Appeal Decision

by [redacted] BSc (Hons) MRICS

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

Valuation Office Agency (DVS)
[redacted]

Email: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Address: [redacted]

Development: Use of outbuilding as four-person dwelling house to the rear of [redacted] and erection of single storey rear extension at [redacted], together with associated car parking and works.

Planning permission details: Planning permission [redacted] granted by [redacted] on [redacted].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the development is to be assessed in the sum of £[redacted] ([redacted]) ([redacted]) CIL: £[redacted] ([redacted]); [redacted]: £[redacted] ([redacted]) and the appeal be dismissed.

Reasons

1. I have considered all the submissions made by [redacted] on behalf of [redacted] (the appellant) and by the Collecting Authority (CA) [redacted].

2. Planning permission was granted by [redacted] on [redacted] for 'Use of outbuilding as four-person dwelling house to the rear of [redacted] and erection of single storey rear extension at [redacted], together with associated car parking and works'.

3. On [redacted] the CA issued a Regulation 65 Liability Notice based on a chargeable area of [redacted] square metres (sqm) as follows:-

[redacted] - £ [redacted]
[redacted] - £ [redacted]

4. The appellant requested a review of the calculation of the chargeable amount on [redacted] but the CA confirmed in an email dated [redacted] that it would not be undertaking a review, citing regulation 113 9(b) of the CIL regulations which disallows a person from making a review request once the relevant development has commenced.

5. On the basis that he had not been notified of a decision of the review within 14 days of the request, the appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) on [redacted] proposing the CIL charge should be reduced to nil. The grounds of the appeal are that CIL has been improperly charged on the retained parts of an 'in-use building'.

6. The CA's representations to the appeal are limited to:

> 'The Council has noted all the submissions made by the appellant but remains of the view that the CIL liability of the site is a valid claim. The CIL demand notice issued is correct. The surcharge applied is warranted and has been applied in accordance to the CIL Regulations 83(1)
>
> CIL has been calculated on the GIA of the outbuilding as a change of use to residential would take place. The appellant has assumed CIL is payable on the extension and this is an error in judgement. As the structure is already in situ and occupied by tenants it is our contention that the charge is payable with immediate effect.
>
> No further updates were made in relation to the CIL liability as per the CIL Regulations 113 (9) b which states *A person may not request a review, once the relevant development has commenced*.'

7. Within detailed representations the appellant notes that an appeal can still be made, irrespective that the CA has not issued a decision in relation to the request for a review and that development had commenced, citing Regulation 114 (3A) which allows an appeal after the relevant development has been commenced if planning permission was granted in relation to that development after it was commenced. The appellant also notes that regulation 113 (9) b, referred to by the CA as being the reason for not undertaking a review, is qualified by paragraph 9A which allows a review to be requested after the relevant development has been commenced if planning permission was granted in relation to that development after it was commenced.

8. Both parties appear to be in agreement that the development has commenced. The appellant explains further that the planning application in this case is of a hybrid nature with the part in relation to the use of the outbuilding as a four-person dwelling house being retrospective in terms of regularising use of the outbuilding for the 'proposed' use which was, in fact, already 'existing' in non-compliance with the authorised use.

9. I am satisfied that development had commenced prior to planning permission being granted and the appeal has been validly made in accordance with regulation 114 (3A).

10. In support of the grounds of the appeal that CIL has been improperly charged on the retained parts of an 'in-use building', the appellant notes that 'in-use buildings' are those which 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 (regulation 40(11) of the regulations in place at the date of planning

permission). In this case the appellant notes that the relevant 3 year period would be from [redacted] to [redacted], the latter being the day on which the planning permission was granted.

11. The appellant is of the opinion that the lawful use prior to the recent retrospective planning permission was as an ancillary residential building used in connection with the main dwelling and that the outbuilding had this ancillary use from the date of a Building Control Completion Certificate issued on [redacted] (submitted as evidence) until at least [redacted] when the appellant's daughter moved in and it was treated separately for Council Tax purposes. A copy of the confirmation of the new Council Tax treatment has also been submitted as evidence and a statutory declaration to this effect, sworn by the appellant, has also been submitted within documentation.

12. Therefore, for the purposes of the 'in-use' building deduction set out within regulation 40(7), the appellant is of the opinion that the outbuilding was in continuous lawful use during the period of [redacted] until [redacted] and the floorspace of the outbuilding should therefore be deducted within the CIL calculation.

13. Since CIL has been levied solely on the floorspace of the outbuilding and this space is deductible for CIL purposes, no CIL should arise in connection with the grant of the planning permission in the opinion of the appellant.

14. Having fully considered the submissions made by the appellant, I would make the following observations:-

15. I have checked the submitted plans and the area of the outbuilding is shown to be [redacted] sq. m. It would therefore appear that the disputed CIL liability has been based on the area of the outbuilding alone and the proposed extension to the main building has been exempted.

16. For the Gross Internal Area (GIA) of an existing building to be deducted from the GIA of the chargeable development it must be an "in-use building" which in accordance with Regulation 40(11) means a building which –

> (i) is a relevant building, and
> (ii) 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;
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> "relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;

17. The building was in existence at the date planning permission was granted. Therefore, the existing floor space can be taken into account in the calculation under Regulation 40 if it was 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, which in this case is [redacted]. As a result, the in use space is netted off from the area of the chargeable development. It is the question of lawful use which forms the substance of this appeal.

18. In respect of establishing the nature of the lawful use I note that the appellant has submitted an email from the enforcement officer dated [redacted] wherein the officer states that it has come to his attention that the outbuilding has been let out as an independent dwelling for users with special needs and their carers. The officer confirms that the building can only be used by the appellant and his family '"incidental" to the main dwelling house. It

cannot be used as an independent dwelling'. This would therefore appear to confirm that the lawful use must be a use that is ancillary or incidental to the main dwelling.

19. It is evident that by the date of the enforcement officer's email on [redacted] the use of the building was not ancillary to the main house. However evidence as to the use of the building prior to this date is not strong. The building control certificate dated [redacted] refers to the 'Erection of a single storey detached garden building' but this does not confirm that the use was ancillary from this date. The enforcement officer states in his email that he has explained to the appellant about the use 'on numerous occasions in the past' which suggests that an unlawful use had been ongoing prior to [redacted].

20. The notice submitted in relation to Council Tax is dated [redacted] and is addressed to the appellant from '[redacted]' at [redacted]. It states that '[redacted]' have been advised that there is a four bedroom bungalow at the rear of the garden at the property and the effective date for Council Tax liability is [redacted]. This lends support to the fact that an unlawful use of the building as a separate dwelling had occurred by [redacted] but in my view it does not confirm that prior to this date the use was ancillary. It merely suggests that '[redacted]' became aware of the use as a separate dwelling on [redacted]

21. The only real evidence as to the ancillary use of the building between [redacted] and [redacted] is therefore the signed declaration made by the appellant himself.

22. Under the circumstance and in view of the absence of any evidence being put forward by the CA regarding the lawful use of the building, I have had regard to the existing and proposed plans submitted in respect of the outbuilding. The proposed plans show the layout as a four bedroom bungalow, each bedroom has en-suite shower room and there is a central family room, kitchen and utility area. Although these plans are labelled as 'proposed' the appellant has already explained that due to the retrospective nature of the application the building was already set out and in use as a four bedroom bungalow for a period of time before the planning application and hence it is reasonable to assume that these plans show the building as it existed at the time of the application. I also surmise that the layout would have been similar at the time of the enforcement officer's visit in [redacted] when the building was let out to residents with special needs and their carers. The plans labelled as 'existing' show the building as a summer house with rooms labelled as playing room, gymnasium, shower, artist's studio, study and store. It is clear that at some point reasonably significant internal reconfiguration, to include the installation of a kitchen and 4 en-suite shower rooms, has taken place but no evidence has been submitted to confirm the date that these works took place.

23. In view of the building clearly having a use in contravention to the approved planning use prior to the planning permission there is considerable doubt as to when this irregular use commenced. There is no evidence, other than the appellant's own declaration, as to the ancillary use of the building in the period claimed, from [redacted] until [redacted] and indeed no corroborating evidence to substantiate the date of the conversion of the building from summer house to four bedroom bungalow. Under the circumstances I do not consider that there is sufficient evidence to confirm a continuous use of the outbuilding as an ancillary building for a 6 month period in the three years prior to the planning permission.

24. On the evidence before me I am of the opinion that there is not sufficient evidence to confirm that the property was 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 permitted the chargeable development.

25. Therefore, I conclude that the CIL charge should stand as follows and the appeal should be dismissed:

[redacted] = £ [redacted]
= £ [redacted]
Total = £ [redacted]

26. The appellant has asked me to consider an award for costs since he believes the Council's lack of engagement to have been unreasonable. I do not consider an award for costs in favour of the appellant to be appropriate when the appeal has been dismissed but nevertheless more substantive representations on the part of the CA, when it has clearly had some awareness of the history of this property, would have been useful for me to consider in deciding this appeal.

[redacted] BSc (Hons) MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]