

Appeal Decision

by [REDACTED] MRICS BA Hons, PG Dip Surv

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW
Email: [REDACTED]@voa.gov.uk

Appeal Ref: 1842091

Planning Permission Details: [REDACTED]

Location: [REDACTED]

Development: 6 x single storey, 5-bed, detached bungalows, with bay windows at ground floor, habitable roof space, associated parking and amenity space. Revised plans [REDACTED]

Decision

I confirm that the Community Infrastructure Levy (CIL) charge stated in the Liability Notice issued on [REDACTED] is not excessive and hereby dismiss this appeal.

Reasons

1. I have considered all of the submissions made by [REDACTED] LLP representing [REDACTED] (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 submitted documents:-

- a. The Decision Notice issued by [REDACTED] on [REDACTED].
- b. CIL Liability Notice [REDACTED] – CIL No. [REDACTED] issued by the CA on [REDACTED].
- c. The request for a Regulation 113 review made to the CA by the appellant on [REDACTED].
- d. The Chargeable Amount review decision issued by the CA on [REDACTED].
- e. The CIL Appeal form and statement received by the VOA on [REDACTED] and submitted by the appellant under Regulation 114, together with documents attached thereto.
- f. The CA's representations to the Regulation 114 Appeal dated [REDACTED].

- g. Further comments regarding the CA's representations made by the appellant on [REDACTED].

Background

2. The subject site was originally used as a [REDACTED] and comprised of outbuildings and an associated residence which was subject to an agricultural occupancy condition. The use as a [REDACTED] ceased in excess of [REDACTED] years ago and the agricultural occupancy tag attached to the dwelling was removed in [REDACTED]. Since the cessation of the [REDACTED] operation, I understand the site has been put to a number of commercial uses by a variety of occupiers up until [REDACTED]. Planning permission has never been sought for change of use of the entire site nor for any of the individual buildings within it. The commercial use of the site has never been subject to any enforcement action.

3. Planning permission was granted for the above chargeable development on the [REDACTED].

4. CIL Liability Notice [REDACTED] – CIL No. [REDACTED] was issued by the CA on [REDACTED], stating a chargeable amount totalling £ [REDACTED]. The charge was calculated based upon [REDACTED] square metres (sq. m.) of floor space. A rate of £ [REDACTED] per sq. m and indexation of [REDACTED] was adopted in accordance with the CA's charging schedule, producing a charge of £ [REDACTED]. A rate of £ [REDACTED] per sq. m and indexation of [REDACTED] was adopted in accordance with the [REDACTED] charging schedule, producing [REDACTED] CIL of £ [REDACTED]. The respective charging rates, indexation and gross internal area (GIA) have not been challenged and I assume both parties agree these to be correct.

5. The appellant requested a formal review of the CIL charge under Regulation 113 on the [REDACTED]. The appellant opined the CIL charge should be nil given the GIA of the new development is less than the GIA of the existing buildings that are to be demolished.

6. The CA issued their Regulation 113 – Review of Chargeable Amount decision on [REDACTED] confirming the CIL liability in the sum of £ [REDACTED]. The CA advised that in their opinion; "it is not clear and it has not been proven whether the site in fact lawfully comprises one single planning unit with a single lawful use across all the buildings, or whether the site in fact comprises numerous planning units made up of individual buildings or groups of buildings with distinct lawful uses." The CA also stated that based upon the evidence available, including the planning history it has not been clearly proven what the exact lawful use(s) of the site or the buildings upon it are, as defined by the Use Class Order 1987 (as amended). Finally the CA advised, they did not consider the evidence they had been provided to be sufficiently clear and unambiguous proof to demonstrate either lawful use of the site as a whole, or lawful use of any of the individual buildings upon the site for the required [REDACTED] month period within the [REDACTED] months leading up to the date planning permission was granted as required by the legislation.

7. The appellant submitted a Regulation 114 (chargeable amount appeal) to the Valuation Office Agency on the [REDACTED]. The appellant has stated that the CIL liability in this case should be [REDACTED] as there is existing floorspace of [REDACTED] sq. m. that had

been in lawful use for at least [REDACTED] months in the [REDACTED] year period up to the date planning permission for the development was granted. The appellant highlights this existing floorspace exceeds the [REDACTED] sq. m of the chargeable development.

8. The appellant opines that the site has been used as one planning unit with one lawful use (that being commercial), for in excess of [REDACTED] years. As such, they consider that the existing floorspace should be offset in accordance with Schedule 1 Regulations 40 and 50 of the CIL Regulations 2010 (as amended).

9. The appellant has provided an abundance of documents which outlines and supports the site as having had some commercial use since at least [REDACTED]. When the appellant purchased the site in [REDACTED], there were existing commercial tenants in-situ who were using the site for low-level commercial uses. From [REDACTED] to [REDACTED], the appellant let out the site as a whole to [REDACTED] for the storage of building materials. In [REDACTED], [REDACTED] and [REDACTED] let the whole site, using it for the storage of various items.

10. The appellant considers that as the site has been used for commercial uses for in excess of [REDACTED] years and has never been subject to enforcement action, the commercial use of the site is lawful.

11. The appellant asserts that the site is and has been one single planning unit for the following reasons;

- The buildings all share one common access from [REDACTED];
- There is no internal division of areas;
- The site is in common ownership;
- The site is controlled and managed by the appellant;
- There is a commonality of use (i.e. for a low level commercial use);
- The site shares a common water supply and drainage;
- The site has a common electrical meter that serves all of the outbuildings, they all run off one supply;
- The site is currently controlled as a single entity and
- The site was historically controlled as a single entity (albeit with multiple occupants).

12. The appellant likens the site to a self-store facility, where the whole site would be a single planning unit and not each separate area used for storage by individual persons and businesses.

13. The appellant reiterates that they have provided background details demonstrating that the site has been used throughout the last three years (more than just the six months required) and asserts that site can be described as lawfully in use for the purposes of the CIL calculation.

14. The CA have submitted representations in response to this appeal, in which they reaffirm that the key issue for consideration is whether it has been clearly demonstrated, on the balance of probabilities, that all or some of the existing buildings at the site (to be demolished) have been in continuous lawful use for [REDACTED] months within the required [REDACTED] month period.

15. The CA consider that the available evidence and the planning history of the site does not allow a clear conclusion to be reached as to whether the site is one single planning unit with a single lawful use across all of the buildings, a single planning unit with a mixed use across the site or numerous planning units made up of individual

buildings or groups of buildings with distinct lawful uses. The CA consider the evidence suggests the site may have been used as both single and multiple planning units, for mixes of commercial uses at various times since the cessation of the original use as a [REDACTED] farm. The CA also considers that the evidence and planning history has not clearly proven on the balance of probabilities what the exact lawful use(s) of the site or the buildings on the site in fact are, as defined by the Use Classes Order 1987 (as amended).

16. The CA opine that the evidence provided does not provide sufficiently clear and unambiguous proof which demonstrates, on the balance of probabilities, either lawful use of the site as a whole or lawful use of any of the individual buildings on the site for [REDACTED] months in the required [REDACTED] month period as required.

17. The CA also point out that it would normally be expected that lawful commercial use of a site or building would be demonstrated by the payment of Business Rates, this usually being a legal requirement. The CA indicate they have no records of Business Rates having been paid at any time in relation to the commercial use of the site.

18. In response to the CA's comments, the appellant submitted further representations on the [REDACTED]. The appellant maintains that the evidence they have submitted is more than sufficient to prove, that on the balance of probabilities, the site has been used for a mixed commercial use (Classes B1, B2 and B8) for a period significantly in excess of [REDACTED] years and therefore is lawful. The appellant reiterates that they consider the site to be one planning unit and that consequently, it is not necessary to evidence what each individual building's use is and a period of continuous use for each individual building.

19. As part of these representations, the appellant submitted a copy of their application to the local authority for a Certificate of Lawfulness Existing Use or Development, including a statutory declaration which was included within the original grounds of appeal in a draft form. The appellant considers that as the statutory declaration is almost identical to the draft submitted with the application, it can be given considerable weight.

20. The appellant has responded to the CA's comment about Business Rates having not been paid. They advise they were not aware of any Business Rates when they acquired the site in [REDACTED] and the lease to the [REDACTED] made it the tenants' responsibility to pay any Business Rates or taxes. The appellant opines non-payment of Business Rates does not attest to the actual (planning) of the site.

21. The appellant has also referred to another CIL appeal decision in support of their case. In this instance the Appointed Person decided the appellants had provided sufficient evidence to demonstrate continuous use even though the gallery in question only opened once a week. The appellants here therefore consider the small gaps between tenants has not interrupted the continuous use of the site.

Decision and Reasoning

22. It is clear a disagreement has arisen in respect of the application of Schedule 1 Regulations 40 and 50 of the CIL Regulations 2010 (as amended) within which, a

calculation of the *net* chargeable area of a development, provides for the deduction of the gross internal area of an ‘in use building’ that is to be demolished as part of the development, as well as certain retained parts.

(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.

23 . Schedule 1 of the CIL Regulations 2010 (as amended) (10) (i) and (ii) provides that an ‘in-use building’ means a building which; *“is a relevant building and 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”*.

24. Schedule 1 (8) states that; *“where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building”*. Schedule 1 (9) states that where a CA does not have sufficient information, or information of a sufficient quality, to enable it to establish – a) whether part of a building falls within a description in the relevant definition or b) the GIA of any part of a building falling within such a description, *“it may deem the GIA of the part in question to be zero”*.

25. Under the legislation we are required to look at the use of the buildings for the three year period from [REDACTED] up until the [REDACTED]. I have therefore focused upon evidence submitted relevant to this time frame.

26. From the information provided, I can see the site comprised of [REDACTED] buildings of various sizes as well as some smaller outbuildings and the residential property. All

of the buildings are detached from each other and regardless of their use as either a whole site or separate buildings, for CIL purposes they are all individual buildings since the regulations refers to the gross internal areas of parts of in-use buildings that are to be demolished before completion. The CA is correct, lawful continuous use of all of the buildings is required to be demonstrated for the entire GIA to be offset.

27. Having reviewed both parties' submissions it is my opinion that the lawful use of the site is currently unclear and I note from the appellant's representations that there is currently an application for a Certificate of Lawful Existing Use or Development outstanding. However, I do not consider the matter of what the lawful use of the buildings is and whether the site is one single planning unit to be wholly relevant in informing my decision as I do not consider the evidence submitted is sufficient to allow me to determine actual use throughout the site. As noted above, I am required to identify which individual buildings were used on site when determining the gross internal area of in-use buildings that qualify to be offset against the area of the chargeable development.

28. I do not dispute the site has been occupied in part during the relevant period and the lease agreement provided by the appellant and his statutory declaration supports this. However, within the lease the "Premises" is described as "the warehouse space at [REDACTED] of [REDACTED], [REDACTED]". Paragraph 4 states the Landlord agrees to rent the Tenant the Premises for only the permitted use (the "Permitted Use") of: Office/Storage/Workshop. A plan is not contained within the lease to clarify the area let and I am unclear as to whether the warehouse space is one or more of the buildings. The lease also does not evidence how and when the site was used.

29. The appellant advises in his Statutory Declaration that the [REDACTED] used all of the buildings on the application site for the storage of various items. He describes the nature of this use/storage as being "like before" with a modest number of visits to the application site and he states that no noise or dust generating activities were carried out. The appellant does not offer precise details about how and when the site was used but states although the [REDACTED] may have visited "*the site more frequently, the total number of visits was not greater than the number of visits but the various/numerous individuals using individual buildings before. Any change was imperceptible*".

30. The appellant has not submitted any declarations from the tenants themselves to explain which buildings they used for what and when and how often and I have not been provided with any photographs, utility bills, business stationary etc to assist with my understanding. I would also expect if the premises were in lawful commercial use, that they would have been subject to Business Rates and evidence of this would have been provided.

31. It is not contested by either party that parts of the site were used for storage purposes and there is no reason to doubt that the [REDACTED] did attend the premises. However, the details provided in the appellant's statutory declaration are very brief and do not provide the detail required to demonstrate that on the balance of probabilities, all of the buildings on site were in continuous lawful use during the relevant period. Furthermore, there is insufficient evidence to identify which of the individual buildings may have been in-use during the relevant period.

32. Although the appellant has referenced a CIL appeal decision where the Appointed Person decided that a gallery which only opened once a week was in continuous lawful use to support their position, I do not consider that decision relevant here. In that case, the appellants provided press clippings showing their advertised opening hours, photos of the premises in active use as well as statements by the occupiers as to their use of the building. Whilst I recognise the appellant is trying to demonstrate the change in tenants would not prevent continuous lawful use, this case differs as in this instance other than the tenancy and the appellant's brief description, I have not been provided with any evidence that shows the site or any part of it in active use.

33. In considering the totality of the evidence in this particular case and on the balance of probabilities I have concluded that the evidence available is not sufficient, nor of a sufficient quality, to establish which buildings were in-use buildings and I therefore consider that the CA have correctly deemed the existing buildings not to be in-use buildings and dismiss this appeal.



MRICS
RICS Registered Valuer
Valuation Office Agency
05 June 2024