

Appeal Decision

by [REDACTED] MRICS

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

[REDACTED]

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

Appeal Ref: [REDACTED]

Address: [REDACTED]

Proposed Development: Erection of replacement dwelling (amendment to scheme [REDACTED], retention of part works already undertaken) at [REDACTED] (as amended by plans received [REDACTED] and email received [REDACTED]). (Retrospective).

Planning permission details: Granted on [REDACTED] under reference [REDACTED] (original planning application reference [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], the appellant, and by [REDACTED], the Collecting Authority (CA).
2. Planning permission for the above development was granted by [REDACTED] on [REDACTED]. The Council implemented its CIL Charging Schedule on 1 April 2014.
3. It is understood that prior to the grant of planning permission the recent planning history was as follows:-
 - [REDACTED] – Planning permission (reference [REDACTED]) was granted for demolition of an existing dwelling and the erection of a replacement dwelling at [REDACTED]. However, the new building differed from the approved drawings.

- [REDACTED] – Planning permission (reference [REDACTED]) for the erection of a replacement dwelling (amendment to scheme [REDACTED], retention of part works already undertaken). This was a retrospective application seeking approval for an amendment to the consent granted under reference [REDACTED].

4. Following the grant of planning 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.

5. On [REDACTED] the appellant contacted the CA by email to request a review of the CIL Charge.

6. On [REDACTED] the CA completed the review of the CIL Charge and confirmed that the CIL Liability Notice dated [REDACTED] was correct.

7. On [REDACTED] the Valuation Office Agency received a CIL appeal made under regulation 114 (chargeable amount) contending that the chargeable amount should be based on a net area of [REDACTED] square metres only.

8. The Appellant contends that the CIL charge calculated by the CA is incorrect because:-

- a. The appellant contends that CIL as detailed in the Charging Schedule is applicable only to [REDACTED] square metres, being the difference in size between the original dwelling and the new dwelling.
- b. The appellant states that the original planning consent was approved on [REDACTED], prior to the CIL charge being introduced by the Council. The appellant further states that when new development commenced amendments were made requiring a new retrospective request for planning consent which was granted on [REDACTED]. The appellant has now made an application under Section 73 of the Town and Country Planning Act 1990 (Determination of applications to develop land without compliance with conditions previously attached).
- c. The appellant states that the appeal would normally lapse under the restrictions that development has commenced, they were unaware of CIL implications as the original planning consent was prior to the introduction of CIL by the Council and the most recent planning consent was after the introduction of CIL by the Council.
- d. The appellant also contends that they should be exempt from CIL as they are not a developer and the development is for the primary residence of the appellant. The appellant has therefore claimed self-build exemption for the whole new home.

9. The CA contend that their calculation of the chargeable amount is correct because:-

- a. The development for the 'Demolition of dwelling and erection of replacement dwelling at [REDACTED] (resubmission of [REDACTED])' had planning approval under planning application [REDACTED]. This was approved before [REDACTED] implemented the Community Infrastructure Levy Regulations.

- b. The appellant proceeded to develop the replacement dwelling but it was brought to the attention of the Council's Planning Enforcement department that the development was not in accordance with the approved plans.
- c. The appellant, via an agent, then submitted a full planning application to regularise the development. The revised application for the 'Erection of replacement dwelling (amendment to scheme [REDACTED], retention of part works already undertaken) at [REDACTED] was approved on [REDACTED] under reference [REDACTED].
- d. As this full application ([REDACTED]) was for retention of part works already undertaken, the development was deemed by the CA to have commenced under Regulation 7 of the Community Infrastructure Levy Regulations (as amended).
- e. On [REDACTED] 15 a Section 73 application to vary the conditions attached to the original planning approval was submitted by the appellant's agent. This application is currently undecided.
- f. On [REDACTED] a 'CIL - Planning Application Additional Information Requirement' form and a 'CIL - Self Build Exemption Claim Form' were received by the CA from the appellant. The appellant claimed self-build exemption for the whole new home. The CA subsequently asked the appellant to confirm the floor areas of the development.
- g. On [REDACTED] an updated 'CIL Planning Application Additional Information Requirement' form was received by the CA from the appellant confirming the gross internal area of the development to be [REDACTED] square metres.
- h. On [REDACTED] a CIL Liability Notice was issued by the CA to the appellant stating a total CIL liability in the sum of £[REDACTED].
- i. On [REDACTED] the appellant requested a review of the CIL Charge under Regulation 113.
- j. On [REDACTED] the CA completed the review of the CIL Charge and the CA advised the appellant that the original CIL Liability Notice was correct.

10. The Council implemented its CIL Charging Schedule on 1 April 2014 and all planning permissions granted on or after that date are potentially liable to a CIL charge.

11. With regard to the first ground of appeal (paragraph 8(a) above) the CIL Charging Schedule provides for a CIL charge on 'residential development'. It does not appear to be in dispute that the gross internal area of the new dwelling in this case is [REDACTED] square metres. The floor space of the previous building which, was in lawful use before it was demolished, cannot be taken into account when calculating the CIL charge because Regulation 40 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 planning permission first permits the chargeable development. Regulation 40 defines a 'relevant building' as 'a building which is situated on the relevant land on the day planning permission first permits the chargeable development'. As the planning permission under consideration here first permitted this development on [REDACTED] and the original dwelling was demolished prior to this date the floor area of the original dwelling cannot be taken into account. In my opinion the area of the chargeable development to be taken into account when calculating the chargeable amount under Regulation 40 is therefore [REDACTED] square metres.

12. With regard to the second ground of appeal (paragraph 8(b) above), I agree with the CA's contention as set out in paragraph 9(d) above. As this was a full planning permission granted on [REDACTED] it is potentially liable to CIL. The appropriate charge must therefore be calculated in accordance with Regulation 40. I can only consider the chargeable amount applicable to this full planning permission. The Section 73 application is a separate matter which, at the time this appeal was made, had not been decided by the Council.

13. With regard to the third ground of appeal (paragraph 8(c) above), I can to some extent understand why the appellants consider that the timeline of events results in a feeling of some unfairness. The original planning permission was granted prior to the introduction of CIL. When planning permission for this development was granted retrospectively it was after the CIL Charging Schedule had come into effect. On an appeal under Regulation 114 I can only consider the calculation of the chargeable amount for the particular planning permission granted.

14. With regard to the fourth ground of appeal (paragraph 8(d) above), I understand that the CA have rejected the appellant's claim for self-build exemption under the CIL (Amendment) Regulations 2014 on the grounds that a claim must be submitted before commencement of the chargeable development. The availability of the exemption for self-build housing is not an issue which I have any authority to determine.

15. In summary, on an appeal under Regulation 114 I can only consider whether the chargeable amount has been calculated incorrectly. For the reasons given above I consider that the CA have correctly calculated the charge in accordance with Regulation 40.

16. On the evidence before me I conclude that the appropriate charge in this case should be £[REDACTED].

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