Appeal Decision

by [redacted] BA (Hons) 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]

[redacted]

Development: Demolition of a large part of [redacted]-storey, part [redacted] storey dwelling, [redacted] and outbuildings, [redacted] and [redacted]. Construction of two new [redacted] dwellings with [redacted] and [redacted]

Planning permission details: [redacted] dated [redacted]

Decision

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

Reasons

1. I have considered all the submissions made by the appellant and I have also considered the representations made by the Collecting Authority (CA), [redacted]. In particular, I have considered the information and opinions presented in the following documents:-

(a) Appellant's appeal form dated [redacted]
(b) Planning permission granted [redacted]
(c) Regulation 113 request dated [redacted]
(d) Regulation 113 response from C.A dated [redacted]
(e) Letter from [redacted] dated [redacted]
(f) C.A's reps dated [redacted]
(g) Appellant's comments dated [redacted]
(h) The liability notice dated [redacted]
(i) Site plan, scale plan of outbuildings and location plan attached to appellant's email dated [redacted]

2. Planning permission was granted on [redacted] by [redacted] for demolition of a large part of [redacted]-storey, part [redacted] storey dwelling, [redacted] and [redacted] and [redacted]. Construction of two new [redacted] dwellings with garages and [redacted].

3. [redacted] the CA issued a Regulation 65 Liability Notice (ref [redacted]) in the sum of £[redacted] based on net additional floor space of [redacted] square metres (sq m) as follows:-

[redacted] *sqm x rate of* £[redacted] *x index of* [redacted]

4. The appellant requested a review of the calculation of the chargeable amount under Regulation 113 on [redacted]

5. The CA issued their regulation 113 response on [redacted] confirming that the Liability Notice issued on [redacted] (reference [redacted]) was in their view 'accurate and that a revised L.N was not necessary'.

6. On [redacted] the parties submitted a CIL Appeal under Regulation 114 (chargeable amount) stating that the chargeable amount should be £[redacted] ([redacted]).

7. The grounds of the appeal can be summarised as follows:-

That there should be additional 'set off' in the calculation of CIL to account for outbuildings totalling [redacted] m2 which are to be demolished as part of the development proposals / planning permission.

That these buildings were in lawful use for the required amount of time given that they were used by the previous owner for his piano restorer / restoration business.

The appellant saw evidence that the buildings were being used as storage and a piano was left in one of the buildings following the sale of the property.

That storage is a lawful business use.

That the previous owner has provided a letter confirming that he used the buildings in connection with his business.

Matters relating to the provision of scale plans and measurements were also referred to. However, as the areas of the outbuildings in question are not a matter of dispute, I do not intent to consider these particular points in more detail.

8. The C.A submitted representations on [redacted] together with the following documents:

Email trail between [redacted] and [redacted] and [redacted]
Email trail between [redacted] and [redacted] and [redacted]
Email trail between [redacted] and [redacted] and [redacted]
Request for Regulation 113 Review
Response to Regulation 113 Review
Officer Report establishing lawful use

Scanned plan of existing outbuildings
Revised liability Notice issued [redacted]

The C.A's representations are summarised below:

That [redacted] failed to provide sufficient evidence supporting the outbuildings being in use. The fact that the outbuildings had been viewed being used for storage by [redacted] and [redacted] on individual dates, was not considered to be sufficient.
Likewise the letter provided by [redacted] following the response to the Regulation 113 review did not provide sufficient evidence of the outbuildings being in continuous use for a period of six months out of the previous 36 months. As such, they have determined that the GIA of these buildings should be zero in accordance with Regulation 40.

The Council has not commented on whether storage could be considered as business use. It has asked for sufficient evidence of the outbuildings lawful use for a continuous period of 6 months within the previous [redacted] month period. Due to the lack of sufficient evidence demonstrating usage of the buildings, what is and is not considered business use is irrelevant at this time.

The C.A's response also discusses information on the CIL form being ignored and addresses issues relating to the provision of scale plans and measurements. As the areas of the outbuildings in question are not a matter of dispute, I do not intent to consider these particular points in more detail.

9. The appellant provided further comments on [redacted], attaching email correspondence with [redacted] of [redacted] and an extract of a design report to their formal response. The comments can be summarised as flows:

That a formal complaint has been made against the C.A by the appellant as the appellant considers that the C.A failed to be express about how the CIL calculation had been arrived at.

That the use of the outbuildings as storage / workshops was a lawful use. The appellant met with the previous owner who confirmed how he used these buildings with his business just prior to relocating it to a commercial premises in [redacted]. The previous owner also provided a letter by way of evidence. The appellant had seen first-hand over the 6 month period prior to competing the purchase that the two smaller buildings appeared to be used as storage and the workshop as a workshop. The C.A requested proof on [redacted] by way of Electricity/gas bills/Business rates payments/where an informal arrangement exists redacted bank statements to show rent/rates have been paid/confirmation from a letting agent/solicitor confirming of the period of occupancy or a Statutory Declaration.

The appellant stated that 'the (previous) owner was in occupation of the house, paying the Council rates and using these buildings until he sold when he cleared them out. They are correctly described as workshop/garage for the lower building and garden storage for the other which is how they were used up to the date he cleared (them).'

That the C.A was in receipt of plans which would have enabled them to calculate the G.I.A of the subject outbuildings

That for planning permission ref [redacted]L the initial CIL Liability notice dated [redacted] and stated the CIL charge was £[redacted]

The appellant queried the charge. The C.A had not taken account of the main house and subsequently reassessed the CIL charge to £[redacted] on the [redacted]. 3 weeks later we received another assessment at £[redacted].

10. Having fully considered all of the above, I would make the following observations regarding the grounds of the appeal:-

i) I was concerned about the validity of the appeal. The signed appeal form was received by VOA [redacted]. The Liability Notice was dated [redacted] with a regulation 113 review request date of [redacted]. All looked in order initially following validity check. However, a detailed review of the C.A's representations and the appellant's comments suggested following the first liability notice of [redacted] for £[redacted] the appellant queried the CIL chargeable amount on [redacted]. The CIL chargeable amount was revised on [redacted] to £[redacted]. It was subsequently revised again on [redacted] to £[redacted]. Regulation 114 states that an *appeal must be made before the end of the period of 60 days beginning with day on which the Liability Notice stating the* ***original*** *chargeable amount was issued. It is arguable that the original chargeable amount was detailed in the Liability Notice dated* [redacted] *and that the appellant's query on* [redacted] *amounted to a regulation 113 request. The regulation 114 appeal received by the VOA on* [redacted] *would therefore be out of time. I received advice stating that the Liability Notice* issued on [redacted] could arguably be regarded as a 'new' Liability Notice given that the C.A formally responded to a regulation 113 request and have not made any representations in respect of validity. As a result, I have considered the appeal, representations and comments in detail.

ii) Regulation 40 (7,E,i) states that the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development can be 'set off' against the GIA of the proposed development, thereby potentially reducing the CIL charge. Regulation 40 (11) states that *'in-use building' means a building which both a relevant building and contains 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'.*

iii) The fact that the buildings are / are not relevant buildings does not appear to be a matter of dispute. However, the RICS definition of GIA states that greenhouses and garden stores in domestic property are to be excluded from measurement. Regulation 40 states that it is the GIA (Gross Internal Area) to be adopted as a basis of measurement, I must consider whether the buildings fall within the definition of GIA. The appellant, in his comments of [redacted] states the buildings are *'correctly described as workshop/garage for the lower building and garden storage for the other' based on what he seen when he viewed the property prior to the sale taking place.* In [redacted] letter of [redacted] he states that the two upper buildings had previously been in commercial use between [redacted] and [redacted] but that he had stored garden equipment in them prior to sale. He does not describe what business use these buildings were ever put to. He does not describe where the garden equipment was previously stored prior to sale. Based on the information provided as to the garden storage use and the lack of evidence of commercial use I am minded that the C.A was correct to deem the GIA to be zero deduction both in accordance with regulation 40 (10B) and having regard to the definition of GIA.

iv) I must still consider if the workshop / garage / lower building is an'in-use buildings' in relation to regulation 40(7) of the CIL Regulations 2010. An 'In use

building' is defined in planning terms as a building which contains a part of an existing building that has been in lawful use for a continuous period of 6 months within the past three years before the grant of the planning permission. Therefore, in the subject case I must consider if the subject property has been in continuous use for a 6 month period between [redacted] and [redacted].

v) In [redacted] letter of [redacted] he states that between [redacted] and [redacted] he was using the building in conjunction with his business. Although the C.A's planners stated in [redacted] that they considered the long term business use established in planning terms there is no formal planning permission in place for the use of the garage / workshop as commercial property in so far as I understand matters from the appeal documentation. In addition, the activities undertaken at the garage / workshop have not been described. The case of R (Hourhope Ltd) v Shropshire Council [2015] related to a disputed CIL liability due on a planning permission to demolish a public house and erect residential units and the resultant application of the demolition deductions that are set out in the Community Infrastructure Levy Regulations 2010 (as amended). In decision of that case, the judge stated that whether a building is in use requires an assessment of evidence as to the activities which took place in it and the intensions of the person said to be using the building. No evidence has been provided by the appellant as to the extent of the commercial use in this case. I am not clear on how often the premises were used by previous owner or his customers. No evidence of the value of the goods stored at the premises has been provided in terms accounting information. As a result, it appears that no CIL credit in accordance with regulation 40 the garage / workshop in accordance with regulation 40 (10) would be appropriate as the 'in use' test has not been evidenced. Therefore, the more complex question of lawful use does not require further consideration.

11. Based on the facts of this case the evidence before me, no credit given for the existing building that would reduce the CIL charge in the Liability Notice dated [redacted].

12.

i) Based on the facts of this case and the evidence before me I conclude that that the appropriate charge in this case should be based on a net additional area of [redacted] sqm

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

[redacted]

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