Appeal Decision

by [redacted] MRICS VR

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

Valuation Office Agency

E-mail: @voa.gsi.gov.uk

Appeal Ref:

Address:

Proposed Development: *Change of use from a guest house to a dwelling.*

Planning Permission details: *Granted by on under reference .*

Decision

I determine that no Community Infrastructure Levy (CIL) should be payable in this case.

Reasons

1. I have considered all the submissions made by the appellant's agent, (acting on behalf of the appellant,), and the submissions made by the Collecting Authority (CA), .

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

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

4. In an e-mail sent on to the CA, the appellant requested a Regulation 113 review of this charge. However, the CA responded, citing that it was of the view that the original CIL liability notice was correct.

5. On , 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 primarily of the opinion that the CIL payable is nil as the building had been in lawful (domestic) use and therefore the entirety of the GIA can be netted off; in addition, the appellant further contends that if there is a CIL liability, it should be based upon a potential measurement of m². The appellant's contention of a GIA of m² is supported by a survey of the subject

property, undertaken by . The appellant states that the planning application was an inappropriate and unnecessary application and was submitted without taking professional advice.

The appellant's contentions can be summarised to two core points:

a) That the property was in existing lawful use for a continuous period of at least six months prior to the grant of permission; indeed, the appellant contends that the property had been in continuous lawful use since .

b) From the appellant's perspective, all parts of the existing floor space constituted lawful use, and accordingly, is an eligible deduction, which can be offset in calculating the CIL charge.

6. I note that there is disagreement between the CA and the appellant on both the gross internal area floorspace of the existing building and disagreement on the floor space of the development.

7. The main area of disagreement between the parties is in relation to 'lawful use' and 'in-use buildings' in accordance with regulation 40(11) of the CIL Regulations 2010 (as amended). The principles of 'lawful use' and 'in-use buildings', give 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.

8. The appellant states that the entirety of the property had been occupied for its lawful use (as residential use) even though that there was a previous planning permission (reference) granted for a change of use from a guest house (Use Class C1) to a residential care home for adults with learning disabilities (Use Class C2). The appellant contends that the property was never occupied as a residential care home and from its cessation as a guest house on , has been occupied for purely residential purposes from . The following evidence in support of this view has been submitted:-

   - A Statutory Declaration by dated .
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- Survey plan and GIA measurements of the property, as prepared by [redacted] .
- Citation of a previous CIL Appeal Decision where a nil (zero) CIL liability was held. Of note, this previous CIL Decision is a publicly available redacted version, which does not show the full facts of that particular case.
- Copy of Valuation Office Agency Notice dated [redacted] – Notice of Deletion from [redacted] Rating List – Guest House and Premises entry was deleted from the Rating List with effect from [redacted].
- Copy of Valuation Office Agency Notice dated [redacted] – Notice of Alteration in Council Tax Valuation List – amendment from Band A (comp) and increased to Band G with effect from [redacted].
- Letter dated [redacted] confirming closure of [redacted] account (credit card machine account for paying guests).
- Confirmation e-mail from [redacted] dated [redacted], citing closure of account due to business closure.
- [redacted] Partnership Tax Return of [redacted], which cites the cessation of the guest house business as [redacted].

On this basis, the appellant considers that the requirements of Regulation 40(11) of the CIL Regulations have been met and that the existing building floorspace should be taken into account as a deduction in the calculation of the CIL liability.

9. Given the [redacted] planning consent to convert the guest house to a residential care home (under reference [redacted]) the CA is of opinion that the property is a guest house under statute, as there is a statement within the [redacted] planning application that records that the current use of the building is a guest house. Further to this, the CA contends that as the appellants have been living in the property as a dwelling and have not been using it for its lawful planning use as a guest house, it does not consider that there was any existing lawful use (6 months within the last three years).

   At the heart of this appeal, the appellant states that the [redacted] planning application was an inappropriate and unnecessary application and that the declared information in the [redacted] planning application (stating the then current use as a guest house) was wholly incorrect and in error.

10. Beyond the cited [redacted] planning consent, the CA has offered no evidence of a guest house (or any other commercial activity) being operated from the property.

11. In arriving at my decision I have considered the case of [redacted] *v* [redacted] [[redacted]] [redacted]. The [redacted] case related to a disputed CIL liability due on a planning permission to demolish a public house, erect residential units and the resultant application of the demolition deductions that are set out in the CIL Regulations 2010 (as amended). This case provided guidance on 'in-use buildings' in that 'in-use buildings' demolished during the development or retained on completion will be determined not by whether there is available a permitted use for the building, but by the actual use of the building. Whilst the circumstances of [redacted] are different to the subject appeal, the decision provides guidance on the actual use of the property:-

    As held by [redacted] - "*Whether a property is 'in use' at any time requires an assessment of all the circumstances and evidence as to what activities take place on it and what are the intentions of the persons who may be said to be using the*

building." It follows therefore, to consider not only the actual use, but the degree of activity of the actual use.

12. I have reviewed all of the evidence submitted by both parties in relation to both 'lawful use' and 'in-use buildings'. Whilst the CA has a *recorded* use of the property as a guest house, in my view the submitted evidence clearly shows an actual use of the property as a private domestic dwelling house.

    Having weighed up the submitted evidence in this case, I have concluded that the building was in 'lawful-use'. In addition, I have concluded that there is reasonable evidence to prove that the building has been an 'in-use building' which satisfies Regulation 40(11) as amended.

13. Whilst there is disagreement between the CA and the appellant on both the gross internal area floorspace of the existing building and the floor space of the development, of import, no additional floor space had been approved for under the chargeable development, i.e. the development constitutes only a change of use of an existing building/floor space. Accordingly, a consideration of the GIA difference in this appeal is irrelevant.

    Given that I have concluded that the building was in continuous lawful use, the entirety of the GIA can be offset.

    In respect of the appellant's cited comparable CIL Appeal Decision, I have attached little weight to this evidence. Each CIL Appeal is individual and is assessed on its own merits. Having read the unredacted version of the cited Appeal Decision (reference [redacted]), I am satisfied that the circumstances are different and a comparison is inappropriate.

    In a determination of the evidence, I am satisfied that the building was in lawful use as per Regulation 40(11) and is an 'in-use building' thereby allowing the area of the building to be netted off the area of the chargeable development. This results in the area of the chargeable development being a nil sum (zero m^2).

14. In conclusion, having considered all the evidence put forward to me, I consider that the CIL payable in this case is to be a nil (zero) sum.

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