Appeal Decision

by [redacted] MRICS VR

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: 1841766

Address: [redacted]

Proposed Development: Change of use from former concrete works (Class B2) to storage container yard for use as self-storage business (Class B8).

Planning Permission details: Granted by [redacted] on [redacted], under reference [redacted].

Decision

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

Reasons

Background

1. I have considered all the submissions made by the appellant, [redacted] of [redacted], acting on behalf of [redacted] and the submissions made by the Collecting Authority (CA), [redacted].

   In particular, I have considered the information and opinions presented in the following documents:-

   a) CIL Appeal form dated [redacted].
   b) Grant of Planning Permission [redacted], dated [redacted].
   c) The CIL Liability Notice (ref: [redacted]) dated [redacted].
   d) Appellant's Statement of Case (undated but received in VOA on [redacted]
   e) Plans of the subject development and submitted planning documentation on the development, including a Design and Access Statement dated [redacted].
   f) The CA's Statement of Case document to VOA, dated [redacted].

g) Appellant's comments on the CA's Statement of Case and Appellant's Rebuttal Statement, dated .

h) E-mail correspondence received from the CA on and , contending that the Appeal has lapsed, as the CA contends that the development has commenced.

Grounds of Appeal

2. Planning permission was granted for the development on , under reference .

3. On , the CA issued a Liability Notice (Reference:) for a sum of £. This was based on a net chargeable area of m² and a Charging Schedule rate of £ per m² (all other uses), including indexation.

4. The Appellant submitted an Appeal to the Valuation Office Agency (VOA) on. As a preliminary matter the CA contends that the Appeal has lapsed as the development has commenced. I understand that no commencement notice was served but there are approximately containers on the site and an advertisement for storage at the site has been placed on-line. The Appellant contends that the works cited by the CA were minor enabling works in the form of removing structures, levelling the slab and introducing a small number of containers on site, which were not related to the approved development. The Appellant confirms that the containers are not used for anything other than to serve the ground and enabling works. Having interrogated the supplied photographic evidence of the containers, which was taken on, I am satisfied that there is not sufficient evidence to confirm that the works so far undertaken constitute development and therefore the development has not yet commenced. I have therefore concluded that this Appeal remains valid. The Appellant has made this CIL Appeal under Regulation 114 (chargeable amount), contending that the CA's calculation is incorrect and that the CIL payable should be £.

5. The Appellant's appeal can be summarised to two related points:-

   That the chargeable development granted under the should only apply to the office and sanitary structure, which the Appellant contends are the only 'buildings' liable for CIL. The Appellant contends that the shipping storage containers of the subject development do not constitute 'buildings' under the CIL Regulations and thus their floorspace is not liable for CIL. The Appellant opines that the CIL payable should be £, reflecting the area of the office and sanitary structure (m²) at a Charging Schedule rate of £ per m².

   The Appellant further opines that if the subject containers are determined to be buildings, then only the ground floor level containers are liable for CIL. The Appellant's argument for no CIL liability of the upper containers in any double stack is that they fall within the definition of a 'building into which people do not normally go' – they are much less accessible and much more likely to be used for long-term storage.

6. The CA disagrees, contending that the CIL payable is £, the sum shown in the Liability Notice.

   It would appear that there is no dispute between the parties in respect of the Charging Rate. I note that the 2023 Annual CIL Rate Summary of the Charging Schedule reflects indexation.

Approved Development in Dispute

7. The dispute between the parties relates to a roughly rectangular shaped site, comprising of approximately [redacted]m² ([redacted]of an acre). The site is a The former cement works machinery and storage sheds have been removed from the site and the site has a concrete hardstanding throughout, which is enclosed by a [redacted]metre height steel palisade perimeter fence.

   The proposed development comprises a re-purpose of the site into a yard for a self-storage facility with the use of shipping storage containers. Access will be available, [redacted] with secure entry for users. The approved permission stipulates the maximum number of containers on site is [redacted] at any one time and no more than two containers shall be stacked vertically on any part of the site. Mobile steps are to be used for accessing the upper units on any double stack. From the plans, I note that the shipping containers are standard [redacted]ft containers of steel construction; [redacted]ft containers typically measure [redacted]mm long x [redacted]mm wide x [redacted]mm tall. On the CIL Appeal form, the Appellant cites that the floor area of each shipping container unit is [redacted]m².

8. At the heart of the matter is a dispute between the parties in respect of the storage shipping containers - the CA contends that they constitute 'buildings'; the Appellant opines that they do not.

Decision

9. The Planning Act 2008, Part 11 Section 209 defines development for CIL purposes as *"anything done by way of or for the purpose of the creation of a new building, or anything done to or in respect of an existing building."*

10. CIL Regulation 9(1) defines the chargeable development as the development for which planning permission is granted.

11. There is no definition given to the word "building" within the CIL Regulations, other than it expressly excludes:-

    i. a building into which people do not normally go,
    ii. a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
    iii. a building for which planning permission was granted for a limited period.

12. The Appellant emphasises that given the business model of the container yard, the consented site plan is indicative only to highlight to the CA the accessibility and manoeuvrability of the containers in and around the site and their maximum number. The Appellant further states that customers' containers will come and go and most probably never return to the same space; many importers of containerised goods own the containers and are only looking to rest their containers to partially unload and then move location again. The Appellant states as part of the business model, that a crane lorry will move the containers; due to the nature of the units being portable and easily moved, the layout is likely to change at different times depending on the individual uses and requirements of each of the containers.

13. The Appellant has provided representations and case law to support their belief that the storage containers are not buildings, which are summarised below:-

    In considering the word "building" the Appellant cites the case of *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd* (1949). This Rating case, which was later endorsed by the Court of

Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102*, laid down that the following three criteria are relevant, when considering the definition of a "building" :-

Size; permanence; and degree of physical attachment. Of note, no one factor is decisive.

14. The Appellant further opines that if the subject containers are determined to be buildings, then only the ground floor level containers are liable for CIL. The Appellant's argument for no CIL liability of the upper containers in any double stack is that they fall within the definition of a 'building into which people do not normally go' – they are much less accessible and much more likely to be used for long-term storage.

15. The CA states that the operations provided by the Appellant in the Appellant's Statement of Case are contrary to the operations granted consent and have not been addressed in the CA's Statement of case.

16. The CA opines that the granted planning permission does not limit the period that this development can operate for, which is reasonable to assume that once the units are on site, they could be sited there in perpetuity and become a permanent feature.

17. The CA is of the view that due to the scale/size, permanence and their physical attachment, the storage containers are classed as 'buildings' for the purposes of Planning and CIL Regulations. In support, the CA has evidenced two Planning Inspectorate Appeal decisions - Land East of The Enterprise Centre, Leicestershire (APP/K2420/C/19/3222721, dated 17 April 2020) and Smallbrook Farm, Hereford (APP/W1850/X/11/2164822, dated 18 June 2012), which in both cases, the Inspector held that the containers should be regarded as buildings and were operational development.

18. The Appellant's main point of contention is that the containers are not buildings, which I will now address. There is no definition of a 'building' in the CIL Regulations. Part 11 of the Planning Act 2008 provides for the making of regulations for the imposition of a charge known as CIL (s.205(1). S.235(1) provides that, "except in Part 11", ""building" has the meaning given by section 336(1) of the TCPA 1990". Therefore, the meaning given by s.336 of the TCPA 1990 does not apply here. That meaning is: *'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building*.

19. The CIL Regulations do not provide a definition of building and so the only apparent option available is to refer to the dictionary for a clear definition as to what constitutes a "building".

    In the absence of any clear guidance from the CIL Regulations, I have therefore, had recourse to:

    (i) the dictionary; for a clear definition as to what constitutes a "building", and
    (ii) guidance from case law.

20. The Shorter Oxford English Dictionary, 6th Edition provides the definition of "building" as *"A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc*." An alternative dictionary definition is "*a structure with a roof and walls, such as a house or factory*."

21. In respect of the dictionary definition of a building, in the absence of any clear guidance from the CIL Regulations, I am satisfied to adopt the ordinary, common sense view of what a reasonable person would consider a shipping storage container

to be. It is my decision that such a person would not view a shipping container as a building within the broader meaning of the word, as it lacks the essential characteristics of a building. Furthermore, the Shorter Oxford English Dictionary, 6th Edition defines "container" as *an object for holding or transporting something*; whilst the import of this definition is not without some argument, it is my view that it supports my decision that a container is not a building for CIL purposes.

22. In respect of planning case law, there would appear to be some Planning Appeal decision evidence, which has held that storage containers are buildings. However, this evidence is as operational development for Planning Appeal purposes and not for CIL purposes. In respect of case law, I am guided by the three tests in *Skerrits*, which comprises of size; permanence; and degree of physical attachment. I shall address these in turn:-

Size Test
In terms of size, the [redacted] ft storage containers are certainly large enough in relation to planning controls and CIL to constitute a building. On the size aspect alone, I conclude that they would constitute a building.

Permanence Test
The Appellant points towards the fact that the containers are not constructed on site and brought into the site. A core aspect of the Appellant's argument is that the containers are not fixed, they are transient and are likely to move in and around the site; furthermore, suiting client's needs, the containers will be moved off site. Whilst the CA argues that they are fixed by their own weight, I am not persuaded by this argument; the fact that the containers have no services (as dictated by the granted permission) and moreover, will be physically moved around the site leads me to conclude that they do not pass the permanence test. The off-site manufacturing of the containers indirectly supports my conclusion.

The CA cites two Planning Appeal Decision in support of its contention that the subject containers are buildings:-

In respect of the Land East of The Enterprise Centre, Leicestershire (APP/K2420/C/19/3222721) the appeal was in respect of …*the siting of two storage container*s…

In respect of Smallbrook Farm, Hereford (APP/W1850/X/11/2164822) the Appeal was in respect of the *stationing of storage containers*.

[my emphasis of the underlined words *siting* and *stationing*.]

In highlighting the underlined words against the Permanence Test, I am of the view that they provide a key distinction in the described use of the Planning Appeal sites as operational development in comparison to the development of the subject storage yard for CIL purposes; the containers in the Planning Appeal sites are much less transient and the test for operational development is not the same for CIL purposes. I am of opinion that the two cited Planning Appeals are not determinative in defining that the subject containers are buildings for CIL purposes.

Degree of Physical Attachment Test
To some degree, I have already explored the argument of this test under the Permanence Test (above). The CA argues that the containers are fixed by their own weight; I am more inclined to describe them as resting on their own weight. It is clear to me that there is nothing stopping them from being lifted from their current position to another location within the site or indeed from the site, in line with the Appellant's business model. It is also clear to me that the containers have no foundations and

are intrinsically designed for taking on and off site with relative ease, hence why they are used for transporting goods in the shipping industry. In conclusion, I determine that the containers have no degree of physical attachment whatsoever and fail this test.

23. I will now address the Appellant's secondary contention - that if the subject containers are determined to be buildings, then only the ground floor level containers are liable for CIL. By virtue of Regulation 6(2) – 'buildings into which people do not normally go', the Appellant contends that by the nature of their use, that the upper level containers (where people store items generally for long periods of time, meaning that they do not enter the containers for weeks if not months on end) fall within Regulation 6(2) being buildings into which people do not normally go. I do not accept this argument; there is nothing at all to stop anyone from accessing their upper storage container. Indeed, the Appellant's Design and Access Statement claims that access will be available 24/7, with secure entry for users. In practice, there may be instances where storage containers are used but accessed on an infrequent basis, but this does not alter the fact that there is unencumbered access at all times and for this reason, I would determine that if they were buildings, then these storage containers would not fall within the Regulation 6(2) exemption.

24. The CA opines that the operations provided by the Appellant in the Appellant's Statement of Case are contrary to the operations granted planning permission for use as self-storage to provide secure domestic and light commercial storage. It is clear to me that the approved permission relates to a *Change of use from former concrete works (Class B2) to storage container yard for use as self-storage business (Class B8)* and the supporting Design and Access Statement clearly indicates that the use of the site is to be a self-storage facility. Condition 8 of the granted permission states that "the storage containers hereby approved shall be used to provide secure domestic and light commercial storage only and shall not be provided with any electricity or water facilities*"*. Given this, I see nothing contrary to operations provided by the Appellant in the Appellant's Statement of Case, which have a material bearing in my final determination.

25. The CA also opines that there is no indication from the information available when permission was granted that the containers are likely to be moved once positioned. They say these are large containers stacked one on top of the other, which will be of considerable scale and size and fixed to the ground by their own weight. From the approved permission, I note that a double stack of two containers not exceeding a height of 5.50 metres is the maximum height permitted and there is nothing in the permission to restrict the movement of containers around the site.

26. Having considered the dictionary for a clear definition as to what constitutes a "building", against the subject containers with additional guidance from case law, I determine that the subject shipping storage containers are not buildings for CIL purposes.

27. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the Appellant that the storage containers lack the characteristics of a building and CIL only applies to the office and sanitary structure buildings, which have an area [redacted] m². I agree with the Appellant's calculation of the CIL charge of £[redacted].

28. In conclusion, in considering the facts of the case, I determine a CIL charge of £[redacted] ([redacted])

MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
4th June 2024