

Appeal Decision

by [REDACTED] BA Hons, PG Dip Surv, MRICS

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: 1834962

Planning Permission Reference: [REDACTED]

Location: [REDACTED]

Development: Retrospective change of existing live/work unit (Sui Generis) to residential (C3)

Decision

I determine the CIL charge in this case to be £0 (NIL).

Reasons

1. I have considered all of the submissions made by [REDACTED] (the Appellant) and [REDACTED] as 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 permission reference [REDACTED] dated [REDACTED].
 - b. CIL Liability Notice [REDACTED] issued by the CA, dated [REDACTED] with CIL Liability calculated at £[REDACTED].
 - c. The CA's Regulation 113 review dated [REDACTED] further to the Appellant's request.
 - d. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
 - e. The CA's representations received on the [REDACTED].

Background

2. The property in question is a flat that was acquired by the Appellant back in [REDACTED]. The property was originally granted planning permission in [REDACTED] as a work home unit. Despite the previous owners using the premises solely as residential accommodation, planning permission was never sought. The Appellant now wishes to sell the property and has applied for the subject retrospective permission to regularise this use.
3. Following the grant of planning permission, the CA issued [REDACTED] advising CIL in the sum of £[REDACTED] ([REDACTED]) was payable.
4. The Appellant submitted a request for a Regulation 113 review on the [REDACTED] in which they explained the history of the property and its use over the years. The Appellant outlined why they considered the building to qualify as “in-use” and consequently they opined the net chargeable area of the development should be zero.
5. The CA issued their regulation 113 review on the [REDACTED] which confirmed the CIL liability at £[REDACTED] ([REDACTED]).
6. The Appellant submitted a Regulation 114 chargeable amount appeal to the VOA on the [REDACTED]. The Appellant explained the history of the property and importantly provided supporting documents which included a statutory declaration, two witness statements, copies of three tenancy agreements, council tax bills and also floor plans and photographs showing the layout of the property.
7. As part of this appeal process, the CA responded to the Appellant’s representations on the [REDACTED]. The CA advise that having considered the documents the Appellant has now provided; they are satisfied that the Appellant has proved beyond reasonable doubt that the property’s existing use was lawful and that it met the 6/36 month test. The CA recommend that this appeal is allowed and consider an in-use floorspace credit appropriate.

Decision

8. Schedule 1 of the CIL Regulations 2010 (as amended), sets out how the deemed net area is calculated;

(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;

9. Schedule 1 (10) defines an “in-use” building as a building which; “(i) is a relevant building, and (ii) 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.”
10. Both parties now agree, and it is evident to me from the submissions provided by the Appellant, that the subject property meets the criteria of an “in-use” building. Given the amount of time the subject has been in use as a solely residential property without any enforcement action having been taken, it is clear that it would qualify for a Lawful Development Certificate.
11. Given KR is equal to GR, the deemed net area chargeable at rate R (A) equates to 0. Consequently, I determine the CIL liability to be £0 (NIL) in this case.

■■■■ BA Hons, PG Dip Surv, MRICS
RICS Registered Valuer
Valuation Office Agency
10 January 2024