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: Siting of [redacted] and [redacted] for use as holiday accommodation.

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] (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 submitted by the Appellant to the CA dated [redacted] for "*Siting of* [redacted] *and* [redacted] ", the property currently being run as a horse livery yard, with the proposed units to be sited within/on the edge of a woodland (copse) to provide holiday accommodation for clients.

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:-

   Residential Zone 2 – Chargeable Area [redacted] *m2 GIA*
   @ £[redacted] */m2 x indexation at* [redacted]
   = £[redacted] *CIL (*[redacted] *only) 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 dated [redacted] 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 the [redacted] and [redacted] are a form of caravan and 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.*"

10. The planning permission granted on [redacted] by the CA was "*Siting of* [redacted] *and* [redacted] *for use as holiday accommodation.*"

11. The CA argues that under the *CIL Regulations*, all buildings granted permanent planning permission are subject to an assessment for CIL liability.

12. 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 *The Social Landlords (Permissible Additional Purposes) (England) Order 2006* which states:

    3.—(1) For the purposes of article 2 "caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer).

13. The Appellant also points to the *CIL Regulations*, which refer to 'buildings' and 'dwellings' in the following ways:

CIL Regulation 2 states that a " '*dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling."*

CIL Regulation 42 states that:
(*1) Liability to CIL does not arise in respect of a chargeable development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.*
(2) But paragraph (1) does not apply where the chargeable development will comprise one or more dwellings.
(3) In paragraph (1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings."

From this the Appellant considers that for a 'dwelling' to be liable for CIL it must first be considered as a 'building', and it is their view that neither unit is a 'building'.

14. The CA state the view that the key issues to consider when looking at whether a 'building' exists are *size, permanence* and *physical attachment*. Applying these factors, the CA note:-

- The self-contained nature of the accommodation. Each unit has its own kitchen and bathroom;

- The permission granted is for the provision of permanent, year-round, holiday accommodation. This indicates that the [redacted] *and* [redacted] *have a greater degree of permanence as they will be in situ for a sufficient length of time to be of significance in a planning and CIL context;*

- Both the [redacted] *and* [redacted] *will be plumbed into a drainage system. The cost and physical works associated indicates that the units are unlikely to be moved, making them a more permanent fixture on the land, and*

- In the case of the [redacted] *, it is a reasonable size (external measurements approximately* [redacted] *m x* [redacted] *m, with a height of* [redacted] *m) and of a solid method of fabrication including, according to the manufacturer's website (*[redacted]*), a steel galvanised base with lifting points, double glazed windows and fully insulated in the floor and roof.*

15. The CA acknowledges that whilst the [redacted] is pre-fabricated and has wheels, so might be easier to move than the [redacted], it is still of a substantial size and weight. They therefore conclude it is unlikely to be moved.

16. The CA therefore hold the view that the combination of the above elements and features indicate that the [redacted] and [redacted] are of sufficient size, have a degree of permanence and physical attachment to the ground to be 'buildings' for the purposes of CIL and as holiday accommodation are therefore subject to the CA's CIL charging schedule.

17. In relation to the size of each unit, the Appellant notes that the *Caravan Sites Act 1968 (as amended)* states the following with regards to a caravan's size:

13-(2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely— (a)length

(exclusive of any drawbar): 65.616 feet (20 metres); (b)width: 22.309 feet (6.8 metres); (c)overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10.006 feet (3.05 metres).

18. The appellant notes therefore that the maximum gross area of a caravan should not exceed 136m2 GIA (based on dimensions of 20m x 6.8m), and points to the fact that their units are well within these maximum dimensions with gross areas at [redacted] m2 GIA ([redacted] m x [redacted] m) for the [redacted] and [redacted] m2 GIA ([redacted] m x [redacted] m) for the [redacted], and both units are also within the height parameters ([redacted] m for the [redacted] and [redacted] m for the [redacted]).

19. Regarding the matter of "permanence", the Appellant argues that both units will retain their 'capability' of being easily moved, as the [redacted] will retain its lifting eyes and the [redacted] will retain its wheels. The Appellant states they have direct access to the necessary equipment to move the [redacted] (a [redacted] telescopic-handler) and their tractor or 4x4 car would be capable of moving the [redacted].

20. The Appellant quotes Massingham v Secretary of State: "*It has been held by the courts that the connection to mains services is not material in determining whether a caravan is a building*". They propose therefore that just because there are services providing a physical attachment to the units does not give them any degree of permanence.

21. The Appellant refers to previous CIL Appeal decisions that address whether a mobile home or park home should be considered as a 'caravan' or as a 'building' for the purposes of CIL. They note that these appeals have concluded the mobile home, or its derivative, be classed as 'caravans'. They also note that a separate CIL Appeal decision referring to park homes concluded they were to be considered as 'caravans' rather than as 'buildings', and the decision refers to the fact that the *Caravans Sites and Control of Development Act 1960* only states the 'capability' of the units being moved rather than whether there is an intention to do so or not.

22. 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 to be considered a "building" there must be a substantial degree of affixation to the land upon which it stands.

23. Skerrits of Nottingham Limited v SSETR [2000] confirms 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).*

24. For the situation under consideration here, the Appellant and CA disagree on whether the [redacted] and [redacted] are to be considered as "buildings" for CIL purposes.

25. Both units in this case would appear to be only affixed to the ground by the connections necessary for services. The "degree of permanence" of these units 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 [redacted] and [redacted] can be disassembled and moved are considered to be the main factors that prevent them from being considered as "buildings".

26. I have considered all the arguments made by the CA and find they do not fully address this key issue of whether the units can be considered as "buildings", and it is my view that

in order for the chargeable development to be liable for CIL the [redacted] and [redacted] would need to be proven to be "buildings" in order to be chargeable under the *CIL Regulations*.

27. Having regard to the above factors and having considered all the evidence and other submissions by both parties, it is not considered that either the [redacted] or [redacted] in this case can be regarded as "buildings" for CIL purposes.

28. The units 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 humans habitations which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer)."*

29. These units 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 [redacted] or [redacted] – the definition of "caravan" under the *Caravan Sites and Control of Development Act 1960* makes no mention of intention, only capability.

30. It is my decision that as the [redacted] and [redacted] in question are not buildings they cannot be considered liable for CIL charges under *Regulation 40 of the CIL Regulations 2010 (as amended)*.

31. 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]