Appeal Decision

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

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [redacted]@voa.gov.uk

Appeal Ref: 1819342

Planning Permission Ref. [redacted]

Location: [redacted]

Development: Conversion of existing Chapel into [redacted] ***residential dwellings with associated amenity space,*** [redacted]

Decision

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

Reasons

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

a. The planning application dated [redacted] together with approved plans, drawings and associated documents.
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 Regulation 113 review dated [redacted].
e. The email from the CA dated [redacted] advising that the CA consider the request for a Regulation 113 review to be invalid.
f. The CIL appeal form dated [redacted] requesting an appeal to the Planning Inspectorate under Regulations 117a and 118.
g. The Planning Inspectorate's Appeal Decision issued on [redacted].

h. The CIL Appeal form dated [redacted] submitted on behalf of the appellant under Regulation 114, together with documents and correspondence attached thereto.
i. The CA's response to the Regulation 114 Appeal dated [redacted].

2. The appellant applied for the above planning permission that is the subject of this Regulation 114 Chargeable Amount appeal on the [redacted]. [redacted] granted permission for the chargeable development on the [redacted]. From the representations submitted, I understand that during the period between the planning application being submitted and permission being granted, the appellant began carrying out repairs to the existing property. This included repairs to the roof and the demolition of an extension to the Chapel. An officer from the local authority visited the property in [redacted] and noted the demolition had taken place. The CA were unable to determine the date when these works were undertaken but took the view that it was post planning permission being granted and deemed commencement of the chargeable development to have begun on the [redacted].

3. As the CA determined development to have commenced, on the [redacted], they issued both a CIL Liability Notice ([redacted]) and a regulation 69 demand notice to the appellant. This was for the sum of £[redacted] comprising of a CIL charge of £[redacted] and surcharges totalling £[redacted].

4. On the [redacted], the appellant requested the CA carry out a Regulation 113 review of the chargeable amount and also submitted an appeal to the Planning Inspectorate (PI) under Regulations 117a and 118. The appellant opined to both the CA and the PI that development had not commenced, and explained they no longer intended to carry out the chargeable development, choosing instead to maintain the existing use of the building. Consequently, the works that had already been carried out were simply repairs rather than the commencement of the chargeable development.

5. The CA responded to the Regulation 113 review request on the [redacted]. They confirmed the CIL charge stated in [redacted], advising that as permission was granted on [redacted] and development was deemed to have commenced on [redacted], an appeal under Regulation 113 was not possible as outlined in paragraph (9) b).

6. On the [redacted], the PI issued his findings to the Regulations 117a and 118 appeals. Within his report, [redacted] states that the subject permission is a retrospective permission, and it is clear he considers that the demolition of the extensions took place before permission was granted. The Inspector confirmed the [redacted] as the deemed date of commencement (this being the date determined by the CA) and dismissed the appeal to save the appellant further penalties.

7. Following the outcome of this appeal, the VOA were able to accept the Regulation 114 appeal requested by the appellant on the [redacted] as valid and having considered the background and representations of both parties, I now provide my determination of the chargeable amount.

8. The appellant's appeal form to the VOA, states that in their opinion, the chargeable amount should be £[redacted] based upon a net chargeable area of [redacted] square metres (sq. m) charged at £[redacted] per sq. m, with indexation at [redacted].

9. The appellant's ground of appeal is that [redacted] is incorrect because it fails to take account of the floorspace of the existing property that remains in lawful use. As part of their representations, the appellant has provided a number of witness statements from individuals who confirm they have used and continue to use the premises on a regular basis to deliver fitness classes and sports therapy.

10. The CA has not directly responded to this ground within their submitted representations. However, they have provided us with the representations that they submitted as part of the PI appeal, in which they opined that the chargeable development commenced on the [redacted]. It is noted that the CA within their email of the [redacted], refused a Regulation 113 appeal under (9) (b) of that Regulation, stating that the appeal was invalid given the development had already commenced.

11. Whilst the PI's appeal decision relates to the deemed commencement date stated in the demand notice, the decision clearly states that the subject permission is retrospective with [redacted] stating, "*As the works took place before permission was granted, it follows that permission was effectively granted retrospectively."* Furthermore, having read the appellant's representations, I agree, demolition works did take place prior to planning permission being granted on [redacted]. Given this permission is retrospective, an appeal in relation to the chargeable amount is permitted under Regulation 114 (3A) "*A person may appeal under this regulation after the relevant development has been commenced if planning permission was granted in relation to that development after it was commenced".* Here the deemed commencement date for the purpose of the demand notice has been decided as [redacted] but it is clear that the planning permission in question was granted after the relevant development was commenced. There is no mention of the deemed commencement date in this regulation. I therefore find this appeal valid and consequently, I will consider the appellant's view that the chargeable amount in [redacted] is incorrect with the CA failing to deduct the existing floorspace.

12. Schedule 1 Part 1 of the CIL Regulations lays out how to calculate the chargeable amount in Standard cases by applying the following formula:

$$\frac{R \times A \times I_P}{I_C}$$

where—
A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);
IP = the index figure for the calendar year in which planning permission was granted;
and
IC = the index figure for the calendar year in which the charging schedule containing rate R took effect."

(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.

13. Schedule 1 (10) defines an "In-use building" as (i) "*a relevant building, and (ii) 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".*

14. "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."

15. As stated above, to qualify as a 'in use building', the building must be situated on the relevant land on the day planning permission was granted. It is clear from the appellant's submissions that the [redacted] sq. m extension was demolished before the [redacted]. As a result, the area of this part of the existing building cannot be netted off from the GIA of the chargeable development. I do however consider the remainder of the building to have satisfied this criterion.

16. The second criteria to be met to qualify as an "in-use building", is that the property must contain a part that has been in lawful continuous use for at least six months ending on the day planning permission first permits development. The appellant has provided a number of witness statements that support regular use of the premises dating from 2019 to present day with fitness classes and other services being delivered most days on a weekly basis. The property, as a former chapel, historically would have had D1 planning permission under the Town and Country Planning (Use Classes) Order 1987. Amendments have been made to the 1987 Use Classes Order and with effect from the 01 September 2020, Class D1 was absorbed into the new Use Class E – Commercial, Business and Service. The uses described by the appellant fall within the sub sections of Class E outlined below;

E (d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms)

E (e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)

E (f) Creche, day nursery or day centre (not including a residential use)

E (g) Uses which can be carried out in a residential area without detriment to its amenity:

Therefore, I consider that the appellant has demonstrated that the use of the building was both lawful and continuous for the qualifying period and aside from the area of the demolished extension, I conclude that the GIA of the former chapel can be offset against the new chargeable development.

17. From the representations submitted, I understand the GIA of the chargeable development to be [redacted] sq. m and that the GIA of the existing building was [redacted] sq. m. However, an area of [redacted] sq. m was demolished before permission [redacted] was granted on [redacted]. This leaves a net chargeable area for A of [redacted]sq. m.

18. I understand there is no dispute in relation to R at £[redacted] and indexation of [redacted].

19. Applying the formulae laid out in Schedule 1 above, I determine the CIL charge in this case to be £[redacted] ([redacted])

[redacted] RICS Registered Valuer
Valuation Office Agency
03 August 2023