Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency
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Durham
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Appeal Ref: 1851129

Planning Permission Ref[redacted]

Proposal: Change of use of existing upper storey and part conversion of ground floor from Banking (E(c)) to dwelling houses (C3) plus addition of new third floor and erection of rear extension to provide in total 18 no. self-contained residential units. Part conversion of ground floor from Banking (E(c)) to a flexible use between Classes E(a), E(b), E(c) or E(e).

Location: [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil)

Reasons

1. I have considered all of the submissions made by [redacted], acting on behalf of [redacted] of [redacted] (the Appellant) and by [redacted], 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 ref [redacted] dated [redacted] ;

    b) Approved planning consent drawings, as referenced in planning decision notice;

    c) CIL Liability Notice [redacted] dated [redacted];

    d) CIL Appeal form dated [redacted], including appendices;

    e) Representations from CA dated [redacted]; and

    f) Appellant comments on CA representations, dated [redacted].

2. Planning permission was granted under application no [redacted] on [redacted] for *'Change of use of existing upper storey and part conversion of ground floor from Banking (E(c)) to dwelling houses (C3) plus addition of new third floor and erection of rear extension to provide in total 18 no. self-contained residential units. Part conversion of ground floor from Banking (E(c)) to a flexible use between Classes E(a), E(b), E(c) or E(e).'*

3. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m² at the 'Zone 3 – [redacted] rate of £[redacted] /m² plus indexation and [redacted] m² at the 'All other types of development' rate of £0.

4. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted], confirming their view that the liability notice was correct.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be Nil.

6. The Appellant's grounds of appeal can be summarised as follows:

    a) The scheme comprises a wholly flatted development and should therefore be charged at £0/m² as per the CIL charging schedule.

    b) If the first point fails, the existing building should be deducted from the chargeable development as a lawful in use building and the CIL charge reduced to £[redacted].

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

    a) The scheme includes retail and is therefore not a wholly flatted development. The flats should therefore be charged at the general residential rate.

    b) There is insufficient evidence to support that the use of the first floor was continuous for at least six months during the relevant period.

Charging Schedule

8. The CA's charging schedule divides different types of development into different categories, each with a different charge. The CA have allocated the residential element of the scheme to 'Zone 3 – [redacted] The appellant argues that the residential element should fall within the category 'wholly flatted schemes.' This category has a footnote which states *"This rate applies where 100% of the dwellings on site are flats. This excludes flats which are part of the housing mix on a larger development site."*

9. The appellants argue that the development meets this description as 100% of the dwellings are flats and it does not form part of a larger development site comprising other types of housing. They argue that the charging schedule does not refer to mixed-use developments being excluded and that as long as all the dwellings are flats, any other use on the site is irrelevant. To support this view, they refer to the CA's local plan update published in January 2024 which defines Housing mix as *"The different size, types and tenures of homes to support the requirements of a range of household sizes, ages and incomes."* They point out that mixed use schemes are not referenced.

10. The CA dispute this interpretation and state that 'wholly flatted schemes' includes only those schemes which are entirely comprised of flats. They have provided the CIL Examiner's report dated 20 February 2018, which states at paragraph 63 - Wholly Flatted schemes "*This rate applies to where the whole scheme is made up of flats, rather than where flats make up part of a wider development."*

11. The appellants also refer to several mixed use schemes that they say the CA have treated as wholly flatted. They consider that this demonstrates their approach to implementing the charging schedule and that it is inconsistent to treat the subject development differently.

12. In my opinion, the relevant document is the charging schedule itself. This clearly defines wholly flatted schemes as those where *"100% of the dwellings on site are flats."* The proposed scheme meets this definition, having no other types of dwelling within the development.

13. I am therefore of the opinion that the residential element of the scheme should be charged at a rate of Nil.

Lawful Use

14. I have not considered the second grounds of appeal submitted by the Appellant as these would only apply if the first ground had failed.

15. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil).

Award of Costs

16. The appellant has requested an award of costs on the grounds that the CA have acted unreasonably. They refer to advice given by the CA within the Officer's Report which states *"as the development is wholly flatted, the proposal is charged at a rate of £nil. As such no CIL payments will be required".* This report is signed by two people who confirmed that the CIL charge had been checked and a liability of nil confirmed. The appellant also point out that other similar schemes have been accepted as wholly flatted schemes and therefore the CA have not applied the charging schedule consistently.

17. The CA state that only one of the schemes referred to by the appellant was mixed use, with the others comprising only residential development. They state that their treatment of this scheme and the comments within the officers report were incorrect. They consider that aside from this error, they have applied the charging schedule consistently and have acted reasonably in dealing with this case. Therefore, they request that no order for costs is made.

18. In my opinion, the CA have acted unreasonably in this case. They have applied an interpretation of the charging schedule that is not included within the schedule itself and have been inconsistent in applying this to different schemes. They also repeatedly confirmed to the appellants that the development was not liable to CIL, before then issuing the Liability Notice. I accept the appellants premise that this appeal would not have been necessary if the CA had correctly and consistently applied the charging schedule and I therefore award costs to the appellant.

[redacted] MRICS
Valuation Office Agency
4 November 2024