Appeal Decision

by [redacted] BA (Hons) PG Dip Surv MRICS

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [redacted] @voa.gsi.gov.uk

Appeal Ref: 1774805

Planning Permission Ref. [redacted] granted by [redacted]

Location: [redacted]

Development: Change of use from ancillary outbuilding to provide an independent dwelling.

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil).

Reasons

1. I have considered all of the submissions made by [redacted] the representative for the appellant, [redacted] (the appellant) and [redacted], the Collecting Authority (CA), in respect of this matter.

2. The chargeable development was granted planning permission on the [redacted] under application reference [redacted]. The permission allowed for a "Change of use from ancillary outbuilding to provide an independent dwelling."

3. Liability Notice [redacted] was issued by the CA in the sum of £[redacted] based upon a chargeable area of [redacted] square metres (sq.m) being the Gross Internal Area (GIA) of the proposed development, charged at a rate of £[redacted] per sq.m (indexed), on the [redacted].

4. The appellant requested that a review under CIL Regulation 113, be undertaken by the CA on the [redacted]. The appellant advised the CA that they considered that the area of the existing ancillary building should be offset from the area of the chargeable development as it had been in continuous use from [redacted] to [redacted].

5. The CA issued their Regulation 113 Review decision on the [redacted]. They confirmed their opinion of the CIL liability to be £[redacted]. The CA advised that whilst they acknowledge the existing building to be a relevant building in accordance with the CIL regulations, they do not consider the building to have satisfied the second criteria contained within the CIL Regulations 2010 (as amended) pertaining to an "in-use building" which states it is a building -, "(ii) which contains a part that has been "in lawful use" for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development."

6. The CA refer to retrospective planning permission that was granted on the [redacted] under reference [redacted] for the, "Part demolition and reconstruction of an attached outbuilding (amended description)." This permission relates to the property in question. The CA therefore consider the property first became a lawful outbuilding on the [redacted] and therefore could not have 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."

7. Following the outcome of this review, the appellant made a Regulation 114 appeal to the Valuation Office (VO) on the [redacted]. Their appeal and supporting documents show three reasons that they believe support their view that the subject property was in lawful use for the qualifying period.

8.The first reason seeks to show that the subject property has always been in lawful use as an ancillary building to the main residential dwelling. The second states retrospective planning permission for the demolition and reconstruction repair works was not warranted and the third relies upon evidence showing that the building works for the aforementioned works were substantially completed in [redacted] and were never challenged by the CA thus, by effluxion of a four year period, became lawful in [redacted].

9. Regulation 40(7) of the CIL Regulations 2010 (as amended) provides that the net chargeable area of the proposed development should be calculated based upon a formula which is essentially the GIA of the proposed development **less** retained parts of lawfully in-use buildings. An 'in-use building' is defined by regulation 40(11) to mean a building which is a relevant building (a building which is situated on the relevant land on the day planning permission first permits development) and 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.

10. It is evident both parties are in agreement that the GIA of the existing building is [redacted] sq.m and both agree that it was a relevant building existing at the date planning permission was granted. Therefore, the issue for me to determine, is whether the subject property was in lawful use for at least a six month continuous period within the previous three years ending on the day planning permission first permitted the chargeable development, which in this case is the [redacted].

11. The appellant's first argument seeks to demonstrate that the property has been in lawful use as a building ancillary to the main residential house throughout their period of ownership which began in [redacted]. Evidence and information provided demonstrate that the subject property has only been used for purposes ancillary to the main residential dwelling throughout. The CA have raised some questions regarding when or if the works relating to the chargeable development have been completed allowing its use as an independent dwelling, but there is nothing to suggest that they disagree that the property has been used for anything other than its lawful use as an ancillary dwelling and I have found nothing to suggest this to be the case.

12. The appellant's second argument asserts that retrospective permission [redacted] was never required for the demolition and reconstruction of part of the outbuilding following storm damage in [redacted].

13. To consider this argument fully, it is useful to first outline the background history of the site. The appellant advises that the subject property was storm damaged in [redacted]. As a consequence, some [redacted] sq.m required demolition and reconstruction and some other repairs also needed to be carried out to the property. The works included timber cladding, French doors and a new roof. No additional floor space was constructed.

14. I understand some internal reconfiguration was made between [redacted] and [redacted] including the installation of a shower and a wc. The CA states a kitchen had also been created but the appellant's submission suggests only a combination microwave oven was installed.

15. It is unclear from the submissions what exactly happened between the planning authority and the appellant, but I understand after some dialogue between the two parties, the appellant felt compelled to make a retrospective planning application in respect of the aforementioned works. Permission was granted on the [redacted] under reference [redacted] for "Part demolition and reconstruction of an attached outbuilding (amended description) at [redacted].

16. The appellant has now secured professional representation and the appellant's representatives have provided documents to support their contention that the works described under [redacted] did not require planning permission. "it is submitted that the probability is that on a fair analysis, applying the exception in s.55(2)(a)(ii) of the 1990 Act and the *Burroughs Day* test, the proper conclusion is that planning permission was not required for these historic repairs at all."

17. S.55(1) and (2) of the Town and Country Planning Act 1990 states the meaning of development to be "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[(1A) For the purposes of this Act *"building operations"* includes –

(a) demolition of buildings
(b) rebuilding;
(c) structural alterations of or additions to buildings; and
(d) other operations normally undertaken by a person carrying on business as a builder.]

(2) The following operations or uses of land shall not be taken for purposes of this Act to involve development of land –

(a) the carrying out of maintenance, improvement or other alteration of any building of works which –

(i) affect only the interior of the building, or
(ii) do not materially affect the external appearance of the building……"

18. The appellant's representative argues the works were "relatively minor in comparison to the entire outbuilding, and therefore may not even have constituted development." They make reference to the *Burroughs Day* test and the exception in s.55(2)(a)(ii) as above, concluding that permission was not required for these historic repairs at all.

19. The CA counter this point providing photographs from [redacted] and [redacted] to show significant differences between the building as was and as is. These include materials, roof form and pitch, fenestration and the presence of a Velux. The CA are of the opinion given this, the works would go beyond the scope of renovation and would constitute development.

20. I would point out the works did involve an element of demolition and rebuilding. As stated in s.55(1)(1A) building operations include demolition and rebuilding. Given this, I cannot with any degree of certainty agree that the retrospective planning permission was not required for the works regularised under [redacted].

21. As I have stated above, I believe the appellant has successfully demonstrated that the property has not been used other than for use ancillary to the main dwelling. However, for the property to be in lawful use, based upon the information available to me, I believe planning permission would have needed to have been in place for the demolition and reconstruction of the outbuilding following the storm damage. As the repair works were undertaken without permission, the building could not be in lawful use as it did not have the necessary planning consent.

22. The next point the appellant has used to support their opinion that the property was in lawful use for a continuous six month period, relates to the works having been completed for a period in excess of four years prior to the date of the chargeable development having been granted permission. The appellants draw attention to Section 171B of The Town and Country Planning Act 1990 that states, "where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed."

23. The CA have advised they do not have sufficient information or information of sufficient quality in respect of determining when the works were substantially completed. The CA have defined Autumn as late [redacted] meaning the works would not have become lawful until late [redacted] and this would mean it was not possible to fulfil the six months of continuous lawful use criteria.

24. The appellants have provided as part of their Regulation 114 appeal to the VO, supplemental evidence that was not provided to the CA for their consideration during the Regulation 113 review. This evidence includes photographs dated [redacted] and [redacted] showing the works on the subject property to be substantially complete. The photograph of the [redacted] shows the weatherboarding and roofing works complete and the [redacted] photograph shows no evidence of ongoing works at all suggesting completion no later than this date.

25. Based upon the evidence before me, I would suggest that it is reasonable as the appellant has suggested, that the very latest date for the completion of building works as described in planning application [redacted] was the [redacted].
This means the property would have become immune from enforcement action on the [redacted] at the latest. Consequently, the property would have been in lawful use from this date for a continuous six month period up until the [redacted] when planning permission was granted for the chargeable development under [redacted].

26. I am unclear whether the CA's comments regarding the timing of an installation of a kitchen and bathroom are shedding doubt upon the date of completion being [redacted] for the repair works carried out under [redacted], or whether they are stating their inclusion meant the works permitted under [redacted] **(**the chargeable development) were substantially complete before planning was granted, but in my view this point is largely irrelevant. As the appellant's representative has pointed out, the appellant did not need planning permission for these improvements as supported by case law including *Uttlesford District Council v Secretary of State for the Environment and another (1991)*. We cannot suggest the appellant has acted improperly in respect of a future planning permission by carrying out lawful improvements before submitting said application.

27. Given the above I believe the appellant has successfully demonstrated that the property was in lawful use for a continuous six-month period up until the [redacted] when planning permission was first granted for [redacted] the chargeable development. As no additional floor space was created, the netting off of the existing relevant building produces a nil liability for the chargeable development described in [redacted].

28. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil)

29. The appellant has asked me to consider an award for costs as part of their appeal. I note that the CA have pointed out the additional information that the appellant provided as part of their Regulation 114 appeal was not available to them for their earlier review. I have found this information to be most useful and some of it to be key in reaching my decision. I agree it would have been difficult for the CA to make a judgement wholly based on what was originally submitted for the Regulation 113 Review. Therefore, I have concluded that although I do not agree with the CA's decision, I do not consider that they have acted unreasonably in arguing their position in this case. Each party should in my view bear their own costs in this matter and I do not therefore make any order as to costs.

[redacted] BA (Hons) PG Dip Surv MRICS
RICS Registered Valuer
District Valuer
16 September 2021