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]

Development: Erection of a detached house. [redacted]

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

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the development is to be assessed in the sum of £[redacted]

Reasons

1. I have considered all the submissions made by the appellant [redacted]. The Collecting Authority (CA), [redacted] provided representations, but these were received after the end of the representations period being 14 days beginning with the date of the acknowledgement of the receipt of the appeal under regulation 120(3). Therefore, no regard has been had to them in arriving at this decision.

2. Planning permission was granted by [redacted] on [redacted] for Erection of a detached house. ([redacted]

[redacted] the main changes to the scheme as submitted involve the omission of the [redacted] (amended scheme).

3. From the evidence submitted, it is understood that the relevant planning history is essentially as follows:-

[redacted]
Planning permission refused and dismissed on appeal for an application to demolish the existing [redacted].

[redacted]
Planning permission refused and dismissed on appeal for a further application to demolish the existing [redacted].

[redacted]
Planning permission granted for the demolition of the existing [redacted] and erection of a new dwelling on basement, ground and first floor, [redacted] prior to the [redacted] CIL Charging Schedule being adopted in [redacted]. [redacted] was adopted in [redacted], but there is no indication any CIL paid has been paid in respect of this permission.

[redacted]
Works commenced, and subsequently included demolition, the development of the basement being abandoned, and the ground floor and foundations constructed.

[redacted]
Planning permission granted for the erection of a detached house. [redacted] the main changes to the scheme as submitted involve the omission of the [redacted]

4. [redacted] the CA issued a Regulation 65 Liability Notice [redacted] based on a net additional Gross Internal Area (GIA) of [redacted] square metres (sqm) in the sum of £[redacted]. The net additional area was based on a GIA of the chargeable development of [redacted] sqm less the GIA of the existing building treated as being in use of [redacted] sqm.

5 The appellant requested a review of the calculation of the chargeable amount dated [redacted], but the CA did not issue a decision notice in respect of this review. However, the CA issued a revised Liability Notice dated [redacted] based on a net additional GIA of [redacted] square metres (sqm) in the sum of £[redacted]. The net additional area was based on a GIA of the chargeable development of [redacted] sqm less the GIA of the existing building treated as being in use of [redacted] sqm.

6. [redacted] submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing the CIL charge should be £Nil on [redacted]. In addition, he also sought to appeal the decision of the CA not to grant self build relief under Regulation 116B.

7. An appeal under Regulation 116B can only be made on the ground that the CA has incorrectly determined the value of the exemption allowed. In this case no exemption has been allowed so there is no right of appeal under Regulation 116 and I will not consider this matter further.

8. The grounds of the appeal in respect of the Regulation 114 (chargeable amount) appeal are summarised below:-

(a) In [redacted] works commenced in respect of planning permission [redacted] to demolish the existing [redacted] and build a new 4 bedroom house and the appellant was still not liable for CIL as CIL had not been introduced in [redacted] when this planning permission was granted.
(b) During the start of the build due to ground conditions the [redacted] was abandoned and the development was reassessed and it was decided to put a room in the loft and change the front porch to double height.
(c) In [redacted] an application for the changes to be treated as amendments was submitted, but [redacted] said the changes could not be dealt with as amendments and an application for full planning permission would need to be made.
(d) If it is only the new parts of the development that [redacted] see as triggering the CIL charge then these are less than [redacted] sqm. In addition, the amended scheme is smaller than the original scheme.
(e) Through no fault of his own he has been unable to conform to CIL having had planning before CIL started, commenced the development and then amended the scheme. Therefore, he should still be exempt under the original planning permission.

9. Having fully considered the representations made by the appellant, I would make the following observations:-

10. Regulation 9(1) defines chargeable development as the development for which planning permission is granted. The planning permission [redacted] describes the development as the erection of a detached dwelling. Although reference is also made to changes to the approved scheme on the decision letter, it is clear from the description and plans that form part of the permission that the whole of the dwelling forms the subject of the planning permission and is therefore the chargeable development for the purposes of calculating CIL.

11. The appellant has referred to the new parts of the development being less than [redacted] sqm. I assume that he is referring to the exemption for minor development where no liability to CIL arises in respect of a chargeable development where the GIA of the 'new build' is less than [redacted] sqm, Regulation 42(1). As I have determined that the chargeable development is the whole dwelling and I consider that this all comprises 'new build' as being part of the chargeable development which will comprise new buildings, Regulation 42(3), this exemption will not apply.

12. The appellant is also of the opinion that the CIL charge should be £Nil broadly on the basis that the previous planning permission [redacted] was not subject to CIL and he has only amended the previous permission.

13. There are provisions under Regulation 128A that in certain circumstances allow for a notional CIL charge to be calculated in respect of a development granted planning permission before a CIL charging schedule has come into effect and for this CIL to be deducted from the CIL charge for the chargeable development on the later planning permission. However, this would not apply in this case as one of the criteria to be met is that the later planning permission must be granted under section 73 of the Town and Country Planning Act 1990 (TCPA 1990) 'Determination of applications to develop land without compliance with conditions previously attached' (this section is also used to allow for minor material amendments to previous permissions). However, in this case it is clear that it was not a permission granted under Section 73 TCPA 1990, but a full planning permission, therefore I do not consider it is appropriate for any deductions to be made under Regulation 128A.

14. It would appear that the appellant and the CA have agreed that the previously existing bungalow was an in use building under Regulation 40(11). Therefore, its GIA has been

netted off from the GIA of the chargeable development by the CA before calculating the CIL charge. As this is not a matter in dispute I shall not comment on it further.

15. I have scaled check measurements from the plans and I am satisfied that the CA's areas are scaled correctly. Therefore, I conclude that the appropriate charge in this case should be based on a net additional area of [redacted] sqm as follows:-

Mayor of London CIL: £[redacted]
London Borough of [redacted]

[redacted]
RICS Registered Valuer
[redacted]