Appeal Decision

by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency
[redacted]

Email: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Planning Permission Ref. [redacted] ***granted by*** [redacted]

Location: [redacted]

Development: Retrospective planning application [redacted]

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] of [redacted] on behalf of [redacted] (the appellant) and [redacted], the Collecting Authority (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

a. The planning application dated [redacted] together with approved plans, drawings and associated documents.
b. The Decision Notice issued by [redacted] on [redacted].
c. The CIL Liability Notice issued by the CA on [redacted].
d. The appellant's request for a Regulation 113 review dated [redacted].
e. The letter from the CA dated [redacted] in response to the appellant's request for a review.
f. The CIL Appeal form dated [redacted] submitted on behalf of the appellant under Regulation 114, together with documents and correspondence attached thereto.
g. The CA's representations to the Regulation 114 Appeal.

h. Further comments on the CA's representations prepared on behalf of the appellant and dated [redacted].

2. A retrospective planning permission for the above development was granted by [redacted] on [redacted] (the [redacted] permission).

3. 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.

4. Prior to the grant of the [redacted] permission a previous application on the same site was approved on [redacted] (the [redacted] permission) as follows:-

- [redacted] – Demolition and rebuilding of existing house.

5. The application form for the [redacted] permission states that building work commenced on [redacted]. The application was required since the position of the house on the site was slightly different to that permitted under the [redacted] permission due to construction constraints and the [redacted].

6. Following the grant of the [redacted] 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.

7. On [redacted] a different agent for the appellant, [redacted], contacted the CA by letter to request a review of the CIL Charge stating that the planning permission subject to the notice (ie the [redacted] permission) was not required and would not be implemented but instead the [redacted] permission had been implemented and minor irregularities would be regularised through a new application under s73 which will not, in their opinion, attract a liability to CIL.

8. On [redacted] the CA completed a review of the CIL Charge and did not revise its calculation. In considering whether the development was liable to CIL the CA explains that the development, as built, was the subject of the [redacted] planning permission which was submitted in order to regularise the position and form of the dwelling, being materially different to that granted under the [redacted] permission. It is the CA's opinion that the development accords with the [redacted] permission and, being retrospective in nature, its implementation was effective upon grant of that permission.

9. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that CIL should have been nil.

10. The grounds for the appeal are set out within a supporting statement and can be summarised as:

i. The property was granted planning permission in [redacted];
ii. The [redacted] was implemented when the original building was demolished in [redacted];
iii. The property was built in accordance with the planning permission granted in [redacted] subject to minor variations that are not material in planning terms; and
iv. The chargeable amount in relation to the [redacted] permission should be calculated as zero as it approves no new floorspace from that approved in [redacted], and as built out in accordance with the [redacted] permission, subject to minor variations that are not material in planning terms.

11. Further detail and case law are provided to explain why the appellant considers that the [redacted] permission was implemented when the original building was demolished in [redacted]. The statement and supporting documents also expand on the differences between the [redacted] and

the [redacted] permissions and explain that, in the view of the appellant, the footprint, height and location are identical and that the differences between the two permissions are 'minor operations' and are not material. The statement recognises that there is a dispute between the appellant and the Council as to whether the property was built in accordance with the [redacted] permission and that there were some minor discrepancies between the [redacted] permission and what was actually built and so the appellant decided to submit an application for what eventually became the [redacted] permission in order to regularise the concerns of the Council. The appellant was not aware that this would expose [redacted] to a potential liability to CIL.

12. The appellant's view is that the correct amount of CIL is zero since the [redacted] permission authorises no 'new build' from that authorised by the [redacted] permission and, under Regulation 42 of the CIL Regulations, no CIL is liable for minor development.

13. Furthermore the appellant contends that if it is considered that Regulation 42 does not apply then CIL should still be nil since then the correct approach to the calculation of the chargeable amount in relation to the [redacted] permission would be in accordance with Regulation 40 of the CIL regulations whereby the area of the dwelling as built and authorised under the [redacted] permission should be deducted from the chargeable development as an 'in-use' building.

14. The CA has submitted representations in response to the appeal. The CA disagrees that the house was built in accordance with the [redacted] permission since it claims that it was built in a different location. It has provided a plan in support of this view and detailed other changes between the [redacted] permission and the house as built to include elevational composition, a wider chimney, a lowering of ridge height in places, changes to the location of the [redacted] room with additional floorspace to create a [redacted].

15. The CA considers that the retrospective planning application [redacted] for which the [redacted] permission was granted under s73A of the TCPA (planning permission for development already carried out) is the only lawful planning permission for [redacted]. The planning permission was granted for the [redacted], not for minor operational development as the appellant contests. It considers that the [redacted] permission was in accordance with the built development and was sought to regularise such. Therefore, as soon as the permission was issued it was implemented, thus making the already built dwelling both lawful and liable for CIL.

16. In commenting further on the CA's representation the appellant has stated [redacted] opinion that the Council has not produced any reliable evidence to substantiate its position that the dwelling was not built in accordance with the [redacted] permission and has provided further imagery to substantiate [redacted] opinion that the building is in the same position as the approved plans for the [redacted] permission. The appellant considers both the [redacted] and [redacted] permissions to be lawful.

17. The appellant has also provided plans and an alternative calculation of the chargeable area which has been calculated to be [redacted] sq m on a gross internal basis measured in accordance with the RICS Code of Measuring Practice 6th Edition. The appellant has calculated the correct CIL amount would be £[redacted] if it is decided that the [redacted] was not implemented.

18. There would appear to be several minor differences between the building as built and the [redacted] permission although the extent of these differences, and indeed even the question of if the position of the house is actually different from that originally permitted, are a dispute between the appellant and the CA. Nevertheless it is not for the appointed person to examine these differences and decide if the [redacted] was implemented or not or to consider if the building was lawful under the [redacted] permission and if the [redacted] permission was indeed required. The fact is that a retrospective application was made and permission was granted

on [redacted] under Section 73A of the TCPA 1990 for the erection of the dwellinghouse and it is the chargeable amount arising from this permission that is for the appointed person to consider under the Regulation 114 appeal.

19. Regulation 5(1) of the Community Infrastructure Levy Regulations 2010 (as amended) defines that planning permission includes permissions granted by a local authority under section 73A of the TCPA 1990 whilst Regulation 9(1) defines that the chargeable development is the development for which planning permission is granted. Since the charging schedule was in operation by [redacted] I consider that the development, as approved by the [redacted] permission and being the development of the dwelling house, is a chargeable development that is potentially liable for a CIL charge. The development is therefore not a minor development that would be considered exempt under Regulation 42.

20. The chargeable area has been calculated on a gross internal basis to be [redacted] sq m by the CA and [redacted] sq m by the appellant. I have examined the calculations provided by the appellant and note that these have been based upon measurements taken on a room by room basis and exclude voids over stairways and the cellar area. The CA has not provided a breakdown of its calculation since it was not aware that there was any dispute over the floor area at the time that its representations were made. The CIL Regulations do not define Gross Internal Area so it is necessary to adopt a definition. The definition of Gross Internal Area provided in the RICS Code of Measuring Practice (6th Edition) is the generally accepted method of calculation and I have applied this definition in considering the extent of the floor space in this case.

GIA is the area of a building measured to the internal face of the perimeter walls at each floor.

Including:-

- **Areas occupied by internal walls and partitions**
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- **Voids over stairwells and lift shafts on upper floors**
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

Excluding:-

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fires

- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stored, and the like in residential property.

I have scaled approved plans as detailed on the Council's website and calculate a gross internal area (GIA) of [redacted] sq m.

21. Regulation 40(7) allows for the deduction of floorspace of relevant 'in-use' buildings from the gross internal area of the chargeable development to arrive at a net chargeable area upon which the CIL liability is based. Regulation 40(11) of the CIL regulations defines an 'in use' building as 'a building which (i) is a relevant building, and (ii) 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 the planning permission first permits the chargeable development'. The appellant considers that the area of the dwelling as built should be deducted from the chargeable development which would result in a net chargeable area of zero but [redacted] has not provided any evidence to confirm any actual use of the building. The lawfulness of the existing building prior to the [redacted] permission is an area of dispute between the parties but in any event there has to have also been actual use of the building for the required period in order to qualify as an 'in-use' building. Bearing in mind that the building work was apparently not completed until [redacted] and no evidence of actual use has been provided I do not consider that the existing building meets the definition of an 'in-use' building for the purposes of CIL Regulation 40 and therefore no deduction should be made for existing floorspace associated with the house as existing prior to the permission.

22. The CIL charge has been calculated at £[redacted] per sq m and this rate does not appear to be in dispute.

23. Based on my calculation of the GIA at [redacted] sq m and using a rate of £[redacted] per sq m I therefore calculate a CIL charge of £[redacted].

24. 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 £[redacted].

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