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.gov.uk

Appeal Ref: 1781432

Planning Permission Ref. [redacted]

Location: [redacted]

Development: Construction of two stand alone self-catering [redacted] ***buildings alongside ancillary access, parking, landscaping and other associated works***

Decision

I determine that there should be no Community Infrastructure Levy payable in respect of the above development.

Reasons

1. I have considered all the submissions made by Phase 2 Planning and Development Ltd on behalf of [redacted] (the appellant) and the Collecting Authority (CA), [redacted], in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents: -

a. The application for planning permission dated [redacted] together with associated plans and drawings.
b. The Decision Notice issued by [redacted] on [redacted] alongside the Planning Officer's Delegated Report.
c. CIL Liability Notice [redacted] issued by the CA on [redacted].
d. The appellant's submission for a Regulation 113 Review dated [redacted].
e. The CA's Regulation 113 Review Report dated [redacted].
f. The corrective CIL Liability Notice, [redacted], issued by the CA on the [redacted] following the Regulation 113 Review. It is noted this Liability Notice supersedes [redacted].
g. The appellant's Regulation 114 Appeal and supporting documents submitted to the VOA on the [redacted].
h. The CA's representations to the Regulation 114 Appeal dated [redacted].
i. The comments on the CA's response dated [redacted] submitted on behalf of the appellant.

I have also had reference to [redacted]'s CIL Charging Schedule which took effect on [redacted].

2. The CA consider that the proposed development, being two standalone self-catering [redacted] Buildings, constitute residential development under the adopted Charging Schedule and is liable to a CIL charge in the sum of £[redacted]. This is based on one [redacted] square metre (sq. m) unit falling within the mid zone for residential development and attracting a charge of £[redacted] per sq.m plus indexation and the other [redacted] sq.m unit, being located within the high zone for residential development, attracting a charge of £[redacted] per sq.m plus indexation. The calculation of the area of the proposed development does not appear to have been challenged by the appellant and it is my assumption these areas and rates are accepted as correct.

3. The appellant contends that the development is not liable to CIL because it does not constitute residential development. As the proposed development is within the grounds of the existing hotel and spa business, it is seen as an extension to the existing commercial tourism offer despite its description as "stand alone."

4. The appellant has given background to the proposed development and how they envisage it being used. They stress this is tourist/corporate accommodation and is to be used very differently to a family dwelling house of the same size. They emphasise that whilst the accommodation could be used by a single entity or household, it has been designed so that it can also be occupied by two or three households.

5. The appellant has asserted that they do not consider that the proposed use of the dwelling falls within any of the three sub-categories of C3 dwelling houses as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended).

6. In addition, the appellant has also provided a redacted copy of a CIL Appeal Decision in which the VOA determined there was no CIL payable for holiday accommodation as based on the facts of that particular case, the use of the building was held to fall outside of Use Class C3. However, I do not consider the decision relevant to this case as it pertains to another Charging Authority with a different Charging Schedule and with a different definition of 'residential' development contained therein.

7. The appellants have referred to the case of *Sheila Moore v Secretary of State for Communities and Local Government and Suffolk District Council (2012).* In this case LJ Sullivan concluded that the holiday lets use in that case would fall outside of C3 use. Whilst this case is interesting, it is imperative each case is assessed on its own merits and the findings in that case cannot automatically be applied to the subject.

8. In support of their contention that the proposed development falls as 'residential development' and is therefore chargeable, the CA contend that point 3 in planning permission Decision Notice [redacted], describes C3 use and emphasises that at no point does the decision notice refer to C1 or sui generis use.

> "3. *The premises herein referred to shall be used as tourism accommodation associated with Kesgrave Hall and for no other purposes (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes Order 2020). The duration of the occupation shall not exceed a period of 56 days in total in any one calendar year, unless the Local Planning Authority agrees in writing to any variation. The owners/operators of the holiday units hereby permitted shall maintain an up-to-date Register of all lettings, which shall include the names and addresses of all those persons occupying the units during each individual letting. The said Register will be made available at all reasonable times to the Local Planning Authority. Reason: To ensure that the development is occupied only as bona-fide holiday accommodation, having regard to the tourism objectives of the Local Plan and the*

fact that the site is outside any area where planning permission would normally be forthcoming for permanent residential development."

9. The CA argue that the intention in planning terms, is to permit the development to be let out to small family groups or single families for holidays/tourism purposes.

10. The CA believe as the development is "stand-alone" and used for self-catering this demonstrates the independence of the development from the existing hotel. The CA draw attention to the home from home facilities such as kitchen and bathrooms that the properties will have as well as their own parking. They also draw attention to the physical separation from the main hotel and acknowledge whilst guests may choose to use the hotel facilities they do not need to.

11. The CA have also made reference to a CIL appeal determined by the VOA that found holiday lets were to be treated as dwelling houses. They also reference *Gravesham BC v Secretary of State for Environment (1980)* the decision of which suggested that a weekend/holiday chalet, with physical characteristics of a dwelling and providing the facilities required for day-to-day domestic existence remained to be considered a 'dwellinghouse' even though it was occupied only for a part, or parts, of the year at frequent or infrequent intervals by a series of different persons. Again, these cases are interesting, but the decisions can not automatically be applied to this case. This case must be considered on its own merits.

12. In deciding this appeal, I have considered the precise wording of the Decision Notice dated the [redacted]. It is in part the interpretation of condition 3 within this Decision Notice, that is giving rise to the differing conclusions of each party. The appellant considers the wording of condition 3 prevents traditional residential use whilst the CA states the wording implies C3 use has been granted with a restriction on occupancy.

13. My reading of condition 3 is that the planning officer has permitted the development to be used for tourism accommodation associated with [redacted]. Whilst the [redacted] themselves are stand-alone it is clear their use is recognised to be associated with the wider commercial tourism site at [redacted]. "The premises herein referred to shall be used for tourism accommodation associated with [redacted] and for no other purposes."

14. The Delegated report also supports this view making the following statements that I have found particularly useful;

> "This application proposes the erection of two '[redacted],' to be used as tourist accommodation associated with the main hotel facilities."
>
> "The proposal will provide two additional units of tourism accommodation within an existing employment site which provides tourism facilities."
>
> "The proposal is considered compatible with the surrounding uses. Similarly, within the Local Plan, the expansion and intensification of employment sites is broadly supported provided that there would not be a severe impact on the highway network, the environmental sustainability of the area, amenity to local businesses or residents or the use would not be compatible with the surrounding uses ([redacted]). Local plan policy [redacted] also seeks to provide additional tourism benefits where opportunities exist."
>
> "whilst a number of the above criterion are similar to those in [redacted], [redacted] also states that tourist accommodation compromising permanent buildings will only be permitted:
>
> - Within the settlement boundaries

- Through the conversion of buildings of permanent structure where they lie outside the Settlement Boundary.
- On medium and large scale sites, where commercial, recreational or entertainment facilities are provided on site; or
- Where such development forms part of a comprehensive masterplan which supports wider landscape and ecological gain.

The site is not within the settlement boundary, as noted above, however the tourism accommodation would be located on an existing commercial tourism site."

15. I am of the opinion that the above demonstrates that the planning officer granted the proposed development permission as it is an expansion of an existing employment site that provides commercial tourism rather than a standalone residential development. Due to the conditions specified in [redacted], it looks unlikely that permission for residential holiday lets would have been granted in this area had the development not been part of the existing commercial operation.

16. The Charging Schedule states;

"For the purposes of the CIL Charging Schedule, the Council will consider developments which fall under the C3 (Dwelling houses) and C4 (Houses in multiple occupation) use class as defined in the Use Classes Order as being subject to the relevant residential rates as detailed. This excludes sheltered / retirement accommodation schemes which are defined as grouped units, usually flats, specially designed for older people encompassing communal non-saleable facilities."

17. This is by no means a straightforward case and I have considered in detail the points made by both parties. It is undisputable that the proposed development would be considered as dwelling houses, having all the facilities required for day-to-day domestic existence in isolation as in the Gravesham case. However, the charging schedule does not state dwelling houses are chargeable it states residential development is chargeable and the intention of the planning officer was to allow an expansion of a commercial tourism site, not to permit residential development.

18. I acknowledge the points raised by both parties pertaining to the envisaged use of the accommodation by future guests. Whilst I appreciate these views are being expressed to assist in deciding whether C3 or C4 use is applicable, the planning officer makes no specific mention of C3 or C4 use within the permission. It is also evident the reasons for granting the proposed development permission, clearly centre around it being set on an existing employment/commercial tourism site to which its use is described as associated with.

19. Having reflected upon the submitted evidence, I conclude that the proposed development is an extension of an existing commercial tourism operation within an area described as an employment site. For that reason, I do not consider that the proposed development can be said to constitute residential development and as such would fall to be classed as "all other uses" within the Charging Schedule, thus attracting a nil liability.

[redacted] BA Hons, PG Dip Surv, MRICS
RICS Registered Valuer
District Valuer
30 November 2021