Appeal Decision

by [redacted] BA Hons, PG Dip Surv, MRICS

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [redacted] @voa.gov.uk

Appeal Ref: 1806991

Planning Permission Ref. [redacted] granted by [redacted]

Location: [redacted]

Development: retrospective application to regularise the restoration and change of use of granary building to provide holiday accommodation and associated works.

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 the Collecting Authority (CA), [redacted], in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

   a. The application for planning permission dated [redacted] together with associated plans and drawings.
   b. The Decision Notice issued by [redacted] on [redacted].
   c. The CIL Liability Notice ([redacted]) issued by the CA on [redacted].
   d. The appellant's request for a review under Regulation 113 dated [redacted].
   e. The outcome of the CA's review dated [redacted].
   f. The CIL Appeal form dated [redacted] submitted to the VOA by the appellant under Regulation 114, together with supporting documentation.
   g. The CA's representations to the Regulation 114 Appeal received [redacted].
   h. The appellant's further comments on the CA's representations dated [redacted].

2. It is understood the appellant acquired the [redacted], a former agricultural building in [redacted]. The appellant set about converting the property to a holiday

let in [redacted] believing the works to fall under Permitted Development Rights (PDR) Class R. In [redacted], the appellant received a Planning Contravention Notice and from the submissions provided, I understand that the local authority was about to take enforcement action in [redacted] to stop the use as a holiday let.

3. On [redacted], the appellant submitted a retrospective planning application for; "the restoration and change of use of [redacted] building, [redacted] to provide holiday accommodation and associated work."

4. On [redacted], [redacted] granted permission for the following development; "retrospective application to regularise the restoration and change of use of granary building to provide holiday accommodation and associated works." ([redacted]). It is this permission that determines the chargeable development for CIL purposes and is the subject of this Regulation 114 chargeable amount appeal.

5. It is apparent from the appellant's submissions that there is dissatisfaction with the planning process and some of the actions of the planning authority. My role is solely to determine the correct chargeable amount in accordance with the CIL legislation. I will not be considering nor passing comment upon the history or planning process surrounding this case.

6. The appellant is of the view that the correct amount of CIL is nil. There are two threads to the appellant's appeal that support this view. The first being that as the subject property is a holiday let, it is not a residential property and as such, having regard to [redacted]'s Community Infrastructure Levy Charging Schedule published January 2016, it will not attract a charge.

7. The representations submitted by the appellant make it clear she considers; "holiday accommodation being more attuned with commercial than residential" use. The appellant highlights 8.44 of the planning officer's report that stated PDR legislation meant it was highly likely C1 use (Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels)) would not require planning permission.

8. The second thread of the appellant's appeal is that the subject was an in use building and as such it's Gross Internal Area (GIA) should be off set from the GIA of the chargeable development.

9. In response, the CA have advised that they consider the chargeable development to be residential development under the adopted Charging Schedule and have issued a liability notice for CIL in the sum of £[redacted]. This is based on a charge of £[redacted] per sq. m (indexed) as applicable for the area within their jurisdiction located to the [redacted].

10. The CA opine that, a holiday let is a dwelling and not a hostel, hotel, or guesthouse. The CA has stated that 'a dwelling can reasonably be described as a building where no more than 6 people live together as a single household that provides all the facilities required for day-to-day private domestic existence (cooking, eating and sleeping). A self-catering holiday let is <u>where the entire dwelling is booked</u> as is the case here." The CA goes on to state

that other types of holiday accommodation such as hotels or hostels would not meet this definition.

11. In support of its contention, the CA has also made reference to a CIL appeal decision in relation to a similar issue whereby the development was found to be CIL liable. Although each case must be considered on its own merits, this decision is akin to the situation under consideration here.

12. The CA has also addressed the appellant's contention that the GIA of the existing building should be netted off. The CA states that up until the date that retrospective planning permission was granted on [redacted], the use to which the building had been put was unlawful. It could not therefore meet the continuous lawful use test, as set out in the CIL Regulations, to benefit from a CIL floorspace credit.

13. The CA have also advised that they consider that the subject would have required planning permission for use as a holiday let and could not have been developed under PDR alone as C3 use requires permission.

14. I will firstly consider whether the use of the chargeable development is residential and consequently whether CIL should be charged at £[redacted] per square metre (sq. m) as detailed in [redacted]'s Community Infrastructure Levy Charging Schedule published in January 2016.

15. To determine this point, I have considered the precise wording of the Charging Schedule. The Charging Schedule specifies the rates at which CIL is charged depending upon the 'Use of Development' to be as follows:

**Residential –* [redacted] *- £*[redacted] *per sq. m*
**Residential -* [redacted] *- £*[redacted] *per sq. m*
Retail (wholly or mainly convenience) - £[redacted] *per sq. m*
Retail (wholly or mainly comparison) - £[redacted] *per sq. m*
Purpose Built Student Housing - £[redacted] *per sq. m*
Standard Charge (applies to all development not separately defined) - £0

**This charge applies to the creation of one or more dwellings, and residential extensions or annexes which are 100 square metres or more gross internal area which are not for the benefit of the owner/occupier. This charge does not apply to residential institutions (C2).*

16. The Charging Schedule rates of £[redacted] and £[redacted] per sq. m for residential use therefore apply to any development that can reasonably be described as comprising 'one or more dwellings'.

17. A 'dwelling' is not defined in the Charging Schedule, but I consider that it can reasonably be described as a building that provides the facilities required for day-to-day private domestic existence. There is nothing within the Charging Schedule to suggest that there is any requirement that before a building can be described as a dwelling, it must be occupied as a permanent home or fall under a particular Use Class under the Town and Country (Use Classes) Order 1987, other than Use Class C2 which is specifically excluded. The

proposed development in my view clearly comprises a new dwelling and there is nothing within the Charging Schedule to exclude a dwelling that is to be used as a holiday let. It therefore follows that a CIL charge based upon the residential rate for the [redacted] of the [redacted] of £[redacted] per sq m (with indexation) is applicable.

18. The second element of this appeal is whether the [redacted] qualifies as an in-use building and as a consequence, whether its GIA can be netted off the area of the chargeable development described in planning permission [redacted].

19. The area of the chargeable development has been calculated by the CA as being [redacted] square metres (sq. m). The calculation of the area would appear to be accepted by the appellant.

20. The CIL Regulations, Schedule 1 defines how to calculate the deemed net area chargeable as detailed below with A being the deemed net area chargeable.

(6) The value of A must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—
G = the gross internal area of the chargeable development;
GR = the gross internal area of the part of the chargeable development chargeable at rate R;

KR = the aggregate of the gross internal areas of the following—
(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;
E = the aggregate of the following—
(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and
(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

21. Schedule 1 (10) defines an “In-use building” 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.

22. “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.

23. As the building has been retained, it is clearly a relevant building. However, the building must have also 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 to fulfil the criteria of an “in-use building”.

24. The appellant opines the [redacted] meets the in-use criteria and its area should be netted off the area of the chargeable development. She is of the view that the use as holiday accommodation from [redacted] was lawful and draws attention to the Planning Officer’s report in particular clause 8.44 which the appellant interprets to mean the [redacted] is highly likely to meet Class R PDR all classes C1 without the requirement for planning.

25. “*In addition there has been a significant increase in Permitted Development Rights made available by the General Permitted Development Order 2015 (as amened), which increasingly makes provision for the re-use of existing buildings. The change of use of The* [redacted] *, is highly likely to have been possible under Schedule 2, Part 3 Class R (agricultural building to flexible commercial use) of the General Permitted Development order 2015 (as amended), with the flexible commercial uses including B8 (storage and Distribution), C1 (hotel) and Class E (commercial, business or service). It is noted there is no requirement for the developer to seek Prior Approval under class R if the building is under 150 square metres (which the* [redacted] *is), with the only requirement being to provide written notification to the LPA of the intended change of use. In addition, the provisions of Class R allow for the formation of a curtilage of up to 50 square metres. Therefore it is highly likely an alternative use for the* [redacted]*, including those within Classes B8, C1 and E would have been possible without obtaining planning permission.”*

26. I have not been provided with a fully copy of the officer’s report only extracts from it. It is therefore difficult to infer whether the officer considers the subject permission as granting C1 use. My interpretation of the short paragraph is that there are numerous uses to which the barn could have been put under PDR that would not require planning, but the officer does not explicitly state the use as a holiday let as being one of them.

27. The appellant has submitted a copy of a decision notice for a CIL appeal where it was found the buildings did qualify as “in-use” buildings, the Valuation Officer accepting their use to have been lawful. However, in this case the agricultural buildings had been used as storage during the qualifying period and this use was deemed lawful.

28. The CA opine that the use of the [redacted] as a holiday let was unlawful up until the [redacted] when retrospective planning permission was granted for a residential dwelling (albeit restricted to a holiday let). They state that the lawful use before this date was as an agricultural building therefore the GIA cannot be offset as it does not meet the lawful use test.

29. The CA point out that whilst Class R of the Town and Country (General Permitted Development ((England) Order 2015 would allow for a change of use to a C1 (hotel), it does not allow for a change of use to a dwelling C3 which is the resultant and current use.

30. Looking at the facts before me, it is apparent that this holiday let is operated as a single unit akin to a dwelling as defined above and is not capable of being let on a room-by-room basis as hotels or guesthouses operate (C1). Furthermore, the Housing Act 1988 defines “holiday letting” as; “*A tenancy of which the purpose is to confer on the tenant the right to occupy the dwelling house for a holiday.”*

31. Therefore, I conclude that the [redacted] was a dwelling operated as a holiday let when the subject planning permission was granted. It would have required planning permission under Use Class C3 and would not have been covered by Class R Permitted Development Rights. As planning permission was not in place until the [redacted], the use of the [redacted] as a holiday let up until that point was unlawful.

32. Consequently, as the subject property was not in lawful use for a continuous period of at least six months within the period of three years leading up to retrospective consent being granted on [redacted], its GIA cannot be netted off the area of the chargeable development.

33. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore confirm a CIL charge of £[redacted] as stated in Liability Notice [redacted] dated [redacted].

[redacted] [redacted] BA Hons, PG Dip Surv, MRICS
RICS Registered Valuer
District Valuer
23 March 2023