

Appeal Decision

by [REDACTED] BA (Hons) PG Dip Surv MRICS

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

Valuation Office Agency

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

Appeal Ref: [REDACTED]

Address: [REDACTED]

Proposed Development: Replacement dwelling and detached garage

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 of 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 plus relevant indexation.
4. In an e-mail sent to the CA on the [REDACTED], the appellant requested a Regulation 113 review of this charge.
5. On [REDACTED], the CA issued the decision of their review under Regulation 113, Community Infrastructure Levy Regulations (2010) as amended. The CA determined that the CIL charge of £[REDACTED] as stated in the liability notice reference [REDACTED] was correct.
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 of the CIL liability is incorrect. The appellant is of the opinion that the

amount of CIL payable should be £[REDACTED], as the building had been in lawful (domestic) use and therefore the entirety of the GIA, [REDACTED] m², should be netted off the GIA of the replacement dwelling.

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

- a) That having inspected the property after purchase, it became evident the property was not safe to inhabit and would need a considerable amount of work. As a consequence, the appellant began renovations under a LDC before being told to stop on the [REDACTED] and submit a planning application.
 - b) The appellant advises that from the [REDACTED] until the [REDACTED] they paid the "usual" amount of council tax with no discount during the period which equates to 1 year and 4 months.
7. 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.
 8. There appears to be no disagreement between the CA and the appellant on the gross internal area floor space of the chargeable development.
 9. 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 of whether 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.

10. The appellant has stated both in his representations to the VOA and the CA, that, "we haven't lived in the property since we purchased it." And that "we are still living in rented accommodation some four years after buying the property."
11. The appellant advises that the reason they have been unable to occupy the property is because it is unsafe for the following reasons:
 - Significant asbestos contamination
 - Significant pest infestation
 - Various issues relating to the roof
 - Matters relating to the surface water.

Given the above condition of the property and the fact that the appellant paid council tax for a period of 1 year and 4 months, they are of the view that the existing building's floor space 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	
CIL liability	-	([REDACTED] m ² * [REDACTED] * [REDACTED]) / [REDACTED]	= £ [REDACTED]

12. The CA advises that they have not received any evidence from the appellant that the property had been in use as a dwelling for a six month continuous period between the [REDACTED] to [REDACTED]. The CA also notes that the appellant does not contest that the dwelling has not been lived in during this time frame.
13. The CA have also provided data from the Council's Council Tax Payment System. This data shows the property was classified as empty/unoccupied until it was re-classified as long term empty in [REDACTED]. They note the property was removed from the Council Tax List by the Valuation Office with effect from [REDACTED].
14. The CA have also pointed out that by the date planning permission was granted on the [REDACTED], approximately [REDACTED] % of the dwelling had already been demolished, with the extension to the rear and the garage to the side having been removed.
15. The appellant advises that these works were not demolition but essential works to make the property safe. The appellant advises renovation works were underway under LDC until they were required to stop and submit a planning application on the [REDACTED].

16. The CA has also provided a table showing the planning history of the subject site;

Appendix A (Planning history)

Planning reference	Permission granted/refused	Date of determination	Proposal
██████████	Pending Decision	Pending Decision	Variation of condition 2 (plans) of ██████████
██████████	Granted	██████████	Replacement dwelling and detached garage
██████████	Refused	██████████	Extension to bungalow, erection of garage and associated hardstanding
██████████ (related to ██████████)	Dismissed	██████████	Demolition of existing bungalow, with new proposed access with high quality residential development consisting 3 no. bungalows.
██████████	Refused	██████████	Demolition of existing bungalow, with new proposed access with high quality residential development consisting 3 no. bungalows
██████████ (related to ██████████)	Dismissed	██████████	Demolition of existing bungalow and construction of 1 no detached bungalow and detached garage with access road
██████████	Refused	██████████	Demolition of existing bungalow and construction of 1 no detached bungalow and detached garage with access road
██████████ (related to ██████████)	Dismissed	██████████	Development of five residential dwellings - one detached bungalow and four two storey detached dwellings.
██████████	Refused	██████████	Development of five residential dwellings - one detached bungalow and four two storey detached dwellings. <i>(note, this application includes the replacement of the existing bungalow)</i>
██████████	Withdrawn	██████████	Demolition of existing bungalow, new access with high quality residential development consisting of 1 bungalow and 4 No two storey detached dwellings

17. In arriving at my decision, I have considered the case of *R (oao Hourhope Ltd) v Shropshire Council* [2015] EWHC518. The *Hourhope* 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 *Hourhope* are different to the subject appeal, the decision provides guidance on the actual use of the property:-

As held by Hourhope - "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.

18. 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 has never resided in the property since acquisition some time in [REDACTED]. Whilst it is acknowledged Council Tax was paid, this alone does not prove the building was 'in-use' as a domestic dwelling.
19. The planning history of the site suggests that during the period [REDACTED] to [REDACTED] the intention of the appellant was not to live in the property as his primary residence, but to demolish the property and redevelop the site. Whether this intention existed before a full appreciation of the unsafe condition of the property was realised is unclear. It is however apparent that during the period between [REDACTED] and [REDACTED], the property was not inhabited and there was no intention to do so.
20. In a determination of the evidence before me, I am satisfied that the building was not in lawful use as per Regulation 40(11) and was not an 'in-use building,' consequently, it is not appropriate to net off the existing building's GIA from the chargeable development.
21. Therefore, I conclude that the CIL charge of £[REDACTED] stands and I dismiss the appeal.

[REDACTED] BA (Hons) PG Dip Surv MRICS
RICS Registered Valuer
[REDACTED]