Appeal Decision

By [redacted] BSc (Hons) 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: 1832607

Planning Permission Ref. [redacted]

Proposal: Change of use and conversion of 1no. building to provide 1.no dwelling along with external alterations, [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] on behalf 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] ;

    f) Appellant comments on CA representations, dated [redacted];

    g) Transcript of Appellants verbal representations, dated [redacted]; and

    h) CA comments on transcript, dated [redacted].

2. Planning permission was originally granted under [redacted] ('the [redacted] permission) for change of use of an agricultural barn to a residential property. Development under this permission commenced in [redacted]. The CA maintain that the development was not completed in accordance with the planning permission and that a retrospective application was required to regularise the development.

3. Planning permission was subsequently granted under application no [redacted] ('the [redacted] permission') on [redacted] for *'Change of use and conversion of 1no. building to provide 1.no dwelling along with external alterations, [redacted].'*

4. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m² at the *'Residential Small Sites up to & inc 10'* rate of £[redacted] /m² plus indexation.

5. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted], confirming their view that the Liability notice is correct.

6. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be Nil.

7. The Appellant's grounds of appeal can be summarised as follows:

    a) The development granted under the [redacted] permission was substantially complete within the three year period specified in the planning conditions and therefore the retrospective planning application should not have been required. The [redacted] permission should only have covered the amendments required and not the full development.

    b) The development was exempt from CIL under the [redacted] permission and therefore no CIL should be charged on the amended permission.

    c) The CA should grant relief under exceptional circumstances because:

        i. the charitable relief granted under the [redacted] permission was inaccurate and the former owner should have been liable for the CIL charge or self-build exemption should have been granted;

        ii. the CA did not inform the appellant at any time that the retrospective permission could attract a CIL liability;

        iii. the CA did not inform the appellant that self build exemption would not be available on the retrospective application; and

        iv. if it had been possible to follow the normal procedures, the appellant would have been exempt under self build relief.

    d) If relief is refused, a lawful use exemption should be applied. The appellant occupied the property from [redacted] and therefore the property was in lawful occupation for the required six months within the previous three years.

8. The CA has submitted representations that can be summarised as follows:

a) The [redacted] consent was not lawfully implemented as the number, size and positioning of rooflights differed to that consented; and both the internal and external layout differed.

b) The CIL position of the [redacted] permission is immaterial to the CIL consideration for the [redacted] permission.

c) Relief for exceptional circumstances cannot be granted as applications cannot be made after the development has commenced.

d) The development is liable for CIL because it is development comprising change of use which results in the creation of one dwelling.

e) As the [redacted] permission was not lawfully implemented, any occupation of the premises could not be lawful. Therefore, no lawful use exemption can be applied.

f) The CIL charge has been calculated using a GIA of [redacted] m² but the CA note this includes areas with a headroom under 1.5m which may need to be excluded.

9. The appellant stated that they have been disadvantaged due to [redacted] and they requested an opportunity to provide evidence in this appeal orally. This request was granted and the appellant gave oral representations on [redacted]. A transcript of this evidence was shared with the CA and they were given the opportunity to comment on this. I have been provided with both the transcript and the CA comments but I was not present when the oral evidence was provided, to ensure that impartiality was maintained.

Extent of appeal

10. The appellants grounds of appeal include several mentions of various types of relief, including relief for exceptional circumstances and self build exemption. The VOA has no jurisdiction to determine if relief should be granted and I have therefore only considered the aspects of this appeal that fall under Regulation 114, Chargeable amount: appeal.

11. The appellant has raised several concerns regarding their interactions with the CA over the period of their build and subsequently. These concerns do not form part of the appeal and have therefore not been addressed within this decision. It is recommended that any concerns or complaints that have not been resolved are raised directly with the CA.

Chargeable Development

12. The Community Infrastructure Levy Regulations 2010 (as amended) section 9(1) defines the chargeable development as the development for which planning permission is granted. The relevant planning consent is the [redacted] permission which is described as *'Change of use and conversion of 1no. building to provide 1.no dwelling along with external alterations, the addition of a porch and associated development (retrospective).'* The approved site and location plan [redacted] shows that the entirety of [redacted] is included within the consent and therefore forms the chargeable development.

13. The appellants argue that the development granted under the [redacted] permission was substantially complete within the three year period specified in the planning conditions and therefore the retrospective planning application should not have been required. The [redacted] permission should only have covered the amendments required and not the full development.

14. The CIL regulations are clear that the chargeable development is the development for which planning permission is granted. Therefore, regardless of any dispute over the implementation of the [redacted] consent, I am of the opinion that the development consented within the [redacted] permission comprises the chargeable development.

GIA

15. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 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."

16. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice definition is used. GIA is defined as "the area of a building measured to the internal face of the perimeter walls at each floor level." The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

17. The CA have adopted a GIA of [redacted] m² but note in their representations *"The council recognise that this figure may change slightly to reflect an exclusion of areas with a headroom of less than 1.5m (areas excluded from the Gross Internal Area as set out in the RICS Code of Measuring Practice May 2015), more accurately."*

18. The appellant has not provided a GIA but has referred to drawing [redacted], which they state provides details of the floorspace.

19. I do not agree that areas with a headroom of under 1.5m should be excluded from the GIA. (These areas are excluded from Net Internal Area within the Code of Measuring Practice, but not from GIA). I am therefore content that the GIA adopted by the CA is not excessive.

Lawful use

20. The appellant has stated that if relief is refused, a lawful use exemption should apply. I am unable to consider any application for relief and therefore I have considered the lawful use grounds.

21. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 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."

22. "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.

23. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, "the land to which the phase relates."

24. The [redacted] permission is for a change of use to an agricultural barn. The original barn can be considered as a relevant building, which was situated on the relevant land. The question therefore falls to whether the building was in lawful use for the relevant period.

25. The appellants maintain that the development granted under the [redacted] permission was substantially complete within the three year period specified in the planning conditions and therefore the lawful use of the building was as residential. They have provided evidence to show that the property was occupied in a residential use from [redacted].

26. The CA maintain that the [redacted] permission was not lawfully implemented as the number, size and positioning of rooflights were contrary to that consented and both the internal and external layout differed. In addition, three pre-commencement conditions and one pre-occupation condition were not discharged. They therefore state that the residential occupation of the property was not lawful.

27. The appellants agree that the build was not entirely in accordance with the plans but argue that the differences were predominantly minor or immaterial. They note that as all the changes were accepted by the CA in the [redacted] permission, this suggests they were either de minimus issues or not of a planning concern. They also comment that the CA have not provided any details on which conditions were not discharged.

28. The appellants further argue that many departures from the plans were made on the advice of their professional advisors, including the building inspector that they commissioned and Natural England, who required some changes following a bat survey.

29. In my opinion, the [redacted] permission was not lawfully completed. The appellants agree that the development differs to the plan in several ways including changes to the roof lights, changes to the internal layout and the addition of the porch. I disagree that these changes are de minimus and I concur with the CA that these alterations result in an unlawful development.

30. As the development was not completed in accordance with the plans, I cannot accept that the residential occupation of the property was lawful. I therefore do not agree that any lawful use deduction should apply.

Conclusion

31. 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] BSc (Hons) MRICS
Valuation Office Agency
25 January 2024