Appeal Decision

by [redacted] MRICS

an Appointed Person under the Community Infrastructure Levy Regulations 2010 as Amended

Valuation Office Agency
Wycliffe House
Green Lane
Durham
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e-mail: [redacted] @voa.gov.uk

Appeal Ref: 1786813

Planning Permission Ref. [redacted]

Proposal: Change of use of existing building to include two further dwellings (three dwellings in total) with associated extensions and alterations (part retrospective)

Location: [redacted]

Decision

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

Reasons

1. I have considered all of the submissions made by [redacted] (the Appellant) and by the Collecting Authority, [redacted] (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
    a) Planning decision ref [redacted] dated [redacted];
    b) Approved planning consent drawings, as referenced in planning decision notice;
    c) CIL Liability Notice Ref: [redacted] dated [redacted].
    d) CIL Appeal form dated [redacted], including appendices;
    e) Representations from CA dated [redacted]

2. Planning permission was granted under application no [redacted] on [redacted] for change of use of existing building to include two further dwellings (three dwellings in total) with associated extensions and alterations (part retrospective)

3. The CA issued a CIL liability notice dated [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] sqm m² at the Residential High- 67 rate of £[redacted] m² including indexation.

4. The CA treated the email dated [redacted] from the Appellant as a request for a review under Regulation 113. The CA responded by issuing a revised Liability Notice dated [redacted] setting out a revised CIL liability notice Ref : [redacted] in the sum of £ [redacted]. This was calculated on a revised chargeable area of [redacted] sqm m² at the Residential High- 67 rate of £[redacted] m² including indexation.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £ [redacted]. This was calculated on a chargeable area of 110 sqm at a base rate of £[redacted] /m² including indexation. The Appellant maintained that they were only adding a total of 55 sqm to the original property.

6. The Appellant's grounds of appeal can be summarised as follows:

    a) The Appellant believes the only element that should be subject to the CIL charge is the ground floor former retail unit which is to be converted to provide residential accommodation along with the first floor and attic floors extension and that the remainder of the building comprising the original two storey element should be offset against the CIL calculation as set down in the Regulations.

    b) The Appellant maintains that the existing two storey building was not a mixed use complex which he says was a fact confirmed by the Planning Officer who inspected the building.

    c) The Appellant also raised several issues relating to the planning process however these are not matters relating to the CIL Appeal process.

7. The CA has submitted representations that can be summarised as follows:

    a) The Council notes that the previous use of the application site is unclear and cannot be definitively established at this point. Nonetheless, the totality of the evidence suggests that the site has previously been in a mixed use combining a business element and a residential element. In planning terms, such a mixed use is a sui generis use. Evidence also suggests that the site has been unoccupied for a number of years. Given that the previous use of the two storey part appears to have been a sui generis use, the site would not benefit from a lawful use within Class C3 (dwelling houses). The last use of the single storey part is also a business use and, as such, planning permission was needed to bring this into C3 use and to create a larger dwelling.

    b) The permission [redacted] permits a change of use of the existing building, plus extensions and external alterations, to form three Class C3 dwelling houses. Given this, the Council submits that the permission permits three new dwelling houses, and that this is CIL liable and that the CIL chargeable area should be calculated on the GIA of all three dwelling houses without any deduction for any previous use as no such lawful use has been demonstrated or evidenced.

8. The dispute here between the Parties relates to the area to be included within the CIL calculation. It is my understanding that the Parties have not challenged the CA's calculation of the chargeable development at [redacted] sq m but are contesting the fact the CA has not offset the GIA of the existing relevant buildings.

9. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted and this is clearly shown on the plans provided and within the associated documentation. The Existing and Proposed Floor Plans (as well as other approved plans) as submitted show how the use of the site will change and what planning permission is granted for (i.e. the development for which planning permission is granted).

10. Regulation 6(1)(d) allows an exception in relation to the 'meaning of development' for CIL purposes. Planning permission granted for the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses is not treated as development for CIL purposes.

11. The CA accepts that CIL Regulation 6(1)(d) exempts a change of use of one dwelling house to two or more dwelling houses from being CIL liable. However, this is based on the existing building being used as a single dwellinghouse. The CA consider that the evidence suggests that the two storey part / planning unit was in mixed use as a business / commercial use with a residential element. This is supported by the Appellant's comments and other evidence, as well as the existing floor plans showing areas marked as in a Shop use.

12. The existing plans for application [redacted] show the two storey part as including a shop area (as well as the separate shop area in the single storey part). As such the original building cannot be said to be a building previously used as a single dwelling house and therefore the exemption granted under Regulation 6(1)(d) does not apply. Even if the two storey part had a standalone C3 planning use in [redacted], this does not mean that this was the case as of the time of the [redacted] application. Indeed, the existing plans for the [redacted] application specifically show a shop use at ground floor and this supports the idea that the two storey part had a mixed use, and that this mixed use was the existing planning use. Planning permission was needed to use this area as a C3 dwelling house which was a change of use from a sui generis mixed use, with two new C3 dwelling houses created in this two storey part and hence there is no exemption from liability to CIL under Regulation 6(1)(d).

13. In addition, the change of use and extension of the existing single storey part involved a change from a business use to a dwelling house which would be CIL liable as it created a C3 dwelling house.

14. The next main issue relates to the original building and whether any part can be used to offset the final CIL calculation. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. The regulations state that the following can be deducted from "the gross internal area of the chargeable development":

    (i) retained parts of in-use buildings; and

    (ii) 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.

15. “In-use building” is defined in the Regulations as a relevant building that contains 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, in this case the three year period ended [redacted].

16. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of “in-use building” then it can deem the GIA of this part to be zero.

17. In this case there has been no evidence presented to me to confirm that the building has been in lawful use during the requisite three year period. The appellant has admitted that he does not have evidence of 6 month’s use. The only evidence that the appellant has been able to provide is confirmation that there was catering equipment and an extractor present when he purchased the property in [redacted] which is not sufficient. The appellant has also confirmed to the planning officer that the building had been vacant for a ‘couple of years’ when he purchased it. The CA notes that that business rates do not record any use since [redacted] and Council Tax records show that the last registration ended at the end of [redacted], this means there is only just over a month from this registration within the three year period and this would not achieve the minimum of six months even if this was regarded as lawful use.

18. Furthermore, there is no clear evidence that any part of the site could have been lawfully used as a standalone residential dwelling (C3) without further planning permission on the day before planning permission first permitted the chargeable development and as such no part qualifies as a deduction set out under 14(ii) above.

19. The development does not qualify for a minor development exemption under CIL Regulation 42 since the development comprises three dwellings.

20. I have had regard to all the information relating to the recent history of the property and the submissions made by both the CA and the Appellant in relation to the use, condition and occupation of the buildings and feel that the weight of evidence suggests that they do not satisfy the requirement set down by the CIL regulations and thus cannot be taken into account as an exemption or offset in the calculation of the chargeable amount.

21. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [redacted] ([redacted])

[redacted] MRICS
Valuation Office Agency
29th March 2022