

Appeal Decision

by [REDACTED] MRICS

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

[REDACTED]

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

Appeal Ref: [REDACTED]

Address: [REDACTED]

Development: Demolition of existing block of [REDACTED] garages; erection of [REDACTED] bedroom detached [REDACTED] and provision of associated parking

Planning permission details: Planning permission [REDACTED] granted by [REDACTED]

Decision

I determine that there should be no Community Infrastructure Levy payable in respect of the above development.

Reasons

1. I have considered all the submissions made by the appellant Mr [REDACTED] and I have also considered the representations made by the Collecting Authority (CA) [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 Liability Notice dated [REDACTED].
- (c) A copy of an email dated [REDACTED] from the CA stating that they were unable to review the CIL calculation.
- (d) Completed CIL Appeal Form with covering letter received on [REDACTED].
- (e) Additional supporting documents submitted with the CIL Appeal:-
 - (i) Copies of approved plans and elevations as referred to in the planning permission dated [REDACTED].

- (ii) A copy of a letter from [REDACTED] enclosing [REDACTED] signed tenancy agreements for the existing garages and a handwritten Statement of Account prepared by the previous owner.
- (iii) A copy of the planning application dated [REDACTED] submitted by the previous owner in respect of the proposed development.
- (iv) A copy of an extract from the conclusion in a Design and Access Statement dated [REDACTED] prepared on behalf of the previous owner and submitted with the planning application for the proposed development.
- (f) The CA's representations in an email dated [REDACTED], including a copy of an email from the CA to the appellant dated [REDACTED] and a copy of a photograph taken on a site visit of the property.
- (g) The appellant's comments on the CA's representations, in an email dated [REDACTED].
2. Planning permission was granted by [REDACTED] on [REDACTED] for the 'demolition of existing block of [REDACTED] garages; erection of [REDACTED] bedroom detached [REDACTED] and provision of associated parking'. The applicant was the previous owner [REDACTED].
3. It is understood that on the [REDACTED] a Liability Notice was issued to the previous owner of the property although it is not known at what figure as I have not been provided with a copy.
4. On [REDACTED] the CA issued a Regulation 65 Liability Notice to the appellant (the appellant purchased the property in [REDACTED]) in the sum of £[REDACTED] based on Internal Floor Space of [REDACTED] square metres (sqm) as follows:-
- [REDACTED]
5. The appellant requested a Review of the calculation of the chargeable amount under Regulation 113 on [REDACTED].
6. The CA confirmed in an email dated [REDACTED] to the appellant that they were unable to review the CIL calculation as an appeal would have to be made within 28 days of the original Liability Notice.
7. On [REDACTED] the appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) contending that there should be no CIL payable on the development.
8. The grounds of the appeal can be summarised as follows:-
- (a) The permission includes the demolition of [REDACTED] garages that have all been in constant use and none of which were vacant.
- (b) The existing floorspace is [REDACTED] sqm and the proposed is [REDACTED] sqm so there is no additional floor space.
- (c) The Liability Notice issued on [REDACTED] is the relevant one for the purposes of seeking a Review and making an appeal as Regulation 65 (8) states that where a CA issues a Liability Notice, any earlier Liability Notice issued in respect of the same development ceases to have effect. Therefore, the previous Liability Notice is now void.
9. The CA submitted representations on [REDACTED] which can be summarised as follows:-
- (a) The 28 day period after the issuing of the original Liability Notice on [REDACTED] had expired when the appellant sought a review so the CA were unable to consider the matter.
- (b) A new notice was provided in the spirit of being helpful to the appellant, but it was explained that it was not an official notice. Therefore, the appellant was not entitled to ask for a review of the CIL calculation. A copy of an email from the CA to the appellant dated [REDACTED]

██████████ explaining that the notice was not official has been included in the CA's representations.

(c) Although the application Design and Access Statement stated the garages were 'in use', during a site visit they were in an extremely bad state of repair, with rubbish dumped in front of them, and a 'garages to let' sign on display. A photograph of the garages was included with the CA's representations.

10. The appellant submitted comments on the CA's representations, dated ██████████ which can be summarised as follows:-

(a) There was sufficient information provided with the application regarding the garages not being vacant and being used for storage purposes for the CA to have determined that the existing building was 'in use' and its area should have been deducted from the area of the chargeable development for CIL calculation purposes.

(b) The photograph provided by the CA in their representations did not indicate that they were in a bad state of repair and had rubbish dumped in front of them and did not indicate they were not occupied or in use.

(c) When the appellant became the new owner he was provided with a new Liability Notice by post, and then by email. He then informed the CA of his right to seek a Review under Regulation 113, and they then emailed him stating the Liability Notice was not official and he had no right to seek a Review. The Liability Notice did not state that it was not official and if they had wanted to provide him something for his records they could have issued a demand notice.

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

12. The Liability Notice dated ██████████ does not have any reference on it to not being an official Liability Notice, or a copy of the original Liability Notice. It is addressed to the appellant with a revised date and refers to the chargeable development. However, the CA have indicated in their representations and clearly stated in their email dated ██████████ to the appellant that the Liability Notice was not official. In my opinion, notwithstanding the contents of the above email and the clear intention of the CA for it to be not treated as official the Liability Notice dated ██████████ has all the statutory requirements of a valid and official Liability Notice and should be treated accordingly. Regulation 65(8) states the following:-

(8) Where a collecting authority issues a liability notice any earlier liability notice issued by it in respect of the same chargeable development ceases to have effect.

13. As a result of the above I have concluded that the earlier Liability Notice dated ██████████ ceased to have effect and was replaced by the Liability Notice dated ██████████ and the appellant had the right to request a Review under Regulation 113. Therefore, I have treated the refusal of the CA to carry out a Review as satisfying Regulation 114(1)(b) and have accepted the appellants Appeal as being valid. It should be noted that there is no statutory provision for providing an unofficial Liability Notice and in order to have avoided the situation which has arisen, the CA could simply have provided a copy of the original Liability Notice.

14. I have read the tenancy agreements that have been provided by the appellant which were granted on a monthly basis and have commencement dates between ██████████ and ██████████. I am of the opinion, that of themselves these do not provide conclusive evidence that part or all of the property had been in lawful use for a continuous period of 6 months within the period of 3 years ending with the day on which planning permission was granted. However, the appellant has provided a copy of a solicitor's letter written in connection with the sale of the property to the appellant that states the property was being sold subject to the existing Tenancy Agreements relating to the ██████████ garages together with

a handwritten schedule stating the names of the tenants and these all correspond with the names on the tenancy agreements. Therefore, as the CA have only put forward details of an external inspection of the site and a related photograph, I consider it is reasonable to conclude from the evidence provided by the appellant that part of the property to be demolished before completion of the chargeable development was in lawful use and its Gross Internal Area (GIA) should be deducted from the GIA of the chargeable development before the calculation of the CIL charge in accordance with Regulation 40(7).

15. I have taken check measurements from the plans provided and can confirm that the GIA is in the region of [REDACTED] sqm for the existing property and [REDACTED] sqm for the proposed development. Therefore, there is no net additional area liable to CIL.

16. In conclusion, I consider that I can fully accept the grounds of the appeal. Therefore, on the evidence before me there should be no Community Infrastructure Levy payable in respect of the above development.

[REDACTED]
RICS Registered Valuer
Valuation Office Agency
[REDACTED]