

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: 1785024

Address [REDACTED]

Proposed Development: Erection of ancillary outbuilding and swimming pool following demolition of existing.

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 the sum of £[REDACTED] ([REDACTED]).

Reasons

Background

1. I have considered all the submissions made by [REDACTED] of [REDACTED], [REDACTED] acting on behalf of 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) The Decision notice by [REDACTED], dated [REDACTED].
 - b) The CIL Liability Notice (Reference: [REDACTED]) for a sum of £[REDACTED].
 - c) The Appellant's Grounds of Appeal document (undated).
 - d) Planning Application plans of the subject property (location and block plans).
 - e) The Appellant's request for a Regulation 113 Review, dated [REDACTED].
 - f) The CA's Regulation 113 Review, dated [REDACTED].
 - g) The CIL Appeal form submitted to the VOA, under Regulation 114, dated [REDACTED].
 - h) The CA's representations to the Regulation 114 appeal, dated [REDACTED].
 - i) The Appellant's response to the CA's representations, dated [REDACTED], which includes a Statutory Declaration dated [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 of £[REDACTED] per m², with indexation at [REDACTED].
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. The Appellant is of the opinion that no CIL should be payable, contending that the existing buildings have been "in-use" buildings and should be offset in arriving at the chargeable amount.
6. The Appellant also cites that revised plans have already been submitted to the CA, for a Section 73 amendment under the Town and Country Planning Act 1990 (as amended). The new plans are for a building under 100 m², for which the Appellant contends, will mean that the development will not be liable for CIL.
7. 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 that the pending Section 73 amendment will mean that the development will not be liable for CIL.

8. The CA disagrees, contending that no eligible deduction can be made for demolished floorspace under Schedule 1. The CA further contends that part of the existing building qualifies as a 'relevant building' as it was situated on the relevant land on the day planning permission first permits chargeable development. However, the CA opines that the retained building element does not qualify as a lawful 'in-use building' as it does not consider that it has sufficient information, or information of sufficient quality, to enable it to establish that any of the retained buildings qualify as an 'in-use buildings'. Accordingly, the CA contends that the chargeable amount should be calculated on the basis of the GIA for the new building, with no deductions for retained or existing parts.

The CA contends that a significant part of the stable/outbuilding was demolished, prior to the grant of planning permission.

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

Decision

10. The Appellant cites the submission of an application under Section 73 with the intention of reducing the new build floorspace to below 100 m². However, I agree with the CA that this is irrelevant and is a wholly separate matter, outside of this

appeal decision. If a Section 73 permission is granted in the future, then the CA will be required to follow the relevant procedure for determining potential CIL liability, as set out in the CIL Regulations 2010 (as amended).

11. 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.
12. 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. 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.
14. 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.
15. 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.
16. The Appellant contends that the entire accommodation of the stable/outbuilding had been in-use accommodation, citing photographic evidence and an invoice of work undertaken to the building. However, this evidence is somewhat historic in that it shows the position prior to the day when planning permission was granted (on [REDACTED]). The Appellant further contends that development of the building, to which the CIL relates has not commenced, but concedes that some preparatory work has been undertaken.
17. The CA contends that a significant part of the stable/outbuilding was demolished, prior to the grant of planning permission, citing Google Earth satellite imagery from the [REDACTED] and its Planning Officer's Report for the development, dated [REDACTED]. In my review of this evidence, whilst I find the Planning Officer's Report of little assistance in respect of the demolition status of the building, I find the Google Earth imagery compelling evidence in support of a partial demolition of the stable/outbuilding, which comprises a demolition of the western wing of the 'U' shaped building. Furthermore, within the Appellant's own Statutory Declaration, the Appellant cites that part of the building was demolished in the second half of [REDACTED]. In conclusion, based upon the submitted evidence, it is clear to me, that on the day that planning permission was granted, only the eastern wing of the building was retained.

18. Having concluded that the western wing of the 'U' shaped stable/outbuilding was demolished prior to the grant of planning permission, it is clear to me that this element of the accommodation cannot be considered a 'relevant building' as it was not situated on the relevant land, on the day planning permission first permits the chargeable development. The question now arises of what extent of the eastern wing was situated on the land on the day planning permission was granted and, if this accommodation can be considered to be a building in lawful use.
19. Using the RICS Code of Measuring Practice (6th Edition) the CA contends that the GIA of the eastern wing of the existing building is [REDACTED] m². It would appear that the Appellant contends that the GIA of the eastern wing of the existing building is [REDACTED] m². In reviewing the plans and submitted evidence, and having scaled the submitted plans, I am in agreement with the CA that the GIA of the eastern wing of the existing building is [REDACTED] m². The Appellant does not appear to dispute the GIA measurement of the proposed development (of [REDACTED] m²) within their Appeal.
20. The CA does not consider that it has sufficient information, or information of sufficient quality, to enable it to establish that the retained building qualifies as a lawful 'in-use building'. However, as part of their appeal, the Appellant has advanced a Statutory Declaration stating that the [REDACTED] is currently in use as a garden workshop and storage area and has been so, for a number of years. Given this and the submitted photographic evidence, I am reasonably satisfied that the retained building, which comprises the eastern wing, passes the threshold test of being a lawful 'in-use building, which satisfies Schedule 1 Part 1 1(10).
21. After considering all of the evidence, I am satisfied that the eastern wing of the building was in lawful use as per Schedule 1 Part 1 1(10) and was an 'in-use building' thereby allowing the accommodation to be netted off the area of the chargeable development. I have concluded that the net chargeable area of the development is [REDACTED] m² (i.e. [REDACTED] m² less the accommodation of the eastern wing, which totals [REDACTED] m²).
22. Having calculated the correct area of the chargeable development, I determine that the CIL payable in this case should be as follows:
- [REDACTED] m² @ £[REDACTED] per m² (with indexation at [REDACTED]) = £[REDACTED]
23. In conclusion, in considering the facts of the case, I determine that the CIL payable should be the sum of £[REDACTED] ([REDACTED]).

[REDACTED] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
21st February 2022