

Appeal Decision

by [REDACTED] MRICS VR

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

Valuation Office Agency
DVS National Taxation Team
[REDACTED]

E-mail: [REDACTED]@voa.gov.uk

Appeal Ref: [REDACTED]

Address: [REDACTED]

Proposed Development: Demolition of existing dwelling and garage and erection of detached replacement dwelling and new vehicular access.

Planning Permission details: Granted by [REDACTED] on [REDACTED], under reference [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] and the submissions made by the Collecting Authority (CA), [REDACTED].
2. Planning permission was granted for the development on [REDACTED], under reference [REDACTED].
3. On [REDACTED], the CA issued a Liability Notice (Reference: [REDACTED]) for a sum of £ [REDACTED]. This was based on a net chargeable area of [REDACTED] m² and a Charging Schedule rate of £ [REDACTED] per m² for C3 use class.
4. In an e-mail sent on [REDACTED] 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 [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 primarily of the opinion that the CIL payable is the sum of £ [REDACTED], as the building had been in lawful (domestic) use and therefore the entirety of the GIA can be netted off.

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 within the period of three years ending prior to the grant of permission on [REDACTED]; indeed, the appellant contends that the property had been in continuous lawful use up to the date of [REDACTED], at least.
 - 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. The CA contends that the continuous lawful use requirement for the property (to be occupied for a minimum of six continuous months within the period of three years up to [REDACTED]) has not been met; thus the existing floor space cannot be offset.
 7. There appears to be no disagreement between the CA and the appellant on the gross internal area floorspace of the existing building. However, there is disagreement between the parties on the proposed floor space of the development; the CA appears to be contending a GIA of [REDACTED] m², whilst the appellant contends a GIA of [REDACTED] m².
 8. 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.

9. The appellant states that the entirety of the property had been occupied for its lawful use (as residential use). The appellant contends that the date that the property was deemed unoccupied should be no earlier than the [REDACTED] and thus the period immediate to this will satisfy the requirements of Regulation 40(7). The following evidence in support of this view has been submitted:-

- A copy of a Court of Protection Order made on [REDACTED] and issued on [REDACTED], granting that the subject property is to be sold due to the deteriorating mental capacity of the owner/occupier (the appellant's mother).
- Documentary evidence that the gardens of the property were being maintained by an employed gardener as at [REDACTED].
- A letter dated [REDACTED], from [REDACTED], citing that the occupier was vacated into a care home approximately two years previously.
- Documentary evidence of local management company fees in respect of the property (paid to the [REDACTED]) covering the period [REDACTED] to [REDACTED] inclusive.

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. The appellant's floorspace figures and CIL calculation are:

Proposed GIA	-	[REDACTED]	m ²	
less existing GIA	-	[REDACTED]	m ²	
Net chargeable GIA	-	[REDACTED]	m ² @ £[REDACTED]	per m ² (C3 rate) = £[REDACTED]

10. The CA contends that the requirement for the property to be occupied for a minimum of six continuous months in the period of [REDACTED] to [REDACTED], has not been met, as the property was deemed to have been unoccupied since [REDACTED]. From the CA's perspective, the occupation of the property falls 17 days short of meeting the six months criterion. In support of this contention, the CA has provided evidence that Council Tax payment ceased on [REDACTED]. Beyond the cited Council Tax evidence, the CA has offered no additional evidence of the property being unoccupied during the requisite period.

11. In arriving at my decision, I have considered the case of *R (oao [REDACTED]) v [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 and intentions of the owner.

12. I have reviewed all of the evidence submitted by both parties in relation to both 'lawful use' and 'in-use buildings'. Based upon the actual submitted evidence, it is clear to me that the appellant's mother had continuously occupied the property from [REDACTED], but departed the property on [REDACTED], due to her poorly condition as at that time.

As per [REDACTED], in considering the 'in use' nature of the property, one must consider the *intentions* and circumstances of the owner as at that time, in addition to actual activity. The appellant cites that the owner's health was in a state of flux and it was not clear at the time, whether she would return to her home or remain in care. It is therefore evident at that time, that there was some uncertainty, whether the vacation of the property was of a permanent or temporary nature.

Given that the actual use of the property was a private domestic dwelling bungalow and primary residence, I am persuaded by the evidence that there was an *intention* to occupy as at [REDACTED], up until the period of [REDACTED], when the Court of Protection Order was issued. Having assessed that this period, on balance, is 'in-use', I have concluded that this meets the requirement of a six month occupation period under Regulation 40(11) as amended.

13. 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.
14. In respect of the disputed floorspace of the proposed development, I have taken scaled measurements from the submitted plans and have determined that the proposed floorspace accords with the CA's figure of [REDACTED] m². Accordingly, my calculation of the net chargeable area of the scheme is as follows:

Proposed GIA	-	[REDACTED]	m ²
less existing GIA	-	[REDACTED]	<u>m²</u>
Net chargeable area	-	[REDACTED]	m ²

The applicable CIL rate of £[REDACTED] per m² has been used by both parties and does not appear to be in dispute. I have adopted this rate in my calculation of the CIL charge, which I calculate as follows:

$$[REDACTED] \text{ m}^2 @ \text{£} [REDACTED] \text{ per m}^2 = \text{£} [REDACTED]$$

15. In conclusion, having considered all the evidence put forward to me, I determine that the CIL payable in this case is to be the sum of £[REDACTED] ([REDACTED])

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

