Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency
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Appeal Ref: 1793245

Planning Permission Ref. [redacted]

Proposal: Alterations to existing first floor annexe and conversion of ground floor storage space to create 2 storey combined living space for use ancillary to the main house and for holiday accommodation purposes.

Location: [redacted]

Decision

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

Reasons

1. I have considered all of the submissions made by [redacted] as Agent for [redacted] and [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 [redacted] dated [redacted];

    d) CIL Appeal form dated [redacted], including appendices;

    e) Representations from CA dated [redacted] and [redacted]; and

    f) Appellant comments on CA representations, dated [redacted] and letter (undated) in respect of the Regulation 113 Review..

2. Planning permission was granted under application no [redacted] on [redacted] for: Alterations to existing first floor annexe and conversion of ground floor storage space to create 2

storey combined living space for use ancillary to the main house and for holiday accommodation purposes.

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

4. The Appellant requested a review under Regulation 113 (letter undated but received by the Charging Authority on [redacted]). The CA responded on [redacted], stating that having reviewed the matter they confirmed their view that the original CIL calculation was correct.

5. The Valuation Office Agency received a CIL appeal dated [redacted] made under Regulation 114 (chargeable amount) contending that the CIL liability should be £ 0.

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

   i. The Appellant maintains that the existing annex constitutes an existing dwelling and the proposed scheme involves no new build floor space (simply the conversion of the existing GF storage areas) and therefore there is no 'new building 'created and therefore it must be less than 100 sqm in which case it would be exempt under the regulations.

   ii. All that is proposed is the conversion of the ground floor area to incorporate this with the current first floor unit to provide the proposed accommodation which will be for dual use as annex/holiday accommodation.

   iii. It is further maintained that in any event the existing buildings were in lawful use with existing annex being used in association with the main dwelling for in excess of 40 years with the ground floor having been used for storage purposes in association with the annex above and the main house as well as part of the agricultural operations at the farm.

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

i. The Collecting Authority are prepared to accept that the first floor had been used for a lengthy period of time as an annexe and is probably lawful in planning terms but it is not accepted it has a lawful use as a new dwelling.

ii. The planning permission granted a new use for both the existing first floor annexe and the ground floor area below as an overall annexe but also as a unit of holiday accommodation. It is considered this planning permission created a new dwelling in the form of commercial holiday accommodation albeit restricted to holiday use. As such, it is CIL liable.

iii. The Collecting Authority undertook a Regulation 113 Review on the [redacted] which concluded that the evidence and information submitted for the Review was insufficient to prove that an active and sustained lawful use had been made of the buildings within the meaning of 'in-use building' in the CIL regulations.

GIA/Chargeable Development

8. 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."

In-use buildings / Lawful use

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. "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.

11. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.

12. 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.

Regulation 42 – Exemption for minor development

13. The provisions of Regulation 42, Exemption for Minor Development are set out below:

Regulation 42

(1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

(2) But paragraph (1) does not apply where the development will comprise one or more dwellings

(3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings

14. I would state that I understand from the submissions made that the matter of the chargeable area stated at [redacted] sqm is not in dispute in this case.

15. There are fundamentally two issues to be addressed for this appeal. The first is to consider as contended by the CA whether the chargeable development consented under planning ref: [redacted] is a new dwelling and therefore chargeable development under CIL Regulations 2010 Reg 42(2). Then it is also necessary to consider whether the same development constitutes minor development under CIL Regulations 2010 Reg 42 (1).

16. The regulation states that in order for the exemption from CIL Liability allowed under Reg 42(1) not to apply, the development must be a dwelling. The definition for CIL purposes is contained in Regulation 2 CIL regulations 2010 (as amended) and states a dwelling is '<u>a building or part of a building occupied or intended to be occupied as a separate dwelling</u>'. In this case the occupation is restricted under the conditions as set out in the permission:

    The occupation of the residential unit hereby permitted shall be restricted as follows: (i) shall only be occupied for holiday purposes or used as annexe accommodation in conjunction with, and ancillary to, the residential use of [redacted] *as a single dwelling house;* [redacted] *Page 2 (ii) shall not be occupied as a person's sole, or main place of residence other than as an annex to* [redacted]*; (iii) shall be owned and managed by the owner/occupiers of* [redacted]*; (iv) occupation of the unit (other than when in use for annexe purposes) must not exceed 60 consecutive days and there must be a minimum gap of 30 days before the unit can be re-occupied by the same visitors. (v) when used for holiday purposes the operators shall maintain an up-to-date register of the names of all occupiers of the holiday accommodation, and of their main home addresses, and shall make the register available at all reasonable times to the local planning authority.*

17. It is my opinion therefore that as the annex cannot be occupied separately it cannot be considered a new dwelling and therefore Regulation 42(2)CIL regulations 2010 as amended does not apply.

18. As there is no new building in connection with this scheme merely the adaptation/conversion of the existing building CIL Regulation 42(1) CIL regulations 2010 as amended does apply and the development must be considered minor development as the GIA is below the 100 sqm limit set down. (Nil in this case).

19. However, notwithstanding that a minor development exemption, as outlined above, does not apply in this case, I consider that the whole of the GIA of the existing building should be offset as 'retained parts of in use buildings' within the CIL calculation. An 'in-use building' is defined in Schedule 1 Part 1 para 10 to mean a building which, is a relevant building, and contains **<u>a part</u>** 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. Here the ground floor is part of the same building as the first floor and whilst there is debate between the parties as to the evidence provided in relation to the use of the ground floor, it appears that there is no argument that the first floor has been in lawful use. Therefore as <u>part</u> of the building has been in lawful use for the requisite period, all of it can be offset as retained parts and the CIL charge is nil.

20. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ 0 (Nil)

[redacted] MRICS
Valuation Office Agency
20th May 2022