

Appeal Decision

by [REDACTED] BSc (Hons) 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]

Planning Permission Ref. [REDACTED]

Proposal: Deconversion of 2 residential units into a dwelling house, involving alterations to rear fenestration at lower ground floor, erection of a single storey rear infill extension at upper ground floor and a rear extension at 1st floor, together with erection of a rear dormer, plus installation of 2 front roof lights.

Location: [REDACTED]

Decision

I consider that a Community Infrastructure Levy (CIL) charge of £ [REDACTED] ([REDACTED] [REDACTED]) is not excessive and I therefore dismiss this appeal.

Reasons

1. I have considered all of the submissions made by [REDACTED] (the appellant) and by [REDACTED], the Collecting Authority (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-
 1. CIL Appeal form dated [REDACTED], including grounds of appeal;
 2. Planning application form dated [REDACTED];
 3. CIL Liability notice and covering letter dated [REDACTED];
 4. Plans ref [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED] (undated);
 5. Planning decision notice dated [REDACTED];
 6. Email chain between the appellant and the CA including a request for a Regulation 113 review and the response from the CA, dated between [REDACTED] and [REDACTED].
 7. Representations from the CA dated [REDACTED] and [REDACTED]; and
 8. Comments on the CA's representations from the appellant dated [REDACTED] and [REDACTED].

2. Planning permission was granted under application no [REDACTED] on [REDACTED] for the deconversion of two residential flats into a single dwelling house, including an extension to the existing floor space. The Charging Authority issued a CIL liability notice on [REDACTED] in the sum of £[REDACTED]. This is calculated on a chargeable area of [REDACTED] square metres, at a rate of £[REDACTED] plus indexation for [REDACTED] CIL and £[REDACTED] plus indexation for [REDACTED] CIL.
3. On [REDACTED], the Valuation Office Agency received a CIL appeal made under regulation 114 (chargeable amount) contending that the CIL liability should be £[REDACTED].
4. The appellants grounds of appeal can be summarised as follows:
 - a) The property was purchased as one freehold and whilst it had been sub divided into two flats, this was done without planning permission and was not in line with building controls. The intention of the appellant is to restore the house to its correct status as a single dwelling, which it has legally always been. Therefore, no new dwelling is being created and this is an extension to enlarge an existing dwelling.
 - b) The extension is less than 100m².
 - c) Another property in [REDACTED] (Planning ref [REDACTED], [REDACTED]) was divided up and then refurbished as a single dwelling following a fire. This is a comparable property and was not charged CIL.
5. The CA has submitted representations that can be summarised as follows:
 - a) The property was historically converted into two 3-bedroom flats without planning permission, but they have been registered for council tax since [REDACTED] and therefore it was assumed that the existing use could be accepted as lawful use.
 - b) The conversion of two flats to one single home is classed as a new residence and therefore comprises a "new dwelling." Hence the extra increase in floor space will be liable for CIL even if it is under 100m², as per Regulation 42.
 - c) The proposal is to bring the property back to a single dwelling house with additional floor space. The GIA of the new development is [REDACTED]m², an increase of [REDACTED]m² on the existing GIA of [REDACTED]m². The existing development was considered to have been in lawful use and therefore only the additional space has been charged on.
 - d) The comparable property provided by the appellant should have been liable for CIL and the CA have stated their intention to now issue a liability notice.
6. The CIL Regulations Part 6: Exemptions and Reliefs, s.42 concerns the exemption of minor development as follows:

"42.—(1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

(2) But paragraph (1) does not apply where the development will comprise one or more dwellings.

(3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings."

7. CIL is charged on "chargeable development" which is defined in the CIL Regulations Part 2, s. 9 as "the development for which planning permission is granted." In this case, planning permission is granted for "Deconversion of 2 residential units into a dwelling house..." The chargeable development therefore comprises "one or more dwellings" and is not eligible for minor development exemption, regardless of size.
8. The CA states that the Gross Internal Area (GIA) of the chargeable development is [REDACTED]m² and the existing floor space is [REDACTED]m², resulting in additional space of [REDACTED]m². The appellant has not disputed these areas and they are supported by the design and access statement, which shows additional space of [REDACTED]m².
9. The CIL regulations allow for the retained parts of in-use buildings to be deducted from the GIA of the chargeable area. An in-use building is defined as a building that "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." The CA have stated that they have accepted the use of the building as lawful and there has been no suggestion that the building should not be classified as in-use. I have therefore deducted the GIA of the existing building from the GIA of the chargeable area as follows:

GIA of Chargeable Development	[REDACTED]m ²
GIA of in-use buildings	[REDACTED]m ²
Net Chargeable Area	[REDACTED]m ²

10. I have reviewed the [REDACTED] CIL charging schedule and I have confirmed that the property falls under Zone B Residential and therefore attracts a rate of £[REDACTED] per square metre, plus indexation. I have also reviewed the [REDACTED] charging schedule which shows a rate in [REDACTED] of £[REDACTED] per square metre, plus indexation.
11. On the basis of the evidence before me I conclude that the CIL charge calculated in this case of £[REDACTED] ([REDACTED]) is not excessive and I therefore dismiss this appeal.

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Valuation Office Agency
[REDACTED]

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