

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency



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

Appeal Ref: [REDACTED]



The erection of a pair of semi-detached dwellings and the demolition of the existing dwelling.

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED]).

An award to the Appellant for costs incurred will not be made.

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 Grant of Planning Permission [REDACTED] issued by [REDACTED] dated [REDACTED].
 - b. The CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL charge.
 - c. The CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL charge.
 - d. The corrected CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL charge.
 - e. The further corrected CIL Liability Notice [REDACTED] issued by the CA on [REDACTED] at £ [REDACTED] CIL charge.
 - f. The CIL Appeal Form dated [REDACTED] (which was presumably a typographical error intended to read [REDACTED]) submitted by the appellant under Regulation 114 and received [REDACTED], together with documents and correspondence attached thereto.
 - g. The CA's representations to the Regulation 114 Appeal dated [REDACTED].

h. Further comments on the CA's representations and an Application for Award of Costs prepared by the appellant and dated [redacted].

i. The CA's comments and representations in response to the Application for Award of Costs by the appellant and dated [redacted].

j. Further comments dated [redacted] from the appellant on the CA's comments and representations, along with copies of drawings prepared by Create It Studios (NW) Ltd., invoices for the same, and a letter from the latter dated [redacted] regarding how the second floor storage areas were marked on the plans.

2. Planning permission for the development was granted by [redacted] on [redacted] [redacted] reference [redacted].

3. A CIL Liability Notice was issued by the CA on [redacted] for the amount £ [redacted] based on the CA's assessment of GIA for the proposed development of [redacted] m², with no deduction in GIA for an existing building.

4. The appellant requested a Regulation 113 Review of Chargeable Amount.

5. The CA issued its decision to amend the Chargeable Amount in a further CIL Liability Notice issued on [redacted] for the amount £ [redacted] ([redacted]), which reflected a deduction of [redacted] m² from the GIA to off-set the existing building.

6. The CA reassessed the GIA for the proposed development at [redacted] m² and issued a further CIL Liability Notice later in the day on [redacted] for the amount £ [redacted] ([redacted]).

7. This was obviously an error, as the CIL charge remained at the previous figure, and the CA issued a further corrected CIL Liability Notice later in the day of [redacted] for the amount £ [redacted] ([redacted]).

8. The CA calculated the CIL charge as follows:-

$$\begin{aligned} & \text{m}^2 \text{ GIA of the proposed development} \\ & \text{Less GIA of existing development } \text{m}^2 \\ & = \text{m}^2 \times \text{£} / \text{m}^2 \times \text{ [redacted] } \text{ (index multiplier)} \\ & = \text{£} \text{ [redacted] CIL Charge} \end{aligned}$$

9. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL charge should be £ [redacted] ([redacted]).

10. The appellants grounds of appeal are:-

In relation to the final CIL Liability Notice dated [redacted] for £ [redacted], the appellant believes this should actually be calculated as follows:-

$$\begin{aligned} & \text{m}^2 \text{ GIA of the proposed development} \\ & \text{Less GIA of existing development } \text{m}^2 \\ & = \text{m}^2 \times \text{£} / \text{m}^2 \times \text{ [redacted] } \text{ (index multiplier)} \\ & = \text{£} \text{ [redacted] CIL Charge} \end{aligned}$$

11. On [redacted] the Valuation Office Agency received an Application for Award of Costs prepared by the appellant on the basis that their challenge to four CIL Liability Notices issued by the CA had taken forty hours of the appellant's time, and that the CA had failed

to follow good practice and had therefore frustrated a reasonable and efficient resolution to the situation. Furthermore, the CA's actions had, in the appellant's opinion, resulted in them having to instruct their architect at short notice to prepare floorplans for the existing building at a cost of £ [REDACTED] in fees.

12. With regard to the main ground of appeal relating to the level of CIL charge proposed by the appellant, there are two issues:-
 - i. The GIA of the proposed development.
 - ii. The GIA of the existing building.
13. With regard to i. the GIA of the proposed development, the CA have treated the pair of semi-detached dwellings as being one building, and have measured through the party wall, arriving at a total GIA of [REDACTED]m². The appellant is of the opinion that GIA should, in accordance with RICS Code of Measuring Practice 6th Edition, be measured to the internal face of the perimeter of each dwelling and the total added together with a resultant total GIA of [REDACTED]m².
14. With regard to ii. the GIA of the existing building, the CAs initial calculation of the existing building GIA at [REDACTED]m² does not include the two permanent outbuildings of [REDACTED]m² each, but does specifically include the garage as per the CAs breakdown of their GIA calculation. They also state that they have excluded some of the loft space on the second floor, as it was not realised from the plans that this was walk-in storage. The appellant confirms that this is all walk in storage of 1.6m head height accessed via doors from the other rooms, and that if the missing areas are included in GIA the total would be [REDACTED]m².
15. Considering i. The GIA of the proposed development, The RICS Code of Measuring Practice 6th Edition section 2.1 states that areas occupied by internal walls and partitions should be included in GIA. Furthermore, *GIA Note 2 - Separate buildings* - further states that "GIA excludes the thickness of perimeter walls, but includes the thickness of all internal walls. Therefore it is necessary to identify what constitutes a separate building".
16. The RICS Code of Measuring Practice sets out the method of calculating GIA but it does not give guidance on what has to be measured for CIL purposes. As Regulation 40 refers to the GIA of "the chargeable development" this would in my opinion seem to point to calculating the GIA of the whole development, treating the two semi-detached dwellings as one building, and thus treating the party wall as an internal partition to be measured through for GIA purposes.
17. The GIA of the proposed development should thus be [REDACTED]m² as per the CA's calculation based on the floor plans.
18. Considering ii. The GIA of the existing building, the two permanent outbuildings of [REDACTED]m² GIA each have been excluded from the total GIA, and also three areas of walk-in storage space in the 2nd floor totalling [REDACTED]m² net internal floor area taken directly from floor areas marked on the architects plans submitted by the appellant were excluded from the total GIA. The CA confirm this latter floor space was excluded as they did not realise it was walk-in space of 1.6m head height accessed via doors in the other 2nd floor room space.
19. The Appellant calculates the GIA of the existing buildings total at [REDACTED]m³. If the CAs calculation of GIA at [REDACTED]m is deducted from this figure, the difference between the two GIA calculations is [REDACTED]m². From this figure, the two permanent outbuildings of [REDACTED]m² GIA each, i.e. [REDACTED]m² total GIA, may be deducted to arrive at a difference in the two GIA calculations of [REDACTED]m².
20. The known net internal floor area of the 2nd floor storage totals [REDACTED]m² from individual "room" areas marked on the plans. Therefore if this figure is deducted from the total

27. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £ [redacted] ([redacted]) and no award for costs will be made.

26. The CA are of the view that as part of the normal planning process floor plans of the existing building should already have been submitted when the Planning Application was made, and that if these had been provided when requested they would have been able to calculate the GIA much earlier, and that the appellant unnecessarily incurred additional costs when instructing their architect to calculate GIA. This would indeed appear to be the case, and under these circumstances an award for costs will not be made.

25. The appellant was asked to provide floor plans of the existing development on [redacted] as part of the Regulation 13 Review. On two occasions the appellant only provided topographical plans, from which it was not possible to calculate GIA. A period of over two weeks elapsed before the appellant provided adequate plans on [redacted], along with their architect's calculation of GIA, which the CA had not requested (as it is the CA's duty to calculate GIA themselves). Also, the appellant did not instruct their architect to provide these plans until around [redacted], despite having been asked by the CA on [redacted]. By this time the matter had become urgent due to the deadlines in place, and had to be dealt with very quickly by the architect and at additional cost to the appellant.

24. With regard to the Application for Award of Costs, the main issue would appear to be whether the CA already had sufficient information to calculate the GIA of the existing building, but were unable to competently measure GIA, thus necessitating the appellant to incur costs getting further plans drawn. From the comments made by the CA along with copies of correspondence from the CA to the appellant, the CA were not initially provided with clear plans, so they used what information they had to calculate GIA, and requested plans on a number of occasions from the appellant. It would appear the CA did not therefore act unreasonably and followed good practice in continuing to request the plans on a number of occasions.

$$\begin{aligned} & \text{m}^2 \text{ GIA of the proposed development} \\ & \text{Less GIA of existing development } \text{m}^2 \\ & = \text{m}^2 \text{ chargeable development} \times \text{£} / \text{m}^2 \times \text{m}^2 \text{ (index multiplier)} \\ & = \text{£} \text{ CIL Charge} \end{aligned}$$

23. Utilising the GIAs of the proposed development and the existing building as determined above, the CIL charge will be calculated as follows:-

22. The Appellant's proposed existing building GIA of [redacted] m² therefore appears to be supported by the information provided.

21. This [redacted] m² remaining difference between the party's calculations of GIA would be further reduced when the thickness of partition walls is included in the measurements to arrive at a GIA measurement for that space, thus making any further difference in existing building GIA negligible.

outstanding difference between the two GIA calculations ([redacted] m² less [redacted] m²) the remaining difference is [redacted] m².