

Appeal Decision

by [REDACTED] MRICS VR

an Appointed Person under the Community Infrastructure Levy Regulations 2010
(as amended)

Valuation Office (DVS)
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E-mail: [REDACTED]@hmrc.gov.uk

Appeal Ref: 1886436

Address: [REDACTED]

Proposed Development: Alterations to dwellinghouse (with ancillary medical consulting rooms), attached annexe and landscaping works approved under [REDACTED]. Erection of outbuilding for letting rooms, bicycle storage and domestic storage. Proposed Plant room outbuilding and swimming pool with associated external works.

Planning Permission details: Granted by an appointee of the Secretary of State on [REDACTED], under planning appeal reference [REDACTED], in connection with the earlier planning application ref: [REDACTED] to [REDACTED], dated [REDACTED].

Decision

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

Reasons

Background

1. I have considered all the submissions made by the Appellant, [REDACTED], acting on behalf of [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 under Planning Inspectorate Appeal, reference [REDACTED], dated [REDACTED], in connection with the earlier planning application ref: [REDACTED] to [REDACTED], dated [REDACTED].

- c) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED]. The Liability Notice stated that the CIL amount which was due, was the sum of £[REDACTED].
- d) The CA's Regulation 113 Review, dated [REDACTED].
- e) Various plans of the subject development.
- f) Original Planning Application of subject property, dated [REDACTED].
- g) The Appellant's Statement of Case document, which comprises the Grounds of Appeal, including Appendices. The Appendices comprise of 24 documents, which include inter alia, photographic evidence, various cited case law, utility bills and historical use/business rates records.
- h) The CA's Statement of Case document dated [REDACTED], which includes various appendices.
- i) The Appellant's comments on the CA's Statement of Case document, which are contained in an e-mail and attached document, which were received in the VO, on [REDACTED].

Grounds of Appeal

2. Planning permission was granted for the development on [REDACTED], allowed on appeal, under reference [REDACTED]. The approved planning permission was:

'Alterations to dwellinghouse (with ancillary medical consulting rooms), attached annexe and landscaping works approved under [REDACTED]. Erection of outbuilding for letting rooms, bicycle storage and domestic storage. Proposed Plant room outbuilding and swimming pool with associated external works.'
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 Zone 2), and indexation at [REDACTED].
4. On [REDACTED], the Valuation Office received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect and that the CIL charge amount payable should be between nil to £[REDACTED].
5. The Appellant's Appeal can be summarised into two separate grounds:
 - Ground 1 – That the CA's application of the approved letting rooms of the development as Use Class C3 residential is incorrect. At the heart of the matter of Ground 1 is the different calculations of the net chargeable area of both parties in relation to their respective interpretation of the [REDACTED] ([REDACTED]) CIL Charging Schedule. To clarify, the [REDACTED] CIL Charging Schedule dated [REDACTED], designates 'Residential Zone 2' at £[REDACTED] per m², whilst 'All other Development' is zero rated.
 - Ground 2 – That the Chargeable Area is incorrect and that the CA has not offset 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the Appellant considers is an eligible deduction, which can be offset against the chargeable area).

It would appear that there is no dispute between the parties in respect of the measurement of constituent areas or the applied indexation.

Approved Development in Dispute

6. The property subject to this Appeal comprises a former public house, now converted to a dwellinghouse with attached annexe, situated in [REDACTED] and located within the [REDACTED]. The property lies in an isolated position adjacent to the [REDACTED]. The immediate surrounding area is mainly woodland with small pasture fields and occasional large, detached houses set in their own grounds.

Decision

7. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:
8. 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.
9. '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.
10. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means 'the development for which planning permission is granted'.
11. Schedule 1 of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 (which refers to 'Calculation of Chargeable amount') states in paragraphs 8 and 9 respectively:

'(8) 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.'

'(9) Where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish—

 - a) whether part of a building falls within a description in the definitions of KR and E in sub-paragraph (6); or
 - b) the gross internal area of any part of a building falling within such a description, it may deem the gross internal area of the part in question to be zero.'
 12. The planning history of the property is somewhat complex. On [REDACTED], planning permission [REDACTED] was granted for the subject property for:

'Change of use of public house to 1 no. dwelling to include ancillary medical consulting rooms and associated works. Demolition of existing function room to be replaced with an annexe. Retention of 4 no. associated letting rooms. With associated external works.'

Following a planning enforcement investigation by the CA in [REDACTED], the CA identified a number of issues, including the demolition of the letting buildings and other changes such as changes to the annex building, that resulted in the Appellant being invited to make a 'retrospective' planning application to rectify the works that had actually been carried out. This ultimately resulted in planning permission [REDACTED], which was granted on appeal by the Planning Inspectorate. This is an important point in relation to my decision on Ground 2, to which I shall return to, later in this Appeal.

13. The Appellant's Appeal can be summarised into two separate grounds (1 and 2) and I shall deal with the two grounds in turn:
14. Ground 1 – That the CA's application of the approved letting rooms of the development as Use Class C3 residential is incorrect. To clarify, the [REDACTED] CIL Charging Schedule dated January 2017, designates 'Residential Zone 2' at £[REDACTED] per m², whilst 'All other Development' is zero rated.
15. The Appellant opines that the 'letting rooms' Use Class C1, does not fall within any chargeable category listed under the [REDACTED] CIL Charging Schedule and further opines that there is no lawful basis for the CIL charge, which has been applied in this respect. In support of the Appellant's contention, the Appellant has advanced the case law of R (Orbital Park Swindon Ltd) v Swindon Borough Council [2017] EWHC 1895 (Admin) and R (Trent) v Hertsmerre Borough Council [2018] EWHC 907 (Admin).
16. Furthermore, the Appellant opines that the development should not be treated as Use Class C3 residential development and that the appropriate classification is either Use Class C1 (visitor accommodation) or sui generis. On this basis, the Appellant opines that C1 accommodation or sui generis falls within 'All other development' and should be nil rated. The Appellant further opines that this is consistent with Condition 5 and 6 of the Planning Inspectorate approval, which state:

Condition 5

Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) the 4 holiday letting units shall be used for holiday accommodation only and shall not be used as a main or sole residential dwelling and for no other purposes (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any statutory instrument revoking, re-enacting or modifying that Order).

Condition 6

The use and operation of the 4 holiday letting units hereby permitted shall not be severed from the occupation and enjoyment of the dwellinghouse known as the [REDACTED].

17. In my consideration of Ground 1 of this Appeal, of major import is paragraph 10 (on page 2) of the [REDACTED] CIL Charging Schedule, which states:

'Residential' includes all development within Use Class C3 of the relevant Order.
'Residential' also includes agricultural workers dwellings and **holiday lets** as these

uses are considered to be normal homes for the purposes of calculating CIL and any restrictive occupancy conditions do not provide exemption from CIL liability. However, they may be exempt from CIL liability if they are self-built or converted from an existing building.’

[my emphasis in bold]

18. It is clear to me that primacy should be given to the content and text of the [REDACTED] CIL Charging Schedule, which was published in January 2017. I agree with the CA that holiday lets are chargeable for CIL at the ‘residential’ rate and that any restrictive occupancy conditions do not provide exemption from CIL liability. Given the description of ‘letting rooms’ in the grant, which is synonymous with ‘holiday lets’, it is patently clear to me that they attract ‘residential’ rate as per the [REDACTED] Charging Schedule and not a zero rate as opined by the Appellant.
19. The CA has cited *Gravesham Borough Council v Secretary of State for the Environment* (1984). In the ‘Gravesham’ judgement, it was held that a distinctive characteristic of a dwellinghouse was its ability to afford those who used it, the facilities required for day-to-day private domestic existence. I agree with the CA that the accommodation of the letting rooms provide the facilities necessary for day-to-day private domestic existence (as referred to in the Appellant’s Design and Access Statement, which was submitted as part of the planning application).
20. Whilst I do not disagree with the content of the case law cited by the Appellant, the Appellant’s application of the case law of ‘Orbital’ and ‘Trent’ is inappropriate. Although my determination in this Appeal is consistent with both of these cases, they essentially provide guidance to somewhat different scenarios in comparison to that of this Appeal:
- In ‘Orbital’ the claimant submitted two separate planning applications to the defendant local authority in relation to the property: one for the installation of a mezzanine floor and the other for external works, including new shop fronts, which created no additional floor space; this is not the situation in the subject case.
- In ‘Trent’, a 2019 liability notice was not issued ‘as soon as practicable’ under Regulation 65(1) of the CIL Regulations 2010 to the claimant. This case considered whether invalidity of the liability notice fatally undermined the subsequent demand notice and other different issues; again, this is not the situation in the subject case.
21. In conclusion, in respect of Ground 1, I determine that the CA has not erred in its application of adopting the ‘residential’ rate in accordance with its Charging Schedule.
22. Ground 2 – That the Chargeable Area is incorrect and that the CA has not offset ‘in-use’ floorspace of the retained buildings (in other words, the existing area floor space, which the Appellant considers is an eligible deduction, which can be offset against the chargeable area). It is the Appellant’s case that the building has been in lawful use for a continuous period of 6 months within the past 3 years. In support of the Appellant’s argument, the Appellant has advanced to me photographic evidence, utility bills and business rates records.
23. I note that the description of the approved permission effectively constitutes two, separate elements:
- ‘Alterations to dwellinghouse (with ancillary medical consulting rooms), attached annexe and landscaping works approved under [REDACTED],’
- and

'Erection of outbuilding for letting rooms, bicycle storage and domestic storage.
Proposed Plant room outbuilding and swimming pool with associated external works.'

24. From the Appellant's perspective, it seems to me, that it is unfortunate that the Appellant was unfortunate or unable to separate the two elements of the application to the local planning authority into two separate planning applications. However, it is clearly one approval, which was approved on appeal; and given that it is one approval, I can only consider both elements as one holistic approval under the CIL Regulations.

The underlying Regulation of Regulation 9(1) is a key principle, which clearly states that chargeable development means:

'the development for which planning permission is granted'.

In this instance, it is clear to me that 'the development for which planning permission is granted' is the grant of [REDACTED] by the Planning Inspectorate under Appeal [REDACTED], which has two elements to it.

The grant of planning permission under the Planning Inspectorate Appeal was clearly a catalyst to trigger a 'new' CIL charge of the scheme under the CIL Regulations. The CIL Regulations do not allow any offset, where the development does not pass the lawful use test (under the provisions Schedule 1 (b) of the 2019 Regulations). It is clear to me that the use of the building was unlawful in planning law and [REDACTED] (which was approved on appeal) was a retrospective planning application to regularise the unauthorised works, which I have previously mentioned in paragraph 11 of this decision. It is a factual matter that the Appellant applied for and sought planning permission to regularise unauthorised works. Given this fact, I can only conclude that the use of the building was not lawful.

In conclusion, in respect of Ground 2, I determine that the CA has calculated the Chargeable Area correctly.

25. Having fully considered the representations made by both parties and all the evidence put forward to me in respect of both grounds, I determine that the CA has not erred and the CIL calculation is correct.
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] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office
21st April 2026