Appeal Decision

by [redacted] MRICS VR

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: [redacted]@voa.gov.uk

Appeal Ref: 1828225

***Address**:* [redacted]

Proposed Development: Conversion and extension of the existing [redacted] building and barn to form barn to form 5no. Aparthotel suites [redacted].

Planning Permission details: Granted by an appointee of the Secretary of State on [redacted], under planning appeal reference [redacted], in connection with the earlier planning application ref: [redacted].

Decision

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

Reasons

Background

1. I have considered all the submissions made by 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) CIL Appeal form (undated) but received in VOA on [redacted].

   b) Planning Inspectorate appeal reference [redacted] dated [redacted], in connection with the earlier planning application ref: [redacted], dated [redacted].

   c) The CIL Liability Notice (ref: [redacted]) dated [redacted].

   d) The CA's Regulation 113 Review, dated [redacted].

   e) The Appellant's Statement of Case document dated [redacted].

   f) The CA's Statement of Case document dated [redacted].

g) Appellant's comments on the CA's Statement of Case and Appellant's Rebuttal Statement, dated [redacted].

Grounds of Appeal

2. Planning permission was granted for the development on [redacted], allowed on appeal, 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 of £[redacted] per m², and indexation at [redacted].

4. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [redacted], stating that it was of the view that its original decision was correct and should be upheld.

5. On [redacted], the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect.

6. The Appellant's appeal can be summarised to a single core point:-

   In that the CIL charge has been calculated incorrectly and the 5no. Aparthotel suites should not be charged against the Residential Zone 2 rate. The Appellant further opines that within the [redacted] CIL Charging Schedule there is no specific provision or charging rate proposed for C1/Hotel development. On this basis, the Appellant contends that C1 accommodation falls within 'All other development' and is therefore nil rated.

7. The CA disagrees, contending that the proposed 5no. Aparthotel suites is 'holiday accommodation' or 'holiday lets' and therefore should be charged at the Residential Zone 2 rate.

   It would appear that there is no dispute between the parties in respect of the Gross Internal Area (GIA) of the development, or the applied indexation.

8. The dispute between the parties relates to a former public house, associated outbuildings, parking and garden area, situated in [redacted] and located within [redacted]. In addition, it is also in the [redacted] Conservation Area. The plot area of the development is approximately [redacted] in size.

9. At the heart of the matter is the different calculations of the net chargeable area of both parties in relation to their respective interpretation of the [redacted] CIL Charging Schedule. To clarify, the [redacted] CIL Charging Schedule dated [redacted], designates 'Residential Zone 2' at £[redacted] per m², whilst 'All other Development' is zero rated.

   The Appellant contends that the CIL charge should be £[redacted], based upon the area of the Barn (C3) only – [redacted] m² @ £[redacted] per m² Residential Zone 2 rate with indexation at [redacted]. The CA contends that the Barn (C3) area and the area of 5no. Aparthotel suites forms the net chargeable area. It would appear that there is no dispute between the parties in respect of the £0 (zero) applied rate of [redacted].

10. The CA contends that the proposed accommodation of the 5no. Aparthotel suites has all of the functions of self-contained accommodation akin to a residential use (i.e. it has its own entrance and facilities such as a kitchen, living space and bathroom) and the purpose is to provide holiday accommodation. Furthermore, the CA opines

that the holiday accommodation falls within the 'residential' rate as set out in paragraph 10 of the [redacted]'s CIL Charging Schedule. The CA has cited an extract of paragraph 10, which specifically states that:-

'Residential' also includes agricultural workers dwellings and holiday lets as these uses are considered to be normal homes for the purposes of calculating CIL".

Therefore, the CA argues that the description of development referring to a C1 use does not prohibit the holiday accommodation falling under the [redacted]'s 'residential' charging rate.

11. The CA further contends that the interpretation of the word '*also'* within paragraph 10 of the [redacted]'s CIL Charging Schedule is the key aspect in its decision to include the Aparthotel suite accommodation. The CA contends that the proposed development is for holiday accommodation or 'holiday lets' and whilst the CA acknowledges that the description of the development refers to Use Class C1, for CIL purposes, this does not prevent the holiday accommodation falling under the [redacted]'s 'residential' charging rate.

12. In support of its contention, the CA also cites previous VOA CIL Appeal decisions 1646862 ([redacted]) and 1767425 ([redacted]). Of note, both of these decisions were cited in a redacted format.

13. The CA opines that the proposed accommodation is akin to a residential use or a 'dwelling' for CIL purposes, which has all the physical characteristics of a dwelling and provides the facilities required for day-to-day domestic existence, even though it will be occupied only for a part, or parts, of the year at frequent or infrequent intervals by a series of different persons (the CA cites the planning case law of *Gravesham Borough Council v Secretary of State for the Environment* (1984) in support).

14. The Appellant opines that there is no specific provision or charging rate proposed for C1/Hotel development. On this basis, the Appellant opines that C1 accommodation falls within 'All other development' and should be nil rated. The Appellant further opines that this is commensurate with paragraph 32 of the Planning Inspectorate Inspector's Report on the Examination of the [redacted] CIL Charging Schedule, dated [redacted], which states:-

'The Authority's evidence shows that, in current market conditions locally, all forms of new employment development in the national park are not conventionally viable at present. Similar conclusions apply in respect of other types of commercial development, including hotels and residential institutions, on a standard valuation basis. Accordingly, nil rates for all such uses are appropriate in the area, for the time being at least.'

15. The Appellant contends that the proposed accommodation is tourist accommodation and is not what the [redacted] CIL Charging Schedule is seeking to capture – they are not a conversion of a traditional C3 unit, they are not an existing C3 unit with occupancy conditions, nor are they 'trojan-horse' dwellings sought under a holiday-let consent with the intention of being converted in due course. The Appellant further opines that the units are clearly described as C1 in the consent and can only be used as such.

16. The Appellant elaborates on the proposed use of the Aparthotel units, citing that the units will be managed by the [redacted] who will offer reception and front of house facilities from the [redacted]. The facilities of the [redacted] (including the [redacted]) will be available to guests and the Appellant anticipates that the units will be commercially rated.

17. The Appellant has advanced a copy of the [redacted]. This document dated [redacted], cites:-

    'this development proposal makes provision for an alternative style of visitor accommodation in the form of 5no. 'Aparthotel Suites' (Use Class C1). These provide a hybrid hotel and self-catering style visitor accommodation which makes a contribution to meeting the visitor accommodation provision needs of the [redacted] and the PMP outcomes.'

18. Furthermore, the Appellant states that the amount of CIL payable must be calculated in respect of a chargeable development, which is defined in Regulation 9(1) of the 2010 Regulations as: "…*the development for which planning permission is granted*." The Appellant states that consent was expressly granted for C1 accommodation and opines that the C1 designation falls under the zero rated 'All other Development'.

19. In support of its contention, the Appellant also cites a previous VOA CIL Appeal decision within the [redacted] area - 1753877 ([redacted]).

Decision

20. In my view, the Appellant's citation of paragraph 32 of the Planning Inspectorate Inspector's Report on the Examination of the [redacted] CIL Charging Schedule provides interesting reading. However, in terms of its application as evidence in support of the Appellant's argument, I find it unpersuasive given its publication date of [redacted]; it is clear to me that primacy should be given to the [redacted] CIL Charging Schedule, which was published in [redacted]. However, I recognise that the content of paragraph 10 of the Schedule is silent in respect of the treatment of Aparthotels.

21. In respect of the Appellant's and CA's cited comparable CIL Appeal Decisions, I have attached little weight to both parties' evidence. Each CIL Appeal is individual and is assessed on its own merits. Having read the unredacted versions of the cited Appeal Decisions (References 1753877,1646862 and 1767425) I am satisfied that the circumstances of these three decisions are somewhat different and a direct comparison to the subject Appeal is inappropriate.

22. The CA has cited *Gravesham Borough Council v Secretary of State for the Environment* (1984). In the *Gravesham* judgement, it was held that a distinctive characteristic of a dwellinghouse was its ability to afford those who used it, the facilities required for day-to-day private domestic existence. I agree with the Appellant in that a fact that a second home is not lived in all year does not prevent it from being a dwelling-house i.e. if it was a dwelling-house for eight months, it did not cease to be a dwelling-house in the other four. Accordingly, I agree with the Appellant that the CA's citation of *Gravesham* is inappropriate to this case.

23. I agree with the CA that the Charging Schedule clearly indicates that development for holiday accommodation or 'holiday lets' can be CIL chargeable. However, the crux of the matter is the question - is the subject development holiday accommodation or 'holiday lets'? I find the Appellant's submitted evidence in respect of the CA's own [redacted] document somewhat persuasive in this regard; however in isolation, this evidence is insufficient.

24. The CA has cited an extract of paragraph 10 of the [redacted] Schedule. However, the following is the full version of paragraph 10:-

Residential' includes all development within Use Class C3 of the relevant Order. 'Residential' also includes agricultural workers dwellings and holiday lets as these uses are considered to be normal homes for the purposes of calculating CIL and any restrictive occupancy conditions do not provide exemption from CIL liability. However, they may be exempt from CIL liability if they are self-built or converted from an existing building.

The subject permission is clearly stipulated as being C1 Use. The inclusions under the term *'Residential'* referred to in paragraph 10 of the [redacted] Schedule appear to refer to where there are occupancy restrictions for a C3 Use, rather than being a separate Use Class, as is the subject case. In my interpretation of the full version of paragraph 10, this points to me that the CA's interpretation (of part only) of paragraph 10 is incorrect.

25. In reaching my final decision, I have concluded that the primary driver is Regulation 9(1) of the 2010 Regulations which cites "…*the development for which planning permission is granted*." The grant is clearly C1 Use but in addition, the description of the development is described as '5no. Aparthotel suites' - this additional descriptive qualification of the development is key in my view. The wording of '5no. Aparthotel suites' must be considered in the context of Regulation 9(1). There is no definition of the word "Aparthotel" within the [redacted] Charging Schedule nor the CIL Regulations and I am inclined to adopt its ordinary, everyday meaning. The definition of "Aparthotel" within the Shorter Oxford English Dictionary, 6th Edition (Shorter OED) is defined as:-

    A type of hotel which offers private suites for self-catering, as well as conventional guest services and facilities.

    Having regard to this dictionary definition, I have concluded that the subject development is not holiday accommodation or 'holiday lets' for the purposes of CIL. Given this conclusion, I agree with the Appellant that the accommodation of the 5no. Aparthotel suites falls within 'All other development' and is therefore nil rated.

26. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the Appellant that the net chargeable area of the development is [redacted] m^2 and agree with the Appellant's calculation of the CIL charge at £[redacted].

27. In conclusion, in considering the facts of the case, I determine that the CIL payable should be the sum of £[redacted] ([redacted]).

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
18th October 2023