeal Response letter from [redacted] dated [redacted].

I have also had reference to [redacted] CIL Charging Schedule and Developer Contributions Guide and the Town and Country Planning (Use Classes) Order 1987 (as amended).

2. [redacted] consider that the proposed development, being 2 No. holiday let units falls as a residential development under the adopted Charging Schedule and is liable to a CIL charge in the sum of £[redacted] (based on a charge of £[redacted] per sq m).

3. The area of the chargeable development has been calculated by [redacted] as being [redacted] sq m. This calculation of the area would appear to be accepted by the appellants – they consider that the chargeable amount has been calculated incorrectly because no part of the development is liable to CIL under [redacted] Charging Schedule.

4. [redacted] ('the appellants') contend that the development is not liable to CIL because the decision notice permits a 'sui generis' use (rather than Use Class C3) as the approved holiday let use does not constitute a C3 dwellinghouse use and is therefore outside of the adopted CIL charging schedule.

5. In their statement of case dated [redacted], the appellants put forward three alternative grounds which refute the development being liable to CIL charges:

i. That the approved holiday use does not constitute a C3 dwellinghouse use.
ii. That the LPA view that two C3 dwellinghouses have been permitted but that there was no intention that this type of residential accommodation would be the subject of CIL charge.
iii. No case is submitted in this respect but relies on the first and second cases succeeding in that neither of the holiday units are C3 dwelling houses or captured by the CIL charging schedule.

6. Condition 8 of the planning permission states the *'holiday let accommodation shall only be occupied as holiday accommodation and shall not be occupied by an individual, family or group for more than 4 consecutive weeks in any 8 week period... or for more than 4 weeks in any 26 week period'*. The reason cited by [redacted]

[redacted] for the inclusion of this condition being the '*establishment of an additional independent unit of accommodation would give rise to an over intensive use of the site… contrary to Policies 26,28 and 33 of the* [redacted] *Planning Framework* ([redacted]*).'*

7. The appellants have referred to the decision given in the case of Sheila Moore v Secretary of State for Communities and Local Government and Suffolk District Council (2012) to support their view that the development is outside of C3 use. The Court of Appeal upheld the Inspector's decision that the particular use as holiday accommodation in that case was not in use as a dwellinghouse. The Inspector had: '*carefully examined the characteristics of the lettings in the present case and concluded that, as a matter of fact and degree, they were a material change of use from the permitted use as a dwelling- house.'*

8. The CA contend that the development falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987.

9. [redacted] Community Infrastructure Levy (CIL) Charging Schedule (April 2017) identifies that 'Residential Development' will attract a CIL liability on the relevant development. The Planning Use Classes liable are specifically identified as being C2, C2A, C3, and C4.

10. The CA consider the criteria set out in the case of Gravesham BC vs Secretary of State for the Environment (1980) and conclude that the essential character of the holiday lets is that of dwelling houses, in that the development is capable of being used on a 'day to day' basis, despite planning condition 8, which creates a 'restricted dwelling' but nonetheless, a dwelling.

11. The physical characteristics of the proposed development are two self-contained units each offering 2 bedroomed accommodation with a shower room and open plan living/kitchen/dining area. There is also a disabled access bathroom, accessed off a communal entrance hallway/bootwash room.

12. The matter to be determined is whether or not the proposed development falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987, which defines 'dwellinghouses' as follows:-

> *Use as a dwellinghouse (whether or not as a sole or main residence) by -*
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> *(a) a single person or by people to be regarded as forming a single household;*
> *(b) not more than six residents living together as a single household where care is provided for residents; or*
> *(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."*

In this instance I have had reference only to (a) as being most relevant and consider the use of the subject development would, by its very design, likely be regarded as a 'single household'.

13. The Appellants contend that the conditions attached to the grant of planning permission (condition 8 as above) determine that the proposed development cannot therefore fall within Use Class C3.

14. The CA have referred to the case of *Gravesham BC vs Secretary of State for Environment (1980)* the decision of which suggested that a weekend/holiday chalet, with physical characteristics of a dwelling and providing the facilities required for day to day domestic existence remained to be considered a 'dwellinghouse' even though it was occupied only for a part, or parts, of the year at frequent or infrequent intervals by a series of different persons.

15. The Appellants have referred to a previous CIL appeal decision concerning a proposed development of a 9 bedroomed holiday development. In that case the decision was that the development was not liable to CIL as the likelihood was that a significant number of the future occupiers would not be occupiers living together as a family group and therefore the development fell outside Use Class C3.

16. Despite the absence of any physical evidence, including a history of use/occupation, I consider it highly likely that a significant proportion of the potential occupiers will comprise family groups/single households due to the size and layout of accommodation.

17. The appellants raise the development granted planning permission under reference [redacted], which did not attract CIL payment as the structures (log cabins) were deemed to fall within the 'caravan' classification. I consider the subject development to be a building.

18. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I consider that the proposed development, having the physical characteristics of a dwelling, noting the future occupation and notwithstanding the planning conditions attached, is a development within Use Class C3 and consequently is a development liable to CIL according to the approved Charging Schedule for the area. I therefore confirm a CIL charge of £[redacted]

[redacted] BSc(Hons) MRICS FAAV
RICS Registered Valuer
District Valuer