Appeal Decision

by 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: @voa.gov.uk.

Appeal Ref: 1823403

Planning Permission Reference:

Location:

Development: Use as self-contained holiday letting unit (retrospective)

Decision

I confirm a CIL Charge of £ ( ) to be appropriate and this appeal is therefore dismissed.

Reasons

1. I have considered all the submissions made by (the Appellant) and 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 dated for the "*Use as self-contained holiday letting unit (retrospective).*"
    b. The CIL Liability Notice issued by the CA dated with CIL Liability calculated at £
    c. The CA's response dated to the Appellant's request for a Regulation 113 review.
    d. The CIL Appeal Form dated submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
    e. The CA's representations to the Regulation 114 Appeal dated .
    f. The Appellant's comments dated , together with attachments.

Background

2. Planning Permission reference was granted on for "*Use as self-contained holiday letting unit (retrospective)*" with condition 4 stating

3. A CIL Liability Notice was issued by the CA dated in respect of planning permission reference with the chargeable amount calculated as follows:-

Residential
Proposed GIA ████ m2
X £████ CIL Rate including indexation
= £████ CIL Liability

4. The CA issued the outcome of its Regulation 113 review on ████ stating that CIL applies to all dwellings, and that a holiday let is a dwelling and is liable to CIL whatever its size. They state that "*the 100 m2 rule…does not apply to the creation of dwellings*" citing Regulation 42 of the CIL Regulations 2010 (as amended). They further stated that the development was commenced and completed without planning permission and was therefore unauthorised, and confirmed the chargeable amount as calculated in their CIL Liability Notice.

5. A Regulation 114 Appeal against the chargeable amount dated ████ was submitted to the VOA on ████.

Appeal Grounds

6. The Appellant is of the view that this is not a residential development, and as the GIA is under 100 m2 it is therefore not CIL liable under the CA's published CIL Charging Schedule.

Consideration of the Parties' Submissions

7. The CA consider that a holiday let is a dwelling, and thus should be treated as residential under its Charging Schedule and is therefore liable to a CIL charge regardless of its size.

8. The Gross Internal Area (GIA) of the development has been calculated by the CA as ████ m2. This calculation of floor area does not appear to be in dispute.

9. The Appellant contends that short-term holiday accommodation can be a material change of use from residential, and that where a property is specifically short-term guest accommodation it is not by definition residential. They cite the Court of Appeal decision in <u>Moore v Secretary of State</u> where it was held that whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree.

10. The Appellant also refers to another planning application in ████ where this same CA granted permission on a property at ████ for "*Change of use on ground and first floors from offices (Class E) to guest accommodation (Sui Generis)*."

11. The Appellant notes that the CA concluded in their Regulation 113 review that a "*holiday let is a dwelling*" but argues that whilst in many circumstances this may be true, for example country and coastal holiday cottages, the difference is that in those cases the buildings will be easily identifiable as residential properties. They further contend that in this particular case the planning permission specifically refers to "*self-contained holiday letting unit*" and by condition 4 reinforces this. They conclude that the scheme under consideration is not residential, but "*something different*" like the example at ████ above, and due to its small size as a non-residential development is therefore not liable for CIL.

12. The Appellant has put forward various articles and papers considering the implications of the decision in <u>Moore v Secretary of State</u> and also looking at the Airbnb market, as well as proposals before parliament to create a new use class of C5 (short term lets) which can be contrasted with C3 (dwellinghouses) supporting their argument that short term lets

result in a material change of use that requires planning permission, and therefore are not residential.

13. The CA note that the Appellant initially argued in their Regulation 113 review request that the development is *Sui Generis*, whilst this Regulation 114 appeal now appears to be on the basis of whether a holiday let is classed as residential accommodation.

14. The CA point to their *Community Infrastructure Levy Charging Schedule* published on [redacted] which applies to all residential development (excluding Use Class C2). They also refer to the case of Gravesend BC v Secretary of State for Environment (1980) where they believe the decision suggested that a holiday chalet, with the physical characteristics of a dwelling and providing the facilities for day-to-day domestic existence, remained to be considered a "dwelling house" even though it was occupied only for a part, or parts, of the year by a series of different persons.

15. The CA also refer to an earlier CIL decision by the Appointed Person (AP), and comment this "*has provided comfort in how to handle a structure that does not have a 'lawful use' when retrospectively applying for planning permission to be converted to a holiday let.*" That case involved a garage that had not been built in accordance with the approved plans requiring retrospective planning permission to regularise the development and therefore, because retrospective consent was required, the accommodation did not qualify as deductible floorspace under the CIL regulations. The CA note, however, that "lawful use" does not appear to be in contention for the current appeal under consideration, as it is not covered under the Appellant's appeal submissions.

16. The CA further refer to another CIL decision by the AP where "*the definition of a Holiday Letting (in Schedule 1, paragraph 9 of the Housing Act 1988) as 'A tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling house for a holiday' leads to a strong and persuasive argument that the building is indeed a dwelling.*"

Consideration of the Appeal

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

18. It is assumed that *Drawing No. 1 - Revision 1 - Sheet 1/1* is the only drawing available of the scheme, and this is the only drawing referred to within planning permission [redacted] granted on [redacted]. This shows a two-storey building with an internal staircase linking ground and first floor. The ground floor would appear to be one open-plan area with the plans annotated to indicate the presence of a kitchen "*bench*" and "*sink*" at one end, and a single bedroom area on the first floor with a shower and "*bench*". The plans are unclear as to whether there is a toilet or wash basin at first floor level.

19. Whilst reference has been made by both parties to lawful use and whether the property may be considered *Sui Generis*, it is evident that the key issue to be considered here is whether or not the use of the chargeable development is "residential", and consequently whether CIL should be charged at the residential rate as detailed in [redacted] *Community Infrastructure Levy Charging Schedule* published [redacted].

20. To determine this point, I have considered the precise wording of the Charging Schedule, which states "*The rates below will generally be levied against the gross internal floor area of all new dwellings (irrespective of size) and all other new development exceeding 100 square metres*". It then goes on to specify the rates at which CIL is charged depending upon the 'Use of Development' as follows:

Rate for permission granted 2023:
Residential (excluding Use Class C2) – £[redacted] per m2

Purpose Built Student Housing - £[redacted] per m2
Out of City Centre Retail - £[redacted] per m2

21. The Charging Schedule rate of £[redacted] per m2 for "*Residential (excluding Use Class C2)*" therefore applies to any development that can reasonably be described as residential.

22. Residential use is not defined in the Charging Schedule, but I consider that it can reasonably be described as the use of 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 residential 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), nor to exclude dwellings that are to be used for holiday lets.

23. Whilst the definition of holiday accommodation as included within Class C1 of The Town and Country Planning (Use Classes) Order 1987 (as amended) is that it is "*temporary accommodation for the use of holiday makers and tourists and not permanent residential accommodation*", in the case of Moore V Secretary of State for the Environment the decision had been that there is no requirement (before a building can be a "*dwelling-house*") for it to be occupied as a permanent dwelling.

24. Dwelling houses come under Class C3 of the Use Classes Order and are defined as follows:-

    Use as a dwelling house (whether or not as a sole or main residence) by:-

    a) A single person or by people to be regarded as forming a single household;
    b) Not more than six residents living together as a single household where care is provided for residents; or
    c) Not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)

25. Despite the absence of any physical evidence such as a history of use or occupation for the proposed scheme, I consider it highly likely that a significant proportion of the potential occupiers will comprise single households due to the size and layout of accommodation. This would align its use with that of a dwelling-house under the above definition and therefore indicate that the development is residential.

26. Whilst the CA have cited Gravesend BC v Secretary of State for Environment (1980) in their submission, they appear to be referring to this in the context of an earlier CIL decision by the AP. That CIL decision actually referenced the case of Gravesham BC v Secretary of State for the Environment where it was determined that a distinctive characteristic of a dwelling-house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It also observed the fact that just because a second home is not lived in all year does not prevent it from being a dwelling-house. If it was a dwelling-house for eight months, it did not cease to be a dwelling-house in the other four.

27. The Gravesham case also proposed that the matter of whether a building is a single dwelling house must be considered by reference to both its use and its physical attributes. Whilst it is apparent from *Drawing No. 1 - Revision 1 - Sheet 1/1* that the facilities are very basic these are, in my view, inherent to its purpose as a self-contained holiday letting unit. This leads me to conclude that, in this case, consideration of the proposed use of the building outweighs its physical attributes. Indeed, its use and purpose are plainly defined by the actual granted permission as a self-contained holiday letting unit.

28. With regard to planning permission condition 4 "*the accommodation hereby approved shall not be occupied as a person's sole, or main place of residence*", the permission granted does not prevent the holiday unit being used as a dwelling house all year round but does appear to prevent it being occupied permanently by the same household.

29. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, notwithstanding that the proposed development does not have an unrestricted C3 Use Class permission and the intention for the property to be used as short-term guest accommodation, I consider that the development can reasonably be considered as being used for residential purposes and there is nothing within the Charging Schedule to exclude a property that is to be used as a holiday let from this.

30. Furthermore, I also consider that the development comprises a new dwelling and therefore it does not qualify for exemption as minor development under CIL Regulation 42. It therefore follows that a CIL charge based upon the residential rate for of £ per m2 (including indexation) is appropriate.

Calculation of CIL Liability

31. CIL Liability must therefore be calculated using the appropriate published CIL Rate in *Community Infrastructure Levy Charging Schedule* published as follows:-

    Residential (excluding Use Class C2)
    Proposed GIA m2
    X £ CIL Rate (including indexation)
    = £ *CIL Liability*

Decision

32. 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 £ ( ) to be appropriate and this appeal is dismissed.

DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
10 August 2023