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

Email: [redacted] @voa.gov.uk

Appeal Ref: 1847431

Address: [redacted]

Development: Reconfiguration of existing hotel ([redacted]) to provide 200 rooms and external alterations; erection of roof extension to [redacted] to create roof terrace area; erection of 7 storey multi storey car park (181 spaces) and associated site alterations. Reconfiguration of [redacted] to facilitate change of use of 2nd and 3rd floors for corporate event space including glazed extension to roof (with terrace), new glazed entrance, external lifts and other internal and external alterations (including demolition of canopy structure). Erection of new roof to existing event space building ([redacted]). Installation of solar photovoltaic (PV) panels and glazed PV panels to roofs and southern elevations of [redacted] , [redacted] and multi-storey car park, and the provision of high-level footbridges.

Decision

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

Background

1. I have considered all of the submissions made by [redacted] representing [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 Decision Notice issued by [redacted] on [redacted] .
b. CIL Liability Notice [redacted] issued by the CA on [redacted] .
c. The appellant's request for a regulation [redacted] review dated [redacted].
d. The CA's regulation [redacted] review decision dated [redacted] .
e. The CIL Appeal form dated [redacted] submitted by the appellant under regulation 114, together with documents and correspondence attached thereto.

f. The CA's representations to the regulation 114 Appeal dated [redacted] together with documents and correspondence attached thereto.
g. The appellant's comments on the CA's representations dated [redacted].

2. Planning permission (reference [redacted]) was approved by [redacted] on [redacted] .

3. On, [redacted] the CA issued Liability [redacted] which states the CIL liability to be £ [redacted] ([redacted]). This is based upon chargeable floor space of [redacted] square metres (sq. m.), a rate of £ [redacted] per sq. m. and indexation at [redacted] .

4. On [redacted] the appellant wrote to the CA requesting a review of the calculation of the chargeable amount pursuant to regulation 113 of the CIL Regulations in which he opined the liability should be [redacted] .

5. The CA issued their regulation 113 decision on the [redacted] confirming the liability to be £ [redacted].

6. The appellant submitted an appeal to the Valuation Office Agency (VOA) on [redacted] under regulation 114 (chargeable amount appeal) proposing a CIL charge of £ [redacted].

Grounds of Appeal

7. The appellant is of the view that the chargeable amount detailed in the liability notice is incorrect because the CA has made two fundamental errors when calculating the chargeable amount;

   1) The CA has made its calculation on the erroneous basis that the proposed new floor space in the 2nd and 3rd and new 4th floors of the [redacted] is for an alleged leisure use. The planning permission authorises a change of use and operational development for 'corporate event space' which the appellant does not consider to be a form of leisure use.

   2) The CA has based its calculation on the erroneous assumption that the proposed muti-storey car park (MSCP) is an ancillary facility to serve the hotel and new events space.

8. In response to the appellant's first point, the CA contends that the new floorspace created at the [redacted] is for 'Leisure' type uses and is liable for CIL at the rate of £ [redacted] per sq. m.

9. In response to the appellant's second point, the CA asserts that they consider the MSCP; "*part and parcel of the entire development and that it is an ancillary facility to cater for the parking demand generated by the new hotel rooms and event/function spaces in the approved development. It cannot be seen as a separate planning unit with its own entirely separate use.*"

Reasons

10. Looking at the appellant's first point, regarding what the use of the new floor space in the western warehouse should be classified as, I note both parties agree that the GIA of the existing in-use buildings has been correctly offset and only the new additional internal floor space in the [redacted] is to be considered. The dispute relates solely to whether the chargeable rate applied should be £ [redacted] or £ [redacted].

11. In respect of this new floor space, the CA have determined it to be for a leisure use and as such have applied a rate of £ [redacted] per sq. m. in line with [redacted] Community Infrastructure Levy: Charging Schedule, which was adopted in, and [redacted] became effective on [redacted] .

12. The appellant highlights that the description of the use of the [redacted] within the planning permission is "corporate event space". The appellant opines that corporate event use is not a leisure use as a corporate event is concerned with business. The attendees of such events are primarily there for the purposes of business and the events that take place will be different to any form of leisure use.

13. The appellant refers to Section 75(2) of the Town and Country Planning Act 1990 that provides that where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used. The appellant notes the subject permission specifies the use of the area in question to be "corporate event space".

14. The appellant lists the types of corporate events that are envisaged to take place here; conferences, product launches, AGMS, investor presentations, marketing events, staff training events, staff motivational events, symposiums, exhibitions and other business focused events. The appellant sees these uses as falling within subsection (c) (iii) of Class E in the Use Classes Order (as amended in 2020), other appropriate services in a commercial , business or service locality (except for exhibitions which fall into subsection (e) of Class F1). The appellant opines the only leisure use which falls into Class E, is indoor sport, recreation or fitness use or use as a swimming pool or skating rink and the appellant observes that the subject planning permission permits no such use.

15. The appellant also notes that offices attract a [redacted] rate within the Council's charging schedule. They state the same rationale behind this would apply to corporate events which are held by businesses in premises external to their offices.

16. The appellant does not agree with the CA that the proposed works associated with the application are to be considered as an expansion of the existing permitted uses. The appellant asserts that as the planning permission expressly specifies the use of the new floor space to be for corporate events, to undertake the leisure uses that exist elsewhere in [redacted] (which are sui generis) in this space would constitute a breach of planning control.

17. The CA advise that in their opinion, the description of the development within the planning permission does not define the use classes for which permission

was sought. They have therefore had regard to the Committee Report which states, "*The newly proposed conference use of the second and third floor (and roof top) of the [redacted] would operate in a similar manner to the existing events use within the [redacted] .*" After considering the assessment of uses defined by the Local Planning Authority in the determination of the development proposals and the current Use Classes Order, they conclude that significant elements of the approved development fall within Class E subsections (c,iii) and (d) as well as Class F1 subsection (e) and as such conclude the new floorspace of the [redacted] is for 'Leisure' type uses.

18. The CA's charging schedule does not make specific reference to either the current or past Use Classes Order and also offers no definition of leisure. The parties are unable to agree under which Use Class corporate events fall. The appellant considers corporate events to fall within subsection (c) (iii) of Class E. The CA agree parts of the development falls within Class E subsection (c, iii) but they also consider parts to fall under Subsection (d) Indoor sport, recreation or fitness and F1 subsection (e) public halls or exhibition halls.

19. The Collins English dictionary defines corporate as; *"relating to business corporations or to a particular business corporation"* and leisure as; *"the time you are not working and you can relax and do things that you enjoy."* Having regard to these definitions, I consider corporate event space to be related to a business use rather than a leisure use.

20. The CA has not provided details as to which areas of the subject space they see as being used for indoor sport, recreation or fitness (E (d)) which is the only one of the Use Classes they list, which suggests a leisure use. In the absence of any evidence that shows where in the development a leisure use has been permitted, I agree with the appellant, regard should be had to the description contained within the subject planning permission as this defines the chargeable development in accordance with regulation 9. Consequently, I determine all of the new [redacted] space to be corporate event space. As such, I deem this space to be fall under "all other development" in the charging schedule which has a charging rate of £ [redacted]

21. In respect of the appellant's second point, I have considered the representations from both parties as to whether the MSCP is a separate planning unit and use as opined by the appellant, or as suggested by the CA, an ancillary use to the hotel and corporate events space.

22. The appellant once again looks at description of the chargeable development contained within the planning permission and notes there is nothing within that description that stipulates that the MSCP is ancillary to another part of the development.

23. The appellant considers assumptions based upon the Transport Assessment Addendum to be impermissible. They describe this document as supporting the planning application but consider that it does not define or circumscribe the development authorised by the planning permission unless it is incorporated within one of the planning conditions (which is not the case here). The appellant states the Transport Assessment Addendum provides certain

assessments of the availability of parking in different scenarios it does not prescribe how the MSCP will be used.

24. The appellant opines that the MSCP will comprise a separate unit of occupation and therefore a separate planning unit. The appellant notes that case law establishes that the use of land cannot be ancillary to the use of other land within a different planning unit even where the planning units are contiguous. (*Westminster City Council v British Waterways Board [1985] AC 676).* The appellant also states that under planning law the MSCP cannot be characterised as ancillary to two different primary uses.

25. The appellant describes the MSCP as having a synergistic relationship with the rest of the development rather than being ancillary to it. They state some hotel guests and visitors to other parts of [redacted] may find it convenient to park in the MSCP but this is synergetic not ancillary. They also point out that the MSCP can be used by people who are not visiting any part of [redacted] and that access and egress is possible without entering the hotel or any other part of [redacted]. The appellant also notes that both parties recognise that a number of visitors to [redacted] will arrive by other modes of transport.

26. The appellant considers that the apportionment of the parking spaces by the CA between the hotel and the "leisure" use is based upon unrealistic assumptions and disregards the fact that most users of the corporate event space will arrive by sustainable non-car modes of travel. The appellant argues the use of the parking spaces will inevitably fluctuate and that the apportionment carried out by the CA is a wholly artificial exercise.

27. In support of their classification of the MSCP as ancillary, the CA explain that this mixed use scheme was considered holistically with the MSCP seen as catering for the parking demand generated by the new hotel rooms and event/function space and that is not a separate planning unit.

28. The CA states that without the associated redevelopment / reconfiguration of the warehouses, it is unlikely that a standalone multi-storey car park would have been deemed appropriate in this location. The CA note the Planning Committee Report considered the MSCP to be "*an ancillary facility which would support the wider use of the site*."

29. The CA consider that Planning Condition [redacted] reinforces the ancillary nature of the MSCP as it requires the appellant to submit a scheme for the provision of parking spaces along with the details of the allocation and management prior to the first use of the reconfigured hotel or [redacted]. The CA describe it as premature to assume that the MSCP can lawfully be used by vehicle users with no intention of visiting the hotel or the new corporate event space in the [redacted] in light of this condition.

30. In response to the CA's representations, the appellant highlights the established tests for determining the planning unit laid down in *Burdle v SSE [1972].* 1) recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. 2) where an occupier carries out a variety

of activities and it is not possible to say one is incidental or ancillary to another, and the different activities are not confined within separate and physically distinct areas of land, these different activities comprise a composite use and, again, the whole unit of occupation should be considered. 3) where within a single unit of occupation, two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes, each area used for a different main purpose ought to be considered as a separate planning unit.

31. The appellant reiterates that the MSCP is a separate planning unit. They point out it will be a separate building and a separate unit of occupation that will be used for a different purpose to the hotel and corporate event space which are also separate units of occupation and planning units. Once that is established, it cannot be descried as ancillary to the hotel or the corporate event space in light of the Burdle principles above.

32. The appellant also opines that the MSCP will neither be in hotel nor leisure use and will be used as a car park in accordance with the planning permission. Consequently, the MSCP must be regarded as "other development" within the CA's Charging Schedule which has a chargeable rate of £ [redacted].

33. In respect of this point, I also find in favour of the appellant. Regulation 9.(1) defines the chargeable development as, "*the development for which planning permission is granted*." In respect of the MSCP, the permission permits the, "*erection of 7 storey multi-storey car park (181 spaces) and associated site alterations).*" The MSCP is not described as ancillary to either the hotel nor the events space.

34. I agree with the appellant, this is a mixed use development and under the Burdle principles, the MSCP would be seen as physically separate and distinct area occupied for substantially different and unrelated purposes to both the hotel and the events space. Whilst some of the users of the MSCP may be guests at the hotel or users of the event space, some may not and there is nothing within the planning permission or conditions that limits the use to that effect. The planning permission does not describe the MSCP as ancillary and given its scale, physical separation and purpose, it is evident this is a car park in its own right rather than being a part of the other planning units within the permission. Whilst the car park might support the wider use of the site this does not equate with being ancillary to the other uses.

35. Given the above, I determine the MSCP a separate planning unit. Its use as a car park falls under other development within the Charging Schedule which attracts a nil charge rate.

36. Based upon the facts of this case and the evidence before me, I determine that the CIL payable should be £ [redacted] ()[redacted].

[redacted]

RICS Registered Valuer
Valuation Office Agency
16 August 2024