Appeal Decision

by ■ MRICS

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

Email – ■ @voa.gov.uk

Appeal Ref: 1847067

Planning Permission Ref: ■

Proposal: Construction of outbuilding for use as holiday let and retention of existing 5-bar gate (part retrospective)

Location: ■

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ ■ (■)

Reasons

1. I have considered all of the submissions made by ■ (the Appellant) and by 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 decision reference ■ granted ■ .
    b) CIL Liability Notice LN ■ dated ■.
    c) The Regulation 113 Chargeable Amount review decision issued by the CA on the ■.
    d) The CIL Appeal form and statement received by the VOA on ■ and submitted by the Appellant under Regulation 114, together with documents attached thereto.
    e) The CA's representations in response to this Regulation 114 Appeal, dated ■ .

f) Further comments from the Appellant in response to the CA's representations dated [redacted] .

2. Planning permission [redacted] was granted on [redacted] for, "*Construction of outbuilding for use as holiday let and retention of existing 5-bar gate (part retrospective)"* It is this permission which specifies the chargeable development to be considered under this Regulation 114 Chargeable Amount Appeal.

3. Prior to this permission, the Appellant was granted an earlier permission under [redacted] on [redacted] for, "*partial removal of existing rear extension and erection of two storey rear extension, removal of existing garage and erection of ancillary accommodation building to the North West corner of the site."*

4. From the submissions provided, I understand the ancillary building was to be used as a home office but in [redacted], the Appellant began using this building as a holiday let. In [redacted] the Appellant was advised this use was not authorised and retrospective permission was applied for and granted to regularise the breach.

5. CIL Liability Notice LN [redacted] was issued on the [redacted] stating the CIL liability in respect of this permission to be £ [redacted] ([redacted]). This is based on chargeable area of [redacted] square metres (sq. m.) at the West Area, Residential Zone B rate of £ [redacted] per sq. m. with indexation at [redacted]. I understand the area and rates adopted are not in dispute.

6. The Appellant requested a Regulation 113 review opining there should be no CIL liability in this instance as the subject property is; not a new development, is under [redacted] sq. m., and is not a new dwelling but part of the Appellant's main residence.

7. The CA issued their Regulation 113 decision on the [redacted] maintaining that the CIL liability should be £ [redacted].

8. Consequently, on [redacted] , the Valuation Office Agency received a CIL appeal made under Regulation 114 (Chargeable Amount) contending that the CIL liability should be [redacted].

9. The Appellant has cited numerous grounds of appeal and those that are relevant to this Appeal are summarised below:

   a) The ancillary building is not a new construction, it is an existing cabin which has been granted change of use from a home office to a holiday let.

   b) The cabin is not a dwelling. The Appellant highlights a condition within the planning consent prevents this.

   c) The cabin is too small to qualify for CIL being only [redacted]sq. m. and too small to qualify as a dwelling. The Appellant points to the Government's standard for a dwelling recommending [redacted] sq. m.

10. The CA have has submitted representations that can be summarised as follows:

a) The building was not constructed in accordance with approved plans submitted under original permission ████ . The subject permission ███ █served to regularise the construction works and the use as a holiday let. If the development had been constructed in accordance with the original permission, the ████ application would have been solely for a change of use. The CA also point out that CIL is chargeable on new floorspace that is created through change of use of an existing building or part of as well as newly built space.

b) The CA argue that functionally, the building could be used as a dwelling but its use as an independent dwelling would not be in accordance with planning policies for the area. The CA claims this differs from the assessment of the building being of C3 use class for CIL purposes.

c) The CA contend that as the building in question is considered to be a residential dwelling, Regulation 42 minor development exemption does not apply.

11. The Appellant has submitted further representations in response to the CA's submissions the contents of which I have noted and considered. In addition, within their respective submissions, both parties have made further and detailed representations relating to change of use and existing lawful use as well as further points which are not relevant to deciding this appeal. Whilst these views have been considered, I do not find it necessary to repeat them here.

12. After considering this matter in detail, it is clear to me the key issue is whether the subject development creates a new dwelling. Otherwise, the development would be exempt under Regulation 42 – Exemption for minor development.

42. (1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

(2) But paragraph (1) does not apply where the development will comprise one or more dwellings.

(3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings."

13. Dwelling is defined within the Community Infrastructure Levy Regulations 2010 (as amended) as, *"a building or part of a building occupied or intended to be occupied as a separate dwelling."*

14. Both parties agree the building is used as a holiday let. The CA deem buildings which are to be used as holiday lets to fall within Class C3 (dwellings) of the Town and Country Planning (Use Classes) Order (as amended). They do not consider the building ancillary to the existing residential use of The ████ and hence consider it to be chargeable at the relevant residential rate for this area.

15. The Appellant does not consider the subject to be a dwelling for a number of reasons including its size and facilities. The Appellant also highlights condition 2 of subject planning permission [redacted] .

    "2 The accommodation hereby permitted shall only be occupied as short term holiday let accommodation in connection with the occupation of the adjacent dwelling 'The [redacted] and at no time shall the accommodation be severed and occupied as a separate independent unit or as a sole or main place of residence.

    Reason: In order to prevent an independent unit which would not be in accordance with the policies for the area. The accommodation provided and the resultant relationship the adjacent dwelling at The [redacted] would not be considered to provide all of the amenities necessary for occupation as an independent dwelling unit or for long term occupation."

16. Whilst I agree with the CA, holiday lets generally constitute a dwelling and would fall under the residential charging rate specified within the Charging Schedule, we must consider whether the subject creates a dwelling for CIL purposes. The legislation is clear, to be a dwelling the building has to be occupied or intended to be occupied as a **separate** dwelling. Planning condition 2, regardless of the reasoning behind it, prevents occupation as a separate independent unit. Therefore, despite its permitted use as a holiday let, the subject does not create a new dwelling for CIL purposes and as such minor development exemption should apply.

17. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [redacted] ([redacted]).

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
07 August 2024