Appeal Decision

By [redacted] MRICS VR

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: 1860098

Address: [redacted]

Proposed Development: Change of use of ancillary outbuilding to provide a short-term holiday let.

Planning Permission details: Granted by [redacted] on [redacted] under reference [redacted]

Decision

I determine that no Community Infrastructure Levy (CIL) should be payable in this case.

Reasons

Background

1. I have considered all the submissions made by the appellant's agent, [redacted] (acting on behalf of the Appellant, [redacted]), and the submissions made by the Collecting Authority (CA), [redacted].

   In particular, I have considered the information and opinions presented in the following documents:-

   a) CIL Appeal form dated [redacted] .

   b) Grant of Planning Permission [redacted], dated [redacted].

   c) The CIL Liability Notice (ref [redacted]:) dated [redacted].

   d) The CA's Regulation 113 Review, dated [redacted].

   e) Various plans and photographs of the subject development.

   f) Statutory Declaration by [redacted], detailing [redacted] bookings, bank statements detailing the payments relating to the [redacted] bookings; and a series of photographs.

   g) The CA's representations letter dated [redacted], under Regulation 114.

h) Appellant's comments on the CA's representations, dated [redacted] .

Grounds of Appeal

2. Planning permission was granted for the development on [redacted], under [redacted]. The approved planning permission was:-

   Change of use of ancillary outbuilding to provide a short-term holiday let.

3. On [redacted] , the CA issued a Liability Notice (Reference: [redacted]) for a sum of £ [redacted]. This was based on a net chargeable area of [redacted] m² and a Charging Schedule rate of £ [redacted] per m² (Residential dwellings - 10 or less (Zone B)), with indexation at [redacted] .

4. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The Regulation 113 review request was sent on [redacted]. The CA responded on [redacted] , stating that it was of the view that its original decision was correct and should be upheld.

5. On [redacted], the Valuation Office Agency received a CIL Appeal from the Appellant, contending that the CA has calculated the CIL charge incorrectly and opines that no CIL is payable. The CA is of the opposite view. The disagreement between the parties can be summarised to two aspects:-

   - A disagreement in the CIL liability under the [redacted] CIL Charging Schedule (if it constitutes a dwelling).
   - A disagreement that if the development was liable for CIL, that the floorspace of the outbuilding was 'in-use' and can be off-set.

6. It would appear that there is no dispute between the parties in respect of the measurement of the building, or the applied indexation.

Approved Development in Dispute

7. The building subject to this Appeal comprises a detached outbuilding of timber construction. The disputed outbuilding is located to the rear garden of the dwelling of [redacted], which is in single family occupation. The plot of [redacted] is bounded on the east by the [redacted], on the [redacted] and given that the plot slopes upwards to the north, the outbuilding is on a significantly lower land level in comparison to the dwelling of [redacted] .

Decision

8. The Appeal site has a long and somewhat complicated planning history, going back to [redacted], when the disputed building was subject to an Enforcement Notice, the withdrawal of the Enforcement Notice and subsequent approved retrospective planning permission.

   Planning permission was approved on [redacted], under reference [redacted] for:-

   '*Erection of a single storey outbuilding to provide ancillary accommodation (retrospective).'*

   [redacted] was subject to conditions, which included Condition 2 :-

'The outbuilding hereby permitted shall not be occupied at any time other than for the purposes ancillary to the existing use of the dwelling known as [redacted], as a single family dwelling. '

However, and of import, this Appeal is subject to the grant of conditional Planning Permission under [redacted], which is dated [redacted].

9. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:-

10. Schedule 1 of the 2019 Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;

    a. retained parts of 'in-use buildings', and

    b. 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.

11. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means *"the development for which planning permission is granted"*.

12. The Appellant opines that in accordance with the CA's Charging Schedule and what constitutes a residential unit, the development should not be liable in the first instance. As a secondary argument, the Appellant opines that the use of the outbuilding has remained ancillary to the main dwelling, through its continuous use by the occupiers of the dwelling of [redacted]. Additionally, the [redacted] bookings were intentionally limited to under 90 days and this occurred concurrently, alongside the daily, ancillary use of the outbuilding. Given the established ancillary use of the outbuilding and that the building was in existence at the date planning permission was granted, the Appellant opines that the floorspace of the outbuilding was 'in-use' and can be off-set from the chargeable amount, thus resulting in a zero CIL charge.

13. The Appellant opines that no material change of use has occurred and the existing floorspace was in lawful use for a continuous period of six months out of the three years, prior to the grant of planning permission on [redacted]. The Appellant further opines that the intention behind submitting a full planning application was to secure an unlimited usage of the outbuilding throughout the year as a short-term holiday let, which would in turn, constitute a material change of use.

14. The CA contends that the Appellant's view that a holiday let is not classified as chargeable use within the adopted [redacted] CIL Charging Schedule is incorrect. The CA points out that within the adopted [redacted] CIL Charging Schedule, the term 'residential dwelling' is not specifically defined as being within Use Class C3 (as per the Use Classes The Town and Country Planning (Use Classes) Order 1987 (as amended).

    The CA further contends that a residential dwelling, for the purposes of the CA's Charging Schedule, can be broader than just Use Class C3. The development permitted is a holiday let; the definition of such being (in Schedule 1, paragraph 9 of the Housing Act 1988): '*A tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling house for a holiday*'.

The CA opines that although compact in size, the approved plans show that the holiday let includes all the facilities to be expected with a dwellinghouse: a living area, sleeping areas (two bedrooms) and a bathroom with shower. It will have all facilities required to *"afford to those who use it the facilities required for day-to-day private domestic existence",* as per *Grendon v First Secretary of State and another* [2006].

The CA maintains that the holiday let permitted under the development is a dwelling, and is therefore chargeable under the [redacted] CIL Charging Schedule (WBCCCS).

The CA opines that the usage of the outbuilding by [redacted] renters was not ancillary, as there was no functional or familiar relationship between the occupiers of [redacted] and the renters of the outbuilding. As such, the CA considers that the use of the outbuilding for [redacted] accommodation was in breach of the [redacted] planning condition (Condition 2).

15. The CA and the Appellant agree that the existing outbuilding is a relevant building. Given this, I will first turn to the parties' disagreement in their opinions of the building's liability under the WBCCCS.

16. Whilst I note the lack of kitchen facilities, cited by the Appellant, I am drawn to the subject approved permission description: *Change of use of ancillary outbuilding to provide a short-term holiday let.* [my emphasis underlined].

Given this, and the Housing Act 1988 definition of holiday let, it is clear to me that the disputed building is a dwelling house for the purposes of the CIL Regulations; accordingly, I agree with the CA that it is chargeable under the WBCCCS.

17. The Appellant states that the floor area of the outbuilding does not exceed 100 m² and thus should not be liable to CIL; this statement appears to allude to the 'Exemption for minor development' provision under Regulation 42. The provisions of Exemption for Minor Development under Regulation 42 are:-

(1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

(2) But paragraph (1) does not apply where the development will comprise one or more dwellings.

(3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings.

However, given that I have determined that the building is a dwelling house for CIL and thus the approved permission creates a dwelling, the Regulation 42 provisions cannot apply (as the chargeable development will comprise one or more dwellings). In conclusion, I agree with the CA that the Minor Development Exemptions cannot be applied here.

18. I will now move onto the Appellant's secondary contention – that, if the development were liable for CIL, that the floorspace of the outbuilding was 'in-use' and can be off-set.

19. The Appellant opines that the condition cited by the CA, does not have clear intention to restrict the outbuilding for short-term letting and simply maintains that it should not be occupied *"at any time other than for the purposes ancillary to the existing use of the dwelling known as* [redacted]*"* Furthermore, the Appellant argues that since [redacted], the lawful ancillary use of the outbuilding has been continuous for residential storage,

general enjoyment as a dayroom/home office and as guest accommodation for friends and family. Alongside this continuous usage, since [redacted], the outbuilding has been used additionally as a short-term [redacted], used for a maximum of 52 days (under 90 days in the calendar year).

20. The Appellant opines that there is a clear functional relationship that exists between the outbuilding and the main dwelling, where there is a shared access, entrance, parking area and postal address. Additionally, the outbuilding is connected to the mains supply to main dwelling, for utilities (water, electricity etc). The Appellant highlights that the services are not metered separately.

    The Appellant opines that due to the number of days and the concurrent, daily residential use of the outbuilding for the family, it does not constitute a change of use and is ancillary to the main residential dwelling of [redacted] .

21. In support of the CA's non-ancillary argument of the disputed outbuilding, the CA points to the Airbnb listing description of the subject as a *"tranquil cabin itself is completely separate from the main house"*, and *"Double Bedroom with your own Private Bathroom and access to the lounge in a newly renovated stylish cabin. It's a nice space to yourself."*

    The Appellant counters this argument, citing that the [redacted] description is typical for such a listing, where it is clearly intended to emphasise the peaceful qualities of the site and provide assurance that those renting it will enjoy their privacy throughout the duration of their stay. I agree with the Appellant on this aspect and conclude it is a marketing description; accordingly, I have attached little weight to the CA's argument that the [redacted] description supports non-ancillary use.

22. The main contention in the secondary disagreement between the parties is their different interpretation of the meaning of *ancillary* in the planning condition of [redacted] (Condition 2)*;* the Appellant opines that there has been no breach of the condition, whilst the CA disagrees. The Appellant cites the case of *Burdle v Secretary of State for the Environment* [1972] which identified three broad categories of distinguishing planning units and provides guidance on ancillary use; the three tests comprise:-

    First Test – Ancillary Use
    First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.

    Second Test – Composite Use
    Secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.

    Third Test – Separate Planning Units
    Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

23. In applying the first *Burdle* test, the outbuilding is situated to the rear garden of the dwelling of [redacted], which occupies a linear shaped plot, which I calculate at approximately [redacted] m² ([redacted] of an acre). From the supplied plan, which shows the extent of the plot and the small size of the outbuilding relative to the dwelling of [redacted], it is clear to me that the outbuilding is incidental to [redacted]. The Gross Internal Area (GIA) of [redacted] (a five bedroom detached two-storey house) is at least [redacted] m², whilst the GIA of the outbuilding is [redacted] m². Based upon the submitted evidence, I am of opinion that the main purpose of the occupier's use is a residential dwelling.

24. The application of the second and third *Burdle* tests are somewhat interrelated in this instance. It is clear to me that the shared access, entrance, parking area and shared services are factors which support subordinate and ancillary use to the main dwelling. In support of the CA's argument, the [redacted] letting is clearly a positive factor, but in my view, it is a question of the degree of [redacted] letting and the Appellant has evidenced sporadic letting use. However, a key item of evidence for me is the Appellant's plan of the subject outbuilding, which indicates the designated places for residential storage, which supports daily use. This overflow storage from the main house for miscellaneous items, throughout the duration of the [redacted] lettings, coupled with the short-term degree and sporadic [redacted] use, in my view, on balance, supports that the outbuilding is ancillary to the main residential dwelling of [redacted]. I do not agree with the CA that there was no functional or familiar relationship between the occupiers of [redacted] and the renters of the outbuilding. In conclusion, I agree with the Appellant that the building is ancillary and that there was no breach of planning use under Condition 2.

25. Given that I have determined there was no breach of Condition 2, I am satisfied that the building was in lawful use as per Schedule 1 Part 1 1(10) and was an 'in-use building', thereby allowing the area of the building to be netted off the area of the chargeable development. This results in the area of the chargeable development being a nil sum (zero m²).

26. In conclusion, having considered all the evidence put forward to me, I consider that the CIL payable in this case is to be a nil (zero) sum.

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
3rd April 2025