

Appeal Decision

By [REDACTED] BA (Hons) PG Dip Surv MRICS

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

Valuation Office Agency (SVT)

[REDACTED]

e-mail: [REDACTED]@voa.gov.uk

Appeal Ref: [REDACTED]

Address of property: [REDACTED]

Development: *Demolition of existing garage and outbuildings, erection of 4 terraced dwellings with associated car parking, vehicular access, landscaping, cycle parking and refuse storage.*

Planning permission details: *Planning permission application number [REDACTED].
Granted by The Council of the [REDACTED] on the [REDACTED].*

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £[REDACTED] ([REDACTED]). (Mayor of London CIL: £[REDACTED] [REDACTED] CIL: £[REDACTED]).

Reasons

1. I have considered all of the submissions made by the appellant's agent [REDACTED]. In particular, I have considered the information and opinions presented in the following documents:-

- (a) Planning permission decision letter dated [REDACTED].
- (b) The CA's (Collecting Authority) Liability Notice dated [REDACTED].
- (c) Completed CIL Appeal form dated [REDACTED].
- (d) Additional supporting documents submitted with the CIL Appeal:-
 - (1) Email dated [REDACTED] to [REDACTED] requesting a 113 review of the CIL charge.
 - (2) Email dated [REDACTED] to [REDACTED] requesting an update on the regulation 113 review.

- (3) Email to [REDACTED] dated [REDACTED] requesting a 113 review urgently as the planning department had not forwarded the above emails to the correct department.
- (4) Email dated [REDACTED] advising CA will look at the form as soon as possible but that it can take up to 14 days. The appellant responded advising that to comply with the 60 day time limit to lodge a regulation 114 appeal they would need to do so that day.
- (5) Planning application form dated [REDACTED].
- (6) Plans showing the existing site and proposed development.
- (7) Letter dated [REDACTED] from the appellant to the CA requesting a 113 review of the chargeable amount.
- (8) CIL Form1 Additional Information dated [REDACTED]

2. Planning permission was granted on [REDACTED] by The Council of the [REDACTED] for, "Demolition of existing garage and outbuildings, erection of 4 terraced dwellings with associated car parking, vehicular access, landscaping, cycle parking and refuse storage."

3. On [REDACTED] the CA issued a Regulation 65 Liability Notice, [REDACTED], in the sum of £ [REDACTED] based on net additional floor space of [REDACTED] square metres (sq m) as follows:-

Primary Use	Internal Floor Space	Amount
CIL Mayor	[REDACTED]	£ [REDACTED]
CIL Croydon	[REDACTED]	£ [REDACTED]

4. The appellant requested a review of the calculation of the chargeable amount under Regulation 113 on [REDACTED]. It appears this initial request was made to the wrong department. When no response was received, the appellant sought an update and the request was forwarded to the correct department on the [REDACTED].

5. The CA have not issued a decision in respect of this review.

6. On [REDACTED] the parties submitted a CIL Appeal under Regulation 114 (chargeable amount) as a decision on their request for a Regulation 113 Review had not been provided within the 14 day time limit from the date of their request and the 60 day appeal period under Regulation 114 was due to expire.

7. The grounds of the appeal can be summarised as follows:-

- (a) The appellant considers the CA's calculation to be wrong as they have failed to take into account the area of the in-use buildings located on the site that are yet to be demolished.
- (b) From the information provided in the letter dated [REDACTED] to the CA requesting a 113 review, I understand there is a garage on site with a GIA of [REDACTED] sqm and a cabin with a GIA of [REDACTED] sqm.

(c) The appellant advises that the buildings are currently in use and notes the chargeable floor space should be [REDACTED] sqm once these buildings are netted off the GIA of the chargeable development.

(d) Based on the above, the appellant calculates the CIL liability to be £[REDACTED].

8. The CA has declined to submit representations at this time and their email of the [REDACTED] to the Valuation Office Agency, advises they await the outcome of this determination.

9. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding the grounds of the appeal:-

- (a) The appellant's grounds of appeal centres around whether the GIA of the existing buildings on site can be deducted from the GIA of the chargeable development.
- (b) The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development can be deducted.
- (c) "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.
- (d) The appellant has not provided any evidence to demonstrate how the garage or cabin were in use but do contend that they were and are currently.
- (e) It is my understanding that the buildings comprise of a domestic garage and a cabin/summer house. Such buildings are regularly used by their owners as ancillary to the main domestic dwelling. There is no obvious way any owner could provide documentary evidence to prove that these buildings are in-use as there would be no separate utility bills or title documents to show interest or ownership. It therefore seems that a logical decision is needed and as the house appears to be occupied, I am satisfied that in the absence of any evidence to the contrary, the ancillary buildings would satisfy the in-use criteria.
- (f) There is no definition given to the word "building" within the CIL Regulations, other than it expressly excludes-
 - i. a building into which people do not normally go,
 - ii. a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
 - iii. a building for which planning permission was granted for a limited period.
- (f) The Shorter Oxford English Dictionary, 6th Edition provides the definition of "building" as "A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc." An alternative dictionary definition is "a structure with a roof and walls, such as a house or factory."

- (g) Garages are included with the RICS Code of Measuring Practice application of GIA. There is no mention of cabins/summerhouses. It is noted that, “The areas to be excluded from this (GIA) 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.”
- (h) On the basis of the limited information available to me, I am of the opinion it is reasonable to conclude that the cabin/summerhouse would satisfy the definition of a building. My reasoning being that this building is a structure with walls and a roof and is wind and water tight. It is seen as a superior structure to a greenhouse or garden store and is used in the ancillary enjoyment of a domestic property in a similar way to how a garage or conservatory may be. It does not fit the exclusions for a building outlined within the CIL Regulations.
- (i) Given there is no evidence to suggest that neither the garage nor cabin/summerhouse were not in use buildings during the relevant period, I am of the opinion their GIA can be netted off the GIA of the chargeable development.
- (j) Neither the CA nor the appellant have provided me with a breakdown of how they have calculated their opinion of the CIL liability.
- (k) Regulation 40(5) provides for the indexation of CIL stating that the amount of CIL chargeable at the rate given in the relevant charging schedule charge must be calculated by applying the following formula:

$$\frac{R \times A \times I_p}{I_c}$$

Where-

A = the deemed net area chargeable at rate R

I_p = the index figure for the year in which planning permission was granted;
and

I_c = the index figure for the year in which the charging schedule containing R took effect.

- (l) Regulation 40(7) of the CIL Regulations 2010 (as amended) details a formula by which the deemed net chargeable area must be calculated. This formula provides for the deduction of ‘the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development’ from the ‘gross internal area of the chargeable development’. This formula has been followed to arrive at ■■■ sqm as the value of A.

$$G_R - K_R - \frac{(G_R \times E)}{G}$$

where—

G = the gross internal area of the chargeable development;

G_R = the gross internal area of the part of the chargeable development chargeable at rate R;

K_R = the aggregate of the gross internal areas of the following—

(i) retained parts of in-use buildings, and

(ii) 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;

E = the aggregate of the following—

- (i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and
- (ii) for the second and subsequent phases of a phased planning permission, the value *Ex* (as determined under paragraph (8)), unless *Ex* is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(m) Regulation 40(6) provides for the index figure for a given year to be based upon-

“(a) the figure for [REDACTED] for the preceding year in the national All-In Tender published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors; or

(b) if the All-In Tender Price Index ceases to be published, the figure for 1st November for the preceding year in the retail prices index “.

(n) I have checked the BCIS TPI rates and have concluded as follows:

(1) The indexation figure for the year the charging schedule was adopted ([REDACTED]'s adopted in 2019 and [REDACTED]'s in 2013) or the year in which planning permission was granted (2020 in this case) is defined in Regulation 40(5) as the All-in Tender Price Index figure for the 1 November of the preceding year published by the Building Cost Information Service (BCIS). There is no reference in the Regulations as to the publication date of the index which is appropriate for calculating the relevant indices.

(2) I have found guidance on the CA's website stating they use the figure for Q4 taken on 1 April of the following year as the basis of changes to the CIL rate'. I assume this means that all planning permissions granted between the 1 April and the 31 March of the following year are based on the same index figures. However, as the CA have not provided the index figures adopted at either the dates of the respective charging schedules or the date of the planning permission it is difficult to comment specifically on the figures. It should be noted that the index for a particular date can change as more data becomes available on which that index is based. Therefore, I have looked at the BCIS All-in Tender Prices indices as published on the date planning permission was granted and these were as follows.

2012 - [REDACTED]
2018 - [REDACTED]
2019 - [REDACTED]

10. On the evidence before me, having regard to the particular facts of this case, I conclude that the CIL charge should be as follows:-

Mayoral CIL 2 = [REDACTED] * £ [REDACTED] * [REDACTED] / [REDACTED] = £ [REDACTED]

Croydon residential = [REDACTED] * £ [REDACTED] * [REDACTED] / [REDACTED] = £ [REDACTED]

Total = £ [REDACTED] ([REDACTED])

BA (Hons) PG Dip Surv MRICS
RICS Registered Valuer
Valuation Office Agency
Date