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: 1767425

Planning Permission Reference: [redacted]

Location:
[redacted]
Development: Construction of courtyard development of 9 holiday cottages together with access and parking.

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be [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. Planning Permission reference [redacted] issued by the CA on [redacted].
    b. CIL Liability Notice reference [redacted] issued by the CA dated [redacted] at £[redacted] CIL liability.
    c. The content of an email exchange dated [redacted] and [redacted] between the Appellant and the CA.
    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. Planning Permission [redacted] was granted by the CA for "Construction of courtyard development of 9 holiday cottages together with access and parking" on [redacted]

3. CIL Liability Notice reference [redacted] was issued by the CA on [redacted] with the CIL Charge calculated as follows:-

[redacted] – [redacted]
Chargeable Area [redacted] *m2*
X £[redacted] */m2 CIL Rate*
X [redacted] *indexation*
= £[redacted] *(*[redacted]*) CIL Liability*

4. In an email dated [redacted] the Appellant requested that the CA clarify the exact CA interpretation of Planning Permission [redacted] - *Condition 9* - regarding length of occupation. On [redacted] the CA responded that *"the holiday units can operate on a year-round basis but that no individual/ group of individuals/ family can occupy the units for more than six months in any calendar year. This is to ensure that the units are not used as permanent residential accommodation, as this would be against planning policy in this location."*

5. On [redacted] the Appellant requested a Regulation 113 review of the chargeable amount from the CA.

6. On [redacted] the CA issued its conclusions following the Regulation 113 review of the chargeable amount, confirming that the new development gross internal floor area is calculated as:

   Ground floor total [redacted] *m2*
   + First floor total [redacted] *m2*
   = [redacted] *m2 GIA*
   and the existing lawful use GIA is 0m2.

7. A Regulation 114 Appeal dated [redacted] was submitted to the Valuation Office Agency and received on [redacted].

8. The Appeal is made on the following main grounds:-

   i - The subject development is holiday accommodation, and not permanent Class C3 residential accommodation as the CA have defined it.

   ii - The subject development supports the Local Authority's desire to achieve improved holiday facilities and tourist accommodation.

   iii - The proposed CIL liability makes the entire scheme unviable.

   iv - It is the Appellant's view that the CA did not intend to include holiday lets as the type of development to incur a CIL charge when drafting the CIL Charging Schedule.

9. <u>Regarding ground i - of the appeal:</u> The Appellant refers to The Town and Country Planning (Use Classes) Order 1987 (as amended,) which defines Holiday Accommodation as temporary accommodation for the use of holiday makers and tourists, and not permanent residential accommodation. Thus, they argue that holiday accommodation is included within Class C1 which lists hotels, boarding houses and guest houses, all of which are for guests who stay for relatively short periods of time. The Appellant is of the view that the subject development is of a similar class of accommodation to that included in C1 rather than permanent residential accommodation under Class C3 of the Use Classes Order, as the CA have defined it.

10. The CA comment that under the Town and Country Planning (Use Classes) Order 1987 there is no separate Use Class for holiday lets; they fall within C3 use (Dwellings) with conditions on the grant of planning permission to restrict usage.

11. The CA note that the Appellant considers that the Use Class for the holiday cottages would be better placed within Class C1. However, the CA feel this is contrary to the law surrounding Use Classes which describe Use Class C1 as: Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels). The CA note that holiday cottages/lets fall within C3 Dwelling-houses, which covers use by a single person, or a family or group of up to 6 people living together as a single household and then restricted by condition to ensure that the use is not a permanent use.

12. The CA further confirm that the development approved is for nine C3 dwellings with restrictions to ensure that they are only used for holiday letting. The floor plans show the layouts of the cottages as those of a dwelling. They have all the characteristics necessary for them to constitute dwellings.

13. The CA state that the following *Condition 9* was imposed on the planning permission: *"The holiday units shall be occupied for holiday purposes only, for no more than six months in any calendar year by any individual occupant, group of individuals or family and shall not be occupied as a main place of residence. The owner shall maintain an up to date register of the detail of all occupiers, including their names and main home addresses, of the holiday unit(s) on the site and shall make it available for inspection at all reasonable times by the local planning authority."*

14. The CA note that the Appellants have included the charging schedule of a neighbouring CA ([redacted]) which shows that their charging schedule for CIL applies a zero rate for holiday accommodation and describes it as housing development that is subject to a holiday occupancy condition. The CA contend that this supports their position that holiday lets fall under the heading of C3 usage/dwellings, as [redacted] have sought to specifically exclude holiday lets from that heading. The CA comment that each CA has their own adopted CIL charging schedule, and their charging schedule includes C3 dwellings with no exclusion for those with a holiday occupancy schedule, and as such CIL is liable.

15. Regarding ground ii - of the appeal: The Appellant points to the support and emphasis on improved holiday facilities and tourist accommodation as set out in *Policies S12* and *EC11* of the adopted *Teignbridge Local Plan 2013 – 2033*. The Appellant cites *Policy S12 Tourism* that states the CA will promote "*a growing, sustainable tourism sector, and support proposals to lengthen the tourism season and encourage higher spending by visitors".* They contend that the holiday cottages proposal at [redacted] will help to extend the holiday season at the site through the provision of purpose-built holiday accommodation that is useable beyond the normal caravanning season of mid-March to mid- November, which is currently not available. *S12* specifically seeks the enhancement of existing tourist accommodation which this proposal provides. They also cite *Policy EC11 Tourist Accommodation*, which seeks to support sustainable expansion of the tourist industry including self- catering accommodation. Again, *EC11a* is geared to expand or improve existing accommodation locations. The Appellant feels that these policies are wholly supportive of the proposed holiday cottages.

16. The CA note the extract from [redacted]'s local plan policies. However, they comment that whilst this may seem to conflict with their decision regarding the subject development, [redacted] as a CA is obliged to enforce the charging schedule as adopted. They further comment that whilst the proposed development may be used commercially and may pay non-domestic rates, the proposed development is still residential for the purposes of CIL and is therefore CIL liable.

17. Under a Regulation 114 Appeal the Appointed Person is only required to determine whether the correct level of CIL Liability has been calculated and applied in accordance with the CIL Regulations. The issue of local planning matters and policies is not a matter for the Appointed Person to comment upon.

18. In ground iii - of the appeal, the Appellant contends that the level of CIL liability claimed by the CA at £[redacted] makes the entire scheme economically unviable and effectively makes the planning permission null and void. They further state that the proposed cost of the holiday cottage project, due to an "unrealistic and excessive" CIL charge, precludes this development from taking place and is directly frustrating the improvement of the site facilities in line with the tourism policy initiatives of the CA. They feel that the proposed CIL liability makes the entire scheme unviable particularly when other nearby authorities appear to define holiday accommodation as zero rated.

19. The CA comment that viability is considered when the charging schedule is drafted and examined and, once adopted, the viability of individual developments is not a matter that can be considered under the CIL legislation.

20. Under a Regulation 114 appeal the Appointed Person is only required to determine whether the correct level of CIL Liability has been calculated and applied in accordance with the CIL Regulations. The issue of any individual development's financial liability is not a matter for the Appointed Person to comment upon.

21. In ground iv - of the appeal, the Appellant's view is that, like other councils, [redacted] did not seek to include holiday lets as the type of development to incur a CIL charge. The Appellant contends that at the time of drafting, the CA did not envisage charging CIL upon holiday development primarily as it does not impact upon local infrastructure in the way that residential development clearly does. Furthermore, they argue that the inclusion of a condition to the planning permission explicitly preventing residential use indicates the CA understand the nature and intended use of the development.

22. The CA confirm that the adopted charging schedule does not specifically include or exclude holiday lets, as this was unnecessary as holiday lets already fall within Use Class C3 as evidenced elsewhere in their case.

23. The CA also note that the Appellant states that the inclusion of a condition preventing residential use indicates that the CA understands the nature and intended use of the development as holiday accommodation. Nevertheless, the CA state that the development is still within Use Class C3 and as such is CIL liable.

24. Under a Regulation 114 Appeal the Appointed Person is only required to determine whether the correct level of CIL Liability has been calculated and applied as per the CA's CIL Charging Schedule in force at that time in accordance with the CIL Regulations. The issue of that Charging Schedule's drafting and content is not a matter for the Appointed Person to comment upon, other than to ensure it has been applied correctly to the case under consideration.

25. The only remaining issue for the Appointed Person to therefore consider in this case is ground i - of the appeal: that is, whether the accommodation provided under this development is to be treated as temporary accommodation for the use of holiday makers and tourists like that included within Use Class C1, which within this CA's Charging Schedule would be CIL exempt, or alternatively whether the development should be treated as Use Class C3 (Dwellings), in which case a CIL levy would be appropriate.

26. The CA refer to two CIL Appeal decisions in support of their view:-
[redacted] *- change of use of first and part ground floor to holiday accommodation* and
– change of use of existing stable building to 2no, holiday-let units

27. The Appellant comments that they are aware of previous CIL cases which may be cited by the CA, but are of the view that there are no comparable cases to the subject appeal as Planning Permission *Condition 9* explicitly states that the purpose of the condition is to prevent residential use. Therefore, to use the development for residential purposes as a

'dwelling house' (as intended in the charging schedule) would not be possible and would be a breach of condition, and the charging schedule does not at any stage seek to include 'holiday lets or holiday accommodation' as the type of development liable to a CIL.

28. *Condition 9* as imposed in the planning permission dated [redacted] states:
"The holiday units shall be occupied for holiday purposes only, for no more than six months in any calendar year by any individual occupant, group of individuals or family and shall not be occupied as a main place of residence. The owner shall maintain an up to date register of the detail of all occupiers, including their names and main home addresses, of the holiday unit(s) on the site and shall make it available for inspection at all reasonable times by the local planning authority."

29. With regards to the two CIL appeal decisions cited by the CA; the first, involving "change of use of first and part ground floor to holiday accommodation", concluded that the development was liable to a CIL charge, citing Moore V Secretary of State for the Environment where the decision had been that there is no requirement (before a building can be a "dwelling-house") for it to be occupied as a permanent dwelling.

30. That particular CIL appeal decision also noted the points made by that Appellant about levy setting and viability, but the Appointed Person stated "this related to the responsibilities incumbent upon a Collecting Authority when setting the CIL levy at Local Plan stage" and that "it is not possible for me to consider the viability of individual developments by way of a CIL appeal….under the CIL Regulations".

31. The second CIL appeal decision referred to by the CA involving "change of use of existing stable building to 2no, holiday-let units" concluded that particular development was liable to a CIL charge, citing the definition of "dwelling house" under Use Class C3 and noting the decision in Gravesham BC v Secretary of State for the Environment.

32. The definition of holiday accommodation as included within Class C1 of The Town and Country Planning (Use Classes) Order 1987 (as amended) is that it is "temporary accommodation for the use of holiday makers and tourists and not permanent residential accommodation".

33. Dwelling houses come under Class C3 of the Use Classes Order and are defined as follows:-

Use as a dwelling house (whether or not as a sole or main residence) by:-
- *a) A single person or by people to be regarded as forming a single household;*
- *b) Not more than six residents living together as a single household where care is provided for residents; or*
- *c) Not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)*

34. Despite the absence of any physical evidence such as a history of use or occupation for the proposed scheme, I consider it highly likely that a significant proportion of the potential occupiers will comprise family groups / single households due to the size and layout of accommodation. This would align its use with that of a dwelling-house under the above definition of Use Class C3.

35. Gravesham BC v Secretary of State for the Environment determined that a distinctive characteristic of a dwelling-house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It also observed that the fact that a second home is not lived in all year does not prevent it from being a dwelling-house. If it was a dwelling-house for eight months, it did not cease to be a dwelling-house in the other four.

36. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I consider that the proposed development, each unit of which having the physical characteristics of a dwelling, noting the future occupation and notwithstanding the planning conditions attached, is a development within Use Class C3 and consequently is a development liable to CIL according to the approved Charging Schedule for the area.

37. I therefore confirm a CIL Charge of £[redacted] ([redacted] only).

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
24 June 2021