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: 1786516

Address [redacted]

Proposed Development: Extensions, alterations and partial demolition of the existing building to retain the ground floor in Class E, with conversion of the first floor flat to a one bed apartment and the addition of a second floor to create a one bed flat.

Planning Permission details: Granted by [redacted] on [redacted], under reference [redacted].

Decision

I confirm 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], 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) CIL Appeal form dated [redacted].

   b) Grant of Conditional Planning Permission [redacted] dated [redacted].

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

   d) Appellant request to the CA for a CIL Review under Regulation 113.

   e) Appeal Statement of Case document by Appellant under Regulation 114 (undated document).

   f) Approved Proposed Site Layout plan for [redacted].

g) E-mail of CA's representations and accompanying CIL questionnaire document, received on [redacted].

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

Grounds of Appeal

1. Planning permission was granted for the development on [redacted], under reference [redacted].

2. On [redacted], the CA issued a Liability Notice (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, with indexation at [redacted].

   On [redacted], the Valuation Office Agency received a CIL Appeal from the Appellant, under the grounds that the CA did not respond to the Appellant's request for a Regulation 113 review within 14 days. In addition, the Appellant cites that the CA has calculated the CIL charge incorrectly and contends that the correct CIL payable should be £[redacted] based upon the following calculation:-

   [redacted] m² @ £[redacted] per m² (with indexation at [redacted]) = £1[redacted]

   The Appellant's appeal can be summarised to two core points:

   - The Appellant's primary contention is that 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).

   - The Appellant's secondary contention is a dispute in respect of the floorspace of the chargeable area.

2. The CA disagrees, contending that (from a submitted CIL questionnaire) that the building was last in lawful use on [redacted]. Accordingly, the CA contends that the building was not in lawful use for 6 months out of the 3 years preceding grant of the permission (permission was granted on [redacted]). Therefore, no eligible deduction can be made for retained floorspace under Schedule 1. The CA contends that the chargeable amount should be calculated on the basis of the GIA for the new development, with no deductions for retained or existing parts.

3. It appears that there is no dispute between the parties in respect of the applied Chargeable Rate of £[redacted] per m² or to the indexation.

Decision

4. The Appellant's primary contention is the continuous use of the accommodation (the existing building floorspace) which the Appellant considers is an eligible deduction, which can be offset in the CIL calculation.

5. 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."

6. 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.

7. 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.

8. 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.

9. The Appellant cites *In effect the building has not been in use since the* [redacted]. However, on the Form 1: CIL Additional Information questionnaire, which the Appellant signed and dated on [redacted] and which was submitted to the CA, in answer to the question *When was the building last occupied for its lawful use?* the response by the Appellant is clearly stated as [redacted]. The Appellant has further responded to this factual evidence, by citing that the CIL part of the questionnaire form was answered in error and the answers on the form in respect of the CIL element are withdrawn. Furthermore, the Appellant has submitted a fresh Form 1: CIL Additional Information questionnaire with (as the Appellant sees it) corrected dates. For clarification, I would point out that the new Form 1: CIL Additional Information questionnaire has been submitted to the VOA as part of the Appellant's Appeal documentation.

   I would point out that the content within the original submitted Form 1: CIL Additional Information questionnaire must stand, as it formed part of the original planning application to the local planning authority and formed part of the information which ultimately informed the CA in its decision in granting consent. Neither the VOA nor indeed the CA, can accept under any circumstances, the submission of a revised CIL Additional Information questionnaire 'after the event' without corroborating evidence to the contrary. The information on the original form must stand, and the fact remains that the information on the form clearly states that the building was last occupied for its lawful use on [redacted].

10. The CA cites that the fact that [redacted] remained the leaseholders in possession until [redacted], does not mean that they were continuing to use it during that period. The appellant disagrees. Whilst I accept that [redacted] remained the leaseholders in possession until [redacted], I have not been offered any factual evidence that [redacted] were actually using the property. Accordingly, in arriving at my decision in respect of an 'in-use building', I have not attached any evidential weight to any physical occupation of the property by [redacted].

11. In conclusion, no evidence has been provided to me to confirm that the building was in lawful use for 6 months out of the 3 years preceding the grant of permission. Accordingly, I have concluded that there is no 'in-use' floorspace of the retained building, which can be offset against the chargeable area.

12. I will now move onto the Appellant's secondary contention – the dispute in respect of the chargeable area. 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."

13. The CIL Regulations do not define Gross Internal Area (GIA), so it is necessary to adopt a definition. The definition of GIA provided in the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6th Edition) is the generally accepted method of calculation.

    GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.

    Including:-

    - Areas occupied by internal walls and partitions
    - Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
    - Atria and entrance halls, with clear height above, measured at base level only
    - Internal open-sided balconies walkways and the like
    - Structural, raked or stepped floors are to be treated as level floor measured horizontally
    - Horizontal floors, with permanent access, below structural, raked or stepped floors
    - Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
    - Mezzanine floors areas with permanent access
    - Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
    - Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
    - Projection rooms
    - Voids over stairwells and lift shafts on upper floors
    - Loading bays
    - Areas with a headroom of less than 1.5m
    - Pavement vaults
    - Garages
    - Conservatories

    Excluding:-

    - Perimeter wall thicknesses and external projections
    - External open-sided balconies, covered ways and fire escapes
    - Canopies
    - Voids over or under structural, raked or stepped floors
    - Greenhouses, garden stores, fuel stores, and the like in residential property.

14. The Appellant opines that the CA's calculation of the chargeable area of [redacted] m² is incorrect. The CA's calculation of the chargeable area is based upon the entire accommodation of the first floor (measured at [redacted] m²) and the entire accommodation of the second floor (measured at [redacted] m²).

    Based upon his assessment that the total GIA of the development is [redacted] m², the Appellant contends that the chargeable development is [redacted] m², based upon the following calculations - [redacted] m² less demolition for the staircase (of [redacted] m² at ground floor level) and less [redacted] m² for the first floor (which the appellant considers is an eligible deduction, which can be offset against the chargeable area). Having

examined the submitted calculations by the Appellant, I have concluded that the Appellant's 's calculations in respect of the chargeable area are flawed and are in error.

Having assessed the CA's measurement calculations and plans in line with the accepted definition of GIA (i.e. the RICS Code of Measuring Practice (6th Edition)), I agree with the CA that the GIA of the chargeable area is [redacted] m².

15. Having considered all the evidence submitted to me, I agree with the CA that the chargeable amount should be calculated on the basis of the GIA for the new development, with no deductions for retained or existing parts. In addition, I also agree with the CA that the GIA of the chargeable area is [redacted] m².

16. The Appellant also cites that the CA's CIL charge as stated in the Liability Notice would tilt the development into becoming unviable. Under Regulation 114, I am responsible for determining whether the chargeable amount has been properly calculated under the wider Regulations; I would point out that the viability of the development has no bearing on the calculation of the CIL charge under the provisions of the Regulations.

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

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
7th March 2022