Appeal Decision

by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency (DVS)
[redacted]

Email: [redacted]@voa.gov.uk

Appeal Ref: [redacted]

Address: [redacted]

Proposed Development: Change of use of an outbuilding and retrospective construction of an outbuilding.

Planning permission details: Granted 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 the submissions made by [redacted] of [redacted] on behalf of [redacted] (the appellant) and [redacted], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

a. Notice of the grant of planning permission issued by [redacted] on [redacted].
b. The CIL Liability Notice issued by the CA on [redacted].
c. The appellant's request for a Regulation 113 review dated [redacted].
d. The letter from the CA dated [redacted] in response to the appellant's request for a review.
e. The CIL Appeal form dated [redacted] submitted on behalf of the appellant under Regulation 114, together with documents and correspondence attached thereto.
f. The CA's representations to the Regulation 114 Appeal dated [redacted] together with Appendices labelled [redacted].
g. Further comments on the CA's representations sent on behalf of the appellant in a letter dated [redacted].

2. Planning permission for the above development was granted by [redacted] on [redacted]. The permission retrospectively allowed the construction of an outbuilding and permitted its change of use as ancillary residential accommodation for [redacted]. The Authority implemented its CIL Charging Schedule on [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge.

3. The CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted]. The calculation is based on a chargeable area of [redacted] square metres @ £[redacted] per square metre indexed.

4. On [redacted] the Valuation Office Agency received a CIL appeal under regulation 114 (a chargeable amount appeal) submitted by the Appellant contending that the chargeable amount should be nil.

5. The Appellant contends that the CIL charge calculated by the CA is incorrect because the development does not meet the tests of a dwelling and therefore cannot be considered to amount to an annex under the CIL Regulations. The appellant is of the view that the [redacted] square metre development should receive a minor development exemption and generate a £nil CIL Liability.

6. The CA contend that their calculation of the chargeable amount is correct because the development is deemed to be an annex for the purposes of the CIL Regulations. The CA refers to an annex as being defined as 'accommodation which is ancillary to a main dwelling and used for this purpose'. The CA note that the CIL Regulations state a development is a residential annex if it is wholly within the curtilage of the main dwelling and comprises a new dwelling. In this case the CA note that the ancillary accommodation is being provided in a separate outbuilding within the curtilage of the main dwelling, [redacted].

7. The CA notes that there is no dispute between the parties as to the gross internal area of the chargeable development at [redacted] m^2 but maintains that the development cannot benefit from the 'minor development exemption' (under 100 m^2) provided by Regulation 42(1) since Regulation 42(2) states that this does not apply where the development comprises one or more dwellings. In the view of the CA the development is deemed to be an annex and is therefore to be treated as a new dwelling for the purposes of CIL.

8. The CA further explains that since this was a retrospective planning permission the commencement date of the development is deemed to be the date the planning application was granted – [redacted] and hence the development had already commenced at the time the planning permission was issued and annex relief cannot be applied. This is in accordance with regulation 42B(2(a)) of the CIL Regulations 2010 (as amended).

9. In support of this opinion the CA has referred to the following documents:

a) Approved drawings which show the outbuilding has separate access and that it will comprise an open plan living area, bedroom and bathroom. In the opinion of the CA the form of the development shows that there is clear scope for the outbuilding to function as a separate unit of accommodation without the need for a further planning application to be submitted.

b) The [redacted] which on page [redacted], in the opinion of the CA, acknowledges that the outbuilding could be used as a separate dwelling as references are made to the intention not to use the development as a separate dwelling.

c) The case officer's delegated report which, at [redacted], explains why it was considered appropriate, in planning terms, to impose a planning condition restricting the occupancy of the outbuilding. The report acknowledges that the accommodation had a certain degree of independence and could be used as a separate dwelling.

d) CA's Charging Schedule which at paragraph 10 states that 'any restrictive occupancy conditions do not provide exemption from CIL Liability'.

10. In respect of the minor development exemption, Regulation 42(1) of the CIL Regulations 2010 (as amended) states "*Liability to CIL does not arise in respect of a development if, on completion of the development, the gross internal area of new build on the relevant land will be less than 100 square metre*s". In Regulation 42(1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings. Regulation 42(2) then states "*But paragraph (1) does not apply where the development will comprise one or more dwellings*." It is not in dispute that the gross internal area of the development in this case is less than 100 m^2 but what is in dispute is whether the development '*will comprise'* a dwelling and hence if it will satisfy the requirements for a minor development exemption. If it is not a dwelling then by default it cannot be considered to be an annex under the CIL Regulations as Regulation 42A (2b) defines that an annex must comprise a dwelling.

11. The appellant is of the view that the development comprises an extension that cannot be used independently of the main house as it does not contain the correct facilities to enable this to occur, and furthermore the use of the development as an independent dwelling would not be possible because of the restrictive condition imposed. The CA defines an annex as being 'accommodation which is ancillary to a main dwelling and used for this purpose' and on the basis of their view that '*there is clear scope for the outbuilding to function as a separate unit of accommodation'*, the CA has deemed the development to be an annex (and thus a dwelling) and therefore considers it incorrect to apply the minor development exemption for the purposes of CIL.

12. There is no provision for deeming accommodation to be an annex or a dwelling within the CIL Regulations 2010 (as amended). Regulation 42(2) only nullifies Regulation 42(1) of the minor development exemption where the development **will comprise** one or more dwellings. The CIL Regulations define a dwelling as "a building or part of a building occupied or intended to be occupied as a separate dwelling". There is no reference to accommodation that 'has scope' to be used as a separate dwelling, to be deemed as such. The development permitted in this case is for 'an outbuilding' as ancillary accommodation and not for a separate dwelling and there is no evidence available to me that confirms the development is, or will be, used as a separate dwelling. The restrictive occupancy condition further confirms this position but without the condition the development as permitted would still not comprise a separate dwelling in my opinion. I therefore consider the development qualifies as an exemption as minor development under Regulation 42.

13. The relevant part of the CA Charging Schedule referred to by the CA in support of their position states in full: "'Residential' includes all development within Use Class C3 of the relevant Order. 'Residential' also includes agricultural workers dwellings and holiday lets as these uses are considered to be normal homes for the purposes of calculating CIL and any restrictive occupancy conditions do not provide exemption from CIL liability." So whilst the Charging Schedule is specific that restrictive occupancy conditions do not provide exemption from CIL liability, the examples quoted are within the context of deciding what is to be included as 'residential' development and as 'normal homes' the examples by default must already be dwellings. In this case I consider that it is not the restrictive occupancy condition that is allowing the exemption from CIL Liability, rather it is the fact that the development is not a dwelling.

14. On the evidence before me I conclude that is it appropriate that there should be a £[redacted] ([redacted]) charge in this case.

[redacted]

[redacted] BSc(Hons) MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]