Appeal Decision

by [redacted] MRICS FAAV

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

Valuation Office Agency (DVS)
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Durham
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E-mail: [redacted]@voa.gov.uk

Appeal Ref: 1851006

Planning Permission Ref: [redacted]

Proposal: Erection of Five Glamping Structures

Location: [redacted]

Decision

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

Reasons

1. I have considered the submissions made by [redacted] , on behalf of the Appellant, [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) Planning decision [redacted] .

b) Site plans and supporting Planning Statement dated [redacted] submitted by [redacted] .

c) Statement from '[redacted]' and Statutory Declaration from [redacted], regarding the construction and siting of the glamping structures.

d) CIL Appeal Form and accompanying, covering letter from [redacted] , setting out the appellant's case.

e) CIL Liability Notice ref Planning Permission [redacted] dated [redacted] for £[redacted]

f) CIL Regulation 113, Review of Chargeable Amount request made on [redacted] and the 114 Appeal Representations from the CA dated [redacted] upholding and defending the original Liability Notice.

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g) Representation letter from the CA to the Valuation Office Agency detailing their views, as per their response to the Regulation 113 review which was requested by the appellant and site visit report to the glamping site by the Council in [redacted].

h) Various redacted, CIL Appeal Decisions supplied by both the CA and the Appellant to support their opinions.

2. Planning permission was granted for the development 'Erection of Five Glamping Structures' on [redacted], under reference [redacted].

3. On [redacted], the CA issued a Liability Notice (Reference: [redacted]) for a sum of £ [redacted]. This was based on a net chargeable area of [redacted] m² and a Charging Schedule rate (which includes indexation) of £[redacted] m².

4. Two further CIL Liability Notices were issued by the CA, after their inspection of the site as part of their Regulation 113 review. The chargeable amount remained unchanged. As the development had commenced prior to anyone assuming CIL Liability the Council applied provisions of Regulation 33 of the CIL Regulations 2010 (as amended) and default CIL Liability Notices dated [redacted] were then served on [redacted] and [redacted] , who had been identified as the owners, through Land Registry.

5. A Regulation 113 review of the charge was made to the Council on [redacted] . The CA responded stating that it was of the view that its original decision was correct and should be upheld.

6. On [redacted] the Valuation Office Agency received a CIL appeal under Regulation 114 contending that the CIL Liability should be [redacted].

Grounds of Appeal

7. The appellants grounds of appeal set out in the agent's letter, accompanying the Regulation 114 Appeal are:
    1. The glamping structures are not 'buildings' and thus in accordance with the CIL Regulations, can not be assessed for GIA purposes or CIL Liability.
    2. The planning permission references glamping 'structures' and not buildings which reinforces the appellants view that they are not buildings.
    3. The planning permission prohibited 'any use as a dwelling' which suggests again that the structures could not be regarded as buildings to live in.
    4. If assessed and subjected to the 'Skerritts Test' (case law which produced three tests to be applied to determine whether a structure is deemed a 'building') the appellant maintains the structures do not qualify as buildings.
    5. The appellants 'Supporting Statement' which accompanied the planning application was for ''five demountable glamping structures with part timber and external green canvas, to replace the previous tents on site'. This supporting statement is intended to evidence that the structures are not permanent buildings, or permanently fixed to the ground. (Skerrit Tests).

8. The Appellant cites a) CIL Legislation to support how if not deemed a 'building' the glamping structures are not CIL Liable; b) includes particular CIL Appeal Decisions to support and evidence their view that the structures are not buildings

and c) case law to support the view the structures are not buildings, (Meaor v SSETR (1999) JPL 182; Appeal Decision 3311612 16 January 2024 Thornham Marina and Moir v Williams (1892) 1 QB 264 CA); Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwins Iron and Steel Co (1949 1KB 385. It was held in the last case that the test as to whether a construction IS a building, relied upon three factors: **size, permanence** and **degree of physical attachment to the ground.**

9. These three criteria were subsequently used in the planning case of Skerritts of Nottingham Limited v Secretary of State for the Environment Transport and the Regions (2000) 2 PLR 102. The appellant contests:

    1. **Size;** the glamping pods are too small to be considered residential dwellings
    2. **Permanence**; the pods sit upon a steel frame that enables a telescopic handler to lift and move them easily and quickly.
    3. **Physical attachment to the ground;** whilst attached to services this is not conducive to deducing the structures are permanently affixed to the ground and the provision of the plinths enables easy accessibility of the structures for removal or re-siting. The pod structures, the tenanted sheet which over sails it and the wider decking area have no connections but are independent of each other.

10. A previous CIL Appeal Decision regarding a Shepherd's Hut and Ecopod, for use as holiday accommodation is raised by the Appellant, to equate their glamping pods as being akin to a caravan as they are fully mobile and can be transported by motor vehicle/trailer.

11. Case law is cited by the Appellant; Elitestone Ltd v Morris and Another (1997) UKHL 15, involved determining whether an asset was a building or a chattel. The case sets out several tests to determine the differences between the two and the appellant considers the glamping structures would be considered chattels under these tests.

12. Finally, as part of his representations, the Appellant raises the Planning Use Class of the glamping site. The Appellant considers the use class of the site to be Sui Generis and not C3 (residential). They consider the design of the structures does not align with residential standards and a campsite does not normally sit within Planning Class Use C3. In planning law terms the site would be Sui Generis thus the Appellant maintains that the applicable CIL rate should actually be £[redacted] per sqm as per the CA's charging schedule for 'all other uses'.

13. In essence, the Appellant contests that in applying the above case law and factors, the structures are not buildings because they are not permanent and do not have permanent physical attachments to the ground. More over, if that were not the case and they **were** CIL liable the applicable and correct CIL rate as per the CA's charging schedule would be £[redacted] per sqm.

14. Conversely the CA considers the structures to be residential buildings and have assessed the CIL due on the basis of a GIA and chargeable area of [redacted] sqm.

15. The CA disagree with the Appellants view that that the development does not include buildings (and is therefore outside of the scope of charging under the CIL Regulations).

16. The CA raise the CIL Appeal Decision of a 'domed structure' which was deemed to be a building and thus CIL chargeable to support their opinion that the glamping structures are similarly chargeable buildings.

17. Unlike the Appellant who considers the separate elements, the CA view the glamping structure as a whole and as comprised of all elements (tented canopy, decking and pod).

18. The CA refer to definitions of 'building' which have been included within previous CIL Appeal Decisions (Shorter Oxford English Dictionary 6th edition) and also refer to the CIL Regulations 2010 Reg 40 (11) which details non applicable buildings.

19. Similarly to the Appellant the CA also refer to the decision and 'tests' contained within 'Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2) (2000) 2 PLR 102 in determining whether a structure **is** a building; size; permanence and degree of physical attachment.

    1. **Size;** the CA consider the glamping pods could be used as dwelling houses regardless of their 'substandard size.' albeit the occupants would have to change (same household not allowed – Condition 9 of the Planning permission).

    2. **Permanence;** the CA consider the evidence they collated from their site visit (Enforcement Officer site visit) support their view that the structures are permanent; 'cast concrete stub columns, set in the ground to support a steel frame, on which the cabins are constructed from timber studwork'. They also refer to some of the cabins being constructed in situ, with timber frames rather than modular designs.

    3. **Permanently fixed to the ground**; the CA also consider the connection of the structures to sewage and drainage services to indicate that even if not evidence alone, it suggests a degree of permanent affixation and state they consider the structures to be 'concreted to the ground'.

    4. In considering their previous points the CA conclude they are of the opinion that the structures are buildings to be used for habitation by persons for holiday accommodation.

20. With regard to the [redacted] Council CIL Charging Schedule, the term 'residential dwelling' is not specifically defined as being C3 (as per Use Classes of The Town and Country Planning Order 1987 (amended). The CA therefore hold that the holiday accommodation does qualify as it includes 'a tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling house for a holiday.'

21. Although it is accepted that they are compact, the CA consider the glamping structures include all the facilities associated with dwellings.

22. The CA disagree with the appellant and do not consider the pods can be classed as caravans; nor were they referred to as caravans in the planning application. The CA does not agree that the pods are chattels as they maintain they qualify as buildings.

23. The Appellant contests that the structures are CIL liable as they are not buildings, but also disputes the CIL Rate used within the CIL Liability Notice. The dispute between the parties regarding the chargeable rate is because the Appellant considers the structures are not 'residential dwellings' and as such should fall into the Sui Generis category of planning class use, which attracts a CIL Liability rating of £[redacted] per sqm. The CA disagree and contest that the Planning Class Uses are not referred to within their CIL Charging Schedule and being holiday accommodation qualifies the structures as being 'residential dwellings.'

Decision

24. The parties firstly dispute whether the structures are buildings and secondly dispute the chargeable rate used in the CIL Liability calculation.

25. As identified by both the Appellant and the CA, there is no definition given to the word "building" within the CIL Regulations, save for Schedule 1 Part 1 1(10), which states that "building" does not include:

    (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;

    In the absence of any clear guidance from Schedule 1 Part 1 1(10), 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.

26. The definition of "building" within the Shorter Oxford English Dictionary, 6th Edition (Shorter OED) is defined 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."* The proposed development has a roof, walls, an inside and an outside and could therefore be deemed to potentially be a "building". It has arguably been created for occupation but there is a question as to whether it can be described as a permanent fixed thing and case law has been used to inform my decision on this point.

27. The case of *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* [2000] 2 PLR 102 (referred to by both parties), held that a marquee **was** considered to be a building and in reaching this conclusion established three criteria, when considering the definition of a "building":

1. Size
2. Permanence
3. Degree of Physical Attachment

28. Size; as stated on the Statutory Declaration submitted by the Appellant, the glamping pods are [redacted]sqm. I equate this to a mid range, double, hotel bedroom or the most modest of static caravans.

29. Permanence; I disagree with the CA and do not consider the glamping structures to be 'physically attached and concreted to the ground'. There is no slab concrete foundation; a steel deck sits upon concrete plinths ([redacted]mm x [redacted]mm) which form minimal ground disturbance and would seem to readily lend themselves to removal, if the structure above was also moved. The structures are rested on a steel deck which is stated could be easily lifted for movement to another part of the site. The structures have been designed, it seems, with movement in mind. What is stated by the Appellant appears reasonable and practical. The presence of water and sewage connections, as per a previous CIL Appeal Decision, does not indicate permanent siting.

30. Degree of physical attachment; as above, the structure is not permanently attached to the land and the steel support structure is intended to enable the movement of the building. In the case of Elitestone Ltd v Morris and another [1997] it was held that if a structure is moveable it is a chattel as opposed to a "building", and that this would remain the case even if the structure was connected to mains services such as electrics, water or sewerage.

31. Taking the three tests together I am of the view that size, permanence or physical attachment have not been demonstrated in a way that supports the subject being defined as a building.

32. With regard to the question of whether the structures are residential dwellings, I have considered the following; the reason for construction of the structures was to extend the usable period (to 365 days) of guest occupation for glamping purposes, it was not to provide residential accommodation. Whilst more robust than the tents they replaced, the structures still lack facilities you would expect to find within a residential dwelling and guests are expected to cook on open fire grills, as part of their glamping experience.

    The limited size of the structures together with their design (focusing on the needs of temporary short term guests rather than permanent residents) indicates these are not intended to be residential dwellings. I consider the view expressed by the CA in this Appeal to be both impractical and unlikely in stating that despite their size and Condition 9 of the Planning Permission, that the structures could still be used as a residential dwellings albeit with a faster turnover of occupants. This view does not appear to align with what I assume was the intention of the inclusion of Condition 9 of the Planning Permission. The Condition, strongly suggests it was not the Councils intention to create five new residential dwellings within the AONB.

33. Given the facts of the case, relevant case law and previous CIL Appeal Decisions, I conclude that I consider the structures are neither buildings, nor residential dwellings.

34. I therefore determine that the CIL charge should be £[redacted] ([redacted]).

35. Award of Costs

    1. The appellants, under Regulation 121 have requested an award of costs in this appeal as they consider the appeal was unnecessary, bar the actions of [redacted] Council. No further comments or supporting information is provided, bar the actual matters being considered within the appeal which is a disagreement over whether the glamping structures are 'buildings' and whether the correct CIL charge was applied.

    2. Guidance on awarding costs states that costs will normally be awarded where the following conditions have been met:

        - a party has made a timely application for an award of costs
        - the party against whom the award is sought has acted unreasonably and
        - the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Secretary of State or appointed Inspector, or part of the
        - expense because of the manner in which a party has behaved in the process.

36. Despite upholding the appeal, in my opinion. the CA have not acted unreasonably. There is no definition of building in the CIL Regulations, and I consider it reasonable that the CA might hold an alternative opinion, notwithstanding that I am of the opinion that their view was incorrect. I therefore deny the request for an award of costs.

[redacted]MRICS FAAV
Valuation Office Agency
17 October 2024