Appeal Decision

by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency
[redacted]

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

Appeal Ref: [redacted]

Address: [redacted]

Proposed Development: Retrospective consent for replacement garage.

Planning permission details: Planning Permission granted on [redacted] ***under 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] of [redacted] on behalf of [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 Decision Notice issued by [redacted] on [redacted].
b. The CIL Liability Notice issued by the CA on [redacted].
c. The appellant's request for a Regulation 113 review dated [redacted].
d. The letter from the CA dated [redacted] in response to the appellant's request for a review.
e. The CIL Appeal form dated [redacted] submitted on behalf of the appellant under Regulation 114, together with documents and correspondence attached thereto.
f. The CA's representations to the Regulation 114 Appeal dated [redacted] together with Appendices labelled A-J.
g. Further comments on the CA's representations sent on behalf of the appellant in a letter dated [redacted].

2. Planning permission for the above development was granted retrospectively by the [redacted] on [redacted]. The Authority implemented its CIL Charging Schedule on [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge.

3. The CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted]. The calculation is based on a chargeable area of [redacted] square metres @ £[redacted] per square metre.

4. On [redacted] the Valuation Office Agency received a CIL appeal under regulation 114 (a chargeable amount appeal) contending that the chargeable amount should be nil.

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

a. The development is exempt from a CIL charge as it falls to be a minor development under Regulation 42 of the Community Infrastructure Levy Regulations 2010 (as amended). The Liability Notice confirms that the gross internal area (GIA) is below 100 sq m, (stated as [redacted] sq m) and is therefore below the threshold limit where charging would apply. Notwithstanding this, the appellant also considers that a garden store measuring [redacted] sq m should be deducted from the GIA at [redacted] sq m in order to comply with the RICS definition of gross internal area.

b. The Liability Notice was served on [redacted] whilst the planning permission was granted much earlier in [redacted]. Guidance states that Liability Notices should be issued as soon as reasonably practical after permission is granted and the CA has been unreasonable in its delay.

c. The CIL charge must be calculated on the basis of the permitted use. The permitted development is an ancillary garage outbuilding not primary accommodation and is not a separate dwelling or a self-contained annex that might offend the minor development exemption. For the appeal building to be used as a dwelling or as an annex would require express planning permission for the use along with the operational development to enclose the garage bays, which would in itself be development subject to the CIL Regulations and a charge, if necessary. The CA's calculation of the CIL charge is therefore based on an unfounded speculation of an alternative development and includes a garden store which should not be included in the calculation in any event.

d. The CA has placed some reliance on the alleged presence of a bathroom in deeming the development to be an annex, and hence a new dwelling unit, whereas in fact it is only a WC.

e. The appellant confirms that he has not made any application for self-build relief since it could not have been reasonably foreseen that the CA would deem a detached garage building, stated to be for vehicular and secure storage, to be an annex with a wholly contradictory use. Similarly he has not claimed any deduction in respect of a previously demolished garage since the garage had already been demolished by the permission date.

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

a. The development is deemed to be an annex. The drawings show a bathroom and references are made to the development being ancillary accommodation to the use of the main house. In the opinion of the CA an annex is defined as being where accommodation is being provided in an outbuilding, or where there is clearly scope for the building to function as a separate unit of accommodation without the need for a further application to be submitted.

b. A condition restricting the use as 'ancillary to the main dwelling' is not relevant since the CA's charging schedule states that 'any restrictive occupancy conditions do not prevent exemption from CIL Liability'.

c. Since this was a retrospective planning permission the commencement date of the development is deemed to be the date the planning application was granted – [redacted], hence since the development had already commenced at the time the planning permission was issued, annex relief cannot be applied. This is in accordance with regulation 42B(2(a)) of the CIL Regulations 2010 (as amended).

d. In relation to the calculation of the GIA the CA maintains that [redacted] sq m is the correct area based on the approved plans which shows the single building for which permission was sought.

e. The appellant has made reference to Regulation 42(1) of the CIL Regulations in relation to a 'minor development exemption' (under 100 sq m). However Regulation 42(2) states that this does not apply where the development comprises one or more dwellings. In the view of the CA the development is deemed to be an annex and is therefore to be treated as a new dwelling for the purposes of CIL.

f. The CA has kept the appellant advised of the potential CIL liability throughout the planning process from [redacted]. The delay in issuing the Liability Notice is unfortunate but the notice was served as soon as reasonably practical and the delay was in part due to land registry searches.

7. In respect of the main ground of the appeal, being the application of minor development exemption (paragraphs 5(a), (c), (d) and (e) above), Regulation 42(1) of the CIL Regulations 2010 (as amended) states "*Liability to CIL does not arise in respect of a development if, on completion of the development, the gross internal area of new build on the relevant land will be less than 100 square metres*". Regulation 42(2) then states "*But paragraph (1) does not apply where the development will comprise one or more dwellings.*" It does not appear to be in dispute that the gross internal area of the development in this case is less than 100 sq m (although there is a dispute as to whether it should be [redacted] sq m or [redacted] sq m). What is in dispute is therefore whether the development '*will comprise*' a dwelling.

8. The appellant is of the view that the development comprises a garage with the use stated within application documents and shown on approved plans as vehicular and secure storage and hence, in his view, it is not a dwelling. On the basis of their view that the building has scope to be used as a separate dwelling the CA has deemed the development to be an annex and therefore considers it correct to treat the development as a new dwelling for the purposes of CIL. The CA defines an annex as being where accommodation is being provided in an outbuilding, *or where there is clearly scope* for the building to function as a separate unit of accommodation without the need for a further application to be submitted. There is no provision for deeming accommodation to be an annex or a dwelling within the CIL Regulations 2010 (as amended).

9. Regulation 42(2) only nullifies Regulation 42(1) of the minor development exemption where the development **will comprise** one or more dwellings. The CIL Regulations define a dwelling as "a building or part of a building occupied or intended to be occupied as a separate dwelling". There is no reference to a dwelling being ancillary or otherwise and in this case I do not consider the restrictive occupancy condition to be relevant to the issue. The development is for a replacement garage, approved plans show a WC, stores and vehicle bays and there is no evidence available to me that confirms the development is or will be used as a new dwelling. I therefore consider the development qualifies as an exemption for minor development under Regulation 42.

10. With regard to the second ground of appeal (paragraph 5(b) above), the delay is indeed unfortunate but the Regulations are not expressive as to the effect of any unnecessary delay.

11. On the evidence before me I conclude that is it appropriate that there should be a £[redacted] ([redacted]) charge in this case.

[redacted] BSc(Hons) MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]