Appeal Decision

by [redacted]

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

Valuation Office Agency
[redacted]

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

Appeal Ref: [redacted]

Site: [redacted]

Development: Erection of [redacted] single storey self storage units. (Renewal of planning permission dated [redacted] ref [redacted]

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

Decision

I determine that the Community Infrastructure Levy (CIL) has been calculated correctly in the sum of [redacted] ([redacted]) and I therefore dismiss the appeal.

Reasons

1. I have considered all the submissions made by [redacted] Chartered Architects on behalf of the appellant and I have also considered representations made by the Charging Authority. In particular I have considered the information and opinions presented in the following submitted documents:-

(a) Planning application form date [redacted]
(b) Letter from [redacted] dated [redacted]
(c) Flood Risk Assessment report dated [redacted]
(d) Letter from Environment Agency dated [redacted]
(e) Planning Permission decision letter dated [redacted]
(f) Letter from [redacted] dated [redacted] advising of [redacted] CIL Liability
(g) Letter from [redacted] dated [redacted] reminder about [redacted] CIL liability
(h) Assumption of Liability form dated [redacted]
(i) [redacted] Liability Notice dated [redacted]

(k) [redacted] Decision Notice dated [redacted]
(l) Completed CIL Appeal form dated [redacted]
(m) [redacted] Representations dated [redacted]
(n) Comments on [redacted] Representations received [redacted]

1. The appellants made an application to the [redacted] on [redacted] for the *'erection of [redacted] single storey self storage units. (Renewal of planning permission dated [redacted] ref [redacted])'*

2. The planning application was acknowledged by the [redacted] on [redacted] in a letter which indicated that the [redacted] would deal with the application as quickly as possible. They reminded the applicants that they could apply to the Secretary of State if no decision was made by [redacted]

3. Planning permission was granted on [redacted] for the erection of [redacted] single storey self storage units. (Renewal of planning permission dated [redacted] ref [redacted]).

4. The previous planning permission was granted on [redacted] when permission was approved (with conditions) for the erection of [redacted] free standing single storey self storage units. The only condition shown is that '*this development shall be begun within 3 years from the date of this permission. To comply with Section 91 of the Town and Country Planning Act 1990'*

5. It has been accepted by both parties that there was not an existing permission on the site at the time the CIL charges came into force. It would appear that the [redacted] planning permission was not implemented within the three year period.

6 On [redacted] wrote to the appellants' architect stating that they had reviewed planning permissions granted after [redacted] and further stated that the development had been identified as being liable for a CIL charge (estimated at £[redacted] and a Liability Notice was issued on [redacted] in the sum of £[redacted] ([redacted] m2 Net Additional Floorspace @ £[redacted] per m2)

7. On [redacted] the parties submitted a CIL appeal under Regulation 114 (chargeable amount) that the CIL charge should be NIL on the following grounds:-

> *(1)The current Planning Permission issued on [redacted] was for renewal of an existing Planning Permission which was due to expire on [redacted] The project should not be subject to a charge introduced whilst a valid and relevant Permission was in force.*
>
> *(2). The application for renewal of Planning Permission and the subsequent supporting information were filed in sufficient time for determination before the CIL charges came into force. Accordingly the project should not be subject to a charge due to late determination of the application*
>
> *(3) The [redacted] CIL Charges were adopted on [redacted] and came into force on [redacted] The application for renewal of Planning Permission was made on [redacted] and granted on [redacted] The Notice of Liability was made on [redacted] Project viability is being affected by a charge that could not reasonably be foreseen. The project should not be subject to a charge which in effect is being charged retrospectively.*

8. I would comment as follows on the three points raised by the appellants:

(a). It has now been accepted between the parties that there was no valid planning permission in place as at the date of submission of the planning application on [redacted] A previous planning permission had been granted on [redacted] on condition that the development was commenced within 3 years i.e. by [redacted]. It is clear that the [redacted] permission was not implemented within the three year period, hence the further planning application made on [redacted] and decided on [redacted]

(b).The second aspect of the matter is that the appellants consider that the planning application could have been determined earlier. The planning decision appears to have been delayed because of the need for a flood risk assessment. This was obtained in [redacted], and was then referred to the Environment Agency, who stated that they had no objections to the proposed scheme on [redacted] The [redacted] then determined the planning application on [redacted]. I do not consider it part of my remit to comment as to whether or not the planning application should have been determined earlier. The k date with regard to CIL is the date on which planning permission was granted, which is [redacted]

(c) The third point made by the appellant is that the charge should not have been applied retrospectively. The [redacted] approved [redacted] Charging Schedule on [redacted] to take effect from [redacted].The explanatory notes to the Charging Schedule emphasise that *'The Charging Schedule applies (and therefore the [redacted] Community Infrastructure is payable in respect of) any development granted planning permission on or after 1st April 2012.* Regulation 40 of the Community Infrastructure Levy Regulations 2010 (As amended) states that the relevant charging rates for CIL '*are the rates at which CIL is chargeable in respect of the chargeable development taken from the charging schedules which are in effect-*

(a) at the time planning permission first permits the chargeable development; and
(b) in the area in which the chargeable development will be situated'

9. I am satisfied that the CIL charge in this case satisfies both criteria in that the [redacted] Charging Schedule was in force at the date planning permission was granted.

10. The facts in this particular case are that planning permission was granted on [redacted]. The [redacted] wrote to the appellants on [redacted] giving an estimate of liability for CIL and also requested the appellants to complete an Assumption of Liability form. This was the first occasion on which the appellants had been specifically advised that CIL would apply to this particular development. The appellants completed an Assumption of Liability form on [redacted], and the [redacted] then issued a CIL Liability Notice on [redacted] nearly 12 months after the date on which planning permission was granted. I note that under Regulation 65(1) '*the collecting authority must issue a liability notice as soon as practicable after the day on which a planning permission first permits development'*. However, an appeal under Regulation 114 can only be made on the ground that the chargeable amount has been calculated incorrectly. I am therefore confined to considering whether or not the chargeable amount has been calculated incorrectly and I am unable to consider whether or not the requirements of Regulation 65(1) have been met in this case.

11... The area of the chargeable development has been calculated as a Gross Internal Area of [redacted] m2 which has been charged at a rate of £[redacted] per m2 to give a total CIL charge of [redacted] This calculation would appear to have been accepted by the appellants. The floor area of the chargeable development is above 100m2, and does not therefore qualify for the exemption for minor developments under Regulation 42 (1). In conclusion, based on the

evidence before me, I conclude that the chargeable amount has been correctly calculated in this case and I therefore dismiss the appeal.

[redacted]
RICS Registered Valuer
District Valuer
[redacted] 2013