Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency - DVS
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Appeal Ref: 1839096

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Proposed demolition of existing residential structure and existing garage with canopies. Erection of a new residential two-storey dwelling with associated landscaping (As amended and amplified by plans and information received [redacted]).

Decision

I confirm a CIL Charge of £[redacted] ([redacted]) to be appropriate and this appeal is therefore dismissed.

Reasons

1. I have considered all 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 application [redacted] dated [redacted].
   b. Planning permission [redacted] granted by the CA on [redacted] for "*Proposed demolition of existing residential structure and existing garage with canopies. Erection of a new residential two-storey dwelling with associated landscaping (As amended and amplified by plans and information received* [redacted]*)*."
   c. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted].
   d. The Appellant's request for a Regulation 113 review dated [redacted] .
   e. The CA's response dated [redacted] to the Appellant's Regulation 113 review request.
   f. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
   g. The CA's representations to the Appointed Person dated [redacted], together with documents and correspondence attached thereto.
   h. The Appellant's response, together with documents and correspondence attached thereto, dated [redacted] and [redacted].

Background

2. An application was submitted to the CA's planning portal dated [redacted] reference [redacted] for "*Proposed demolition of existing residential structure and existing garage with canopies. Erection of a new residential two-storey dwelling with associated landscaping.*"

3. Planning Permission [redacted] was granted on [redacted] for "*Proposed demolition of existing residential structure and existing garage with canopies. Erection of a new residential two-storey dwelling with associated landscaping (As amended and amplified by plans and information received [redacted]).*"

4. CIL Liability Notice [redacted] was issued by the CA dated [redacted] with liability calculated as:-

   Minor Resi [redacted]
   Proposed GIA [redacted]*m2 @ £*[redacted]*/m2 index linked*
   = £[redacted] *CIL Liability*

5. The Appellant requested a Regulation 113 review on [redacted] .

6. The outcome of the CA's Regulation 113 review was issued on the [redacted], whereby the CIL liability as initially calculated was confirmed.

7. A Regulation 114 Appeal was submitted to the VOA dated [redacted] and received on [redacted] .

Appeal Grounds

8. The Appellant argues that in calculating the CIL charge the CA have made no deduction for the existing lawful buildings on the site.

9. The Appellant notes that the existing buildings were shown on the planning documents and the Gross Internal Area (GIA) confirmed as [redacted] m2 as per drawing no.[redacted] included with this appeal and submitted for planning.

10. The Appellant argues that the proposed GIA calculation used by the CA is incorrect and that the correct area is confirmed on drawing no. [redacted] included with this appeal and submitted for planning.

11. The Appellant considers the existing dwelling and workshop to be lawful, as planning permission for a home on this site was granted in [redacted]. The site has been used as residential for over 10 years.

Consideration of the Appeal

<u>Appeal Ground 1: no GIA deduction was made for the existing lawful buildings</u>

12. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

13. There is disagreement between the parties over the matter of "in-use buildings" within Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or off-set of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.

14. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) defines an "in-use building" as a building which:

(i) is a relevant building (i.e. one which is situated on the relevant land on the day planning permission first permits chargeable development);
And
(ii) which contains a part that has been "in lawful use" for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

15. The Appellant has contended that the CA's floor area calculations make no reference to the existing property and they refer to Clause 9.2 of the CA's charging schedule document:

    9.2 CIL is charged on the gross internal floorspace 11 of new development. Where planning permission is granted for a development that involves the extension or demolition and then rebuild of a building in lawful use 12, the level of CIL payable will be calculated based on the net increase in floorspace. This means that the existing floorspace contained in the building to be extended or demolished will be deducted from the total floorspace of the new development when calculating the CIL liability.

16. The Appellant states they would expect the CA's increased floor area calculation to be based on the proposed floor area minus a GIA of [redacted] m2 that covers the existing dwelling and garage.

17. Before the matter of whether the structures in question can be considered as a "relevant in-use building", it must be established if indeed each structure was a relevant "building".

18. The CA refer to the *Design and Access Statement* which states: "*The existing structure is a 'caravan like' structure with composite sandwich panel walls and roof, corrugated roof canopy to the west of the existing structure and a garage with corrugated roof and canopy to the north*". They have also included photographs with their submission (attachments [redacted]) taken from the planning application which show the garage and existing dwelling. The CA further note these are described in *Design and Access Statement* as being in a "*poorly condition*" and in the Council Tax statements provided by the Appellant as "*uninhabitable*". These statements only cover the period back to [redacted] however.

19. With regards to the existing dwelling: the CA refer to two previous CIL appeal decisions by the Appointed Person (AP) (attachments [redacted]) involving caravans/mobile homes and whether they may be classed as a building. They note that both decisions conclude that the physical attachment to the land is an important determining factor and this, along with the possibility of them being moved, means they are not a building.

20. The CA further comment that the subject site has a history of planning applications for the retention of a mobile home, the last being in [redacted] (attachment [redacted]). That decision notice allows the retention of one mobile home for a period of [redacted] years. In [redacted] an appeal allowed permanent use of a caravan on the site (attachment [redacted]).

21. The Appellant has responded that there has been no opportunity to investigate either by themselves or the CA as to the physical attachment of the dwelling to the ground, and state it "*is certainly not on wheels and a visual inspection to check the presence of any foundations is impossible due to the site being overgrown*." The Appellant also notes that the previous CIL appeal decisions cited by the CA state that a caravan is defined as any structure designed or adapted for human habitation which is capable of being moved from one place to another. The Appellant argues that the existing dwelling would not withstand being moved anywhere.

22. Whilst Schedule 1 of the CIL Regulations 2010 (as amended) discusses the types of building not to be included for CIL purposes, it does not define what a "building" is.

23. The Planning Act 2008 defines "building" as having the meaning given by section 336(1) of the Town and Country Planning Act 1990, which defines "building" as something that *"includes any structure or erection, and any part of a building, as so defined*". However, the definitions in the Planning Act are not applicable for CIL purposes, being specifically excluded from Part 11 of the Planning Act 2008 which references CIL.

24. The CA's *Contaminated Land Questionnaire* dated [redacted] submitted by the Appellant along with this appeal describes the land and building use as "*existing single storey structures, in a semi-permanent state and used for residential*".

25. The CA's *Sustainable Construction Checklist* (undated) submitted by the Appellant along with this appeal notes "*the existing site consists of an existing structure that is a 'caravan like' structure with composite sandwich panel walls and roof, corrugated roof canopy and a garage with corrugated roof and canopy. The site and structures have been vacant since approx. second half of* [redacted]."

26. The statutory definition of a "caravan" is contained in Section 29(1) of the Caravan Sites and Control of Development Act 1960:

    "caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—
    (a)
    any railway rolling stock which is for the time being on rails forming part of a railway system, or

    (b)
    any tent;

27. One of the two previous CIL appeal decisions by the Appointed Person referred to by the CA had briefly considered the case of Skerrits of Nottingham Limited v SSETR [2000] which confirms that the three factors established in Cardiff Rating Authority and another v Guest Keen Baldwin Iron & Steel Co Ltd [1949] must be taken into account in determining whether something is a "building":-

    i. size
    ii. degree of permanence
    iii. physical attachment to the ground.

28. The CA argues that a caravan cannot be a "building" because it neither has ***a degree of permanence*** nor is it ***physically attached to the ground***.

29. Planning Permission [redacted] dated [redacted] allowed "*the retention of one mobile home*" on the site for a period of [redacted] years. There had been an earlier refusal of planning permission under reference [redacted] dated [redacted] for use of the site as a "*permanent site for caravan*", but a Planning Inspector's decision dated [redacted] under appeal reference [redacted] allowed permanent use of a caravan on the site.

30. From the facts available, the dwelling is described in the Appellant's own *Design and Access Statement* and their completed *Sustainable Construction Checklist* as a "*caravan like structure*". The dwelling would also accord with the statutory definition of a "caravan" in Section 29(1) of the Caravan Sites and Control of Development Act 1960 as "*any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed,* ***or by being transported on a motor vehicle or trailer)***" [my emphasis]. The dwelling in question, whilst not having any

wheels, would appear to be something capable of being transported on another vehicle or trailer from one place to another and therefore satisfies the test set out in the Skerrits case, in that it is not permanently affixed to the ground, and the Planning Inspector's decision dated [redacted] specifically allowed permanent use of a "*caravan*" on the site.

31. I have considered all the arguments made by the parties and find they do not fully address the key issue of whether the existing dwelling can be considered as a relevant "building", and it is my view that it would need to be proven to be a relevant "building" in order to be capable of GIA off-set under the CIL Regulations.

32. Having regard to the above factors and having considered all the evidence and other submissions by both parties, it is considered that the existing dwelling in this case is a "caravan" and cannot be regarded as a relevant "building" for CIL purposes.

33. I therefore consider that the CA are correct not to make a GIA deduction for the area of the existing dwelling and it is therefore of no consequence whether the lawful use criteria are satisfied or not.

34. With regards to the existing garage/workshop: The Planning Act 2008 defines "building" as having the meaning given by section 336(1) of the Town and Country Planning Act 1990, which defines "building" as something that "*includes any structure or erection, and any part of a building, as so defined*". The definitions in the Planning Act are not, however, applicable for CIL purposes, being specifically excluded from Part 11 of the Planning Act 2008 which references CIL.

35. In the absence of any clear guidance from Schedule 1 of the CIL Regulations 2010 (as amended) as to what a "building" is, reference can be made to the Pocket Oxford English Dictionary definition of a building, which refers to "*a structure with walls and a roof*".

36. The RICS Code of Measuring Practice 6th Edition 2015 section 2.0 states "*Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at each floor level*" and section 2.16 specifically includes "garages" as to be included in GIA measurements.

37. In my opinion the existing garage/workshop is therefore a relevant "building" and its area can be included in the GIA of existing buildings and therefore can be considered for offset against the GIA of the proposed development for CIL Liability purposes, but only if a relevant period of continuous lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended) can be satisfied. This is considered below under Appeal Ground 4.

Appeal Ground 2: GIA of existing buildings

38. The CA point to the amended plans, for which planning permission was granted, that show a GIA for the proposed development of [redacted] m2. The Appellant now accepts the CA's GIA of [redacted] m2 and as this measurement is made in accordance with the RICS Code of Measuring Practice 6th edition May 2015 (ie measured to the internal face of the perimeter walls at each floor level) and no dispute as to this floor area calculation exists, the AP has no further decision to make on this matter.

Appeal Ground 3: GIA of proposed floor area

39. The CA comment that they accept the existing structures GIA of [redacted] m2 as measured by the Appellant's agent, [redacted] Architects. As this measurement is made in accordance with the RICS Code of Measuring Practice 6th edition May 2015 (ie measured to the internal face of the perimeter walls at each floor level) and no dispute as to this floor area calculation exists, the AP has no further decision to make on this matter.

Appeal Ground 4: Lawful use of existing dwelling and workshop

40. I have considered the respective arguments made by the CA and the Appellants, along with the information provided by both parties.

41. The existing dwelling is considered under Appeal Ground 1 above.

42. With regards to the existing garage/workshop: Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) provides that an "in-use building" means a relevant building which 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.

43. Part 1 – standard cases – 1 (10) also provides that "relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

44. It has been accepted under Appeal Ground 1 above that the existing garage/workshop is a relevant "building" for CIL purposes, but the matter as to whether it has been in lawful use for the relevant period must now be considered.

45. The relevant period of continuous lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended) would be [redacted] to [redacted].

46. The Appellant states that [redacted] , the previous owner, lived at the property "*in the last* [redacted] *years and died in early* [redacted] ". They argue that an electricity bill was left at the dwelling which shows that electricity was charged and paid for in the period [redacted] to [redacted] – a time period of just over [redacted] months. They also state that [redacted] neighbours have confirmed he lived at the property "*in the last* [redacted] *years before he died*", although no supporting information, such as sworn statements, has been submitted.

47. The Appellant also argues that as Council Tax was charged to the now deceased owner until [redacted] the submitted recent Council Tax bills are evidence that the property was in residential use.

48. The first Council Tax "*Adjustment bill for* [redacted] " dated [redacted] notes the property was "*Empty Uninhabitable for period* [redacted] *to* [redacted] " whilst the second Council Tax "*Adjustment bill for* " [redacted] also dated [redacted] notes the property was "*Empty Uninhabitable for period* [redacted] *to* [redacted] ". This evidence therefore indicates the property was empty and/or uninhabitable at least between [redacted] up to and beyond the end of the relevant period for continuous lawful use (which would be [redacted]. This would leave [redacted] months between [redacted] and [redacted] in which lawful use for a continuous period of at least six months would be possible.

49. The Appellant has submitted an "*amended electricity bill*" from [redacted] dated [redacted] and addressed to "*the executors of* [redacted] " covering the period [redacted] to [redacted] with a total bill of £[redacted] due to earlier credit being deducted from the total bill of £[redacted]. This amended bill does not, however, give any actual units of electrical usage during the relevant period.

50. The Appellant has also submitted a *Residential* [redacted] search result from [redacted] dated [redacted] which states at 2.1 that the property is not connected to public sewers for foul water drainage and at 2.2 is not connected to public sewers for surface water drainage. At 3.1 it confirms the property is connected to mains water. No bills or invoices have been submitted, however.

51. The CA commented that, regarding the garage/workshop which was initially stated by [redacted] Architects in *CIL Form 1* as "*not in lawful use*", they asked the Appellant for evidence of its lawful use. As no further evidence was provided, they were unable to determine whether it was a relevant building or whether it had been in lawful use. They state there is no dispute that the garage was used by [redacted] up to [redacted], but don't know what the lawful use was.

52. The Appellant has submitted a copy of an email dated [redacted] to their architect stating "*CIL Form 1 should have been ticked yes instead of no. The garage was used as a workshop which can be defined as a service area so both were habited in the last 36 months. I would appreciate it if you would resubmit explaining the error*." The Appellant further states "*The previous owner lived in the mobile until his death in* [redacted] *and the garage was used as his workshop*." This instruction between the Appellant and their architect would appear to be based on the information submitted above, with no additional evidence supporting the matter.

53. From the comments made by both parties and all the information submitted, it is my opinion that it has not been adequately proven that the garage was lawfully "in-use" for a continuous period within three years of the grant of planning permission on [redacted] and the "lawful use" requirement of Schedule 1 of the CIL Regulations 2010 (as amended) has not therefore been met.

54. The GIA of the garage/workshop cannot therefore be off-set against the GIA of the proposed development for the purposes of calculating the CIL charge.

Calculation of CIL Liability

55. The CIL liability is thus as originally calculated by the CA:-

Minor Resi [redacted]
Proposed GIA [redacted]*m2 @ £*[redacted]*/m2 index linked*
= £[redacted] *CIL Liability*

Decision

56. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[redacted] ([redacted]) to be appropriate and this appeal is dismissed.

[redacted]MRICS
RICS Registered Valuer
Valuation Office Agency
10 April 2024