Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency (SVT)
[redacted]

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

Appeal Ref: [redacted]

Address: [redacted]

Proposed Development: *Conversion of a disused barn to single residential unit. (Revised Supporting Statement received [redacted]) (Additional information has been submitted by the applicant in relation to this application).*

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 the appellant, [redacted], and the submissions made by the Collecting Authority (CA), [redacted].

2. Planning permission was granted for the development on [redacted], under reference [redacted].

3. The CA issued a CIL Liability Notice dated [redacted] in the sum of £[redacted]. This was based on a net chargeable area of [redacted] m² @ £[redacted] per m², with indexation at [redacted].

4. The appellant requested a review of this charge under regulation 113 of the CIL Regulations 2010 (as amended) on [redacted] and the CA issued its response dated [redacted], confirming the amount as set out in the original notice.

5. On [redacted], the Valuation Office Agency received a CIL Appeal made under regulation 114 (chargeable amount) from the appellant, contending that the development is not liable for CIL. The contention from the appellant's perspective is that no development has been carried out in relation to the CIL Regulations 2010 (as amended). In addition to a letter of complaint from the appellant to the CA, the appellant's grounds of appeal and summary of representations are as follows:

   a) The property is entitled to a Certificate of Lawful Use or Development pursuant to S.191 of the Town and Country Planning Act 1990 (as amended). It is not disputed that the appellant has lived at this address as his sole residence since [redacted]. Works were carried out in [redacted] converting a disused barn into residential accommodation with a [redacted] business. Therefore, no development has been carried out in relation to the CIL Regulations 2010 (as amended).

   b) In [redacted], the Planning Department of [redacted] required the appellant to make an application for full planning permission. The appellant agreed to do so on the basis that there was no liability other than the application fee of £[redacted]. The Planning Department made it clear throughout that there was no CIL liability. The appellant considers that the Planning Department have therefore clearly made a misstatement and misrepresentation of their position to him, throughout the planning application process.

   c) The only relevant works for planning purposes were carried out in [redacted], which is a substantial period before the imposition of the CIL Regulations.

   d) In any event, the appellant is not in agreement with the measurements of the property and is currently re-measuring the property.

   e) The planning application is currently the subject of an investigation and the liability under these Regulations will probably be included in Civil Proceedings against the Council.

6. The CA submitted representations on [redacted], which can be summarised as follows:

   a) The conversion of the former barn to a dwelling is a material change of use of the building, which requires planning permission. A material change of use of a building is development for the purposes of planning and therefore planning permission is required under section 55(1) Town and Country Planning Act 1990.

   b) The appellant was made aware of CIL in a letter dated [redacted] sent by the Council's Enforcement Manager. The applicant also submitted as part of the planning application a CIL additional information requirement form. The form clearly states that the development will create floor space and the Council has a dedicated CIL web page, which includes its charging Schedule.

   c) As set out in point a) above, a material change in the use of a building can be development for the purposes of planning and in this case, the conversion of the original barn (lawful use of the building) to a single residential unit is development requiring planning permission under section 55(1) Town and Country Planning Act 1990.

      It is acknowledged that there was an error in the original Committee report, which did erroneously state that the application was not liable for CIL; however, the Development Control Manager, as reflected in the Committee minutes verbally corrected this at the Committee meeting on [redacted].

d) The submitted plans have been re-measured by the CA. Upon further examination of the approved plans, the CA acknowledges that it had erroneously included the open area above the ground floor lounge in the GIA calculation of the first floor. The CA has calculated the revised measurement as [redacted] m² GIA, which results in a revised CIL liability of £[redacted].

In summary, in addition to revising its opinion of the GIA, the CA is of the view that the requirements of continuous lawful use have not been met and on this basis, the existing floor space cannot be offset.

7. As part of his representations, the appellant has cited a formal complaint, which he has made to the CA in respect of the CIL liability (and other matters) which may lead to litigation. It is understood that the complaint is pending, along with a Planning Appeal, to the [redacted] Planning Inspectorate, which was dated [redacted]. The appellant has enquired to me if this subject appeal should be deferred, pending the outcome of the litigation.

   As the appointed person, I do not consider that it is necessary to defer my decision. I would emphasise that my remit is merely to determine this appeal based upon the submitted representations under the provisions of the CIL Regulations 2010 (as amended). My role in Regulation 114 appeals is to determine the correct 'chargeable amount' (if any) based on the facts, as at the time the planning permission first permits the chargeable development. The later determination of a different planning permission as a result of a Planning Appeal, matters relating to the complaint and any litigation proceedings are clearly outside the remit of this appeal.

8. The principal areas of disagreement between the parties (which are within my purview as the appointed person) are in relation to 'lawful use' and 'in-use buildings' in accordance with regulation 40(11) of the CIL Regulations 2010 (as amended) and a disagreement in floor space measurement.

   I will address the first area of disagreement, namely in respect of 'lawful use' and 'in-use buildings', which gives rise to a consideration if the existing area floor space is an eligible deduction, which can be offset:

   Regulation 40(7) of the CIL Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;

   a. retained parts of 'in-use buildings', and

   b. for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

   Under regulation 40(11), to qualify as an 'in-use building' the building must contain a part that has been 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.

9. Given the occupational history of the property, there is no dispute whether or not the existing building is an 'in-use building'; the issue is simply therefore if its use is one that could be lawfully carried on before planning permission first permits the chargeable development.

10. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means *"the development for which planning permission is granted"*. The CIL liability herein under appeal, therefore relates to the proposed development allowed by the planning permission [redacted], which is for *"conversion of a disused barn to single residential unit"*. It was required since its use a residential unit (and indeed earlier use as a [redacted]) was unauthorised.

    It is clear in my view (although it is not explicitly stated within the text of the planning permission document) that permission [redacted] is a retrospective planning permission, which sought to regularise the change of use of the building. Indeed, the CA's Planning and Development Committee Report dated [redacted] specifically cited application [redacted] as a retrospective planning permission.

11. On the day before the [redacted] permission granted consent, in my opinion, the accommodation did not have a use that could be carried on lawfully, since the residential unit (and indeed its previous use as a [redacted]) was unauthorised; hence the requirement for the retrospective consent for its retention. The CA contends that use of the building between [redacted] and [redacted] was, in planning terms, a 'mixed use' as the residential part was not self-contained. The change of use of the barn in [redacted] to use as a single residential unit was an unlawful use, in respect of which enforcement action could have been taken. The appellant has produced no evidence to dispute the CA's contention that the use as a single residential unit did not commence until [redacted]. Therefore, the accommodation as a whole or in part, does not qualify as deductible floor space.

12. I will now address the second area of disagreement, namely in respect of a difference in floor space measurement:

    In the appellant's CIL 'Additional Information Requirement Form', the appellant had stated (at Question 7 of the form) that the GIA to be retained was a total of [redacted] m² (split [redacted] m² to the [redacted] and [redacted] m² to residential).

    However, in the Planning Appeal Form to the Welsh Planning Inspectorate dated [redacted], the appellant has revised his opinion of the floor space to [redacted] m².

    In its representations, the CA acknowledges that it had erroneously included the open area above the ground floor lounge in the GIA calculation of the first floor. The CA has calculated the revised measurement of the floor space to [redacted] m².

13. 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. Both parties appear to have had regard to this definition in considering the extent of the floor space in this case.

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

    Including:-

    - Areas occupied by internal walls and partitions
    - Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
    - Atria and entrance halls, with clear height above, measured at base level only
    - Internal open-sided balconies walkways and the like
    - Structural, raked or stepped floors are to be treated as level floor measured horizontally

- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- 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
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

Excluding:-

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

Having undertaken a check of the measurements from the submitted plans (Appendix F of the CA's representations) I agree with the CA that the floor space is [redacted] m² GIA.

14. The CIL charge has been calculated at a rate of £[redacted] per m², which appears not be in dispute. I have ascertained that the Index for [redacted] would appear to have been [redacted] and the Index as at [redacted] (the effective date for the Charging Schedule) would appear to have been [redacted].

15. On the evidence put forward, I calculate that the CIL payable is:

    [redacted] m² x £[redacted] per m² x [redacted] = £[redacted]

16. In conclusion, having considered all the evidence put forward to me, I consider that the CIL payable in this case to be the sum of £[redacted] ([redacted]).

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