

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: 1835001

Planning Permission Ref. [REDACTED]

Proposal: Change of use of annexe to dwelling house

Location: [REDACTED]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil)

Reasons

1. I have considered all of the submissions made by [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]; and
 - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for 'Change of use of annexe to dwelling house'.
3. 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 '[REDACTED] Residential – [REDACTED]' rate of £[REDACTED]/m² plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], stating their view that the charge was correct.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be Nil.
6. The Appellant's grounds of appeal can be summarised as follows:
 - a) The property was in lawful use for at least six months during the relevant period and therefore a GIA offset should be applied.
7. The CA has submitted representations that can be summarised as follows:
 - a) There is insufficient evidence to support that lawful use occurred for at least six months during the relevant period.

Lawful use

8. 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."
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. "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.

11. 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.
12. The appellant confirms that the property had existing planning permission under reference [REDACTED] for the ‘*conversion and part reconstruction of barn to farm dwelling [with annexe]*.’ The annexe referenced under this permission comprises of a one bedroom, self-contained property which already comprised a dwelling for CIL purposes.
13. The appellants state they purchased the property on [REDACTED] and used it as guest accommodation for friends and family. They have provided a statutory declaration by [REDACTED] (co-owner) stating that the property was used by their guests on several dates between [REDACTED] and [REDACTED]. In total, these visits cover 44 days over this five month period. The declaration also states that refurbishment work occurred from [REDACTED], in order to prepare the annexe for use as a holiday let.
14. A second statutory declaration by [REDACTED] (co-owner) states that the property received “annexe relief” from council tax from [REDACTED]. This declaration confirms that the property was first marketed as a holiday rental from [REDACTED]. A further statement by [REDACTED] of the [REDACTED] confirms that they are not aware of any use other than for guest accommodation.
15. The appellant has already provided significant documentation to support that the property was only marketed as a holiday let from [REDACTED], including website statistics and an invoice for the web design. Further, home insurance documentation confirms that the whole property was insured as a 5 bedroom house (4 bedrooms in the main house, plus the annexe), which was used only for private use.
16. The CA comments that the information in the statutory declarations contradicts a letter to the council tax department dated [REDACTED] in which the appellants state that the property would be used for storage purposes. The CA consider that the evidence suggests the lawful use is actually less than six months. They state that other evidence provided, such as documentation regarding the website and invoices for works being undertaken at the house, do not prove lawful use of the annexe. They have further evidence that the previous owners let the property out unlawfully and therefore they consider there is insufficient evidence to support that the property was in lawful use for the relevant period.
17. The appellants counter that the property was used for both domestic storage and guest accommodation. They also state that they used the annexe when the bedrooms in the main house were uninhabitable due to extensive electrical works.
18. In my opinion, there is no evidence to suggest that the appellants have used the property for any commercial purposes or that they have let the property separately to the main dwelling. The CA argue that the annexe was used as storage for at least some of the time following acquisition and that the evidence regarding guest stays does not cover a full six months. However, I do not consider that this precludes the annexe from being considered as in lawful use. It seems clear from the evidence that the annexe was used by the appellants as ancillary accommodation to the main house, in part for domestic storage and in part as guest accommodation, from the time that they purchased in [REDACTED].

19. I am content that the appellants have sufficiently demonstrated that the annexe was in lawful use for at least six months during the relevant period. I understand that the GIA of the existing building is the same as the GIA of the consented building (i.e. this is a change of use with no additional floor space) and therefore the net chargeable area is 0m².

20. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil)

■■■■■ BSc (Hons) MRICS
Valuation Office Agency
17 January 2024