

Appeal Decision

by [REDACTED] BSc (Hons) 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]

Planning Permission Ref. [REDACTED] and [REDACTED]

Proposal: Change of use of former public house to residential (resubmission of [REDACTED])

Location: [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 [REDACTED] (the Appellant) and by the Collecting Authority, [REDACTED] (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
 - a) Planning decision ref [REDACTED] dated [REDACTED] and appeal decision ref [REDACTED] dated [REDACTED];
 - b) Approved planning consent drawings, as referenced in appeal decision notice;
 - c) CIL Liability Notice [REDACTED] dated [REDACTED] and revised Liability Notice [REDACTED] dated [REDACTED];
 - d) CIL Appeal form dated [REDACTED] and revised form dated [REDACTED];
 - e) Supporting documents received from the appellant on [REDACTED], [REDACTED] and [REDACTED];
 - f) Representations from CA dated [REDACTED]; and
 - g) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission for a change of use of a former public house to residential was initially refused under application no [REDACTED] on [REDACTED]. This was a resubmission of

an earlier application ref [REDACTED]. The refusal was appealed under reference [REDACTED]. The appeal was allowed and permission granted on [REDACTED].

3. The CA issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m² at the rural rate of £[REDACTED]/m² plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], stating that the original liability notice was incorrect. The CA issued a revised CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m² at the rural rate of £[REDACTED]/m² plus indexation.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £[REDACTED].
6. The Appellant's grounds of appeal can be summarised as follows:
 - a) The property was in lawful use prior to the development being permitted and does not create any new build floorspace. It should therefore not be liable for CIL.
 - b) The lawful use was only outside of the [REDACTED] month time limit due to the failure of the planning department to form the correct decision on the original application and the subsequent re submission within a reasonable time.
7. The CA has submitted representations that can be summarised as follows:
 - a) There has been insufficient evidence provided to demonstrate that the building was in use for at least six months within the three year period prior to planning permission being granted.
 - b) There are no legal grounds to reduce a CIL liability because of the length of time taken for a planning permission to be granted.
2. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."
3. "In-use building" is defined in the Regulations as a relevant building that contains 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.
4. The appellants have provided no evidence that the property was occupied within the time period required. The planning appeal decision states that the pub closed in [REDACTED] but does not give an exact date. The appellants state that the pub was designated as an "Asset of Community Value" and as it retains its facilities and rateable class and remains a licensed premises that is legally available for use, it should be classed as in-use. However, I do not consider that being available for use is equivalent to being in use.

5. The appellants appear to suggest within their representations that the pub was not in use within the three years prior to the grant of planning permission but it was in use within the three years prior to the original refusal dated [REDACTED]. The regulations are clear that the time period ends on the day planning permission was granted and therefore the earlier decision date cannot be taken into account.
6. The CA state within their Regulation 113 review that the upper floors are residential and the permission can be treated as an extension to the residential use of the upper floors, rather than a formation of a new dwelling. I have been provided with no evidence to suggest that the residential element has been occupied within the relevant time period.
7. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of "in-use building" then it can deem the GIA of this part to be zero. I therefore conclude that the existing building cannot be treated as "in-use."
8. The appellants have requested that discretion be used in reaching a decision in this case, as they consider that they have received unnecessary delays and improper treatment by the CA. However, the VOA have no authority to use discretion in determining CIL appeals and can only apply the Regulations as they are written.
9. The appellants have not queried the GIA or the rate applied and I have assumed that this element is not in dispute. I have therefore adopted the figures used by the CA.
10. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

[REDACTED]

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Valuation Office Agency

[REDACTED]