Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency (DVS)

[redacted]

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

Appeal Ref: [redacted]

Address: [redacted]

Proposed Development: *Change of use of community space (D1 Use Class) to residential use (C3 Use Class) within* [redacted]

Planning Permission details: *Granted on appeal, on* [redacted]*, under a Planning Inspectorate reference decision* [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] (acting on behalf of [redacted]) and the submissions made by the Collecting Authority (CA), [redacted].

2. Planning permission was granted for the development on [redacted], on appeal, under a Planning Inspectorate reference decision [redacted]. The allowed planning appeal decision was in respect of a planning application reference [redacted], dated [redacted], which was originally refused permission by the CA, on [redacted].

3. On [redacted], the CA issued a Liability Notice ([redacted]) for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m², comprising of:

[redacted] CIL
[redacted] m² @ £[redacted] per m² (index [redacted]) = £[redacted]

[redacted] CIL
[redacted] m² @ £[redacted] per m² (index [redacted]) = £[redacted]
£[redacted]

4. The appellant requested a review of this charge after the 28 day review period under Regulation 113 of the CIL Regulations 2010 (as amended). Whilst I understand the CA accepted representations from the appellant and reviewed the CIL amount, the CA was of the view that its original decision was correct and should be upheld.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) from the appellant, contending that the CA's calculation is incorrect. The appellant is of opinion that the CIL payable is £[redacted]), contending that the building should receive a full deduction for being in use for the past three years prior to the grant of permission and the change of use does not result in any additional floorspace.

   The appellant's contention can be summarised to a single core point:

   From the appellant's perspective, the CIL calculation should be [redacted], reflecting 'in-use' floorspace of [redacted] m², which the appellant considers has been in continuous use as a [redacted] for at least six months within the period of three years up to [redacted] (thus comprising an eligible deduction, which can be offset).

   The CA disagrees, contending that the building has not been in continuous use and contends that the chargeable amount £[redacted] has been calculated correctly.

6. I note that there is no disagreement between the CA and the appellant in respect of lawfulness of use of the building; it is the aspect of continuous use, which is in dispute.

7. I note that there is no disagreement between the CA and the appellant in respect of the floorspace; the total gross internal floorspace of the existing building and the proposed development is [redacted] m².

8. At the heart of the matter is the continuous use of the accommodation (the existing building floorspace) which the appellant considers is an eligible deduction, which can be offset in the CIL calculation.

9. 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.

10. The appellant maintains that the property had been occupied for a continuous use as a [redacted], for the requisite period up to [redacted]. The appellant contends that the building remained in use by virtue of remaining available for the community to use and the intentions of the owners to continually manage and encourage such use of the [redacted]. The following evidence in support of this view has been submitted by the appellant:

    - Tables of bookings.
    - Advertisements for use as a [redacted]
    - Cleaning quotation
    - Electricity bills
    - Purchasing and placing signage upon outer gates of complex.
    - Review of booking fees and deposit amounts in order to entice users
    - Extended opening hours to attract more users
    - Dedicated manager who was available to take phone and email enquiries
    - On-site concierge service who were available to show users to the site

11. The CA is of the opinion that the information submitted by the appellant does not constitute sufficient evidence (or evidence of sufficient quality) to enable it to deem the relevant building to be in continuous use. Furthermore, the CA contends that the appellant's view of the 'in use' status of the building has changed substantially since the grant of the planning permission on [redacted] and contends that the improved marketing and management efforts (which were understood to be persuasive in granting planning permission on appeal) were a mechanism for the appellant to satisfy planning policy and gain residential planning permission in the first instance.

12. The CA points to three separate documents, which were part of the planning application documentation, where the appellant explicitly stated that the subject property was vacant. The three cited documents are:

    - in the CIL Form dated [redacted], under Section 7 (Existing Buildings) the answer to the question *"Was the building or part of the building occupied for its lawful use for 6 continuous months of the 36 previous months (excluding temporary permissions)?"* the appellant's stated response in the ticked box was *"No"*.

    - Similarly, in the Planning Application Form dated [redacted] under Section 14 (Existing Use) the answer to the question *"Is the site currently vacant?"* the appellant's stated response was *"Yes"*.

    - In the Planning Statement ([redacted]) Paragraph 1.70, the appellant stated that: *"The development would result in the re-use of a vacant building, provision of a new residential dwelling within the borough and is therefore entirely consistent with the objectives of the [redacted], the [redacted] and the adopted [redacted], in this respect. For these reasons, it is considered appropriate that planning permission is granted."*

13. From the documentary evidence in paragraph 12, I have concluded that the building has emphatically not been in continuous use by the appellant up to the period of [redacted]. In considering continuous use from [redacted] to the requisite period of [redacted], I must consider evidence as to what activities took place within the [redacted], and the intentions of the appellant who was using the building.

14. The appellant contends that the management, active marketing and continuous bookings of the [redacted] facility constitutes an 'in-use' building. I accept that the centre did not ever close during the period and there were increased marketing efforts by the appellant. However, in themselves, increased marketing and management activities do not constitute an 'in-use' building in my view. I agree with the CA, that the table of bookings provides evidence of the active use of the [redacted] building. This use was summarised in the Planning Inspectorate Appeal Decision of the subject property ([redacted]) where it was stated:

    "There were eighteen enquiries and bookings in [redacted] with this falling to fifteen in [redacted] and just two in [redacted]. The number of bookings in the list over the recorded period is less than one a month and the number of enquiries and bookings taken together over the period averages less than two a month. This is notably below the indicative threshold set out by a previous Inspector. There is no reason to doubt the accuracy of the figures. For example, the representations submitted by interested parties do not suggest enquires have not been followed up or recorded on the list."

    Whilst the table of bookings shows activity in the [redacted], the bookings are infrequent, extremely low and lacking in consistency. In my view, the lack of a continuous pattern of bookings fails to meet the threshold test of an 'in-use' building under the provisions of Regulation 40(11).

    In considering the intentions of the appellant, there is positive evidence submitted by the appellant, which demonstrates activities with an intention for use. However, given the planning history of the subject property (with a previous unsuccessful planning appeal by the appellant) the CA contends that the appellant's intentions, were a mechanism for the appellant to satisfy planning policy and gain residential planning permission in the first instance. Such a contention is open to conjecture and very difficult to evidence, but I do agree with the CA, that the appellant's view of the 'in use' status of the building has substantially changed from [redacted] to the grant of planning permission on [redacted] and is conflicting (the cited documentation in paragraph 12 provides compelling evidence in support of this).

15. Furthermore, from the appellant's Planning Appeal Statement of case, dated [redacted], the appellant cited (at paragraph 1.11) *The site has an extremely remote prospect of ever being used productively in its current planning use. The building is very rarely used as a [redacted] facility*. I am of opinion that this statement is compelling evidence in support of my conclusion that the building has not been an 'in-use' building, which satisfies Regulation 40(11) as amended.

16. In conclusion, based on the facts of this case, I do not consider that the property was in continuous use for the requisite period and failed to meet the threshold test of an 'in-use' building under the provisions of Regulation 40(11). I therefore consider that it was reasonable for the CA to deem that the property was not an in-use building for CIL purposes.

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

    [redacted] CIL
    [redacted] m² @ £[redacted] per m² (index [redacted]) = £[redacted]

    [redacted] CIL
    [redacted] m² @ £[redacted] per m² (index [redacted]) = £[redacted]
    £[redacted]

18. In conclusion, having considered all the evidence put forward to me, I consider that based on the particular facts of this case, the CIL payable should be as stated in the

Liability Notice dated [redacted], at the sum of £[redacted] ([redacted]).

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