Appeal Decision

by [redacted] MRICS

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: 1815617

Planning Permission Reference: [redacted]

Location: [redacted]

Development: "Conversion of existing unauthorised building to a two-bedroom dwelling including alterations to fenestration and provision of dormer window to rear and rooflight to front and patio to rear"

Decision

I determine the Community Infrastructure Levy (CIL) payable in this case calculated at £[redacted] ([redacted]) to be correct, and the Appeal is therefore dismissed.

Reasons

1. I have considered all the submissions made by [redacted] (the Appellant) and [redacted] as the Collecting Authority (CA) in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:-

   a. Planning permission reference [redacted] dated [redacted] for the [redacted]
   b. Earlier planning permission [redacted] dated [redacted] for [redacted]
   c. Planning Inspectorate appeal references [redacted] and [redacted] decision dated [redacted] where the CA's enforcement notice reference [redacted] was quashed.
   d. Planning Inspectorate appeal reference [redacted] decision dated [redacted] where "*planning permission is granted for* [redacted] *in accordance with the terms of the application,* [redacted]*, dated* [redacted]*, subject to the attached schedule of conditions*."
   e. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
   f. The Appellant's request to the CA dated [redacted] for a Regulation 113 review of the chargeable amount.
   g. The CA's response dated [redacted] to the Appellant's request for a Regulation 113 review.
   h. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
   i. The CA's representations to the Regulation 114 Appeal dated [redacted].

j. The Appellant's comments dated [redacted].

Background

2. Planning permission reference [redacted] was granted on [redacted] for the "[redacted]" This followed a history of various planning applications for the original building and its subsequent conversion to a dwelling.

3. An original planning application [redacted] had been granted permission on [redacted] for "[redacted] ".

4. An enforcement notice was issued by the CA in [redacted] requiring the removal of the building on the basis that there had been a breach of planning control, namely "[redacted]". This was quashed by a Planning Inspectorate decision dated [redacted] to appeals referenced [redacted] and [redacted]. The decision determined that development had commenced under permission [redacted] before it expired and the partially constructed building was not so materially different from what was approved as to debar the works from benefitting from the [redacted] permission. The inspector noted that development had commenced in accordance with a revised plan rather than the original drawing number [redacted] (neither of which was made available to the Appointed Person as part of the current CIL appeal under consideration).

5. A later planning application dated [redacted] reference [redacted] for conversion of the building to a dwelling was initially refused, but was then subject to a Planning Inspectorate decision dated [redacted] reference [redacted] that states "*planning permission is granted for the* [redacted] *…"* The relevant proposed block, floor and elevation plan reference [redacted] was not made available to the Appointed Person as part of the current CIL Appeal under consideration however.

6. A CIL Liability Notice reference [redacted] was issued by the CA on the [redacted] with CIL calculated at £[redacted] based on [redacted] m2 chargeable area with no GIA offset for an existing building.

7. On [redacted] the Appellant requested a Regulation 113 Review of the chargeable amount on the basis that GIA offset for existing floorspace should be included for CIL calculation purposes.

8. On [redacted] the CA issued its decision on the Regulation 113 review request. The floorspace of the proposed development was confirmed as [redacted]m2 GIA, along with confirmation that the relevant timeframe for demonstrating a lawful in-use period for CIL purposes would be [redacted] to [redacted]. It states that the CA do not consider that the available information demonstrates that the property had been in use for a continuous period of six months over the relevant three-year period. The CA therefore deemed that the property was not an in-use building and its GIA could not be offset against the GIA of the proposed development.

9. The Appellant submitted a Regulation 114 Appeal dated [redacted] against the chargeable amount, which was received by the VOA on [redacted].

Appeal Grounds and Parties' representations

10. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

11. The GIA of the proposed development utilised by the CA in their CIL Liability Notice dated [redacted] at [redacted]m2 is the same as the GIA of the proposed floorspace at Section 6 of the CIL Questionnaire dated [redacted] as submitted by the Appellant's agent. As the GIA

does not appear to be in dispute, I have nothing further to consider with regards to that matter.

12. The Appellant argues that the building was in lawful use for more than six months continuously during the three-year relevant period prior to planning permission being granted on [redacted] and that the CIL Liability should therefore be nil.

13. In their comments on the CA's representations, the Appellant refers to 'the four year rule' and notes "*Application [redacted] contains a drawing of the existing building dated by [redacted] so that is proof that the building has been in place for more than the four years required for it to become lawful which use can include storage.*" This "as built" drawing [redacted] is date stamped by the CA "[redacted]". The Appellant also states "*Photographs presented by [redacted] and dated [redacted]* [sic – actually [redacted]] *show the building watertight and usable for storage so again this is lawful under the four year rule*".

14. The Appellant also provided three sworn declarations as part of their original Appeal submission to support their argument that the building was in use for more than six months continuously during the three years prior to planning permission being granted on [redacted]:-

    1) [redacted] (the Appellant) dated [redacted] stating that from [redacted] he *"used the [redacted]….to store timber, building materials and hand tools…..and to construct timber and joinery products" and that he "rented space within the workshop and store…to [redacted] where he stored goods and constructed timber and joinery products from [redacted] to [redacted]".*

    2) [redacted] dated [redacted] stating that from [redacted] to after [redacted] he rented space at the [redacted] where he *"stored timber and building goods…. and worked making timber and joinery products with others"* and that *"during [redacted] and until today I have seen martials* [sic] *owned by others stored in the workshop".*

    3) [redacted] dated [redacted] stating that from [redacted] to [redacted] he worked for [redacted] at the [redacted] where he *"made timber and joinery products".*

15. The Appellant also provided a copy of an Invoice as part of their Appeal submission dated [redacted] from [redacted] to [redacted] for the supply and fit of windows and internal shutters to the windows.

16. As part of their comments on the CA's representations the Appellant submitted a valuation report which they state is "*of [redacted]*" origin, where paragraph 2.9 confirms mains water, electric and sewage are available on the site at [redacted]. The CA have provided no further comment on this new information. The Appellant also submitted two Council Tax invoices for [redacted], and comment that the Valuation Office did a site visit and found the site could sustain a home and the CA charged for a home on the site. The CA have provided no further comment on this new information.

17. The Appellant [redacted] also submitted a further statement dated [redacted] that "*I worked from 8.15am until 4pm each day continuously and regularly from [redacted] until [redacted] and from [redacted] within the workshop and storage building…I used hand held tools … along with [redacted] …within the workshop … continuously throughout the last five years … the building has mains water supply and main electric available but is has not been used for some years*." This does not constitute a sworn declaration, as there is no statement as to where the item was signed and no witness to the signature. The CA have provided no further comment on this new information.

18. The Appellant also submitted three additional statements:-

1) a statement by [redacted] dated [redacted] stating "*from* [redacted] [to] [redacted] *I was working regularly with* [redacted] *in the workshop…I worked Monday to Friday from 8am until 4pm each week…I took a total of 22 days leave during the period between* [redacted] *and* [redacted] *… I only used battery operated hand held tools…*"

2) a statement by [redacted] dated [redacted] stating "*whilst working at the workshop and storage building….from* [redacted] *until* [redacted] *I worked from 8am until 4pm each day Monday to Friday consistently and regularly … I have a generator, first aid products and facilities to store water and boil it within my van…I also have a portable w/c within my van…*"

3) a statement by [redacted] dated [redacted] stating "…*whilst working for* [redacted] *within the workshop and storage building….my normal working day was from 8am until 4pm and I worked Monday to Friday each week. In* [redacted] *I worked consistently and regularly within the workshop between* [redacted]*. After the* [redacted] *I worked regularly until* [redacted]*. I did not work all day on my own…*"

19. These latter three items do not constitute sworn declarations, as there are no statements as to where the items were signed and no witnesses to the signatures. The CA have provided no further comment on this new information.

20. The CA argue that there is insufficient information and insufficient quality of information to establish that the building was an "in-use building", as defined by the Regulations at Schedule 1, Part 1 (10).

Lawful Use

21. Disagreement surrounding the issue of identifying the lawful in-use buildings has arisen from Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or offset of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.

22. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) provides that an "in-use building" means a building which 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.

23. The Appellant considers that the GIA of the existing building should be deducted as part of the calculation of the chargeable amount, and refers to Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) which defines an "in-use building" as a building which:

    (i) is a relevant building (i.e. one which is situated on the relevant land on the day planning permission first permits chargeable development);
    And
    (ii) which contains a part that has been "in lawful use" for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

24. In accordance with the above, any relevant period of "*at least six months*" of continuous lawful use would fall within the three-year period [redacted] to [redacted].

25. The Town and Country Planning Act 1990 s171B (1) states "*Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*."

26. Photographs submitted by the CA taken on [redacted] show the property with a boarded-up front door and windows, whilst photographs taken on [redacted] show that upvc windows had been installed to the ground floor, but with boarding behind them inside the property and a rough wooden front door on hinges. Some rolled up materials are shown stored in a pile to the side of the single storey shed-like structure in the grounds of the property.

27. Three earlier sets of photographs taken on [redacted] show the ground floor windows boarded-up on a more permanent basis, with screws clearly holding the boarding in place. There was also an old caravan in the front grounds of the property. It is noted that the boarding and position of the wall mounted letter box (affixed to the right-hand side of the left ground floor window boarding) appears the same as that shown in the [redacted] photograph.

28. Four sets of photographs taken on [redacted] show the ground floor windows boarded up on a more permanent basis with screws clearly holding the boarding in place. The old caravan seen in the earlier [redacted] photographs is still shown in the front grounds of the property. It is noted that the boarding and position of the wall mounted letter box (affixed to the right-hand side of the left ground floor window boarding) appears the same as in both the earlier [redacted] photograph and the later [redacted] photograph.

29. In their CIL Appeal submission the Appellant refers to a planning officer's report in connection with an earlier planning application [redacted] [of which the Appointed Person does not have a copy] which had noted '*The building that is on site therefore has planning permission and could be completed and used as a light industrial workshop at any time'"*.

30. The Appellant also states in an email dated [redacted] that later "*planning permission* [redacted] *confirms the building is lawful*". This would appear to be referring to the [redacted] Planning Inspector decision where enforcement notice reference [redacted] was quashed.

31. The CA note in an email dated [redacted] that the Planning Inspector in their later [redacted] decision "*noted that the building the subject of the* [redacted] *appeal was different to the building which was the subject of the previous appeal (*[redacted]*). The Inspector clearly considered that the building needed planning permission as well as its use*."

32. The CA indicate they would accept that the lawful use of the building would be for a garage, workshop and timber store. However, this would only be applicable if the development had been authorised.

33. The Planning Inspector's [redacted] decision concluded that the [redacted] development had been implemented. Whilst it was accepted that there were breaches of conditions relating to the [redacted] permission, the Inspector decided that these did not go to the heart of the permission. The result of this decision was that the partly built development on the site in [redacted] could not be subject to an enforcement notice requiring its demolition. Under the extant [redacted] permission the lawful use would therefore be as a garage, workshop and store.

34. At the time of the second planning appeal in [redacted] the Inspector is clear that the building on the site is unauthorised. He altered the description of the development from "[redacted]" to "[redacted]". He comments "*I have altered the description of the development to more accurately describe the appeal proposals"* and he states "*I saw from my site visit that a two-storey building has been partially constructed*" and "*it is clear that the planning permission dated* [redacted] *was implemented. I am also aware from the evidence that the building work was never completed.*" The Inspector's decision was therefore "*planning permission is granted for the conversion of existing unauthorised building to a two bedroom dwelling*…"

35. In his [redacted] decision, the Planning Inspector also notes that it is apparent that the appeal proposal "*differs from the implemented permission, predominantly in respect of the alterations to the roof, elevational alterations and the use of the building as a dwelling. The planning permission showed a roof with a front dormer window and a rear dormer window with an external staircase leading up to it. The ground floor showed a different configuration of doors and windows*". He notes that the building was not constructed in accordance with the plans submitted to the Council with the [redacted] application, and whilst the building clearly had a roof by this time he comments "*Whilst I cannot be certain that the height of the roof of the appeal building matches the roof of the extant permission, it is clear from the evidence supplied by the appellant, that the height of the roof is not so materially different from what was approved in* [redacted]". The Inspector is clear that despite the [redacted] permission being implemented the part-built building on the site in [redacted] was not authorised.

36. Since the Inspector confirms that the building as existed in [redacted] was unauthorised, an issue to be considered in deciding if any use of the building had been lawful for CIL purposes is whether s171B(1) applied and if building operations were "substantially completed" four years prior to the "in-use" period, and hence no enforcement action could have been taken to disallow six month's lawful use during the three year period prior to the [redacted] planning permission.

37. The three year lawful use period for CIL purposes would be [redacted] to [redacted], and for any use to be considered as lawful there must have been no possibility of enforcement action for at least the last six months of this period (i.e. [redacted] to [redacted]). Building operations would therefore have needed to have been substantially completed four years prior to this (i.e. before [redacted]). The Planning Inspector was of the opinion that the building was only "*partially constructed*" and "*never completed*" on his visit in [redacted], and from the photographic evidence there does not appear to have been any substantial completion works since that time and most definitely not prior to [redacted]. The photographs submitted by the CA show ongoing building operations/ changes to the building up to [redacted]. Whilst the Appellant states that the building was water-tight and has been like that for more than four years, as evidenced by plans in [redacted] and photographs in [redacted], the "as built" drawing [redacted] from [redacted] shows the roof is yet to be tiled and the walls are yet to be rendered – clearly not complete – as confirmed by the photographs. This also pre-dates the Inspector concluding the building was incomplete and unauthorised in his [redacted] report.

38. As a result I do not accept that a period "*of four years beginning with the date on which the operations were substantially completed*" could be established and therefore the existing building remained "unauthorised" as per the Planning Inspector's [redacted] decision throughout the relevant three year period, and thus any use of the building was not "lawful" for the purposes of CIL. This position fully accords with the continued use of the words "*existing unauthorised building*" in the planning description for the most recent application reference [redacted].

39. Whilst the Appellant and the CA have provided several documents to demonstrate or refute that the building was lawfully in use for at least six months during the relevant period, I consider that the building remained "unauthorised". I determine that there cannot have been any lawful use of the building and therefore the evidence regarding use of the building is not relevant.

40. The CA representations also consider the use of the building for storage as opposed to workshop use. They further argue that a lack of electricity and water supply to the property would prevent workshop use. Again, I do not consider this relevant as I determine that the building remained "unauthorised".

41. It is my opinion that from all the information provided the building was not in lawfully "in-use" during the relevant period, and the "lawful use" requirement of Schedule 1 of the CIL Regulations 2010 (as amended) has not therefore been met.

42. The GIA of the existing building therefore cannot be off-set against the GIA of the proposed development.

Calculation of CIL Liability

43. CIL Liability is calculated using rates and indices at [redacted] relevant at the date planning permission was granted and is confirmed as:-

All residential development
[redacted]m2 proposed/chargeable GIA
@ £[redacted] indexed up to £[redacted] / m2
= £[redacted] CIL charge

Decision

44. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[redacted] ([redacted]) to be correct, and the Appeal is therefore dismissed.

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
24 April 2023