

Appeal Decision

by Vanessa Rodrigues BSc(Hons) MRICS

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

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Appeal Ref: 1610544

Planning Permission Ref. APP/16/00720 granted by Havant Borough Council

Location: 3 Elm Grove, Hayling Island, PO11 9EA

Development: Erection of 5 No. 2 bed holiday flats/commercial leisure accommodation (Sui Generis Use)

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £52,620.72 (fifty two thousand, six hundred and twenty pounds and seventy two pence).

Reasons

1. I have considered all the submissions made by D J Green Associates on behalf of Mrs G M Simmons (the appellant) and the Collecting Authority (CA), Havant Borough Council, in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

- a. The application for planning permission dated 8 July 2016 together with associated plans and drawings.
- b. The Decision Notice issued by Havant Borough Council on 9 September 2016.
- c. The CIL Liability Notice issued by the CA on 11 September 2016.
- d. The letter from the CA dated 30 September 2016 in response to the appellant's request for a Regulation 113 Review.
- e. The CIL Appeal form dated 30 September 2016 submitted on behalf of the appellant, under Regulation 114, together with documents attached thereto, including a redacted copy of a CIL appeal decision dated 14 December 2013.
- f. The CA's representations to the Regulation 114 Appeal dated 12 October 2016.
- g. The comments on the CA's response dated 1 November 2016 submitted on behalf of the appellant.

I have also had reference to Havant Borough Council's CIL Charging Schedule and Developer Contributions Guide and the Town and Country Planning (Use Classes) Order 1987 (as amended).

2. The CA consider that the proposed development, being 5 two bed holiday flats, is residential development under the adopted Charging Schedule and is liable to a CIL charge in the sum of £52,620.72 (based on a charge of £100 per sq m).

3. The appellant contends that the development is not liable to CIL because the decision notice permits a 'sui generis' use (rather than Use Class C3) as commercial leisure accommodation and the Charging Schedule does not allow for a CIL charge on 'non-residential' accommodation .

4. The area of the chargeable development has been calculated by the CA as being 438.18 sq m. This calculation of the area would appear to be accepted by the appellant who considers that the chargeable amount has been calculated incorrectly because no part of the development is liable to CIL under Havant Borough Council's Charging Schedule.

5. The appellant contends that the proposal is not a 'residential development type' and considers this view to be supported by the decision notice and the planning officer's delegated report which advises that, should the proposed business fail, then a new application for residential C3 use would be needed.

6. In addition the appellant has also provided a redacted copy of a CIL Appeal Decision relating to holiday accommodation where no CIL was payable since, based on the facts of that particular case, the use of the building was held to fall outside of Use Class 3. However, I do consider this decision to be relevant since it relates to another Charging Authority with a different Charging Schedule and with a different definition of 'residential' development contained therein.

7. In support of their contention that the proposed development falls as a 'residential development' and is therefore chargeable, the CA have noted that their Charging Schedule sets out CIL rates according to development types and does not specify C3 use. It further notes that paragraph 2.03 of their Developer's Contributions Guide (HBC7), specifies that: 'Residential floorspace includes new dwellings, extensions, conversions, garages, and other buildings ancillary to residential use. In flatted developments, this includes communal entrances, landings and any related internal parking'. The Council considers that since the proposal is for flats, these are to be included within 'residential floorspace' and fall to be chargeable to CIL at the residential rate.

8. In deciding this appeal I have considered the precise wording of the Charging Schedule as it is the interpretation of this that is giving rise to the differing conclusions of each party. The Charging Schedule specifies 'Development Types' and refers to 'Residential* (one dwelling or more)'. The Developer's Contributions Guide goes on to say that 'Residential floorspace includes new dwellings, extensions, conversions, garages or any other buildings ancillary to residential use. In flatted developments, this includes communal entrances, landings and any related internal parking'.

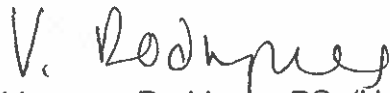
9. I consider the Charging Schedule therefore applies to any development that can reasonably be described as 'residential' or comprising 'one dwelling or more'. It does not restrict the definition of 'residential' to development falling within Use Class C3.

10. 'Dwelling' is not defined in the Charging Schedule but I consider it can reasonably be described as meaning a building that provides the facilities required for day-to-day private domestic existence. There is nothing in the Charging Schedule to suggest that there is any requirement that before a building can be described as a dwelling, it must be occupied as a

permanent home. The proposed development in my view clearly comprises new dwellings and there is nothing in the Charging Schedule to exclude dwellings that are to be used for holiday lets.

11. Therefore, notwithstanding that the proposed development does not have a C3 Use Class permission and the appellant's intention is for the property to be used in connection with providing commercial leisure accommodation, I consider that the development can be reasonably described as 'residential', comprising 'one dwelling or more' as specified within the Charging Schedule and a CIL charge based on the residential rate of £100 per sq m is therefore applicable.

12. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore confirm a CIL charge of £52,620.72.



Vanessa Rodrigues BSc(Hons) MRICS
RICS Registered Valuer
District Valuer
23 November 2016