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: Erection of a domed structure for use as a holiday let and associated parking.

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

Background

1. I have considered all the submissions made by the appellant, [redacted] (BA Hons) of [redacted] (acting on behalf of [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, with indexation at [redacted].

4. 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

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 of the opinion that no CIL should be payable, contending that that the approved permission does not constitute a C3 (dwelling house) use and therefore seeks to appeal against the CA's contention that the development is liable for CIL.

   In addition, the appellant cites the relatively small and highly unusual characteristics of the proposed development, contending that the proposed development (a dome) is a structure rather than a building. The appellant contends that the proposed development does not fall within the definition of a "dwelling house" and does not constitute self-contained accommodation due to its lack of facilities. It is not disputed that there are no foundations, no kitchen facilities, no running hot water and no foul water drainage (the toilet proposed is a composting toilet rather than one which is connected to the water system). However, there is a cold water connection.

   The appellant alludes to the Regulation 42 exemption for minor development Regulations, citing that the [redacted]m² GIA of the permission is considerably less than [redacted] m² limit for exemption. Furthermore, the appellant cites that the size of the unit falls well below the Government space standards of [redacted] m², for a 1-bedroom, 2-person dwelling.

   The appellant is also of the view, that the existence of the following planning condition, restricts the permanent use of the unit and is a direct contradiction of the CA's assertion that the unit can be occupied as a separate dwelling and is therefore CIL liable:

   The holiday let unit hereby approved shall be occupied for the purposes of short-term holiday let accommodation only and shall not at any time be occupied as a person's sole or main place of residence.

6. The CA contends that the proposed development is a building, citing the CIL NPPG, which states that *"structures which are not buildings, such as pylons and wind turbines"* do not pay the levy. The CA contends that the proposed development does not fall under the definition of structure, as per the examples given. The CA cites that the dome is clearly intended for habitation by persons for holiday accommodation and despite its unconventional shape for habitation and therefore its uniqueness and attractiveness for this purpose, there is clearly a roof, walls, inside and outside. The CA cites the following planning case law in support of its contention: *Gravesham Borough Council v Secretary of State for the Environment* (1984) 47 P&CR 142 and *Grendon v First Secretary of State and another* [2006] EWHC 1711.

   In response to the appellant's contention that the planning condition is in direct contradiction of the CA's assertion that the unit can be occupied as a separate dwelling, the CA opines that the permission granted does not restrict the holiday unit being used as a dwelling house all year round; the condition merely requires that it is not occupied permanently by the same household.

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

Decision

8. There is no definition given to the word "building" within the CIL Regulations, save for Regulation 40 (11) which states that "building" does not include:

   (i) a building into which people do not normally go,

(ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
(iii) a building for which planning permission was granted for a limited period;

In the absence of any clear guidance from CIL Regulation 40, I have therefore, had recourse to:

(i) the dictionary; for a clear definition as to what constitutes a "building", and
(ii) guidance from case law.

9. Firstly, the definition of "building" within the Shorter Oxford English Dictionary, 6th Edition (Shorter OED) is defined as "*A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc."* Having regard to this dictionary definition, I agree with the CA's opinion, in having a roof, walls, an inside and an outside, that the proposed development readily falls within the definition of a "building". In addition, it is noted that within the appellant's own Design and Access Statement (dated ██████) the appellant refers to the proposed development as a 'building' at least a dozen times.

10. Secondly, in considering the word "building" in planning case law, I have had regard to the case of *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* [2000] 2 PLR 102. This case, which held that a marquee was a considered to be a building, laid down that the following three criteria are relevant, when considering the definition of a "building":

    Size; permanence; and degree of physical attachment.

    In terms of size, there would appear to be no dispute between the parties that the proposed development is ██████m² GIA. Whilst relatively small, I do not consider the proposed development to be de minimis in relation to planning controls and CIL.

    In terms of permanence, I do not consider that the subject dome development (which is an unusual, igloo shaped 'pod') is so transient or ephemeral that it lacks permanence.

    Based upon the facts of the case, I consider that the subject dome development has a significant degree of physical attachment to the land on which it stands.

11. Having considered both case law and the dictionary for a definition as to what constitutes a "building", I have concluded that the proposed development is clearly a "building" and not a structure under the provisions of the CIL Regulations.

12. As I have concluded that the proposed development constitutes a (new) building under the CIL Regulations, the Regulation 42 exemption for minor development, which the appellant alludes to (citing that the ██████m² GIA of the permission is considerably less than ██████ m² limit for exemption) does not apply.

13. I now move onto the parties' disagreement in their opinions, whether the unit constitutes a "dwelling house" or not. Whilst the lack of facilities cited by the appellant has some merit to their argument, I agree with the CA, that its cited case law of *Gravesham Borough Council v Secretary of State for the Environment* (1984) 47 P&CR 142 and *Grendon v First Secretary of State and another* [2006] EWHC 1711provides valuable guidance to this case. *Gravesham* provided that the distinctive characteristic of a dwelling is "*its ability to afford to those who use it the facilities required for day-to-day private domestic existence"*. Whilst this is useful, *Gravesham* also offered that the question, whether a building is a single dwelling house must be considered by reference to both its use and its physical attributes. I

concede that its facilities are very basic and its physical attributes are arguably basic, but its physical attributes are in my view, inherent to its purpose as a holiday let 'pod'. This leads me to conclude that in this case, consideration of the proposed use of the building outweighs the physical attributes of the building. Indeed, its use and purpose is plainly defined by the actual granted permission i.e. *Erection of a domed structure for use as a holiday let and associated parking.*

In consideration of its purpose as a holiday let, I find that the definition of a Holiday Letting (in Schedule 1, paragraph 9 of the Housing Act 1988) as *'A tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling house for a holiday'* leads to a strong and persuasive argument that the building is indeed a dwelling.

14. Turning to the appellant's contention that the pod unit is not a dwelling house on the grounds that the habitable space is under [redacted] m² and less than the minimum size standard for a dwelling house in the Nationally Described Space Standards, I agree with the CA's view, that its small size does not mean that it could not be used as dwelling house, just that it is of a sub-standard size.

15. In respect of the appellant's contention that the planning condition is in direct contradiction of the CA's assertion that the unit can be occupied as a separate dwelling, I agree with the CA that the permission granted does not restrict the holiday unit being used as a dwelling house all year round and that the condition requires that it is not occupied permanently by the same household.

16. Having regard to the information submitted by the parties and given the facts of the case, I agree with the CA and determine that the proposed development is a building and is a dwelling house for the purposes of the CIL Regulations.

17. In conclusion, having considered the facts of the case and all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated [redacted] and hereby dismiss this appeal.

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