Appeal Decision

By [redacted] BSc(Hons) MRICS

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

Valuation Office Agency

[redacted]

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

Appeal Ref: [redacted]

Address: [redacted]

Proposed Development: Construction of 2No. 3 bed dwelling house (including basement accommodation) with rear plot boundary alteration.

Planning permission details: Granted on [redacted] under reference [redacted].

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] of [redacted] (the Appellant) and by the [redacted], the Collecting Authority (CA).

2. Planning permission for the above development was granted by the [redacted] on [redacted]. The Council implemented its CIL Charging Schedule on [redacted] and the [redacted] Charging Schedule came into effect on [redacted].

3. It is understood that prior to the grant of the above mentioned planning permission the recent planning history was as follows:-

- [redacted]. Conversion of existing mixed use premises into two cottages. Change of use on ground floor from A1 to C3 and associated alterations to fenestration.

- [redacted] Variation of condition U92532 (approved drawings) of planning permission [redacted] to include the construction of basements and rear extensions.

4. Following grant of the planning permission the CA issued a CIL Liability Notice (reference [redacted]) on [redacted] in respect of both [redacted] and [redacted] CIL. These are both based on a chargeable area of [redacted] square metres. [redacted] CIL has been charged @ £[redacted] per square metre plus indexation in the sum of £[redacted] and [redacted] CIL @ £[redacted] per square metre plus indexation in a sum of £[redacted] giving a total liability of £[redacted].

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

6. On [redacted] the CA completed the review of the CIL Charge and concluded that the chargeable amount stated on the Liability Notice with reference [redacted] had been correctly calculated.

7. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount).

8. The appellant contends that the CIL Charge calculated by the CA should be £[redacted] as previously notified to them by the CA on [redacted] in a Liability Notice in respect of an earlier planning approval ([redacted]) because:-

a. The current planning permission is a replacement planning permission for the same development as was previously approved and is not a new permission for a new development. The appellant explains that work had commenced under the first planning application but due to structural issues during the construction process, the front and right elevation and roof had to be taken down and reinstated. The current planning application was required since the building was then to be new build but the layout and size were exactly the same as approved under the previous permission.
b. The appellant considers that under Section 40 of the CIL Regulations 2010 (as amended) the floor space of the original building should be deducted with the calculation of the net chargeable area since the calculation should be considered at the point planning permission is <u>first</u> granted for the chargeable development. The appellant considers that planning permission for this development was first granted in [redacted] at which point original building was still there and the CIL should therefore only be calculated on the increase in square meterage, being the basement level only.
c. The Council required a new application be submitted, rather than a variation. The permission is for the same development as was previously granted permission.
d. These are exceptional circumstances and relief should be made available by the Council under Section 55 of the CIL Regulations.
e. The project is not viable with a CIL charge of £[redacted].
f. The CIL should be calculated on the additional space ([redacted] sqm).

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

a. Regulation 9(1) requires the CA to determine the liability and the chargeable amount based on the planning permission granted, which in this case is the [redacted] permission and is for the construction of dwellings.
b. As the existing building was demolished prior to the grant of planning permission for the chargeable development, it does not qualify as being a 'relevant building' and no demolition credit can be used in the calculation of the CIL chargeable amount.
c. The reason that the new planning application was required to be submitted is not material to the application of the CIL Regulations. The development in question however was changed, as it was no longer for conversion of premises to 2 dwellings

but the construction of 2 dwelling houses. A difference that was material enough to require a new full planning application be submitted rather than an amendment to previously granted permissions.

d. The CA, as allowed for within Regulation 55, has not made relief for exceptional circumstances available in its area. It is therefore not possible for it to grant any such claims.
e. The chargeable amount must be calculated in accordance with Regulation 40 and the viability of the development is not a consideration when determining chargeable amount.
f. The chargeable amount must be calculated for the chargeable development, which is the planning permission that has been granted. The building that had existed on the site was no longer on the site at the time 'planning permission first permits' and therefore was not eligible to be deducted.

10. With regard to the grounds a), b) and f) of appeal the appellant is effectively contending that the existing building should be netted off the area of the chargeable development. The history of the site is such that planning applications consented various alterations to the existing property and works relating to that development were commenced. During those works the building became unstable to the point that the original building had to be demolished and a fresh application was required to develop two new dwellings on the site ([redacted]). In order for the existing building area to be netted off the new dwelling area within the net chargeable area calculation, that building has to be a "relevant building" and "in use" under Regulation 40 (11) of the CIL Regulations 2010 (as amended). A relevant building is defined as a "building which is situated on the relevant land on the day planning permission first permits the chargeable development".

Under Regulation 8 (2) of the CIL Regulations 2010 (as amended) "the time at which planning permission first permits development" is defined as "the day that planning permission is granted for that development". In this case the development is the construction of 2 dwelling houses (the previous permission being for the conversion of the original building into 2 cottages) and permission for this development was granted on [redacted], by which time the original building had already been demolished. I therefore conclude that the area of the original building cannot be consider to be a 'relevant building' and cannot therefore be netted off the area of the new development as the existing property had been demolished prior to the granting of the permission [redacted].

11. Grounds c), d) and e) (in respect of the reason for the most recent application being a new application and not a variation; the availability of relief in exceptional circumstances; and the viability of the development) are not matters that the Regulations allow me to consider within an appeal.

12. There would appear to be no dispute as to the area of the chargeable development, the rates or indexation applied and on the evidence before me I therefore dismiss this appeal and confirm a total CIL charge of £[redacted] as set out in the Liability Notice dated [redacted].

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