Appeal Decision

by [redacted]MRICS

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW
Email: [redacted] @voa.gov.uk

Appeal Ref: 1855702

Planning Permission Details: [redacted]

Location: [redacted]

Development: Erection of one self-build dwelling and two semi-detached dwellings

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Decision

I confirm that the Community Infrastructure Levy (CIL) charge stated in the Liability Notice issued on [redacted] is not excessive and hereby dismiss this appeal.

Reasons

1. I have considered all of the submissions made by [redacted] of [redacted] representing [redacted] (the appellant) and [redacted], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

a. The Decision Notice issued by [redacted] granting planning permission [redacted] on [redacted].
b. The request for a Regulation 113 review made to the CA by the appellant on [redacted].
c. The Chargeable Amount review decision issued by the CA on [redacted].
d. CIL Liability Notice [redacted] issued by the CA on [redacted].
e. The CIL Appeal form and statement received by the VOA on [redacted] and submitted by the appellant under Regulation 114, together with documents attached thereto.
f. The CA's representations to the Regulation 114 Appeal dated [redacted].
g. Comments made in response to the CA's representations by the appellant on [redacted].

Background

2. From the representations provided, I understand the subject is a former commercial site that consisted of workshops and storage units that the appellant intends to develop for residential use in accordance with the above permission.

3. Planning permission was granted for the chargeable development on the [redacted].

4. From the CA's Regulation 113 review and representations provided, I have concluded that a CIL Liability Notice had been issued prior to notice [redacted] which is the subject of this appeal. The appellant requested a Regulation 113 review against the original notice on the [redacted] . I have not been provided with a copy of this original notice nor the respective Regulation 113 review request. However, from the Regulation 113 review issued by the CA on the [redacted] , I conclude that a change was made which reduced the chargeable area from the [redacted] square metres (sq. m.) in this original notice, to [redacted] sq. m in the subject. As a result, [redacted] was issued on the [redacted]. This calculated the CIL liability at £ [redacted]. This was based upon a chargeable area of [redacted] sq. m. chargeable at a rate of £ [redacted], with indexation at [redacted]. This produces a chargeable amount of £ [redacted]. The CA have then applied self-build relief, reducing the liability payable to £ [redacted].

5. The appellant continued correspondence with the CA post issue of the revised liability notice between [redacted] and [redacted]. From the emails provided, I understand the appellant requested that the gross internal area (GIA) of the buildings at the front of the site, immediately behind the entrance gates be deducted as existing floorspace. The CA declined and consequently the appellant submitted a Regulation 114 Chargeable Amount appeal to this Agency on the [redacted] .

6. Within this Regulation 114 appeal, the appellant opines that the chargeable amount should be £ [redacted]. This is based upon a chargeable area of [redacted] sq. m. chargeable at £ [redacted] per sq. m. and with indexation at [redacted] . The appellant advises that the chargeable area of [redacted] sq. m. is correct as the CA have omitted to deduct [redacted] sq. m. of existing floor space that will be demolished. The appellant advises that the [redacted] sq. m. in question has been in use as storage and production for in excess of [redacted] years.

7. In response, the CA submitted representations that explained the background to the 113 review. They advise that the appellant had sought a reduction for [redacted] sq. m of existing in-use floorspace within their Regulation 113 review. The CA explain that following feedback from their planning officer, they concluded that there were no existing buildings on the site prior to planning permission being granted.

8. The CA points to Schedule 1 of the CIL Regulations 2010 (as amended) in support of their decision. This highlights that to qualify, the building must have been "in-use" which requires the building to have been in lawful use for a continuous period of six months within the period of three years, ending on the day planning permission first permits the chargeable development. The building must also be a "relevant building" which means that the building must have been situated on the relevant land on the day planning permission first permits the chargeable development.

9. The CA explain that aside from the disagreement as to whether the buildings were still on the land at the relevant date, the appellant did not provide any evidence as to the use of the buildings as part of the Regulation 113 request. The CA highlight that the Regulations state in Schedule 1 Part 1 1 (8) that where the CA does not have sufficient information or information of sufficient quality, to enable it to establish

whether any of the existing buildings qualify as in use buildings, it may deem the gross internal area of those buildings to be zero. Whether a building is in use is a matter of fact and degree, based upon the evidence.

10. The CA has pointed to past CIL appeal decisions that support their view that is reasonable for the CA to deem the buildings were not in use for CIL purposes. They also highlight that within the Supporting Statement provided with the pre-application for the site submitted in [redacted], it states; "*Although a small workshop on the site is being currently used ad-hoc for minor vehicle repairs, the site is by all intents and purposes redundant and has been for the past two years or so."* The CA argue that this statement confirms that none of the buildings had been in use since [redacted] apart from one small one and that no evidence has been provided to prove continued use of this small workshop or to prove that any of the buildings have come back into use since this statement was prepared.

11. The CA advise that during correspondence as part of the Regulation 113 review, the appellant confirmed that only [redacted] sq. m. of floorspace was standing on the day planning permission was granted, not the [redacted] sq. m. originally claimed. The appellant provided photographs of these buildings located either side of the entrance driveway to the main site. The CA note these photographs were taken from outside of the fence that surrounds the site and as such they are not very clear. However, the CA have compared them with photographs saved on the Council's Planning Data Management System and have concluded that the buildings referred to are containers/ caravan type structures. The CA highlight that in the pre-application Supporting Statement it states; "*Clearance of any existing storage containers will further improve the visibility splay and access."* The CA therefore believe this statement is referring to the buildings in dispute.

12. The CA opines that the [redacted] sq. m. of "buildings" in dispute are not in fact buildings for CIL purposes stating that something needs to be more complex than a park home/caravan/storage container to be considered a building. The CA points to Google's English Dictionary, Oxford Languages' definitions of a building and structure to support their view. They also highlight previous CIL appeal decisions where it was decided that something is not a building if it is capable of being moved. The CA reiterate that it is not clear whether the [redacted] sq. m. in question are buildings or not but if they are, the appellant has not provided any evidence to prove they were "in-use". The CA therefore maintain their calculation of CIL Liability in [redacted] is correct.

13. In response, the appellant submitted further representations on the [redacted]. The appellant advises that [redacted] sq. m. of buildings had to be removed prior to applying for planning permission owing to storm damage and the need to make the site safe in order for consultants to enter and carry out their investigations. The appellant clarifies that his initial CIL form stated [redacted] sq. m. of existing buildings which he revised to [redacted] sq. m. given the demolition of the above buildings prior to planning permission having been granted. The appellant advises that the recent storm has led to the collapse of the remaining [redacted] sq. m. of existing workshop referred to above. However, he has been advised of further existing buildings since his original application. The appellant contests that photographs and areas have been provided but the council have refuted them as sheds. The appellant states that for the past [redacted] years these buildings have been used for "light workshop and food takeaway activity."

Decision and Reasoning

14. It is clear a disagreement has arisen in respect of the application of Schedule 1 Regulations 40 and 50 of the CIL Regulations 2010 (as amended) within which, a calculation of the *net* chargeable area of a development, provides for the deduction of the gross internal area of an 'in use building' that is to be demolished as part of the development, as well as certain retained parts.

(6) The value of A must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—
G = the gross internal area of the chargeable development;
GR = the gross internal area of the part of the chargeable development chargeable at rate R;

KR = the aggregate of the gross internal areas of the following—
(i) retained parts of in-use buildings; and
(ii) 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;
E = the aggregate of the following—
(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and
(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

15 . Schedule 1 of the CIL Regulations 2010 (as amended) (10) (i) and (ii) provides that an 'in-use building' means a building which; *"is a relevant building and 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*". A relevant building is defined as *"a building which is situated on the relevant land on the day planning permission first permits the chargeable development."*

16. Schedule 1 (8) states that; *"where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building".* Schedule 1 (9) states that where a CA does not have sufficient information, or information of a sufficient quality, to enable it to establish – a) whether part of a building falls within a description in the relevant definition or b) the GIA of any part of a building falling within such a description, *"it may deem the GIA of the part in question to be zero*".

17. Under the legislation we are required to look at the use of the buildings for the three year period from [redacted] up until the [redacted].

18. From the information provided, I conclude that the parties agree that at the relevant date the only structures that remained on site were [redacted] sq. m. of buildings located either side of the entrance driveway. I have however been unable to reconcile how the appellant has reached a net chargeable area of [redacted] sq. m. as stated on the Regulation 114 appeal form considering the GIAs that have been supplied for the chargeable development and existing buildings to be offset.

19. The CA dispute whether these remaining buildings are in fact buildings or temporary moveable structures such as caravans or storage containers. I concur with the CA, the photographs provided are poor in quality having been taken through the fence and I cannot with any certainty be sure of their nature or construction.

20. Regardless of this point, to qualify as "in-use" buildings the legislation is clear, the buildings must have been in a lawful use for a continuous period of six month within the last three years ending on the day planning permission first permits the chargeable development. The appellant opines that the "buildings" in question have been used for light workshop activity and as a food takeaway for the past [redacted] years. The appellant has failed to provide any evidence to support this statement. For properties in the use described over such a time frame, it is reasonable to expect there to be some supporting documentary evidence. For example a copy of a lease or licence granted to any occupiers, utility or non-domestic rating bills, testimony of employees and customers, evidence of delivery of supplies to the address to name some examples.

21. I therefore conclude that the evidence available is not sufficient, nor of a sufficient quality, to establish whether the [redacted] sq. m. of buildings remaining on site on the relevant date were in fact in-use buildings.

22. I consider that the CA have correctly and reasonably deemed the existing buildings not to be in-use buildings. There appears to be no dispute between the parties about the gross internal area of the chargeable development at [redacted] sq. m. nor the chargeable rate or indexation adopted. I, therefore, conclude that the chargeable amount, prior to the deduction of any relief to be granted by the CA, is correct in the sum of £ [redacted] and hereby dismiss this appeal.

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
10 January 2025