

Appeal Decision

by [REDACTED] BA MRICS

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

[REDACTED]

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

Appeal Ref: [REDACTED]

Address: Land adjoining [REDACTED]
[REDACTED]

Development: Retention of [REDACTED] bedroom house. Erection of single storey infill rear extension

Planning permission details: Planning permission granted by [REDACTED]
[REDACTED]

Decision

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

Reasons

1. I have considered all submissions made by the Appellant and the Collecting Authority (CA). In particular I have considered the information and opinions expressed in the following submitted documents:-
 - a. Notice of planning permission decision dated [REDACTED].
 - b. Correspondence between the Appellant and CA regarding discharge of conditions attached to planning permission.
 - c. Completion certificate issued by the CA's Building Control Services.
 - d. Correspondence relating to building phase e.g. with NHBC.

- e. Application for planning permission for single storey infill extension dated [REDACTED] together with associated drawings.
- f. Application for retrospective planning permission and for single storey infill extension dated [REDACTED] together with associated drawings.
- g. Notice of planning permission dated [REDACTED]
- h. CIL Liability Notice dated [REDACTED].
- i. Correspondence relating to Regulation 113 Review carried out by CA.
- j. CIL Appeal Form dated [REDACTED] together with supporting documents.
- k. Representations from the CA dated [REDACTED] and supporting documents.

I have carried out an inspection of the site and taken check measurements.

- 2. The appeal relates to a detached house and the subsequent decision to extend it at ground floor level.
- 3. I set out below a history of events:
- 4. [REDACTED]: Planning permission granted by CA for a new detached [REDACTED] bedroom dwelling subject to compliance with conditions. In respect of conditions 5,6,7,8,9,10 & 11, approval would be required from the Council relating to hard surface, landscaping, fencing, external material, tree protection and cycle storage issues. (Planning reference [REDACTED]).
- 5. [REDACTED]: Building works commenced.
- 6. [REDACTED]: Appellant e-mails CA for the discharge of conditions.
- 7. [REDACTED]: Appellant makes application to discharge conditions.
- 8. [REDACTED]: CA approve details in respect of condition 9 – external materials.
- 9. [REDACTED]: Building works completed.
- 10. [REDACTED]: Appellant e-mails CA further details for discharge of conditions 5,6,8,10 & 13.
- 11. [REDACTED]: CA refuse the details in respect of Condition 8 – tree protection. CA approve details in respect of Conditions 5 & 13 – hard surfacing and cycle storage.
- 12. [REDACTED]: CA refuse the details in respect of Condition 7 – retention of landscaping.
- 13. [REDACTED]: CA refuse the details in respect of Condition 6 – soft landscaping.
- 14. [REDACTED]: Planning permission [REDACTED] expires due to three pre-commencement conditions (6,7 & 8) not being discharged.
- 15. [REDACTED]: Completion certificate issued by the CA's Building Control Services in respect of the original house.
- 16. [REDACTED]: Appellant makes application for planning permission for single storey infill extension but is subsequently advised to withdraw this.
- 17. [REDACTED]: Appellant submits further planning application for planning permission for new [REDACTED] bedroom property including rear infill extension.
- 18. [REDACTED]: CA grants planning permission for "retention of a [REDACTED] bedroom house; erection of single storey infill rear extension." (Planning reference [REDACTED])

19. [REDACTED]: CIL liability Notice issued by the CA served on Appellant in the sum of £ [REDACTED] calculated as follows, and based on a net increase in Gross Internal Area of [REDACTED] m2:-

[REDACTED]

20. [REDACTED]: Appellant e-mails CA seeking "to appeal under section 113 against the calculations/amounts... .. Under the grounds that the building was already existing/built early [REDACTED] and that I was only applying for a small infill extension...."
- The council had recommended that the application for an infill extension be withdrawn and that a full retrospective application be submitted requesting permission to build the [REDACTED] bed detached house including the small infill.
21. [REDACTED]: CA e-mails the Appellant a decision following their review stating that whilst the property had a completion certificate, the building did not have planning consent. The previous planning consent had expired on [REDACTED] because not all conditions had been discharged within the three year limit. The CA were of the view that CIL had been correctly charged on the whole property including the infill extension, because it was not in lawful use prior to the grant of retrospective planning consent ([REDACTED]) on [REDACTED].
22. [REDACTED]: Appellant appeals against the calculation of the chargeable amount under regulation 114 of the CIL Regulations 2010 (as amended) on the grounds that CIL should only apply to the infill extension, which has yet to be built.
23. With regard to the initial planning application ([REDACTED]) granted on [REDACTED] subject to the discharge of various conditions, the CA have stated that this permission lapsed on [REDACTED], because not all of the conditions had been discharged. The Appellant sent some information to the CA regarding the discharge of the conditions, and had perhaps assumed that they had been adequately discharged. It would appear that the CA's decisions on the discharge of these conditions were sent to a previous address of the Appellant. The address to which they were sent was the address shown on the 'Application for approval of details reserved by condition' dated [REDACTED]. The Appellant appears not to have received this correspondence.
24. It is not within the remit of this appeal to comment on this apparent breakdown in communication.
25. The construction of the original building was completed by early [REDACTED] and a completion certificate was issued by the CA's Building Control Services on [REDACTED].
26. Notwithstanding the issue of the completion certificate, the existing building did not have planning permission as that had lapsed on [REDACTED] because the conditions had not been discharged to the satisfaction of the planning authority. It could therefore be construed as an unlawful building.
27. The planning application that was made on [REDACTED] sought to rectify the position in that it was a request for a new [REDACTED] bedroom house including a rear infill extension. This permission was granted on [REDACTED] for "retention of a [REDACTED] bedroom house; erection of single storey infill rear extension." (Planning reference [REDACTED])

28. Under regulation 40 (7) of the Community Infrastructure Levy Regulations 2010 (as amended) the following gross internal area may be deducted from the gross internal area of the chargeable development when calculating the CIL charge:-

- (i) *Retained parts of in-use buildings.*
- (ii) *For other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried out lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development”.*

29. In this case there was a “retained part” of a building that was existing prior to [REDACTED] and which part is understood to have been in use for some time. However Regulation 40 (11) provides that “in use-building” means a building which:-

- (i) *is a relevant building (i.e. a building which is situated on the relevant land on the day planning permission first permits the chargeable development), 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.*

30. In this instance, whilst the initial building was in existence and in use on [REDACTED], that building did not contain a part that had been in lawful use for a continuous period of 6 months within the three years ending on [REDACTED], as the initial building did not have planning permission.

31. The chargeable development for CIL purposes is the development for which planning permission has been granted, which in this case is the building which was granted planning permission on [REDACTED].

32. On the evidence before me, I decide that the entire building (both the original building and the infill extension) should be included within the GiA for CIL purposes, rather than just the infill extension as proposed by the Appellant

33. I have checked the Gross Internal Area on site and I am satisfied that the Gross Internal Area of [REDACTED]m2, as submitted by the parties, is correct.

34. In their representations the CA have claimed that as the Appellant’s request for a review on [REDACTED] was out of time their e-mail of [REDACTED] was not a formal regulation 113 review. The CA claim that their e-mail was sent just to clarify why the development was liable to CIL and they therefore suggest that the appellant should not be allowed to appeal under regulation 114. However, the e-mail of [REDACTED] clearly states that the appellant had requested a review and that the e-mail is “the decision of the review and the reasons for the decision”. Having received such a decision the Appellant is in my view entitled to appeal under regulation 114.

35. I therefore determine the CIL payable in this case should be as per the CIL Liability Notice issued by the CA on [REDACTED]. This is as follows:

[REDACTED]

RICS Registered Valuer
Valuation Office Agency