Appeal Decision

by [redacted]

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: Replacement of 6no. static caravans and 7 no. seasonal pitches with 9 no. park homes for permanent residential use (one of which is an existing unit to be retained)

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] as agent for [redacted] (the appellant) 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. 3 CIL Liability Notices dated [redacted], [redacted] & [redacted].
e. CIL Appeal document date [redacted]
f. Review Decision from the CA dated [redacted].
g. Appellants Statement of Case dated [redacted], including the Planning, Design & Access Statement, various appendices and photographs and references to case law and previous CIL Decisions.
h. The CA's representations dated [redacted] containing various appendices and references to case law
i. The appellant's response to the CA reps, dated [redacted].

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

3. Following the grant of planning permission the CA issued a series of CIL Liability Notices on [redacted], the final and correct one, in the sum of £[redacted]pence. This is based on a net chargeable area of [redacted] square meters @ £[redacted] per square metre.

4. The appellant requested a review of the Liability Notice on [redacted].

5. On [redacted] the CA completed a review of the CIL Charge and revised its calculation based on that review. The decision was contained in a 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, as Sec 13 of the Caravan Sites Act 1968 defines a caravan as a structure and that Sec 336(1) of the Town & Country Planning Act 1990 Act widely defines buildings to include structures.

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

7. The appellant's main grounds of appeal are summarized below:-

i. That the CIL charge relating to the planning consent ([redacted]) should be nil as the caravan was not a building and therefore not a chargeable development for the purposes of CIL.

ii. That the caravans (also known and referred to subsequently as [redacted]) referred to with the planning consent are 'caravans' under the definition contained in the Caravans Sites and Control of Development Act 1968 and the caravans are within the set size criteria therein. The Planning, Design and Access Statement that accompanied the Statement of Case are described the caravans (aka [redacted]).

iii. That the method of assembly and siting of the park homes as described is compliant with the definitions within the Caravans Sites and Control of Development Act 1968.

iv. That the security of tenure for the park home owners in order to be protected the home must maintain its mobility in order to be entitled to an agreement under the Mobile Home Act 1983.

v. That Regulation 9 of the CIL Regulations 2010 states that in order for a CIL charge to be levied the planning consent must relate to a building either new or altered.

vi. The appellants quote case law in support of their contention that the park home is not, for the purposes of CIL, a building. Case quoted are Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel company Ltd 1949, the Measor case of 1998 and Elistone Ltd v Morris 1997, it is contended that the decisions in these cases state that caravans (and therefore park homes) are not considered buildings.

vii. The appellants further contend that if the CA believed that the park homes were buildings then they would not benefit from Permitted Development Rights under Schedule 2 Part 5 of the General Permitted Development Order.

viii. The appellants contend that if the park homes were buildings they would not be covered by the Model Standards 2008 for Caravan Sites in England. Further no floor plans of the park homes were required as part of the planning application, had they been buildings, the appellants suggest plans would be required by the LPA.

ix. That Nationally Described Space Standards apply to residential buildings, the appellants contend that the LPA would have applied these standards if they thought the park homes were actually buildings.

x. That the LPA issued pre application advice without reference to CIL liability therein, therefore implying CIL was not chargeable on the development.

xi. That the LPA in its Officers Delegate Report used the word replacement when referring to the development, the appellants contend that if the LPA believed the park homes were buildings this term would not have been used.

xii. That the submitted list of 19 other CA not charging CIL on this type of development indicate strongly that caravans are not considered buildings for CIL purposes.

xiii. The appellants quote two VOA CIL decisions (redacted) in support their contention that the park homes (caravans) are not buildings.

8. The CA made their representations in response to the grounds of appeal above, and some of the main points are summarized below:-

- That CIL is chargeable on the development due to the permanence of the units to be replaced, stating the units were to remain in the same position for a significant time and therefore have a significant impact on infrastructure.

- The Caravan Site and Control of Development Act 1960 (as supplemented by the Caravans Sites Act 1968) states that definition of 'caravan' includes the word structure and that Section 336 (1) Town & Country Planning Act 1990 has a wide definition of 'building' which includes 'any structure'

- The CA contend that in accordance with case law (Skerritt, applying the 3 fold test in Cardiff Rating Authority case) and given the information provided to the CA, that the units have a degree of permanence being sited in a permanent position and attached to the site via the services and therefore physically attached to the land.

- The CA state that planning fees were calculated on the basis of dwelling house under guidance referred to in a document entitled 'Planning Resource'.

- The CA quote from a published book by Martin Goodall (Law Society Planning Panel member) entitled 'The Essential Guide to Land Use and Buildings under Planning Acts including the Use Class Order' here it is argued that the siting of a caravan can no longer be regarded as a change of use under planning law and should be regarded as building operations due to the degree of permanence on the site.

- The CA reject the appellants argument that the units should not be considered building as the White Paper (Fixing Broken Homes) refers to park homes as a 'type of development that uses modern methods of construction' further stating 'homes built off-site or can be rapidly assembled'. The CA given the above argue the park homes are therefore buildings.

- The CA argue that the intention of the development is to provide permanent homes and therefore the park homes are likely to be in situ for a significant period of time and are therefore buildings for CIL purposes satisfying the test of permanence.

- The Town and Country Planning Act 1990 widely defines structures as buildings, the CA argue therefore that it is logical to apply that definition to CIL as it is intrinsically linked with planning law.

- The CA comment on the interpretation of the case law quoted by the appellant, stating among other things that, the units are constructed on site as they are brought there in two sections, that the units are physically attached to the ground by services and are not intended to be moved, evidenced by the brick skirt. The CA argue that park homes in general may be expressly constructed with the intention to remain mobile but in this case they are not, they may have the ability to be moved but that is not the intention.

- The CA argue that similar cases determined by the VOA as quoted by the appellants, are not relevant here as every case must be considered on its own merits.

- The CA state that it is not disputed that the units could be moved, but is their view that, in relation to this development, it was not the intention of the appellant so to do.

9. The appellant responded to the CA's representations some of which are summarised here:-

- The use of the units is not relevant in considering whether the park homes are buildings.

- The non-use of space standards relating to the park homes is re stated by the appellants.

- The appellants re affirm their contentions in relation to the Planning Application Fee & Determining whether a Development may be CIL Liable Planning Application Information Requirement Form, inferring the park homes are not buildings.

- The appellants contend that the CA, in quoting extracts for published non judicial documents and books, should be treated as irrelevant to this matter whilst the approach of other CAs and VOA published judicial decisions should be given more weight.

10. Based on the representations and comments received from the appellant and the CA, it seems to me that the case law referred to by the parties establishes that, for planning purposes, for a caravan (or as described by both parties a park home) to become a building and thus operational development, there must be a substantial degree of affixation to the land on which it stands, it must comply with size criteria and it must be capable of being moved. A further argument around the intention for permanency of the park home is also made by the CA.

The quoted case law suggests that 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 CIL Regulations 2010 (as

amended). In this case the appellant and the CA disagree on whether, based on a consideration of the above factors, the park homes (caravans) on site in this case are buildings.

The park homes in this case are not particularly large, they are smaller than the space standards required for a bricks and mortar dwelling and it would appear that the only affixation to the land would be the connections to the services provided to the park homes. There exists a brick skirt to each park home but this is not attached to both the land and the park home.

The degree of permanence of the park homes is, in my view not around the intention of the appellants to move them around, or indeed off the site, but the capability so to do, the level of attachment to the land and the ease in which the park homes can be disassembled and moved is the factor I consider paramount to the mobility and therefore I do not consider them permanent and a rightly defined as caravans and not buildings.

Having regard to the above factors and based on all the evidence, plans and photographs submitted, I do not consider that the park homes in this case can be regarded as a 'buildings' for the purposes of CIL. The CAs argument that Sec 336 (1) of the Town & Country Planning Act 1990 enables structures to be considered buildings under that definition is not supported by sec 235 of the Planning Act 2008, that specifically provides that 'building' has the meaning given by sec 336(1) of the Town & Country Planning Act 1990 except for Part11. Part 11 relates to CIL. I therefore conclude that sec 336(1) TCPA 1990 does not provide a wider definition of building for CIL purposes.

It is my view that in order for the chargeable development to be liable to CIL the park homes have to fall under the definition of building within the CIL regulations. As that is not defined therein I have to look elsewhere for a relevant definition.

I have considered all the other stated arguments and counter arguments put by both parties and find them not pertinent to the crux of the issue, whether the park vans are considered buildings for the purposes of CIL.

11. It is my decision that the park homes as described in the various submissions by the parties meet the definition of caravans, as defined under the Caravan Sites and Control of Development Act 1960 (as supplemented by the Caravans Sites Act 1968) as 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer).

The park homes are not permanently affixed to the land, are of a size small enough by unit to fall within the definition of caravan and are able to be moved from one place to another. I am of the view that it is irrelevant whether there is a future intention to move the park home or not, the definition of caravan under the Caravan Sites and Control of Development Act 1960 make no mention of intention, only capability.

It is my decision that the park homes are caravans for the purposes of the Act above and therefore cannot be defined as buildings. As they are not building they cannot be consider liable for CIL charges under Regulation 40 of the CIL Regulations 2010 (as amended).

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]