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: 1782062

Address: [redacted]

Proposed Development: Preapproved artists studio to be changed into a 3 bed eco lodge at [redacted]

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

Decision

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

Reasons

Background

1. I have considered all the submissions made by the Appellant, [redacted] and the submissions made by the Collecting Authority (CA), [redacted]

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

3. 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 (which includes indexation) of £[redacted] m².

4. On the [redacted], 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. In summary, the Appellant is of the opinion that no CIL should be payable, contending that that the approved permission to change a pre-approved artist's studio into a 3 bed eco lodge meets the definition of a caravan as defined under the Caravan Sites and Control of Development Act 1960 (as supplemented by the Caravans Act 1968) and is thus not liable for CIL. The CA disagrees and cites that the eco lodge is a building for the purposes of CIL, which thus makes the proposed development liable for a CIL charge.

6. The Appellant cites that the eco lodge meets the definition of a caravan as defined under the Caravan Sites and Control of Development Act 1960 (as supplemented by the Caravans Act 1968) as *"any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer)*". Furthermore, the appellant cites the case of *Save Woolley Valley Action Group Ltd v Bath & North East Somerset Council* [2012] which cites the factors, when considering the definition of a "building" of size, permanence and physical attachment. The Appellant also alludes to *Measor v Secretary of State for the Environment Transport and the Regions* [1998] which held for a static caravan to become a building, there must be a substantial degree of affixation to the land on which it stands. The Appellant contends that these decisions show that caravans (and by implication park homes and the subject lodge) are not considered buildings and are not liable for CIL.

7. The Appellant further contends that the eco lodge is capable of being transported in two halves, measures under 20m x 6.8m, and can be divided into two and moved relatively quickly, in a matter of hours. In addition, the Appellant cites the use of the EasyPad system, where the eco lodge will not be physically attached to the ground in any way and can simply be unplugged from the services as and when it needs to be moved.

8. In addition, the Appellant cites the [redacted] CIL webpage - "Is my development chargeable?" which states that mobile homes are exempt "*unless the proposal is considered to be a building*".

9. Finally, as part of his representations, the Appellant cites two previous CIL Appeal Decisions, which refer to separate CIL appeals in respect of: a) the siting of 10 caravans and b) the siting of 6 replacement caravans. Of note, the two previous CIL Decisions are publicly available redacted versions, which do not show the full facts of the particular cases.

10. In essence, the Appellant argues that in applying the above case law and factors, the approved permission (an eco lodge) cannot be a "building", because it does not have a degree of permanence and contends that it is not physically attached to the ground.

11. The CA contends that the proposed development is a "building", citing that it can find no evidence that the eco lodge is a caravan/mobile home; rather it is a building, which is going to be assembled on site and is not capable of being moved without structural work being undertaken. The CA contends that the approved plans do not show any element of mobility and the [redacted] Brochure demonstrates that the ground fixings to be used are capable of supporting a building.

12. The CA is applying for an award of costs in this appeal, as it contends it has incurred unnecessary officer time and resource in preparing evidence and a response in relation to this appeal.

13. The CA has also disputed the validity of this appeal, as this development directly relates to a pre-approved application, which has commenced, it asserts, on the 'relevant land'.

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

Decision

15. There would appear to be a dispute between the parties in respect of the validity of this appeal. The CA contends that development has commenced and hence the appeal is not valid. I am satisfied that development has commenced on [redacted], but not in relation to the planning permission that was granted, [redacted] - for the change from an artist's studio to an ecolodge; accordingly, I have concluded that this appeal is valid.

16. There is no definition given to the word "building" within the CIL Regulations, save for Schedule 1 Part 1 1(10), which states that "building" does not include:

    (i) a building into which people do not normally go,
    (ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
    (iii) a building for which planning permission was granted for a limited period;

    In the absence of any clear guidance from Schedule 1 Part 1 1(10), I have therefore, had recourse to:

    (i) the dictionary; for a clear definition as to what constitutes a "building", and
    (ii) guidance from case law.

17. Firstly, the definition of "building" within the Shorter Oxford English Dictionary, 6th Edition (Shorter OED) is defined as "*A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc."* From the supplied plans, the proposed development (which is labelled as a lodge) is of timber frame construction and clearly has a roof, walls, an inside and an outside. Having regard to this dictionary definition, I have concluded that the subject lodge/eco unit could potentially be a "building". However, I must look to case law in respect of mobile homes, park homes, lodges and caravans, as referenced within the evidence submitted to me, which override the simple dictionary definition.

18. Secondly, in considering the word "building" in planning case law, I have had regard to the case of *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* [2000] 2 PLR 102 (referred to in both of the redacted CIL appeals submitted by the appellant). This case, which held that a marquee was considered to be a building, laid down that the following three criteria are relevant, when considering the definition of a "building":

    Size; permanence; and degree of physical attachment.

    Whilst of some import, I am not persuaded that the Woolley Chickens case *Save Woolley Valley Action Group Ltd v Bath & North East Somerset Council* [2012] fully supports the appellant's argument. In *Woolley,* the local authority had been asked to consider whether mobile poultry units were "development". They concluded that the units did not fall within the definition of "development" at section 55 of the Town and Country Planning Act 1990 Act, as their mobility meant that they were chattels. However, the court concluded that the authority erred in taking too narrow an approach to the meaning of development in section 55. The Council should have

considered whether the unit was an “erection” or a “structure” within the meaning of section 336(1) of the Act, particularly in light of the units’ substantial size and weight.

The appellant cites *Measor v Secretary of State for the Environment Transport and the Regions* [1998], which provides guidance that the stationing of mobile caravans and touring caravans on land would not be taken to involve any building operation, having regard to the factors of permanence and physical attachment. Whilst the Appellant cites that the eco lodge meets the definition of a caravan, I am not wholly persuaded by this assertion - it is clearly a lodge in my view and is described as such in the submitted plans. Indeed, the CA quite rightly points out that the lodge is not mounted on wheels, which provides some evidence of permanence. Accordingly, I am of opinion that the *Skerrits* case provides better guidance in this instance, in comparison to *Measor*. In arriving at this conclusion, I am therefore required to consider the factors of size, permanence and degree of physical attachment.

In terms of size, I do not consider the proposed development to be de minimis in relation to planning controls and CIL.

In terms of permanence, as per case law, this is to be assessed upon a matter of fact and degree, with each case on its own merit. The engineering drawing submitted shows that the structure is capable of being moved. The degree of permanence of the eco lodge in my view, would not appear to be attributable to the intention of the Appellant to move it around, but the capability to do so and the ease in which the lodge can be disassembled and moved. Given the submitted evidence, I have concluded that the eco lodge fails the tests of permanence.

The eco lodge in this case, would appear to be only affixed to the ground by the connections necessary for services and via the ‘[redacted]’, which is a simple metal foundation pad, which sits on the ground. Whilst the CA note that the [redacted] fixings are capable of supporting a building, it does not mean that they are in this instance. The level of attachment to the land and ease with which the eco lodge can be disassembled and moved are considered to be the main factors that prevent it from being considered as a “building” for the purposes of CIL. Based upon the facts of the case, I agree with the Appellant that the eco lodge does not have a significant degree of physical attachment to the land on which it stands. In support of this conclusion, I have also considered the *Elitestone* case, which was referenced in one of the redacted Appeals cited by the Appellant. In the case of *Elitestone Ltd v Morris and another* [1997] it was held that if a structure is moveable it would be a chattel as opposed to a “building”, and that this would remain the case even if the structure was connected to mains services such as electrics, water or sewerage.

Although the proposed development is not de minimis in size, I have concluded that it has failed two of the three tests of the *Skerrits* case.

19. Having regard to the information submitted by the parties and given the facts of the case, and in conjunction with case law, I have concluded that the proposed development is not a “building” under the provisions of the CIL Regulations.

20. In conclusion, having considered the facts of the case and all the evidence put forward to me, I therefore determine that the CIL charge should be £0 (zero sum).

21. The CA has applied for an award of costs in this appeal, as it contends it has incurred unnecessary officer time and resource in preparing evidence and a response in relation to this appeal. Having considered the matter, I do not consider that the appellant has acted unreasonably in arguing his position and given my above decision, I determine that no award of costs is to be made.

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
24th January 2022