Appeal Decision

By [redacted] **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: 1867207

***Address**:* [redacted]

Proposed Development: Use of the railway carriage and building as holiday accommodation (Retrospective).

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

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted]([redacted]).

Reasons

Background

1. I have considered all the submissions made by the Appellant, [redacted] (App) 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 Retrospective Planning Permission [redacted], dated [redacted].

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

   d) The Demand Notice dated [redacted].

   e) The APP's Regulation 113 Review request dated [redacted].

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

g) The CA's Charging Schedule.

h) CA's Written Statement including Supporting Evidence.

i) The APP's confirmation of [redacted] Accounts income ([redacted] – [redacted]).

j) The APP's comments on the CA's Statement of Case document and various statements and additional supporting evidence, which are dated [redacted].

Grounds of Appeal

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

   Use of the railway carriage and building as holiday accommodation (Retrospective).

3. On [redacted] , the CA issued a Liability Notice (ref: [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 Zone 2) plus indexation of [redacted] .

4. The APP issued a Regulation 113 Review dated [redacted] . Following the outcome of the Regulation 113 review, the APP made this Regulation 114 chargeable amount appeal to the Valuation Office (VO) on the [redacted].

5. The APP has set out their Grounds of Appeal under Ground A and Ground B. Ground A refers to the entire GIA being offset on the basis the building has been in continuous "lawful use" for more than six of the preceding thirty six months. Ground B is on the basis the GIA should only include the railway carriage and not the adjacent building.

6. In summary, I consider the issues before me are whether the GIA of the existing buildings can be offset in accordance with Schedule 1 Part 1 1. (6) of the CIL Regulations 2010 (as amended) and; if not, what is the correct GIA of the chargeable development. There is no dispute around the charging rate or indexation adopted.

Approved Development in Dispute

7. The dispute between the parties relates to a parcel of land in a predominantly rural location, situated to the south of the [redacted], to the south east of [redacted].

8. The development is situated within the curtilage of [redacted], which is a Grade [redacted] Listed Building. It comprises a railway carriage which is let for holiday accommodation and adjoining timber addition.

Decision

9. I believe the most logical place to start and the first issue to address is the APP's "Ground B". The APP considers the adjacent building known as "The [redacted]" should not be included as a "relevant building" and was included in the planning application in error. The "chargeable development" is defined in the CIL regulations as follows.

> ***Meaning of "chargeable development"***
> ***9.—****(1) The chargeable development is the development for which planning permission is granted.*
>
> I appreciate the APP may not have intended this to be the case, however, as the Appointed Person, I am required to consider the submitted facts of the case and determine under the Community Infrastructure Levy Regulations 2010 (as amended).
>
> I have considered the following:
>
> a. The inclusion within the application description as "Use of railway carriage *and building* (my emphasis) as holiday accommodation (Retrospective)".
> b. The approved plans and documents.
>
> It is clear the adjoining room known as "The [redacted] " is part of the planning permission, therefore, it must be considered part of the chargeable development as per the Regulations 9.(1).

10. Now turning to "Ground A", the core dispute between the parties in this case relates to the interrelated CIL Regulation concepts of 'In-use building' and lawful use.

11. Schedule 1 (6). of the 2019 Regulations "KR" allows for the deduction of floorspace of certain existing buildings from the gross internal area (GIA) of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. The deductible floorspace of buildings that are to be retained includes;

> 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.
>
> In this particular case "KR (i)" is the relevant part to consider.

12. Further clarification under Schedule 1 (10) is provided. An "in-use building" means 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.

In terms of 10 (i), I have concluded what I deem to be the "relevant building" previously under paragraph 7.

Part 10 (ii) requires due consideration under Ground A.

13. Both parties have advanced to me evidence in support of their respective viewpoints.

14. After considering the APP's representations, I understand that they acquired [redacted] in [redacted]. The APP opines that for the duration of their near-[redacted] - year ownership of the property, they have used the railway carriage as accommodation for family and guests, as well as storage for the main house. They have also used the adjacent building as additional laundry facilities and storage area, including to house equipment for the neighbouring tennis court. The APP has provided some Statements of Use from relatives and the letting agent to support their case.

15. A planning history of the wider site is included within the APP's representations, namely the Delegated Report but there is no specific mention of the buildings in question. The Officer's report makes short reference to the subject development, "*There are no issues with the principle of development. The additional tourist accommodation will provide opportunities for visitors to sustainably appreciate the special qualities of the National Park, whilst re-purposing an existing ancillary building, in accordance with policies SD23, SD25 and SD34 of the SDLP..*"

16. The APP opines the railway carriage was installed at the property over [redacted] years ago and the first public record of the railway carriage is its appearance on the country archives in [redacted] . This does not appear to have been disputed by the CA in their representations.

17. With this in mind and the age of the railway carriage means it is highly unlikely they have any formal planning permission and in the absence of any documents or evidence restricting the use of the subject buildings, it is reasonable to assume any use ancillary to [redacted] would be a lawful one. In addition, I am of the view the use of the words "existing ancillary building" in the Planning Officer's Report are descriptive to the considered use of the buildings.

18. The CA is of the view the lawful use is required for offset to be applied. In their opinion, the holiday accommodation use only became lawful through the granting of the retrospective planning permission (reference [redacted]) on [redacted], consequently no offset can be applied.

19. I agree with the CA in this instance. The APP's representation questions the CA's interpretation of lawful use being overly restrictive. Although I have sympathy with this argument, there has to be a line drawn to avoid the abuse of the planning system as a whole. Consequently, applying Part 10 (ii) of the Regulations for the

"relevant buildings" I am satisfied the "lawful use" is a domestic usage ancillary to [redacted].

20. Planning permission was granted on [redacted] . Therefore, the period to consider the lawful use for a continuous period of at least six months within the preceding three years is between the [redacted] to [redacted].

21. The APP has provided confirmation of the bookings from the letting agent, which show there were no lettings for six months from [redacted] until [redacted].

22. The CA concluded within their representations under Ground A that no other evidence has been provided to help demonstrate that six continuous months of any lawful use took place within relevant time period. Thus, referring to Schedule 1 Part 1 1.(8) states, *"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."*

23. I concur. Within the period [redacted] to [redacted], there is limited information provided within the APP's representations clearly confirming the lawful use for a continuous period of at least six months. For example, the six months of continuous lawful use would have run from [redacted] until [redacted]. The CA has put evidence forward evidence to show reviews which were left on dates later than [redacted] and the APPs themselves have confirmed bookings after this date in their evidence. In addition, the accommodation appeared to be available online for bookings during the "domestic" period.

24. Based upon the evidence advanced by the APP, I do not find sufficient evidence to support the APP's claim of a lawful use for a continuous period of at least six months within the preceding three years as per Schedule 1, 10 (ii) within the Regulations . In arriving at my decision, I must make my determination based upon the submitted facts of the case, determined under the Community Infrastructure Levy Regulations 2010 (as amended). The viability of any development scheme is not a factor, which I can consider.

25. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the CA that the Railway Carriage and The [redacted] had not been in lawful use for the required period and they failed to satisfy the CIL Regulations Part 5 Chargeable Amount, Schedule 1.

26. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated [redacted] and hereby dismiss this appeal.

[redacted]

[redacted] MRICS

Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
Date: 8 July 2025