Appeal Decision

by [redacted]

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

[redacted]

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

Appeal Ref: [redacted]

Address: [redacted]

Planning Permission ref: [redacted] ***granted by*** [redacted]

Development: Single storey garage extension to existing block to provide [redacted] ***no. additional bays.***

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 on behalf of [redacted] (the appellant) by [redacted] (the appellant's agent) and those made by [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 application for planning permission dated [redacted] together with associated plans and drawings.
    b) The planning Decision Notice issued by [redacted] dated [redacted]
    c) The CIL Liability Notice issued by the CA dated [redacted]
    d) The letter from the appellant's agent dated [redacted] requesting the CA to review the CIL Liability Notice.
    e) The letter from the CA to the appellant's agent dated [redacted] giving their decision on the request for a review of the CIL Liability Notice.

f) The completed CIL Appeal Form and letter from the appellant's agent dated [redacted] requesting that I determine the CIL liability at nil under regulation 114 of the CIL Regulations 2010 (as amended).
g) The [redacted] CIL Charging Schedule .
h) The letter from the CA dated [redacted] detailing their representations on the appeal.
i) The letter from the appellant's agent dated [redacted] detailing their comments on the CA's representations.

I have also had regard to the Town and Country Planning (Use Classes) Order 1987 (as amended).

2. The development comprises an extension to an existing garage situated within the grounds of a large dwelling house. The development is to be used to garage vehicles and landscape maintenance equipment belonging to the owner of the dwelling house.

3. The CA consider that under the [redacted] Charging Schedule the proposed development should be liable to a CIL charge of £[redacted] because it falls within the definition of 'residential (C3)' development. This is based on [redacted] square metres of additional floor space at a rate of £[redacted] per square metre.

4. The appellant's agent contends that the proposed development is not liable to CIL because it is not 'residential (C3)' development and it therefore attracts a zero liability because under the Charging Schedule it falls within the category "all other uses (unless stated otherwise in this table)" for which the CIL rate is £[redacted] per square metre.

5. Essentially, the appellant's agent argues that the Charging Schedule rate of £[redacted] per square metre only applies to buildings that are to be used as a "dwelling house"(as described in Class C3 of the Use Classes Order 1987 (as amended)) and does not apply to buildings that are ancillary to a dwelling house.

6. The CA, however, argue that the building is located within the curtilage of an existing dwelling and forms one and the same planning unit with that dwelling. They maintain that the use of the building is ancillary and incidental to the existing residential dwelling house (C3) use and should therefore attract the CIL rate of £[redacted] per square metre.

7. In their representations the CA have also questioned whether it is appropriate for me to determine whether a particular development attracts liability for CIL at all, as distinct from disputes as to the method of calculation and the quantum thereof. The CA suggest that the wording of regulation 114(1) implies that I am only empowered to make decisions as to quantum and not as to whether there should be any liability at all, particularly when that liability appears to hinge on a point of statutory construction.

8. Both sides have asked me to award costs in their favour.

9. With regard to the CA's comments referred to in paragraph 7 above, I would comment that this is an appeal under regulation 114(1) and under regulation 112(1)(a) I am the 'appointed person' responsible for determining this appeal. Whilst I am not under the CIL regulations generally responsible for deciding whether or not a particular exemption or relief applies I am responsible for determining whether the chargeable amount has been properly calculated in accordance with regulation 40. The calculation required by regulation 40 does inevitably involve me in determining which buildings should or should not be included in the calculation and if, having decided that issue, the calculation results in the charge being nil then that is what I must determine. There are two distinct issues here, firstly, does the calculation required under regulation 40 give rise to a chargeable amount and secondly is any liability to CIL removed by an exemption or relief? The former is a matter that I am responsible for deciding, the latter is not.

10. Both sides have made detailed submissions and I have carefully considered all the arguments made. In my opinion, based on the facts of this case, it would be wrong to interpret the description 'residential (C3)' use in the restrictive way contended for by the appellant's agents. The existing use of the property, including the existing garage, would in my opinion fall within the description of 'residential (C3)'. The proposed development is an extension to an existing 'residential (C3)' building and should therefore in my opinion properly attract a CIL charge at £[redacted] per square metre under the relevant Charging Schedule.

11. I note in the appellant's agent's request for a review dated [redacted] and the CA's response dated [redacted] reference is made to the question of whether or not the development may qualify for exemption under regulation 42A (as inserted by the CIL(Amendment) Regulations 2014) the 'exemption for residential annexes or extensions'. Regulation 42A states;

    Exemption for residential annexes or extensions

    42A. (1) Subject to paragraphs (5) and (6), a person (P) is exempt from liability to pay CIL in respect of development if—

    (a)P owns a material interest in a dwelling ("main dwelling");

    (b)P occupies the main dwelling as P's sole or main residence; and

    (c)the development is a residential annex or a residential extension.

    (2) The development is a residential annex if it—

    (a)is wholly within the curtilage of the main dwelling; and

    (b)comprises one new dwelling.

    (3) The development is a residential extension if it—

    (a)is an enlargement to the main dwelling; and

    (b)does not comprise a new dwelling.

    (4) An exemption or relief under this regulation—

    (a)in respect of a residential annex is known as an exemption for residential annexes;

    (b)in respect of a residential extension is known as an exemption for residential extensions.

    (5) An exemption for residential annexes or extensions cannot be granted to the extent that the collecting authority is satisfied that to do so would constitute a State aid which is required to be notified to and approved by the European Commission.

    (6) Where paragraph (5) applies, the collecting authority must grant relief up to the amount that would not constitute a State aid which is required to be notified to and approved by the European Commission.

    As I have indicated at paragraph 9 above, the question of whether or not a development qualifies for an exemption is not a matter for me to decide. However, I would comment that the parties may wish to review this in the light of my decision. If the CA consider that the existing garage is part of the 'dwelling' then it does in my mind raise the question of whether the development should perhaps be regarded as an extension to that dwelling?

12. In my opinion neither the CA nor the appellant's agent have in this case acted unreasonably in arguing their position on the quantum of the charge to be calculated in accordance with regulation 40. Each party should in my view bear their own costs in this matter and I do not therefore make any order as to costs.

13. On the evidence before me I consider that the chargeable amount calculated in accordance with regulation 40 is correctly assessed in the sum of £[redacted] ([redacted] and I therefore dismiss the appeal.

[redacted]
RICS Registered Valuer
[redacted]