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

e-mail: [redacted]@voa.gov.uk

Appeal Ref: 1862484

Planning Permission Ref. [redacted]

Proposal: Conversion and extension of existing potting shed to create a single dwelling with ancillary garden and parking. (as amended by Information and Plans received [redacted] and [redacted]).

Location: [redacted]

Decision

I do not consider the Community Infrastructure Levy (CIL) charge of £[redacted] ([redacted]) to be excessive and I therefore dismiss this appeal.

Reasons

1. I have considered all of the submissions made by [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 Conversion and extension of existing potting shed to create a single dwelling with ancillary garden and parking. (as amended by Information and Plans received [redacted] and [redacted]).

3. The CA issued a revised CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted]m² at the rate of £[redacted]/m² plus indexation.

4. The Appellant requested a review under Regulation 113 on an unknown date. The CA responded on [redacted], issuing a revised notice stating that it was only successful in part.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £[redacted]. This was calculated on a chargeable area of [redacted]m² at a base rate of £[redacted] /m² plus indexation.

6. The Appellant's grounds of appeal can be summarised as follows: The building was in lawful use for a period of more than six months within the three years prior to the date that planning permission was granted. The existing building should therefore be netted off from the CIL calculation.

7. The CA has submitted representations that can be summarised as follows: The building was not in lawful use for a continuous period of at least six months within the period of three years ending the day planning permission first permitted the chargeable development.

The Appellant's appeal

8. The Appellant contends that the "net chargeable area" of the Scheme, is only [redacted] sqm, giving rise to a CIL liability of approximately £[redacted] (to be index linked from 2023).

9. The majority of the development involves the conversion of existing buildings.

10. The Appellant claims that they have been using all of the existing buildings as offices and for storage, for in excess of six months prior to the date on which the [redacted] Permission was granted.

11. The appellant claims that the building was being used in accordance with the existing legal planning use.

12. The Appellant contends that the property was a mixed or *sui generis* use, comprising a mixed use of C2 hospice, offices, and storage. They claim that the use as offices and storage was not just ancillary to the use as a Hospice but were independent established uses for planning purposes.

13. The Appellant explains that the site is comprised of three separate buildings, the original [redacted] House which includes the former stables and a workshop, the former squash court and the potting shed.

14. The [redacted] was initially built and then occupied as a single large [redacted] house. The property was donated to [redacted] hospital in the late [redacted], and it was used as a convalescent home. In [redacted] the [redacted] charity took ownership and from that time it was used as an adult end of life hospice.

15. The Appellant claims that the property was not used only or exclusively as a hospice by [redacted] and provide details of additional uses to include Outpatient Care, offices used to administer the Charity (as opposed to the Hospice), use of the stables to store charitable donations and to facilitate the three-weekly sale events which raised money for the Charity as a whole (and not only the Hospice), a nurses' flat and two cottages occupied by staff.

16. The use of the property as an in-hospice gradually reduced as the [redacted] Charity increased the provision of domestic outpatient hospice care. By [redacted] there were no in-patient residents. The property was vacated in [redacted].

17. The Appellant provided a Witness Statement from [redacted], Managing Director of [redacted] who provided his own knowledge of the site whist the property was owned by the [redacted] and also details the use of the property by the Appellant. This was supplemented by the answers to questions put to [redacted], the Regional Property Manager at [redacted] .

18. The Appellant refers previous planning applications on the site. In particular the planning application granted [redacted] for the conversion and associated extension/alterations to the manor house to 20 dwellings. The Planning Officer's Report described the development as follows:

    Redevelop the existing listed (Grade [redacted]) hospice and offices ([redacted]) buildings back into residential use in multiple occupation retaining all the existing buildings and footprint, but adding 9 to the existing north extension a first floor staircase link internally to replace the fire escape structure (as clarified by site plans dated ([redacted])

19. In addition, the Appellants refer to the Planning Authorities planning application decision which also refers to the existing use as Hospice and Offices.

20. The Appellants claim at this time the charging Authority accept the use of the property is Hospice and Offices.

21. To determine the chargeable area the total gross internal area of the Chargeable Development can be offset by 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.

22. The Appellant consider that the Charging Authority accept that the property was being used and occupied but not in accordance with planning law.

23. In accordance with enforcement of change of use in planning law, it is necessary to consider the planning use of the property from ten years before the start of the three-year period that is relevant for the application, [redacted].

24. The Appellants agree that in [redacted] the site included a Hospice, Use Class C2 but also included other uses.

The Charging Authority's case

25. The Charging Authority contend that the net chargeable area attracting CIL over all three planning applications is [redacted] sqm giving rise to a liability in excess of £[redacted].

26. The Charging Authority state that the calculation of the "net chargeable area" can only be off-set by "retained parts of in-use buildings" that have been in lawful use for the prescribed period of time.

27. The Charging Authority contend that the [redacted] charity used the main building as a Palliative Care Facility from [redacted] until its closure in [redacted] and that this was the primary use of the property. The use of the property as offices and storage is not lawful.

28. The Charging Authority accept that the Appellant was using the building but not lawfully.

29. The Charging Authority refer to the 10-year rule to enforce against change of use so the use of the property needs to be considered as at [redacted].

30. The Charging Authority refer to the property at the relevant time to be in a single unit of occupation.

31. The Charging Authority refer to the issue as to whether the planning unit was in a single primary use as a hospice, with secondary incidental and ancillary activities which include offices and storage or whether there were mixed uses to include offices and storage.

32. The Charging Authority refer to the following legal principles:

a. An incidental use is one which differs in character from the main use, but is functionally related to it. By definition an incidental use cannot be one that is integral to or part and parcel of the primary use: Sage v SSHCLG [2021] EWHC 2885 (Admin).

b. The functional relationship should be one that is normally found and not based on the identity/personal choice of the user: Harrods Ltd v SSETR [2002] EWCA Civ 412.

c. The scale of the use may be relevant but is not determinative; even a

relatively small use may be a separate primary use and not merely ancillary if it cannot be regarded as 'part and parcel' of the main use: Main v SSETR (1999) 77 P & CR 300.

d. Incidental uses may be changed, expanded or decreased without giving rise to a material change of use, so long as they remain subsidiary to the primary use(s) of the planning unit as a whole: Brazil (Concrete) Ltd v MHLG & Amersham RDC [1967] 18 P & CR 396.

e. The protection of ancillary uses remains only so long as the ancillary link is maintained. Incidental use rights do not continue after the cessation of the primary use: Barling v SSE [1980] JPL 594.

f. The ancillary link may be lost also where the ancillary use grows to the point where it can no longer be said to be ancillary, but to have become a separate use in its own right (either within a new planning unit or so as to put the original planning unit into a new mixed use). In that case it is likely that there will have been a material change of use: Wood v SSE [1975] 25 P & CR 303.

33. The Charging Authority also refer to the Court decision in Hourhope that the onus is on the developer to provide sufficient evidence to confirm that the buildings were in actual lawful use during the required period.

34. The Charging Authority refer to three sources of evidence and provides a critique of:

(i). the CIL forms and the associated correspondence between the Appellant and the Charging Authority during the processing of the application,

(ii). the witness statement of [redacted], of [redacted], dated [redacted], and

(iii). the email from [redacted], Regional Property Manager at [redacted]

35. The Charging Authority also refer to the evidence that parts of the site were used to hold regular second-hand sales for fundraising purposes.

36. There is information to indicate that the sales may have taken place for at least [redacted] years and that these sales were on a substantive scale and that the buildings were also used to support this use.

37. The Charging Authority conclude that on the evidence now available, that the use of the property for sales was more than incidental and subsidiary, and that as at [redacted] the use of the property for sales purposes was a separate primary use in its own right.

38. The Charging Authority state the fact that there would be office use to support the main use of the property as a Hospice.

39. The Charging Authority refer to the evidence provided by [redacted] and identifies inconsistencies and also that the evidence is not date related and does not state the facts in [redacted].

40. The Charging Authority conclude that on the evidence there is insufficient evidence as at [redacted] to support office use as a primary use in its own right.

41. The Charging Authority refer to the Palliative Car Hub which started at the property from [redacted]. This use and any ancillary supporting office use was not taking place in [redacted] so not relevant to the appeal.

42. The Charging Authority refer to an element of storage which would be incidental to the use as a Hospice.

43. The Charging Authority reject the Appellants claims that the storage of charitable donations to be sold amounted to a separate use and claim that it was an ancillary use to the sales function.

44 The Charging Authority refer to the nurses flat and two cottages which were for staff use. Some level of permanent on-site residential accommodation would be normal and expected for a hospice and is incidental to the hospice use.

Decision

45. I have considered all the arguments put forward by the Appellants and the Charging Authority.

46. The matter to be determined is calculate to "net chargeable area" after offsetting the "retained parts of in-use buildings" that have been in lawful use for the prescribed period of time.

47. It is necessary to establish the relevant time the buildings were in use, whether this use was lawful and was this use for the relevant period.

48. The chargeable development arises from the three planning permissions, one dated [redacted] and two dated the [redacted]. In accordance with the CIL regulations, the relevant period would be from three years earlier, [redacted].

49. Until [redacted] the property was being used as a Hospice. Originally a private home, the property was donated to [redacted] hospital in the late [redacted], and was used as a convalescent home. In [redacted] the [redacted] charity took ownership and the property was used as an adult end of life hospice. This use commenced without planning permission.

50. As the property had no explicit planning consent for the hospice use, it could have obtained a lawful development certificate certifying that the use was lawful under section 191 of the Town and Country Planning Act 1990. It is necessary to decide if this lawful use certificate would include office and storage as a primary planning use.

51. In accordance with section 171 of the Town and Country Planning Act 1990 any enforcement action by the local planning authority against an unapproved change of use must be commenced within ten years.

52. Following from above, in order to decide if the use in the relevant period was legal it is necessary to consider the established uses as of [redacted].

53. All parties accept that at least some of the buildings were in use for the prescribed period of time, but it is not agreed that the use was lawful in accordance with the CIL Regulations.

54. The Appellants had been using the property for offices and storage .

55. The evidence for how the property was used in [redacted] is limited.

56. The evidence provided from the witness statement of [redacted], of [redacted], dated [redacted] provides detailed information regarding the use of the building by the Appellant and of the more recent use of the property whilst owned by the [redacted] Charity, but not as far back as [redacted] .

57. The email provided by [redacted], Regional Property Manager at [redacted], comprises a series of answers to a number of proposed questions . It is noted that [redacted] was not based at the property and that his responsibilities were "building works and maintenance of the building Estate" and not directly concerned with the daily management of the property . The Charging Authority's submission refers to some inconsistencies in these responses, also that this evidence does not specify any timeline.

58. The Appellant's refer to the planning application granted [redacted] for the conversion and associated extension/alterations to the manor house to 20 dwellings and the planning officers' comments within the application which both refer the property as hospice and offices. This evidence is from [redacted] years after the relevant period in consideration and provides no confirmation as to the established planning rights as at [redacted].

59. There is evidence to show that the property was being used for retail purposes from prior to [redacted] and that the items to be sold were stored at the premises, however, this use as storage was ancillary to the retail use.

60. The use of the property for office use was mainly ancillary to the use as a hospice. There is insufficient evidence to establish a primary office use as at [redacted].

61. In accordance with the Court decision in R (Hourhope Ltd) v Shropshire Council [2015] EWHC 518 Admin Hourhope that the onus is on the developer to provide sufficient evidence to confirm that the buildings were in actual lawful use during the required period.

62. The ruling in the Hourhope decision stated "Whether a property is 'in use' at any time requires an assessment of all the circumstances and evidence as to what activities take place on it and what are the intentions of the persons who may be said to be using the building."

63. Hourhope makes it clear that where an ancillary use, such as storage or residential, continues after the primary use of a public house ceases, that might be treated as a continuation of the lawful use if there was evidence that the cessation of the primary use was temporary and there was an intention to continue the primary use.

64. In this instance there is no plan or intention to use the property for use as either a hospice or for retail purposes. The use of the property as offices and storage have been ancillary to the primary use. In my opinion, this supports the view that the subject premises were not in lawful use.

65. On the basis of the evidence before me, I do not consider the Community Infrastructure Levy (CIL) charge of £[redacted] ([redacted]) to be excessive and I therefore dismiss this appeal.

[redacted]

[redacted]
Valuation Office Agency
Date 4/06/2025