Appeal Decision

by [redacted] MRICS VR

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

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

Appeal Ref: [redacted]

***Address**:* [redacted]

Proposed Development: Proposed conversion of a Grade II* Listed Building from an A1 shop at first and second floors to C3 apartments, with the ground floor and basement retained for use as an A1 shop.

Planning Permission details: Granted by [redacted] on [redacted], under reference [redacted].

Decision

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

Reasons

Background

2. I have considered all the submissions made by the appellant, [redacted] and the submissions made by the Collecting Authority (CA), [redacted].

3. Planning permission was granted for the development on [redacted], under reference [redacted].

4. 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.

5. On the [redacted], the appellant requested a review of this charge after the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [redacted], stating that it was of the view that its original decision was correct and should be upheld.

Grounds of Appeal

6. 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 was incorrect. The appellant is of the opinion that the passageway on the ground floor should not form part of the CIL liability, as it is shared multi-purpose space that already exists. In addition, the appellant contends that the area comprising the first floor stairwell and second floor stairwell should not form part of the CIL liability. In conclusion, the appellant is of the opinion that the CIL liability is a maximum of [redacted] m². The CA is of opinion that the net chargeable area of the development is [redacted] m² Gross Internal Area (GIA); it contends that the disputed 50 m² difference, which is attributable to the ground floor shared entrance corridor, first and second floor stairwells forms part of the CIL liability.

7. The appellant's contention can be summarised to a single core point:

   The appellant maintains that the disputed [redacted] m² accommodation is shared multi-purpose space that already exists. It is argued that the access is necessary for the leaseholder/freeholder to access the wider building and roof structure, as well as enabling the shopkeeper to maintain an air-conditioning vent. In addition, the appellant contends that the passageway/corridor is not permanent, as it is made of an aluminium frame floating separating wall that is not attached to the building structure.

8. The CA disagrees, contending that the building has not been in continuous use and contends that the chargeable amount of £[redacted], based upon [redacted] m², has been calculated correctly. The CA agrees that the disputed floor space already exists, but forms part of the proposed development. The CA has concluded that the disputed floor space is CIL liable and cannot be offset, as the building has not been in a lawful use for 6 months within the last three years.

9. It appears that there is no dispute between the parties in respect of the applied Chargeable Rate per m² or to the indexation.

Decision

10. It is clear to me that the main area of disagreement between the parties is in respect of a floorspace area of approximately [redacted] m² and a dispute in the [redacted] m² being part of the net chargeable area or not. At the heart of the matter is the continuous use of the accommodation (the existing building floorspace) which the appellant considers is an eligible deduction, which can be offset in the CIL calculation. I elaborate as follows:

11. 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.

12. Given the nature of this appeal, a consideration of the qualifying area must be considered. The CIL Regulations do not define Gross Internal Area (GIA), so it is necessary to adopt a definition. The definition of GIA provided in the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6th Edition) is the generally accepted method of calculation.

    GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.

    Including:-

    - Areas occupied by internal walls and partitions
    - Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
    - Atria and entrance halls, with clear height above, measured at base level only
    - Internal open-sided balconies walkways and the like
    - Structural, raked or stepped floors are to be treated as level floor measured horizontally
    - Horizontal floors, with permanent access, below structural, raked or stepped floors
    - Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
    - Mezzanine floors areas with permanent access
    - Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
    - Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
    - Projection rooms
    - Voids over stairwells and lift shafts on upper floors
    - Loading bays
    - Areas with a headroom of less than 1.5m
    - Pavement vaults
    - Garages
    - Conservatories

    Excluding:-

    - 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
    - Greenhouses, garden stores, fuel stores, and the like in residential property.

13. Having examined the appellant's and the CA's supplied plans, it is clear to me that the shared accommodation comprising the entrance corridor, first and second floor stairwells falls under the definition of GIA. I am not persuaded by the appellant's argument that the passageway/corridor is not permanent and therefore does not constitute GIA.

14. The appellant emphasises that the accommodation in dispute already exits; based upon the evidence, I readily concur with this statement. However, the question I must consider, is not if it is assessable (as per the appellant's contention) but a question if the accommodation can be *offset* under the Regulations; i.e. has the accommodation 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? The CA submits that it has not been in a lawful use for 6 months of the last three years and further states that this is not disputed by the appellant. However, the appellant does dispute this, contending that the upper parts were used for storage, demonstrated by the sheer amount of items, old stock and equipment that he had to remove upon taking ownership of the lease. Whilst the CA states that the accommodation has not been in lawful use, there is no evidence in support of this claim.

15. Little evidence has been advanced to me from either party in respect of the lawful use of the disputed accommodation. The appellant points to the requirement of sole, shared passageways and stairwells being required for maintenance by the freeholder and thus satisfying being in continuous use. The appellant further contends that the shared passageways and stairwells are quite clearly for shared/critical access and are sole access points for all parties with an interest. I am of opinion that there is some merit in this argument, but one must assess the configuration and layout of the existing accommodation in this instance, to arrive at a determination.

16. I have not been supplied with the pre-scheme (existing plans) of the accommodation from either party. Accordingly, I have had recourse to interrogate the CA's Planning Portal to examine these publicly available documents. In examining the existing plans of the building, I note the change in the configuration of the ground floor accommodation for the purpose of access to the upper floor accommodation; this change is clearly significant and that the scheme's access corridor is a necessary part of the proposed development and the resulting dwellings. Given the significant change and the submitted evidence, I have concluded that the entrance corridor, which comprises approximately [redacted] m², cannot be offset, as it has not 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.

17. I also note the changes in the configuration of the stairwells at first floor and second floor levels. I note that the stairwells are the sole access to the upper floor accommodation. From the provided documentation, the first floor and second stairwell areas are respectively [redacted] m² and [redacted] m² in area. The changes to the stairwells are insignificant in my view, which, when considered with their required access for maintenance (although infrequent and intermittent) in my view, satisfies the test for lawful use for a continuous period of at least six months within the last three years. Accordingly, I have concluded that the accommodation of the upper floor stairwells can be offset; this accommodation totals [redacted] m².

18. Having fully considered the representations made by both parties and all the evidence put forward to me, I have concluded that the net chargeable area of the development is [redacted] m² (i.e. [redacted] m² less the accommodation of the upper floor stairwells, which totals [redacted] m²).

19. Having calculated the correct area of the chargeable development, I determine that the CIL payable in this case should be as follows:

[redacted] m² @ £[redacted] per m² (index [redacted]) = £[redacted]

20. In conclusion, in considering the facts of the case, I determine that the CIL payable should be the sum of £[redacted] ([redacted]).

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