Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency (SVT)
[redacted]

E-mail: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Address: [redacted]

Proposed Development: *Retention of garage as built, and change of use to create holiday accommodation*

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

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

2. Planning permission was granted for the proposed development on [redacted], under reference [redacted]. Of note, an earlier planning permission was granted in respect of the same property, as below:

   Planning permission was granted on [redacted], under reference [redacted] for [redacted].

3. The CA issued a CIL Liability Notice dated [redacted] in the sum of £[redacted]. This was based on a net chargeable area of [redacted] m² @ £[redacted] per m², with indexation at [redacted].

4. The appellant requested a review of this charge under regulation 113 of the CIL Regulations 2010 (as amended) on [redacted] and the CA issued its response dated [redacted], confirming the amount as set out in the original notice.

5. On [redacted], the Valuation Office Agency received a CIL Appeal made under regulation 114 (chargeable amount) contending that the scheme is not liable for CIL. The contention from the appellant's perspective is that the development essentially comprises a change of use of part of the building to holiday accommodation, as opposed to the construction of a new building. Consequently, in accordance with the Regulations, the development should not attract a CIL liability. The appellant's representations can be summarised as follows:

   a) The appellant contends in the case of pre-existing buildings, there is a need for applicants to demonstrate that buildings, or any part thereof, have been used for their lawful purpose for 6 continuous months within a 3-year period preceding the application. The appellant contends that there is no doubt that part of the building has been used continuously since at least [redacted]. Accordingly, the appellant is of the view that the existing floor space can be offset against the area of the chargeable development.

   b) Supporting documentation of continuous use (Document L) in the form of a Declaration by [redacted] and photograph confirming his knowledge of the use of the garage/workshop building.

   c) Evidence to support that the holiday use aspect of the [redacted] grant of conditional planning permission has not been implemented prior to the grant of permission (e-mail evidence from letting Agent).

6. The CA submitted representations dated [redacted], which can be summarised as follows:

   a) The [redacted] planning permission related to the whole building and the new proposed use as a dwelling (holiday home) with restrictions. This makes the building liable to pay CIL for the floor space relating to the residential unit.

   b) To enable the floor space of an existing building to be taken into account in calculating the chargeable amount, there must be evidence that the lawful use (i.e. domestic garaging ancillary to the main house) was in continuous use for a period of six months between the date this lawful use commenced, up to the date of the grant of the second planning permission on [redacted].

   c) Evidence of the marketing of the subject holiday home by [redacted].

   d) The CA considers that two out of three conditions of the original planning permission ([redacted]) were breached and that the unapproved works constituted a material change. It is the CA's view that the permission under [redacted] sought to regularise the unapproved works.

   In summary, the CA is of the view that the requirements of continuous lawful use have not been met and on this basis, the existing floor space cannot be offset.

7. The parties have identified that their area of disagreement is in relation to 'lawful use' and 'in-use buildings' in accordance with Regulation 40(11) of the CIL Regulations 2010 (as amended). Given that there is a change of use only (in part) and no change in GIA, both parties contend that at the heart of the matter is a consideration if the existing area floor space is an eligible deduction, which can be offset.

Regulation 40(7) of the CIL 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.

There is no dispute that the intended use of the building as holiday accommodation is not a use that could be lawfully carried on before planning permission first permits the chargeable development, so the issue is simply whether or not the existing garage building is an 'in-use building'.

Under regulation 40(11), to qualify as an 'in-use building' the building must contain 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.

8. The issue in this case is not whether the existing garage building had actually been in use for the required period for it to qualify as an 'in-use building', but whether that use was lawful bearing in mind that the garage building had not been constructed entirely in accordance with the [redacted] planning permission. The departures made from the original planning permission include additional doors, removal of a door, changes to the garage door and additional or changed windows required to facilitate the new use as holiday accommodation. I agree with the CA that these are material changes that needed to be regularised through a further planning application, as the original planning application was not implemented in accordance with the conditions attached to that permission.

9. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means *"the development for which planning permission is granted"*. The CIL liability herein under appeal, therefore relates to the proposed development allowed by the planning permission [redacted], which is for *"retention of garage as built, and change of use to create holiday accommodation"*. It was required since the garage was not built in accordance with the approved plans under planning application [redacted].

   It is clear in my view, that permission [redacted] is in part a retrospective planning permission, which sought to regularise the incorrect implementation of permission [redacted]. Whilst the material difference between the original consent and the [redacted] consent is the change of use to holiday accommodation (with physical changes to doors, windows and the garage door), the development permitted by the [redacted] consent nevertheless includes the garage building, as built, itself.

10. On the day before the [redacted] permission granted consent, in my opinion, the garage did not have a use that could be carried on lawfully, since the garage had not been built in accordance with approved plans ([redacted]); hence the requirement for the retrospective consent for its retention. Therefore, the accommodation as a whole or in part, does not qualify as deductible floor space.

11. The CIL charge has been calculated at a rate of £[redacted] per m², with indexation at [redacted]; neither these figures nor the floorspace of [redacted] m² appear to be in dispute. Accordingly, based upon the information submitted by the parties, I have determined that the CA's calculation of the CIL charge is correct.

12. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] as stated in the Liability Notice dated [redacted].

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]