Appeal Decision

by BSc FRICS

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

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VOA Appeal Ref: 1833688

Planning Application:

Proposal: Permitted Development Assessment - Prior Approval sought for a change of use from Commercial, Business and Service (Use Class E) to 15 flats (Use Class C3).

Address:

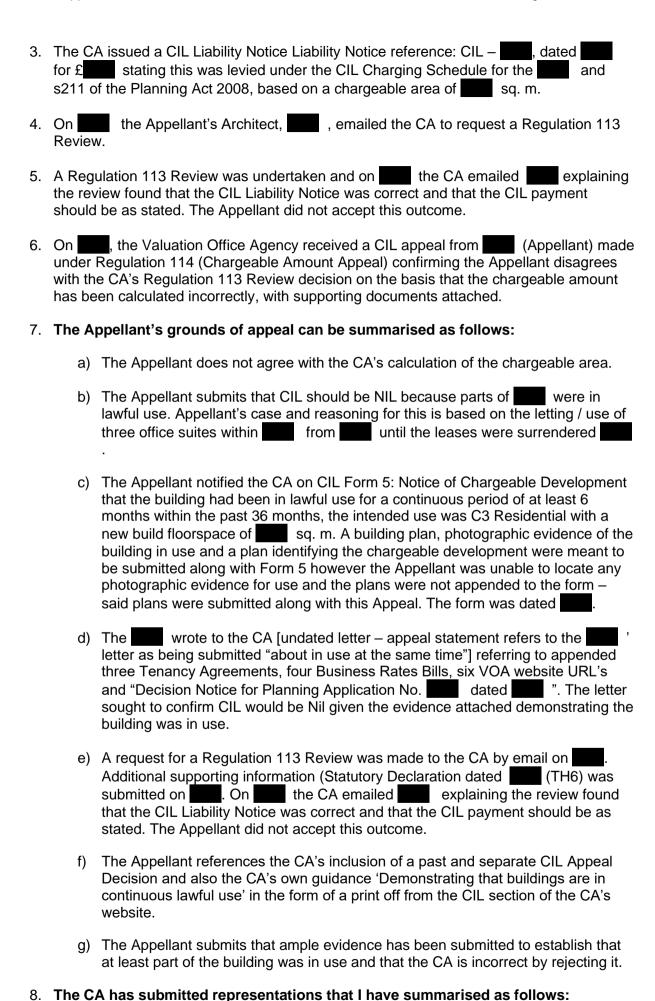
Decision

Appeal dismissed.

Reasons

- 1. I have considered all of the relevant submissions made by the Appellant) and by 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 in respect of Application No: [dated d
 - b) CIL Liability Notice CIL , dated for £
 - c) CIL Appeal form dated along with supporting documents referred to as attached.
 - d) Representations from the Appellant.
 - e) Representations from the CA.
- 2. Prior Approval Change of Use was granted as detailed within the Decision Notice for Application reference for the Proposal: Permitted Development Assessment Prior Approval sought for a change of use from Commercial, Business and Service (Use Class E) to 15 flats () (Use Class C3).

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- a) The CA considers the information provided by the Appellant insufficient in order to determine the in lawful use criteria has been met.
- b) The CA refers to its previous Regulation 113 Review reply and makes additional references to Schedule 1 Part 1 of The Community Infrastructure Levy Regulations 2010 (as amended), specifically 1. (8) [whereby] the CA 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.
- c) The CA refers to the explanations provided to the Appellant in an email in response to information submitted. Within this email the CA explains it has concluded the development is CIL liable as it considered it did not have information of sufficient quality to establish the building had been in-use. The CA advises that as the [Form 5] Notice of Chargeable Development [NCD] was dated however was not received until the [qualifying] relevant period to determine whether the building was in use was therefore to ...
- d) The CA provides feedback on five elements explaining why it has taken the decision the information is insufficient to determine the building as in lawful use.
- e) Subsequently, on the CA received a request for a Regulation 113 review, as described above, and states that at this point additional information to demonstrate the 'in-use building' was not forthcoming until the CA states that the additional information submitted as part of the Regulation 113 Review included a Statutory Declaration to support the three leases previously provided. The CA considered the leases and other information were inadequate to demonstrate continuous lawful use, referencing reasoning already provided.
- f) The CA's position after considering the Appellant's submissions, both before and as part of the Regulation 113 Review, was that the leases and the declaration did not demonstrate how the building was actively being used or show that any use was continuous. The CA states evidence such as an electricity bill showing electricity consumption would help demonstrate active use during the lease period. An additional challenge to the evidence submitted was conflicting information from the CA's Business Rates Team which contradicted the Declaration.
- g) Specifically, the CA quoted the information from its Business Rates Team received which I summarise as follows:
 - i. 'The property is split into **six different assessments** of which three were let for a period of months for exactly the same dates to
 - ii. 1st Floor middle was let to ground floor rear was let to ground floor front was let to
 - iii. The NDR Department state that it billed all three of the Suites as vacant rates throughout the leased period and were not advised of any occupation / the bills paid were for vacant assessments. Further, that the other three assessments remained in the Appellant's name and were billed vacant throughout. The Appellant disputes the assessment basis.

- operation during a substantial amount of the lease period which it argues makes it unlikely that continuous use could have occurred.
- i) The CA addresses the Appellant's reference to the CA's own publicly available guidance on demonstration of continuous lawful use. The CA reiterates said guidance that the information on the CA's website is given as guidance only, and specifies that "It is the applicant's responsibility to provide the evidence to demonstrate the continuous lawful use... The Council will require further evidence of continuous use if it is not evident from the information supplied..." which in this connection the CA is stating as the case.
- j) The CA's Representation made under this appeal lastly addresses the Appellant's application for costs under CIL Regulation 121. The CA considers it has been very accommodating to the Appellant and not acted unreasonably, therefore requests that both the Regulation 114 Appeal and the Regulation 121 Costs Appeal are dismissed for the previously referred to reasons and specifically in relation to costs, the CA summarises that it:
 - i. Prior to issuing the Liability Notice gave the Appellant opportunity to provide 'in-use information'
 - ii. When the Liability Notice was issued, the accompanying email, outlined the concerns that it had with the 'lawful use' information and what it expected to be submitted to address the issues.
 - iii. As the Liability Notice was issued on request a Regulation 113 review. It is received a phone call from the Appellant's agent asking if it would accept a request for a Regulation 113 review however with the supporting information to be submitted after. However, the CA received the Regulation 113 information on day 43 days after the Liability Notice had been submitted when the relevant Regulation states the must be requested within 28 days, the CA highlights it therefore could have refused the Review on day 29.

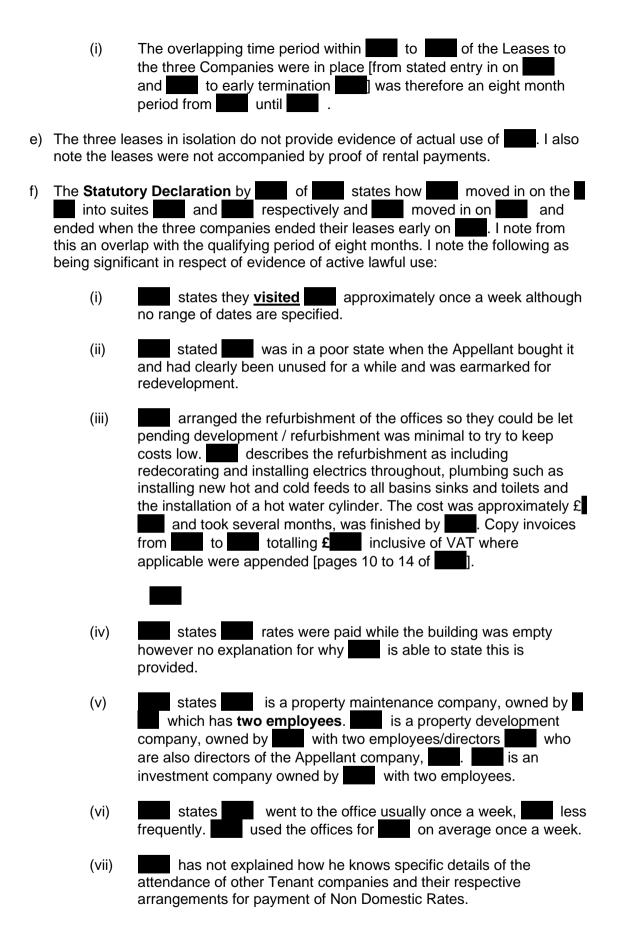
9. The Appellant submitted comments on the CA's representations which I summarise as follows:

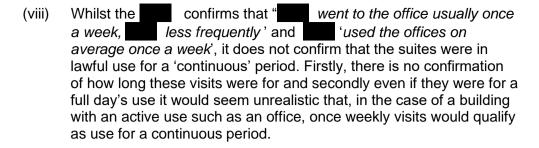
a)	advises these have been located and provided for the period (although is missing).
b)	The Appellant refutes the CA's argument that prevailing Covid-19 national lockdown measures meant it was unlikely that continuous use could have occurred. The "stay at home order" (copy attached work) did not prevent travel to work and describes how the business activities of the Tenant companies at were not able to work from home, did not have the IT to allow that and needed to attend the offices to perform their work functions – also that contained tools and materials as well as accounting records and in person access was required for these. Was the key holder for various residential properties and required access for those, as well as paper file records and storage of various items.
c)	none of this was prohibited. The Appellant highlights that it disputes the CA's position on Non Domestic Rates, referring to a separate dispute in this connection and referencing appended copy correspondence. Said correspondence comprises email exchanges initially between the Appellant's NDR Agent and the CA's NDR Team between and and appendict the Appellant.
	and subsequently between the NDR Agent and the Appellant.

d) Lastly the Appellant reiterates its reasons for seeking costs.

10. Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal:

- a) In this case, the Appellant does not agree with the CA's stated net chargeable area used in the calculation of CIL. The Appellant submits the whole of the existing GIA should be excluded from the calculation of the chargeable area for CIL because parts of remained in use for a qualifying period and that the CIL Regulations permit the whole of the property to be treated as in use because part of the property was in use.
- b) In-use buildings / Lawful use The CIL Regulations Part 5 Chargeable Amount, defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."
- c) "In-use building" is defined in the Regulations as a relevant building that 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.
- d) In this case, instead of the grant Planning Permission being required, Prior Consent was sought for a Permitted Development. The CA's published [website] guidance, as referenced by the Parties, "Demonstrating that buildings are in continuous lawful use" describes how Regulation 40, in accordance with Schedule 1, of The Community Infrastructure Levy (Amendment) Regulations 2019 allows for existing floor area that has been in continuous lawful use for at least six months in three years prior to the day that planning permission is granted to be used as deductible floor area against the calculation of the CIL liability for the development.../...for Prior Approval or permitted development cases this is on receipt of a Notice of Chargeable Development form IN THIS CASE, therefore the [qualifying] relevant period to determine whether was in use was therefore





- (ix) Unfortunately, the opportunity to further corroborate statement with evidence of payments for invoices, rates bills and rents does not appear to have been taken up.
- g) I note the bills provided with Representations are for dates out with the qualifying period. Within the Appellant Comments, three relevant bills are provided covering.
- h) The copy correspondence between the Appellant's NDR Agent, the CA and the Appellant does not itself provide evidence of occupation there was clearly a form of ongoing dispute.
 - I note that evidence to show payment of NDR bills is not provided. Further, the Business Rates Bill provided with Appellant Comments in respect of Suite Ground Floor Front of from the CA's NDR Department is dated for £ and is in respect of Liability Period to Form of the CA's on the case of the companient of the case of the case
- i) Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of "in-use building" then it can deem the GIA of this part to be zero.
- j) The Appellant's contention is that the property was occupied and used by employees of three companies, commencing within days of Lockdown and Restrictions legally enforced by the UK Government from
- k) Unfortunately, the Appellant has not, in my opinion, provided evidence which is sufficiently strong to prove continuous use during requisite time period. There has been ample opportunity to collate evidence that could include actual payments for rent, bills or other occupational costs that would be incurred, other than bills for three months.

The evidence in relation to use of the property during the period in question is inconclusive in my opinion and insufficient evidence has been provided to demonstrate continuous use for the required six months within the relevant qualifying period.

In summary, I am of the opinion that the criteria for demonstrating that parts of were in active lawful use for the required six months within the relevant three year period as detailed above has not been met.

There appears to be no dispute in relation to the rates adopted or indexation and I therefore dismiss this appeal.

The Appellant has applied for an award of costs as part of their Representations. The purpose of such costs awards is to encourage responsible and reasonable use of the appeal system by Appellants and action by Collecting Authorities, by introducing financial consequences for unreasonable behaviour. I have considered the facts of this case, the evidence submitted and the conduct of the Parties. In this case, I have not seen evidence of unreasonable behaviour by either Party and therefore dismiss the claim for costs.

BSc FRICS Valuation Office Agency 29 January 2024