

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]

Development: *Demolition of two houses and redevelopment of site to provide* [REDACTED]
[REDACTED]

Planning permission details: *Planning permission* [REDACTED] *was granted by* [REDACTED]
[REDACTED] *on* [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] ([REDACTED]: £[REDACTED]: £[REDACTED]).

Reasons

1. I have considered all the submissions made by [REDACTED] (the appellant) and the representations from the Collecting Authority (CA) [REDACTED].
2. Planning permission was granted on by [REDACTED] on [REDACTED] for 'Demolition of two houses and redevelopment of site to provide [REDACTED] reference [REDACTED].

3. On [REDACTED] the CA issued a Regulation 65 Liability Notice (LN) based on a net chargeable area of [REDACTED] square metres (sqm) in the sum of £[REDACTED]. They subsequently issued a further LN dated [REDACTED] based on a net additional area of [REDACTED] sqm in the sum of £[REDACTED].

4. The appellant requested a Review under Regulation 113 because he considered the Gross Internal Area (GIA) of the chargeable development and the existing floorspace to be netted off had both been calculated incorrectly.

5. The CA carried out a formal Review and confirmed that their decision was that the revised CIL charge of £[REDACTED] was correct.

6. The appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) dated [REDACTED] proposing the CIL charge should be reduced to £[REDACTED].

The grounds of the appeal were as follows:-

- a) The CA have provided an incorrect GIA for the consented scheme. They state [REDACTED] m2. The correct figure is [REDACTED] m2
- b) The CA have provided an incorrect GIA for the existing buildings. They state [REDACTED] m2. The correct figure is [REDACTED] m2 (the appellant has incorrectly added up the various areas on the appeal form, the individual areas stated add up to [REDACTED] sqm).
- c) The CA have applied an incorrect Indexation Uplift Factor of [REDACTED]% for [REDACTED] CIL and [REDACTED]% for [REDACTED] CIL. The BCIS All-in TPI for Q4 [REDACTED] was [REDACTED] and for Q4 [REDACTED] was [REDACTED], which provides an Indexation Uplift Factor of [REDACTED] %.

7. The CA submitted representations on [REDACTED] partially agreeing with the appellant's grounds of appeal for the reasons below:-

- a) The CA revised the GIA of the chargeable development to [REDACTED] sqm based on the plans of the proposed development as approved by the local planning authority and set out in Condition 2 of the planning permission.
- b) The CA also revised the GIA of the existing buildings to [REDACTED] sqm based on the plans of the existing buildings submitted by the appellant in support of his appeal. The CA now included the outbuildings which they had previously excluded. However, they excluded an area at first floor level at [REDACTED] being the area between the internal wall of the accessible areas and the eaves as they presumed it to be void and not accessible floorspace.
- c) Therefore, the CA proposed as part of their representations that the net additional area should be revised to [REDACTED] sqm.
- d) The CA's approach to the application of indexation is to fix the I_p figures (the BCIS All-in Tender Price Index figure for the [REDACTED] in the year preceding the grant of planning permission) it uses for all liability notices issued in a given year. The [REDACTED] figure that the council has been using for [REDACTED] liability notices for planning permissions granted in [REDACTED] is the figure as published for Q4 [REDACTED] on BCIS on [REDACTED]. This approach is taken on the basis that the figure applicable to liability notices is usually a forecast for about a year after the quarter to which the figure relates has past while the sample of tenders from which it is formulated is incomplete. The BCIS is only available to fee paying customers and having to change chargeable amounts and reissue liability notices every time a forecast index figure changes is impractical.
- e) The CA's approach given this uncertainty of the final indexation figure is considered a pragmatic approach. In this instance the figure forecasted for I_p on [REDACTED] this year was higher than the figure for I_p provided by the Appellant which is also a forecast figure and could rise or fall before the final tender submission that will complete the sample for the figure to become fixed is recorded.

8. The appellant subsequently provided comments on the CA's representations as follows:-
- a) The architect recalculated the GIA of the chargeable development using CAD drawings as [REDACTED] sqm.
 - b) The part of the first floor at [REDACTED] excluded by [REDACTED] was used by the previous owner, [REDACTED], as storage and the appellant provided a copy of an email from [REDACTED] confirming that 'the entire floor space on the upper floor of [REDACTED] was in use, including the eaves which was used for storage'.
 - c) As the permission was granted on [REDACTED] the relevant quarter for indexation is Q4 [REDACTED] and the figure is [REDACTED].
 - d) Both houses were occupied for more than half of the three years prior to planning permission being granted.
 - e) The measurements of the outbuildings were carried out by a professional third party surveyor.
 - f) The outbuildings should be taken into account in the calculations as they were used for storage, as a shed for bicycles, for storing lawnmowers, strimmers etc.

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

Calculation of the GIA of the chargeable development

10. I have been provided with various plans of the proposed development, some of which have detailed measurements and some which have not. I have considered both the stated measurements and have also taken check measurements and have come to the conclusion that the CA's proposed area of [REDACTED] sqm is reasonable and will adopt this as the area of the chargeable development. It would appear that the majority of the difference between this area and the revised area provided by the appellant relates to plots 6 to 10. The appellant provided detailed plans of these plots with annotated measurements and I have used these in considering the areas. In addition, I can confirm that I consider the whole of the second floors should form part of the chargeable development including that part that adjoins the bathroom as although its use is not indicated and it includes parts of the eaves, there is clearly a permanent access to it from the second floor landing.

Calculation of the GIA of existing 'in use' buildings

11. For buildings existing at the date planning permission was granted the floor space can be taken into account in the calculation under regulation 40 if it was in lawful use ('in 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, i.e. it is netted off from the area of the chargeable development.

12. The existing dwellings [REDACTED] have been agreed by the CA and the appellant as 'in use' for the purposes of Regulation 40 so I will accept this for the purposes of this appeal and make no further comment in this respect. However, there is still a difference of opinion over the area to be included in the GIA for the two houses. The CA have excluded an area on the first floor of [REDACTED] as they consider it was void and inaccessible. The appellant has provided a copy of an email from the previous owner confirming that the whole of the area on the first floor was in use with the eaves being used for storage. Having regard to this information and as the rest of the house has been accepted as 'in use', on balance I consider that this area should be included in the GIA.

13. I have been provided with plans of the existing houses. I have considered both the stated measurements and have also taken check measurements and have come to the conclusion

that the appellant's proposed area of [redacted] sqm including all the first floor at [redacted] is reasonable and will adopt this as the area of the existing dwellings.

14. There are a number of outbuildings which are also to be demolished as part of the development. The CA originally did not include these as 'in use' buildings given their very poor state of repair and difficulty of access. The appellant has stated that they were in use for storage purposes etc. and should be included. As the condition of the properties or difficulty with access do not in themselves preclude them from being 'in use' for the purposes of CIL, and as the CA have now accepted in their representations that these buildings should be included, I have included them together with the dwellings as forming the 'in use' buildings for the purposes of calculating the net additional area in this appeal. I have taken check measurements from the plans and can confirm that I consider the appellant's area of [redacted] sqm is reasonable and will adopt this as the area of the existing outbuildings.

15. I can confirm that on the basis of the area of the chargeable development being [redacted] sqm and the area of the 'in use' dwellings and outbuildings being [redacted] sqm, the net additional area is [redacted] sqm.

Calculation of the Indexation Factor

16. The definition of the appropriate index factor is in Regulation 40(6) as follows:-

(6) In this regulation the index figure for a given year is—

(a) the figure for [redacted] for the preceding year in the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors(a); or

(b) if the All-in Tender Price Index ceases to be published, the figure for [redacted] for the preceding year in the retail prices index.

17. There is no indication in the Regulations as to the date on which this factor should be calculated. The CA consider that it should be calculated adopting the BCIS All-in Price Tender Index as published on [redacted] whereas the appellant considers that it should be as published on a later date and they have provided a figure of [redacted] as published [redacted]. Although both figures are stated as being forecasts, as there is likely to be more data available at the later date this means that the figure will be more accurate. In addition, there is nothing specific in the Regulations to suggest that all planning permissions granted within a calendar year should have the same indexation factors. Therefore, I can confirm that I consider the approach of the appellant to be more reasonable and will adopt an index of [redacted] for [redacted].

18. The appellant has adopted the same indexation factors for both the [redacted] and the [redacted] CIL. However, the [redacted] CIL Schedule came into effect on [redacted], so the relevant date for calculating CIL is [redacted] with an index factor of [redacted].

19. On the evidence before me, having regard to the particular facts of this case, I conclude that the appropriate charge should be based on a net additional area of [redacted] sqm as set out below:-

[redacted]

Net chargeable area - [redacted] sqm @ £[redacted] = £ [redacted]

Plus indexation = £ [redacted]

(Index [redacted] - [redacted])
(Index [redacted] - [redacted])

[REDACTED]

Net chargeable area - [REDACTED] sqm @ £ [REDACTED] = £ [REDACTED]

Plus indexation = £ [REDACTED]

(Index 1 [REDACTED] - [REDACTED])
(Index 1 [REDACTED] - [REDACTED])

Total Charge

[REDACTED] = £ [REDACTED]
[REDACTED] = £ [REDACTED]
Total = £ [REDACTED]

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

