Appeal Decision

by [redacted] MRICS VR

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

Valuation Office Agency (DVS)
Wycliffe House
Green Lane
Durham
DH1 3UW

E-mail: [redacted] @voa.gov.uk

Appeal Ref: 1776057

Address: [redacted]

Proposed Development: Demolition of office/workshop and erection of one dwelling and garage linked to on site car sales business – retrospective.

Planning Permission details: Granted by an appointee of the Secretary of State on [redacted], under planning appeal reference [redacted], in connection with the earlier planning application ref: [redacted] to [redacted], dated [redacted].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

Reasons

Background

1. I have considered all the submissions made by the appellant, [redacted] of [redacted] (acting on behalf of [redacted]) and the submissions made by the Collecting Authority (CA), [redacted].

   In particular, I have considered the information and opinions presented in the following documents:-

   a. Planning Inspectorate appeal reference [redacted] dated [redacted], in connection with the earlier planning application ref: [redacted], dated [redacted].

   b. Approved planning consent drawings, as referenced in the Planning appeal reference [redacted].

   c. The CIL Liability Notice (ref: [redacted]) dated [redacted].

d. CIL Appeal form dated [redacted], including 'Grounds of Appeal' statement by [redacted].

e. Representations from the CA dated [redacted].

f. Appellant's comments on the CA's representations, dated [redacted].

2. Planning permission was granted for the development on [redacted], allowed on appeal, under a planning appeal reference [redacted].

3. On [redacted], the CA issued a Liability Notice (Reference: [redacted]) following the grant decision under planning appeal reference [redacted], for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m² and a Charging Schedule rate of £[redacted] per m² plus indexation.

4. The appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [redacted], stating that it was of the view that its original decision was correct and should be upheld.

Grounds of Appeal

5. On [redacted], the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the appellant, contending that the CA's calculation is incorrect. The appellant is of the opinion that no CIL should be payable, contending that that the approved permission does not constitute a new development and the development constitutes a rebuild; accordingly all the accommodation can be offset.

6. At the heart of the matter, there remains a disagreement between the Appellant and the CA, as to what is considered a 'new build' and what is conversion. The conversion (or new build as considered by the CA) took place on the same footprint / slab. It is the appellant's view that on this basis, the dwelling should not be CIL liable. From the appellant's perspective, the CIL calculation should reflect 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the appellant considers is an eligible deduction, which can be offset against the chargeable area).

7. The CA disagrees and considers (on the basis of the Planning Inspector's planning appeal decision) that on the day planning permission was granted, the original building had been substantially re-built and, for the purposes of CIL, and that no eligible deduction can be made for retained or demolished floorspace under Regulation 40.

8. As part of their representations, the CA cites a previous CIL Appeal Decision, which references a CIL appeal in respect of a retrospective permission grant of a demolition of a dwelling and erection of a replacement dwelling. Of note, this previous CIL Decision is a publicly available redacted version, which does not show the full facts of that particular case (VOA Appeal Decision Reference 1572623).

Decision

9. 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."

10. Furthermore, Schedule 1 of the 2019 Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;

    a. retained parts of 'in-use buildings', and

    b. for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

11. Under Schedule 1 Part 1 1(10) of the 2019 Regulations, to qualify as an 'in-use building' the building must contain 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.

12. Under Schedule 1 Part 1 1(8) of the 2019 Regulations, where the CA does not consider that it has sufficient information, or information of sufficient quality, to enable it to establish that any of the existing buildings qualify as an 'in-use buildings' it may deem the gross internal area of those buildings to be zero. Whether a building is in use, is a matter of fact and degree, based upon the evidence.

13. The case has a somewhat complicated planning history, which, for the purposes of this CIL appeal, commenced with [redacted] - Change of use from car sales to a dwelling house and car sales, with ancillary car repairs and valeting and development of a garage. Permission was granted for [redacted]. Subsequently, an enforcement case and a later planning application/refusal and associated appeal decision later transpired, due to [redacted] not being built in accordance with approved plans.

14. In respect of the CA's cited comparable CIL Appeal Decision, I have attached little weight to this evidence. Each CIL Appeal is individual and is assessed on its own merits. Having read the unredacted version of the cited Appeal Decision (Reference 1572623) I am satisfied that the circumstances are somewhat different and a comparison is inappropriate.

15. The Appellant concedes (and goes to great length to explain that due to no fault of his own) that his original plans had to be amended from original. Whilst I am not unsympathetic to the circumstances, which are explained in the Appellant's letter of [redacted] the circumstances fall outside the provisions of the CIL Regulations, which govern this appeal.

    Neither party offers any direct evidence as to 'in-use buildings'; however, this is a moot point as the CA is of opinion that the previous building no longer existed as it had been substantially demolished. The CA points to paragraph 7 of the Planning Inspector's Appeal Decision, which states:

    According to the appellant, the dwelling retains the slab and foundations of the former building and some walls which now form the corner of the kitchen and a back bedroom. He concedes that some walls shown of retention on a former planning approval for the conversion of the building were replaced on account of their structural stability. On the evidence before me, the degree of necessary re-build would render what remained of the building incapable of serving as a dwelling.

Accordingly, I conclude that the development that has taken place is substantially new-build rather than merely a change of use or conversion.

16. I agree with the CA and find the Planning Inspector's comment that *the development that has taken place is substantially new-build rather than merely a change of use or conversion* wholly persuasive in determining that the building should not be considered as 'existing' on the day of permission. Even if some element of the building is 'existing' on the day of permission, this element cannot be considered as a lawful in in-use deduction, as it had no lawful use in planning terms prior to the retrospective planning permission (as evidenced by the previous enforcement notice). Accordingly, I have concluded that the building cannot be offset.

17. It appears that there is no dispute between the parties in respect of the applied Chargeable Rate per m² or to the indexation.

18. Having regard to the information submitted by the parties and given the facts of the case, I agree with the CA, that on the day planning permission was granted (by way of appeal reference [redacted]) the previous building no longer existed as it had been substantially demolished. On that basis, the previous building is not considered to be a relevant building for the purposes of Schedule 1 and is not included as a deductible within the CIL calculation

19. In conclusion, having considered the facts of the case and all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated [redacted] and hereby dismiss this appeal.

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
21st December 2021