

Appeal Decision

by [REDACTED]

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



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

Appeal Ref: [REDACTED]

Address: [REDACTED]

Development: Partial demolition of existing [REDACTED] building and erection of a new [REDACTED] dwelling.

Planning permission details: Planning permission [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] and I have also considered the representations made by the Collecting Authority (CA) [REDACTED]. In particular I have considered the information and opinions presented in the following submitted documents:-

- (a) Planning permission letter dated [REDACTED]
- (b) The CA's Liability Notices dated [REDACTED] and [REDACTED].
- (c) The CA's decision on the review of the CIL chargeable amount contained in an email dated [REDACTED].
- (d) Completed CIL Appeal form dated [REDACTED].
- (e) Additional supporting documents submitted with the CIL Appeal including:-
- (f) Copies of plans including the approved plan [REDACTED] as listed at condition 2 of the planning permission dated [REDACTED].
- (g) Schedule of measurements and calculation of CIL liability.
- (h) Photograph of site

- (i) Various email correspondence between the appellant and the CA.
 - (j) Land Registry copies of land registry entries for [REDACTED] and [REDACTED] and [REDACTED].
 - (k) The CA's representations dated [REDACTED].
 - (l) The appellant's comments on the CA's representations dated [REDACTED].
2. Planning permission was granted by [REDACTED] on [REDACTED] for partial demolition of existing [REDACTED] building and erection of a new [REDACTED] dwelling.
3. On [REDACTED] the CA issued a Liability Notice in the sum of £[REDACTED] based on a net additional floorspace of [REDACTED] square metres (sqm).
4. The appellant requested a review of the calculation of the chargeable amount and the CA issued their decision on the review on [REDACTED] and amended the CIL charge to £[REDACTED] based on a net additional area of [REDACTED] sqm issuing a revised Liability Notice at this figure on the same date.
5. On [REDACTED] submitted a CIL Appeal under Regulation 114 (chargeable amount) proposing the CIL charge should be £[REDACTED] based on an additional net area of [REDACTED] sqm. The grounds of the appeal can be summarised as follows:-
- (a) The CA have included areas on the second floor which are under 1.5m high contrary to the RICS Code of Measuring Practice.
 - (b) The CA have included the area of the intermittent parking space which currently exists with lawful use and also provides access to [REDACTED].
6. The CA submitted representations on [REDACTED] which can be summarised as follows:-
- (a) The appellant is applying the RICS Code of Measuring Practice incorrectly as areas under 1.5 metres in height are included on page 12 as being within the Gross Internal Area (GIA) and this is supported by a published VOA decision on a previous CIL appeal.
 - (b) The existing use of the car space cannot be netted off as it is not within a building. In addition, this area is marked as a garage on the plan and is clearly part of the proposed dwelling.
7. The appellant submitted comments on the CA's representations, dated [REDACTED] as set out below:-
- (a) Government guidance on CIL published in May 2011 provides that "The levy must be chargedon the net additional increase in floor space of any given development. This will ensure that charging the levy does not discourage the redevelopment of sites". In addition, Regulation 40(5) defines A in the formula as the deemed net area chargeable' and although Regulation 40(6) refers to GIA it is Regulation 40(5) which should prevail.
 - (b) The use of the RICS Code of Measuring Practice in the construction and property industries makes clear that the rules for areas under 1.5 metres in height are discounted when valuing a property and do not form part of the net lettable area when calculating the rental value of a building.
 - (c) The ground floor level is open with no garage door and does not form part of the built form. The term 'garage' on the plan is a mere label and it should be described as an access way as it has to provide for a legal right of way for the benefit of [REDACTED]

(d) Since planning was approved the toilet has had to be re-sited and an opening in the rear wall inserted as per drawing revision [REDACTED].

(e) The difference in the areas adopted by the appellant and the CA are as a result of the CA including the area under 1.5 metres height on the 2nd floor and the ground floor access way (the total area including these areas is agreed at [REDACTED] sqm).

(f) The appellant refers to a sum of £[REDACTED] being contained in the 'LPA schedule' and the need for this sum to be deducted from the current claim as it has already been paid by the appellant in respect of an adjoining development at [REDACTED]. I feel that I am unable to consider this point in reaching my decision for the following reasons:-

(i) No further details have been provided so it is not possible to know what area is being referred to by the appellant,

ii) This matter is not one of the grounds of appeal on the CIL Appeal form and

iii) The appellant has made it clear that the difference between them and the CA in terms of the floorspace wholly relates to the inclusion of the 2nd floor and ground floor space.

8. Having fully considered the representations made by the appellant and the CA, I would make the following observations on the grounds of the appeal:-

The GIA of the chargeable development to be reduced to exclude those areas on the 2nd floor below 1.5 metres in height

9. Although I am not completely certain from the appellant's comments as to the point that he is making regarding his contention that Regulation 40(5) should prevail over Regulation 40(6) I assume he is emphasising the use of the word net in Regulation 40(5) to support his contention that the areas under 1.5 metres in height should be excluded. However, I do not see any conflict between the use of the words net area in Regulation 40(5) and the use of gross internal area to calculate G or G_R in the formula to calculate A in Regulation 40(7) (Regulation 40(6) has now been superseded by Regulation 40(7) as a result of The Community Infrastructure Levy (Amendment) Regulations 2015). A is calculated by deducting from the GIA of the chargeable development the GIA of retained parts and demolished parts of in-use buildings and retained parts of other relevant buildings in accordance with Regulation 40(7) to arrive at the net area.

10. Gross Internal Area (GIA) is not defined in the Community Infrastructure Levy Regulations 2010 (as amended). The generally accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6th edition);

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

11. The appellant has referred to Applications APP 6 on page 13 of the RICS Code of Measuring Practice to support his opinion that the areas under 1.5 metres in height should be deducted from the GIA of the chargeable development. However, this refers to the use of the Code for Rating purposes for non-domestic properties, neither of which are relevant in this case. In addition, he has also referred to the construction and property industry discounting such areas when valuing properties and also when calculating the net lettable area for rental purposes. In my opinion, in the absence of any specific guidance in the Regulations it is appropriate to use the definition of Gross Internal Area provided in the RICS Code of Measuring Practice (6th edition) which specifically includes areas with a headroom of less than 1.5 metres in the core definition. Therefore, I consider that those areas on the 2nd floor under 1.5 metres in height should be included in the GIA of the chargeable development.

The GIA of the chargeable development to be reduced to exclude the area on the ground floor used as an intermittent parking space and also as permanent access to the adjoining property [REDACTED]

12. The chargeable development is defined as the development for which planning permission is granted. In this case, the planning permission was granted subject to the condition below:-

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan and drawing number [REDACTED] and Design and Access Statement

13. The plan which was referred to in the planning permission decision [REDACTED] indicated that the ground floor was to be a garage with walls to three sides and an opening to the front. In addition, the Design and Access Statement clearly stated that the proposal was for a 'new C3 unit with on-site parking'. In addition, reference was made in the Design and Access Statement to access to the proposed development being via the front entrance and garage from [REDACTED]. There was no reference to any requirement for the ground floor to provide access to [REDACTED].

14. In my opinion, the planning permission granted was for the development of a dwelling and garage and this comprised the chargeable development. Therefore, as garages are included in the definition of GIA in the RICS Code of Measuring Practice (6th Edition) I am of

the opinion that the area of the garage should be included in the GIA of the chargeable development.

15. The appellant referred to the existing lawful use of the intermittent parking space in his grounds of appeal, but it was unclear as to whether he was asking for the area to be netted off from the GIA of the chargeable development as being an 'in use' building. However, from the photographic evidence provided the parking space was an uncovered surfaced car space, not a building, or part of a building so its area cannot be deducted from the area of the chargeable development.

16 The appellant has provided evidence that the ground floor 'garage' area is subject to a right of way for the benefit of [REDACTED] and this has to be maintained at all times and as a result a revised plan has been drawn up to include an opening in the rear elevation. However, the revised plan was drawn up after the relevant planning permission was granted so I do not consider that it affects the extent of the chargeable development which is the development described on plan [REDACTED] and the Design and Access Statement and my decision is on that basis.

17. I conclude that the appropriate charge in this case should be based on a net additional area of [REDACTED] sqm including the area under 1.5 metres on the 2nd floor and the ground floor garage area as set out below:-

[REDACTED]

[REDACTED] BSc (Hons) MRICS
RICS Registered Valuer
Valuation Office Agency
[REDACTED]