Appeal Decision

by [redacted]

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

[redacted]

Email: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Planning Permission Ref. [redacted] ***granted by*** [redacted]

Location: [redacted]

Development: [redacted] ***Application for the rebuilding of*** [redacted] ***and conversion*** [redacted] ***to a single dwelling house and demolition*** [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 [redacted], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

a. The planning application dated [redacted] together with approved plans, drawings and associated documents.
b. The Decision Notice issued by [redacted] on [redacted].
c. The CIL Liability Notice issued by the CA on [redacted].
d. The appellant's request for a Regulation 113 review dated [redacted].
e. The letter from the CA dated [redacted] in response to the appellant's request for a review.
f. The CIL Appeal form dated [redacted] submitted by the appellant, under Regulation 114, together with documents and correspondence attached thereto.
g. The CA's representations to the Regulation 114 Appeal.

h. Further comments on the CA's representations prepared by the appellant and dated [redacted].

2. Planning permission for the above development was granted by [redacted] on [redacted]. The council implemented its CIL Charging Schedule for this location on [redacted].

3. Prior to the grant of the planning permission a previous application on the same site was approved on [redacted] as follows:-

- [redacted] – Removal of [redacted] and [redacted] and [redacted] and [redacted] to a [redacted] house and [redacted].

It is understood that work had commenced under this original permission but the [redacted] application, to which this appeal relates, was required since the original [redacted] had been demolished and a new [redacted] frame had been constructed which was not allowed for under the original permission. Under the new permission the [redacted] will be [redacted]m in height as opposed to [redacted]m under the [redacted] permission and the internal floor space of the new [redacted] will be [redacted]m as opposed to [redacted]m.

4. Following the grant of the more recent planning permission the CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted]. This is based on a net chargeable area of [redacted] square metres @ £[redacted] per square metre.

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

6. On [redacted] the CA completed a review of the CIL Charge and did not revise its calculation. Within the 'Reasons for Decision' the CA explains that the CIL liability relates to the chargeable development of [redacted] square metres (the new [redacted] floor space) from which existing floor space, comprising [redacted] extending to [redacted] square metres, has been deducted as it was considered that the [redacted] met the CIL Regulation 40 'in-use' test. The [redacted] frame that was present on the site at the date of the permission has not been taken into account (as existing floor space) since it does not constitute a building and, having no walls, is not capable of a measurement of internal floor space. The CA have also explained the reasons why it considers that neither transitional provisions nor self-build relief apply.

7. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that CIL should not have been charged. The appeal form indicated that the Appellant wished to appeal under Regulation 114 (Chargeable Amount Appeal).

8. The appellant's grounds of appeal for a nil charge are:-

i. CIL transitional arrangements to cover replacement applications and minor material amendments to pre-CIL applications have not been taken into account.

ii. The possibility of the appellant being able to claim self-build relief has been disregarded by the CA disallowing a dual commencement on the planning permission.

iii. The partial work carried out that revealed the extent of substantial timber decay and associated structural weakness/instability and the [redacted] aspect of these works in terms of the overall much larger scheme has not been adequately considered in respect of self-build relief.

iv. The necessary new frame cannot be considered as a 'building' to which the CIL regulations apply.

v. The current totally open structure is not capable of serving as habitable accommodation and cannot be considered as an area/structure/building that people are able to go into every day.

vi. The CIL demand was issued [redacted] days after the planning approval.

vii. The current [redacted] permission is clearly for the [redacted] which subject to the discharge of extensive pre-commencement conditions will cover all operational/construction works prior to final habitable occupation. The whole project has always been a self-build and should comply with the applicable CIL exemption.

9. The Council implemented its CIL Charging Schedule on [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge.

10. With regard to the first ground of the appeal, this appears to relate to the transitional provisions in CIL regulations 128A and 128B which allow certain qualifying developments to benefit from a reduced or zero charge. CIL Regulations 128A paragraph 2 and 128B paragraph 3 set out the qualification criteria which includes that the new planning permission is granted under S73 of the TCPA. This permission is granted under S73A TCPA and does not therefore meet the qualification criteria.

11. Grounds (iv) and (v) of the appeal (paragraph 8 above) relate to the frame being an open structure and not a building. This is not considered pertinent to the calculation of the CIL charge in as far as the development permitted is the entirely [redacted] and [redacted] rather than solely the erection of the frame. Regulation 9 of the CIL regulations 2010 states that chargeable development means the development for which planning permission is granted. The CIL liability under appeal therefore relates to the proposed development allowed by the planning permission [redacted] which is the [redacted] of the [redacted] and [redacted] of the [redacted] to a single dwelling house.

12. With regard to the grounds (ii), (iii) and (vii) (paragraph 8 above), these appear to relate to the self-build exemption provided under the CIL (Amendment) Regulations 2014. There is no authority for the appointed person to consider an appeal against a CA's decision not to grant self-build relief.

13. With regard to ground (vi) of the appeal, Regulation 65(1) states that the CA must issue a liability notice as soon as practical after the date on which a planning permission first permits development. The Liability Notice was issued [redacted] days after the planning permission and the CA has explained that it was awaiting legal advice in respect of a request made by the appellant's agent at the time. I do not consider that the [redacted] day delay in this case offends the 'as soon as practical' requirement placed on the CA.

14. The CA have based their calculations of the CIL liability on floor areas submitted on behalf of the appellant in the Planning Application Additional Requirement form. The gross internal area of the proposed development is stated as being [redacted] sq m and gross internal floor space of the retained existing building is given as [redacted] sq m. There would appear to be no dispute in the calculation of these areas.

15. Regulation 40(7) allows for the deduction of floor space of relevant 'in-use' buildings from the gross internal area of the chargeable development to arrive at a net chargeable area upon which the CIL liability is based. Regulation 40(11) of the CIL regulations 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 the planning permission first permits the chargeable development'.

The CA are satisfied that the [redacted] meet the 'in-use' definition and have therefore deducted the [redacted] sq m from the proposed floor space area of [redacted] sq m. The previous [redacted] was demolished prior to the day the planning permission first permitted the chargeable development and the Council have not considered the frame as a 'building' for the purposes of CIL Regulation 40 and therefore no deduction has been made for existing floor space associated with the [redacted].

16. Grounds (iv) and (v) of the appeal confirm that the frame is not a building and is an open structure which serve to reaffirm the CA's approach to not deducting any area in relation to it.

17. The CIL charge has been calculated at £[redacted] /sq m and neither this rate nor the net increase in floor area ([redacted] sq m) appears to be in dispute. Based on the information submitted by both parties I am therefore of the opinion that the CA's calculation of the charge is correct.

18. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore confirm a CIL charge of £[redacted] as stated in the Liability Notice dated [redacted].

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