Appeal Decision

by [redacted] MRICS

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

[redacted]

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

Appeal Ref: [redacted]

Address: [redacted]

Proposed Development: Demolition of dwelling and erection of replacement dwelling.

Planning permission details: Retrospective permission granted subject to conditions on [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be [redacted]

Reasons

1. I have considered all the submissions made by [redacted], the appellant, and by [redacted], the Collecting Authority (CA).

2. Planning permission was granted for the above development on [redacted] following an application for retrospective consent as a result of enforcement action taken by the planning authority in respect of an earlier planning consent. Planning permission to alter and extend the original bungalow had previously been granted on [redacted] (under reference [redacted]). However, on [redacted] the planning authority commenced enforcement action against the development as the bungalow had been demolished. The enforcement deemed that the property had been demolished without consent and therefore the [redacted] planning permission was void. The Council implemented its CIL Charging Schedule on [redacted]

3. It is understood that prior to the grant of planning permission the recent planning history was essentially as follows:-

- [redacted] - A planning application was submitted to the council to alter and extend the existing bungalow [redacted]
- [redacted] - planning consent granted conditionally.
- [redacted] - the Council opened an enforcement investigation as it appeared the existing bungalow had been demolished without consent.
- [redacted] - a retrospective planning application was submitted for the demolition of the bungalow and the erection of a new dwelling [redacted]
- [redacted] - planning consent was granted subject to conditions.

4. Following the grant of retrospective planning permission the CA issued a CIL Liability Notice on [redacted] in the sum of [redacted]. This is based on a chargeable area of [redacted] square metres @ £[redacted] per square metre, subject to the follow formula:-

$$\frac{\text{CIL Rate x Chargeable Floor Area x BCIS Tender Price Index (at Date of Planning Permission)}}{\text{BCIS Tender Price Index (at Date of Charging Schedule)}}$$

5. On [redacted] the Valuation Office Agency received a CIL appeal made under regulation 114 (chargeable amount) contending that the chargeable amount should be nil.

6. The Appellants contend that the CIL charge calculated by the CA is incorrect because:-

a. The calculation of the CIL charge should have included the Gross Internal Area (GIA) of the existing, demolished building on the site (the pre-existing dwelling).If that GIA had been included in the calculation no CIL charge would be due as the net increase in GIA would have been less than the 100 square metres new build threshold (in regulation 42 of the CIL Regulations).

b. The original consent to extend could not be taken forward due to lack of foundations to parts of the existing property and therefore had to be demolished before erection of a new dwelling.

c. The plans drawn up by the appellant for the new dwelling were on the same footprint as the existing dwelling with only minor alterations from the originally consented extended property. These plans were submitted to [redacted] and were approved in [redacted].

d. [redacted] Building Control Department told the appellant that they (the Building Control Department) would update the planning department about the changes to the proposed build project.

e. CIL had not been in force for [redacted] when the development commenced in [redacted].

f. The project is a self-build and therefore exempt from CIL.

7. The CA contend that their calculation of the chargeable amount is correct because:-

a. The Council implemented its CIL Charging Schedule on [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge. The planning consent in question ([redacted]) was submitted on [redacted], the CIL Charging Schedule was adopted by [redacted] on [redacted].

b. Self-build exemption did not apply as a claim must be submitted prior to the development commencing (regulation 54B (2b) of the CIL Regulations 2010 (as amended)).

c. The GIA of the original bungalow could not be included in the CIL calculation as it had already been demolished before the relevant date (the, day on which the planning permission (reference [redacted] first permits the chargeable development).

8. Regarding the first ground of appeal at 6.a above, I agree with the CA's contention as set out in paragraph 7(c) above. As planning permission first permitted this development (the demolition and erection of a new dwelling) on [redacted] and the previous building was demolished in [redacted] the previous building cannot be taken into account when calculating the chargeable amount under Regulation 40. The planning permission is for the erection of a new dwelling, not the enlargement of an existing building (because the existing dwelling had already been demolished) so the 100 square metres GIA threshold in regulation 42 is not applicable.

9. With regard to the second ground of appeal at 6.b above, it is understood that the original consent to extend could not be carried forward due to structural issues identified. However, once the property was demolished the initial planning consent would be clearly void. Unfortunately the demolition of the existing building was not permitted under the consent in place ([redacted]) nor had any planning consent been sought for that demolition.

10. With regard to the third ground of appeal at para 6.c above, I appreciate that the plans drawn up for building control purposes were similar to those in the initial application and consent [redacted]. However, I must conclude that it is for the developer to submit the appropriate documentation to apply for planning consent to the appropriate authority and in the correct format. It is clear from the representations that this was not done until [redacted]

11. With regard to the fourth ground of appeal (paragraph 6.d above), I can only comment on what has been placed before me, whether Building Control Officers of the council did or did not state they would update the planning department of the position is not relevant, what is relevant is whether a planning application had been made before the development had commenced.

12 With regard to the fifth ground of appeal (paragraph 6.e above), I conclude that when planning consent for the demolition of the existing dwelling and erection of a replacement dwelling was granted on [redacted], CIL was in place as it was adopted by this authority from [redacted]. The development had already started when planning consent was granted and that was not when work started on the initial consent ([redacted]) in [redacted], as that consent was void due to the demolition of the existing building in [redacted].

13. With regard to the sixth ground of appeal (para 6.f above), the availability of the exemption for self-build housing is not an issue which I have any authority to determine.

14. Due to the fact that this was a retrospective planning permission, the previous building had been demolished before the date on which planning permission was granted and the

area of that building cannot therefore be taken into account when calculating the chargeable amount under Regulation 40. On an appeal under Regulation 114 I can only consider whether the chargeable amount has been calculated incorrectly. For the reasons given above I consider that the CA have correctly calculated the charge in accordance with Regulation 40.

15. On the evidence before me I conclude that the appropriate charge in this case should be [redacted].

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