Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency - DVS
[redacted]

e-mail: [redacted]@voa.gov.uk.

Appeal Ref: [redacted]

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Change of use of land to extend residential park home site to allow the siting of 10 caravans (park homes)

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 [redacted] of [redacted] acting as authorised agent to [redacted] (the Appellant) and [redacted] as the Collecting Authority (CA), in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:-

    a. The Planning Application made by the Appellant dated [redacted].
    b. Planning Permission reference [redacted] issued by the CA on [redacted].
    c. CIL Liability Notice reference [redacted] issued by the CA dated [redacted] at £[redacted] CIL liability.
    d. The Appellant's request dated [redacted] for a Regulation 113 review.
    e. The CA's confirmation of CIL Liability in their Regulation 113 review outcome issued [redacted].
    f. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
    g. The CA's representations to the Regulation 114 Appeal dated [redacted].

h. Further comments on the CA's representations prepared by the appellant and dated [redacted].

2. A Planning Application was made by the Appellant to the CA dated [redacted] for "Change of use of land to extend residential park home site", the land in question measuring [redacted] hectares according to the application form. This involved adding an additional 10 residential units (caravans or park homes) to an existing residential caravan park.

3. Planning Permission reference [redacted] was approved on [redacted].

4. CIL Liability Notice reference [redacted] was issued by the CA dated [redacted] with CIL Charge calculated as:-

   Dwellings C3
   New GIA [redacted] m2 @ £[redacted] /m2 = £[redacted]
   X indexation at [redacted]

   = £[redacted] ([redacted]) CIL Charge

5. The appellant requested a Regulation 113 Review of the Chargeable Amount on [redacted].

6. Following the Regulation 113 Review the CA wrote to the Appellant on [redacted] confirming their CIL calculation as per their previous CIL Liability Notice.

7. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL charge should be £[redacted] ([redacted]).

8. It is the Appellant's case that CIL liability should be £[redacted] ([redacted]) because caravans (park homes) are not "buildings" and therefore cannot be liable for CIL charges under Regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended).

9. Regulation 40(1) of the 2010 Regulations provides that the amount of CIL payable must be calculated in respect of a chargeable development, which is defined in Regulation 9(1) of the 2010 Regulations as: "The chargeable development is the development for which planning permission is granted." The permission granted on [redacted] by the CA was "Change of use of land to extend residential park home site to allow the siting of 10 caravans (park homes)".

10. The CA argues that the use of the caravans (park homes) will be as C3 dwellings, and thus appears to regard them in the same way as buildings, making the proposed development chargeable for CIL purposes and so liable to pay a CIL charge.

11. The Appellant points to the statutory definition of a "caravan" contained in Section 29(1) of the Caravan Sites and Control of Development Act 1960 as amended by Section 13 of the Caravan Sites Act 1968, and notes there is no statutory definition of the term "building" either in the Planning Act 2008 or the CIL Regulations.

12. Instead, the Appellant contends that we should look to case law to establish what can be considered a "building" and cites Skerrits of Nottingham Limited v SSETR [2000] which confirms that the three factors established in Cardiff Rating Authority and another v Guest

Keen Baldwin Iron & Steel Co Ltd [1949] must be taken into account in determining whether something is a "building":-

i. size
ii. degree of permanence
iii. physical attachment to the ground.

13. The appellant argues that in applying the above factors, a caravan (park home) cannot be a "building" because it neither has a degree of permanence nor is it physically attached to the ground. They point to Elitestone Ltd v Morris and another [1997] which confirms that if a structure is moveable it would be a chattel as opposed to a "building", and that this would remain the case even if the structure was connected to mains services such as electrics, water or sewerage. It is also argued that as these caravans (park homes) are not attached to the hard standing but are rested by their own weight on metal legs, Measor v SSETR [1998] confirms that a caravan (park home) does not have the necessary degree of permanence or physical attachment to the ground to be a "building".

14. The CA confirm they measured the Chargeable Area as [redacted]m2 GIA based on the submitted and approved plans with each caravan (park home) having an area of [redacted] m2 GIA. They have assessed the additional caravans (park homes) on the site as "C3 residential development" and so liable, in their view, to CIL charging under the [redacted] Area CIL Charging Schedule.

15. The CA point to the marketing documentation produced by the Appellant that infers that the caravans (park homes) will provide use as dwellings for a long period of time, and therefore argue they could not be considered as providing accommodation of a temporary nature.

16. The CA also refer to the Appellant's agreement to provide an off-site financial contribution under a section 106 Agreement of £[redacted]towards affordable housing provision, and point to the NPPF (2018) that states that affordable housing should only be sought for developments where the development is for 10 or more homes, or where the site has an area of 0.5 hectares or more. They also suggest that the status of park homes as dwellings that require affordable housing contributions to be made has been confirmed in the recent appeal decision [redacted].

17. The CA points to the fact that the *MHCLG Housing Supply Indicators Of New Supply, England* sets out the definition of a dwelling to help local authorities count the number of new dwellings completed in their areas, and includes mobile homes (park homes) in this definition as a residence. As the use of the park homes will clearly be as a dwelling on a permanent basis with no restriction they consider that the use of these park homes falls within the description of C3(a) as:-

"use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child"

18. The CA therefore argues that as these residential units will be included in the housing completions numbers reported to MHCLG for [redacted] when completed, and do not fall into a *sui generis* use category, this supports their argument that the use is for C3 dwellings which should be charged CIL as set out in their charging schedule.

19. The Appellant advises that the development has been marketed with the homes described as “caravans” meeting [redacted] standard, generally built to last 40 to 50 years to ensure that they are suitable for residential use as a main residence rather than for holiday purposes because an occupier is not entitled to the benefit of a Mobile Homes Act Agreement unless it is used as their main residence (s.1(1)(b) Mobile Homes Act 1983).

20. From the facts available, it would seem that these caravans (park homes) will be capable of being moved on the highway from one place to another and therefore satisfy the test set out in the Skerrits case, in that they are not permanently affixed to the ground and are not therefore “buildings”.

21. The Appellant argues that as a section 106 contribution towards affordable housing is to be made rather than providing an actual percentage of the park homes to be used for this purpose, their case is supported, as caravans (park homes) are considered to be chattels because they are not permanently fixed to the ground. They argue that affordable housing providers do not generally choose to take on a percentage of park homes on sites to provide affordable housing because they cannot obtain finance for these chattels, which are depreciating assets.

22. The Appellant notes that MHCLG Technical Note as referred to by the CA provides guidance to local authorities to assist them to assess annual housing supply, and that the term “Dwelling” encompasses all forms of housing whether they are buildings or not:-

    “Non-permanent (or 'temporary') dwellings are included if they are the occupant's main residence and council tax is payable on them as a main residence. These include caravans, mobile homes, converted railway carriages and houseboats. Permanent Gypsy and Traveller pitches should also be counted if they are, or likely to become, the occupants' main residence.”

23. From a consideration of the representations and comments received from the Appellant and CA it would appear that case law establishes that for planning purposes for a caravan (or park home) to be considered a “building” and thus “operational development” there must be a substantial degree of affixation to the land upon which it stands.

24. Skerrits of Nottingham Limited v SSETR [2000] confirms earlier case law in that the primary factors to consider when determining whether a “building” exists are: size, permanence and physical attachment. It would seem reasonable to consider these same factors for the purposes of CIL when considering whether there is a “building” that needs to be included when calculating the chargeable amount under Regulation 40 CIL Regulations (as amended).

25. For the situation under consideration here, the Appellant and CA disagree on whether the caravans (park homes) involved are to be considered as “buildings” for CIL purposes.

26. The caravans (park homes) in this case would appear to be only affixed to the ground by the connections necessary for services and are surrounded by a brick “skirt” to each park home. The “degree of permanence” of these caravans (park homes) would not appear to be attributable to the intention of the Appellants to move them around, but the capability to do so. The level of attachment to the land and ease with which the caravans (park homes) can be disassembled and moved are considered to be the main factors that prevent them from being considered as “buildings”.

27. I have considered all the arguments made by the CA and find they do not fully address this key issue of whether the caravans (park homes) can be considered as “buildings”, and it is my view that in order for the chargeable development to be liable for CIL the

caravans (park homes) would need to be proven to be “buildings” in order to be chargeable under the CIL Regulations.

28. Having regard to the above factors and having considered all the evidence and other submissions by both parties, it is not considered that the caravans (park homes) in this case can be regarded as “buildings” for CIL purposes.

29. The caravans (park homes) as described in the various submissions by the parties meet the definition of “caravans” as defined under the Caravan Sites and Control of Development Act 1960 (as supplemented by the Caravans Act 1968) as “any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer)”.

30. These caravans (park homes) will not be permanently affixed to the land, will be of a size small enough by unit to fall within the definition of “caravan” and are capable of being moved from one place to another. I am of the view that it is irrelevant whether or not there is any future intention to actually move the caravans (park homes) – the definition of “caravan” under the Caravan Sites and Control of Development Act 1960 makes no mention of intention, only capability.

31. Whilst the CA has demonstrated through the MHCLG Technical Note that the caravans (park homes) should be considered as “dwellings”, this does not preclude them from being “caravans” as opposed to “buildings”. Simply because a form of housing is considered to be a “dwelling” for the purposes of assessing housing land supply does not make it a “building”.

32. It is my decision that as the proposed dwellings in question are not buildings they cannot be considered liable for CIL charges under Regulation 40 of the CIL Regulations 2010 (as amended).

33. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that on the facts of this case the CIL charge should be £[redacted] ([redacted]).

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]