Appeal Decision

by [redacted] BSc (Hons) MRICS

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

Valuation Office Agency
[redacted]
e-mail: [redacted] @voa.gsi.gov.uk.

Appeal Ref: [redacted]

Planning Permission Ref. [redacted]

Proposal: Change of use from a registered care home to a residential dwelling (C2 to C3)

Location: [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

Reasons

1. I have considered all of the submissions made by [redacted] (the Appellant) and by the Collecting Authority [redacted] (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

    a) Planning decision ref [redacted] dated [redacted];

    b) Approved planning consent drawings, as referenced in planning decision notice;

    c) CIL Liability Notice [redacted] dated [redacted];

    d) CIL Appeal form dated [redacted], including grounds of appeal and appendices;

    e) Representations from CA dated [redacted] including appendices; and

    f) Appellant comments on CA representations, dated [redacted] and [redacted].

2. Planning permission was granted under application no [redacted] on [redacted] for '*Change of use from a registered care home to a residential dwelling (C2 to C3).'*

3. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m² at the '[redacted] - Residential' rate of £[redacted] /m² plus indexation at [redacted].

4. The Appellant requested a review under Regulation 113. The CA acknowledged this request on [redacted] but did not provide a response within the deadline.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under regulation 114 (chargeable amount) contending that the CIL liability should be £[redacted].

6. The appellants grounds of appeal can be summarised as follows:

    a) The building was in lawful use for a period of more than six months within the three years prior to the date that planning permission was granted. The existing building should therefore be netted off from the CIL calculation.

    b) The GIA is incorrect. There has been no increase in floor space. The basement and roof space have reduced height and should be excluded.

7. The CA has submitted representations that can be summarised as follows:

    a) The building was not in lawful use for a continuous period of at least six months within the period of three years ending the day planning permission first permitted the chargeable development.

    b) The GIA is correct in accordance with the RICS guidance, which includes areas of a headroom under [redacted] m.

8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "*retained parts of in-use buildings*" can be deducted from "*the gross internal area of the chargeable development*."

9. "*In-use building*" is defined in the Regulations as a relevant building that 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.

10. The Regulations go on to state *"Where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building."*

11. Planning permission was granted on [redacted] and therefore the relevant three year period would commence on [redacted].

12. The lawful use of the care home in the period before planning permission was granted was as a care home (C2). The appellants contend that the property continued to be a care home after their purchase and that they were unable to take in any residents as works to the home were delayed by Covid-19. They also contend that they have lived in the property lawfully as the previous planning permission allowed for care staff to be resident at the home.

13. They have provided further evidence that they were booked to look after four students between [redacted] and [redacted], which is outside of the relevant period. There is no evidence that any care home residents have been in occupation since the appellants purchased the property.

14. The CA have provided evidence of the pre-application advice given to the appellants in [redacted], when they sought advice on changing the use of the property to residential C3 use. In addition, the appellants have confirmed that the site was purchased with the intention of either converting it to a residential family home, or running it as a supported living facility or boarding establishment.

15. It is my decision that there is no evidence that the property was in use as a care home by the appellants. The appellants' occupation of the property was not ancillary to providing care but was the primary use, contrary to the planning consent at the time. I therefore do not consider that the appellants have been in lawful use of the property.

16. Prior to [redacted], it is my understanding that the property was vacant. The planning application form submitted by the applicants describes the property as a "*redundant registered care home*" and states under existing use that it "*was a registered mental health care home with community care trust until c. 2 ½ years ago when it moved next door, making* [redacted] *redundant*." It further states that the use ended "*approx* [redacted] ." A statement by a neighbour provides that the care home closed *"around early* [redacted] and the house was then "*vacated and put up for sale*." An email from the appellants to the CA dated [redacted] confirmed that the property was listed for sale with vacant possession in [redacted].

17. There is some contradictory evidence regarding the exact date that the care use ceased and overall I do not consider the evidence is sufficient to establish that the building was in lawful use for the relevant period.

18. The appellants have confirmed that the change in use involves no change to the footprint of the building and only minor physical alterations. They consider that the GIA is incorrect and that the basement and roof space have reduced height and should be excluded. The appellants have not provided their GIA calculations but state that the GIA should be [redacted] m². The CA suggest a GIA of [redacted] m² and have provided plans with the measurements of each floor.

19. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice (6th Edition) definition is used. GIA is defined as "*the area of a building measured to the internal face of the perimeter walls at each floor level*." The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

20. I consider that areas of reduced height fall within the definition of GIA and must therefore be included within the chargeable area. I have reviewed the floor plans provided and I am of the opinion that the floor areas provided by the CA are correct.

21. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

[redacted]

[redacted] BSc (Hons) MRICS
Valuation Office Agency
[redacted]