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: 1853068

Address [redacted]

Proposed Development: Roof alterations and extensions to allow the enlargement of existing first floor flats; construction of front porches and render to front elevation (pursuant to the change of use of part of the ground floor commercial to flats granted consent by planning ref: [redacted]) and provision of rear amenity space, bicycle store and bin store.

Planning Permission details: Granted by [redacted] on [redacted] , under reference [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 [redacted], acting as Agent for the appellant, [redacted] of [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 dated [redacted] .
   b) Grant of Conditional Planning Permission [redacted], dated [redacted].
   c) The CIL Liability Notice (ref:[redacted]) dated [redacted] (the fourth Liability Notice).
   d) The CA's Regulation 113 Review, dated [redacted] .

   e) The Appellant's Appeal Statement of Case document dated [redacted], which includes various Appendices.

f) The Design and Access Statement of the of the subject development, which includes plans of the building.

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

h) The Appellant's comments on the CA's Statement of Case document, which is dated[redacted] .

Grounds of Appeal

2. The background to this Appeal stems from an earlier planning application, [redacted], which was granted in[redacted] , for *Change of use of ground floor part commercial part residential to 3x one bed flats*. The CA deemed that no CIL was payable in respect of this permission on Liability Notice [redacted] (the first Liability Notice).

3. The Appellant submitted a subsequent planning application under[redacted] , for: *Roof alterations and extensions to allow the enlargement of existing first floor flats; construction of front porches and render to front elevation (pursuant to the change of use of part of the ground floor commercial to flats granted consent by planning ref:* [redacted] *) and provision of rear amenity space, bicycle store and bin store.*

   Planning permission for the amended development under [redacted] was granted on [redacted].

4. Thereafter, a series of Liability Notices were issued by the CA:-

   Liability Notice [redacted] dated [redacted], showing CIL payable of £[redacted] (the second Liability Notice).

   Liability Notice[redacted] dated[redacted] , showing CIL payable of £ [redacted] (the third Liability Notice).

   Liability Notice [redacted] dated [redacted], showing CIL payable of £[redacted] (the fourth Liability Notice).

5. This Appeal Decision relates to the CA's fourth Liability Notice [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 (Residential Area B), plus indexation of[redacted] .

6. 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 and that no CIL should be payable.

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

   The Appellant disputes the floorspace of the chargeable area in the CIL calculation, contending that it should reflect 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the appellant considers is an eligible deduction, which can be off-set against the chargeable area). The Appellant opines that no CIL should be payable as the entirety of the accommodation should be off-set.

   It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate of £[redacted] per m², or the applied indexation.

Decision

8. The dispute between the parties relates to the re-development of an existing two-storey Victorian built building, which fronts the[redacted] . The building in part, comprised the former[redacted] and is situated on a sloping site.

9. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."

10. Furthermore, Schedule 1 of the 2019 Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;

    a. retained parts of 'in-use buildings', and

    b. 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.

11. "In-use building" is defined in the Regulations as a relevant building that 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.

12. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.

13. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "*the development for which planning permission is granted*".

14. The Appellant opines that all the existing area of the building was in use and had a lawful use and should be deducted from the chargeable area, resulting in a charge of zero (nil sum). As evidence of continuous lawful use, the Appellant has advanced to me a Statement of Truth document, various Business Rates Bills and Council Tax Bills. Furthermore, the Appellant opines that there is no new build, citing the use of the majority of the upper floor loft space as existing floorspace.

15. The CA contends that the upper floor (loft space) accommodation of the building does not constitute as an 'in-use building' and consequently the upper floor accommodation cannot be off-set. In support of the CA's argument, the CA has advanced extensive photographic evidence.

16. The CA contends from photographic evidence that there were no first and second floors to the building on [redacted]. Consequently, new floors will need to be constructed as part of the approved development. The CA further opines that these new floors will constitute "new build" and be treated as an enlargement of an existing building, as of the date of the grant of planning permission (para. 1(10) Schedule). The KR(i) deduction of GIA applies to the retained part of the building, which is the area "*on completion of the chargeable development*" but "*excluding new build*." New build is defined in Schedule 1, Part 1, para 1(10) of the CIL Regulations as "*that part of the chargeable development which will comprise new buildings and enlargements to existing buildings*".

    The CA opines that the addition of a floor within a building gives rise to a CIL charge if it is part of a larger development. In support of its opinion, the CA cites the case of *R (oao Hourhope Ltd) v Shropshire Council* [2015] EWHC518.

17. Of note, the submitted photographic evidence by the CA was time stamped on [redacted], less than [redacted] weeks post the material date of [redacted]. Having studied and reviewed the CA's photographic evidence, it is very clear to me that the building was a shell and the upper floors were not in existence as at [redacted]. The Appellant has also submitted two photographs of the upper floor accommodation, which I note, show physical rooms. However, the Appellant's photographs are not time stamped. In the absence of any strong evidence to the contrary, and given in my view, the CA's compelling photographic evidence of the absence of upper floors, on the balance of probabilities, I have concluded that the upper floor accommodation was not in existence as at the material date of [redacted].

18. Furthermore, the CA also refers to the Appellant's letter of [redacted], which stated that [redacted] had stripped out the entire interior of the property in [redacted], and no further works had taken place after that point. This statement reinforces my conclusion that the upper floor accommodation was not in existence as at the material date of [redacted]

    I agree with the CA that the offset of accommodation can only be given to accommodation, which existed as at the time of the grant of planning permission. Given the evidence, I agree with the CA that the upper floors did not exist as at the day planning permission first permits the chargeable development i.e. [redacted]; accordingly the alleged accommodation cannot be offset and only the accommodation of the ground floor can be considered in-use and deductible.

    In addition, it is clear to me from the approved description of the development, that the development inherently includes additional accommodation, which cannot be off-set:-

    Roof alterations and extensions to allow the <u>enlargement</u> of existing first floor flats; construction… [my emphasis of text is underlined].

19. The Appellant alludes to the case of *R (Orbital Shopping Park Swindon Ltd) v Swindon Borough Counci*l [2016] EWHC 448 (Admin) and the Court of Appeal case of *R (on the application of Giordano Ltd) v London Borough of Camden* [2019] EWCA Civ 1544 in their Appeal. However, I consider that the citation of both of these cases is inappropriate, for the following reasons:-

    Of note in the *Giordano* case, the proposed residential floorspace in the two developments approved by the two planning permissions were identical; this is not the situation in the subject case.

    In *Orbital*, the claimant submitted two separate planning applications to the defendant local authority in relation to the property: one for the installation of a mezzanine floor and the other for external works, including new shop fronts, which created no additional floor space; again, this is not the situation in the subject case.

20. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the CA that there was no first and second floor accommodation to the building, which could be offset on [redacted] and the Net Chargeable Area of the development is [redacted] m² as shown in Liability Notice [redacted] dated [redacted].

21. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated [redacted] and hereby dismiss this appeal.

[redacted]MRICS VR

Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
2nd December 2024