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]

Proposed Development: *Change* [redacted] *to* [redacted] *dwelling* [redacted]

Planning permission details: *Granted by* [redacted] *under reference:* [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 the agent, [redacted] of [redacted], on behalf of the appellant [redacted] and the submissions made by the Collecting Authority (CA), [redacted].

2. Planning permission was granted for the proposed development on [redacted].

3. The CA issued a CIL Liability Notice dated [redacted] in the sum of £[redacted]. This was based on a net chargeable area of [redacted] sq m @ £[redacted] per sq m.

4. The appellant requested a review of this charge under regulation 113 of the CIL Regulations 2010 (as amended) and the CA issued their response dated [redacted] confirming the amount as set out in the original notice.
5. On [redacted] the Valuation Office Agency received a CIL Appeal made under regulation 114 (chargeable amount) contending that the chargeable amount had been incorrectly calculated as a consequence of the CIL regulations having been incorrectly applied.

6. The CA should in their calculation of the chargeable amount reflect the fact that 'minor development' is exempt. 'Minor development' is defined in regulation 42. Liability to CIL does not arise in respect of a development if, on completion of that development, the Gross Internal Area (GIA) of 'new build' on the relevant land will be less than 100 sq m. However, this does not apply where the chargeable development will comprise one or more dwellings, so, for example a new dwelling with a GIA of 90 sq m would not be exempt. 'New build' means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings. The CA consider that the 'minor development' exemption does not apply in this case as the permitted development is for [redacted].
7. When calculating the chargeable amount under regulation 40 the CA should take into account the existing floor space which has been in lawful use for a continuous period of at least 6 months within the previous 3 years ending on the day that planning permission first permits the chargeable development. It is clear that in this case the CA have allowed/included the total area of the original building and have identified the net chargeable area as being the net increase in the GIA.

8. The appellant's contentions and my comments are as follows:-

    a. That the premises were partly used as a dwelling throughout its entire period of use as a [redacted]. I find that the evidence is that a planning application for a change of use was necessary and this is the permission which has been granted. The appellant acknowledges in their appeal that planning permission for a change of use was granted.

    b. That as the CA has granted a change of use exemption it does not make sense to charge CIL on the small extension. This is not strictly correct – the CA have calculated the net chargeable area under regulation 40(6) by deducting the aggregate GIAs of all buildings which on the day the planning permission first permits the chargeable development are situated on the relevant land and in lawful use.

    c. The CA acknowledge the status of part of the [redacted] as a dwelling by making a Council Tax charge on part of the premises. Whilst this may be the case it is not material to the calculation of the CIL charge – the minor development exemption does not apply where the development will comprise one or more dwellings and that is clearly the case here.

    d. That the CA's case is based on their interpretation of the CIL Regulations, in particular the fact that they (the CA) consider that a new dwelling is being created through the change of use. The CIL charge is for the small amount of additional space being created by an extension. The appellant suggests that a dwelling already existed but that planning permission was required to change the use of the business floor space so that the entire building could be classed as a private dwelling. The appellant suggests that the exemption of all CIL charges on the proposed extension be considered in this context. Again,

whilst this may be the case it is not material to the calculation of the CIL charge – the minor development exemption does not apply where the development will comprise one or more dwellings and that is clearly the case here.

9. From the paperwork submitted it appears that both parties are in agreement that the GIA of the extension/alterations is a net increase of [redacted] sq m. However, the appellant has also suggested that the part of the single storey element demolished as part of the permission (chargeable development) and stated to have a GIA of [redacted] sq m, should also be taken into account giving a net chargeable development of [redacted] sq m. The CA in their response to the appellant's original request for review maintain that this area cannot be taken into account as it had already been demolished by the relevant date of [redacted]. There are no submissions to dispute this and therefore I must accept this to have been the case. In my opinion the net chargeable area appears to be properly identified to be [redacted] sq m being the GIA of the extension permitted. There is no deduction for buildings which are demolished before the relevant date.

10. On the evidence before me I consider that the CIL payable in this case should be £[redacted].

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