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]

Planning Permission Ref: [redacted] ***granted by*** [redacted] ***on*** [redacted]

Location: [redacted]

Development: Retention of Detached Outbuilding to be used as Ancillary Guest Accommodation

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Decision

Appeal dismissed.

Reasons

1. I have considered all the submissions made by [redacted] (the appellants) 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 appellants' request for a Regulation 113 review dated [redacted].
d. The letter from the CA dated [redacted] in response to the appellants' request for a review and an amended CIL Liability Notice of the same date.
e. The CIL Appeal form submitted by the appellants as a Regulation 114 Chargeable Amount appeal, together with documents and correspondence attached thereto received by the VOA on [redacted].
f. The CA's representations to the Regulation 114 Appeal dated [redacted].
g. Further comments on the CA's representations sent by the appellants in an email dated [redacted].

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

3. Prior to the grant of this permission I understand that previous approvals on the same site were as follows:-

- [redacted] – Planning permission for alterations and extension to existing garage and conversion to ancillary accommodation granted on [redacted].
- [redacted] – Planning permission for construction of basement to the existing ancillary recreational accommodation granted on [redacted].
- [redacted] – Non material amendment approved for rendered wall to rear (log and bike store) with a wooden door [redacted] m and removal of the two light wells to basement approved on [redacted].

4. I understand that at the time of the basement construction in [redacted], the original garage was demolished and when it became apparent to the planning authority that the outbuilding on the site was a new building, a retrospective application was required and it is the CIL liability in respect of this permission dated [redacted] that is the subject of this appeal.

5. Following the grant of the retrospective planning permission the CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted]. This was based on a net chargeable area of [redacted] square metres @ £[redacted] per square metre (sq m).

6. On [redacted] the appellants requested a review of the CIL charge under Regulation 113 of the CIL Regulations 2010 (as amended) and following their review the CA issued an amended liability notice in the sum of £[redacted] based on a reduced net chargeable area of [redacted] sq m @ £[redacted] per sq m.

7. On [redacted] the appellants submitted an appeal made under Regulation 114 (a chargeable amount appeal) to the Valuation Office Agency contending that the CIL charge should be £[redacted] based upon a net chargeable area of [redacted] sq m @ £[redacted] per sq m, although in a letter attached to the appeal form the appellants contest that the CIL charge should be [redacted].

8. The grounds of the appeal are that the development of the basement and that of the ancillary accommodation on the ground and first floors are two separate developments constructed separately and as a part of separate planning permissions. The appellants consider that the basement is a distinct and lawful development which was permitted under [redacted] and implemented in full and hence its area should not be included within the calculation of the CIL liability in respect of the later planning permission ([redacted]). The appellants are of the opinion that the only chargeable development in relation to the later permission is in respect of the ground and first floors. Furthermore, since the area of these falls below the 100 sq m threshold as specified within the minor development exemption detailed in Regulation 42(1), there should be a [redacted] charge.

9. Nevertheless, should it be decided that the area of the basement is to be included within the chargeable area calculation, the appellants contend that its floor area should then be deducted as a retained part of an in use building within the deemed net chargeable area formula calculation set out in Regulation 40(7) since it has been in lawful use for the relevant six month period Kr (i) and in any event would also qualify under Kr(ii).

10. Within its representations the CA explains that permission [redacted] retrospectively approved the construction of the outbuilding to provide ancillary guest accommodation and it was required to rectify an unlawful development since it had transpired that the original building on the site had been demolished and the outbuilding (including the basement) was a new building and was not built in accordance with previously approved permissions and plans. The CA therefore maintains that the whole development is liable to CIL as the development was not built in accordance with the previously approved permission and plans to 'alter and extend the existing garage' and the outbuilding (including the basement) is a new building which was made lawful in [redacted] when permission [redacted] was granted.

11. The CA also explains that in issuing the first liability notice it had relied on areas provided by the appellants but on review officers had measured approved plans and found these areas to be incorrect and had therefore issued an amended notice using the reduced areas.

12. The CA acknowledges that it has discounted the floorspace of the original garage as being 'in-use', when in the strict sense of Regulation 40(11) it should not have as the building was not situated on the land on the day planning permission first permits the chargeable development'. As a gesture of goodwill the [redacted] is continuing to allow this floorspace to be discounted and maintains a CIL charge of £[redacted] in accordance with the revised Liability Notice.

13. The CA implemented its CIL Charging Schedule on [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge.

14. Regulation 9 of the CIL Regulations 2010 (as amended) states that chargeable development means the development for which planning permission is granted. The CIL liability under appeal therefore relates to the development allowed by the planning permission [redacted] which is for the 'retention of detached outbuilding to be used as ancillary guest accommodation'. The permission is therefore in relation to the entire building including the basement, a point which is further confirmed within the conditions to the permission which state that 'the basement at lower ground floor level *hereby permitted* shall be used for ancillary domestic storage only..'.

15. The appellants contend that an earlier planning permission exists for the basement and that it was built in accordance with that approval and hence it was a lawful development in itself and should not have been included within the retrospective planning permission. The appellants have provided a surveyor's opinion that the basement was physically constructed in accordance with the previously approved plan of the basement. As noted in paragraph 14 above it is clear that the retrospective planning approval refers to the detached outbuilding as a whole and hence the chargeable development includes the entire building. Notwithstanding this I consider that the retrospective permission correctly included the basement since the permission that originally allowed the construction of the basement was as a *basement to the existing ancillary recreational accommodation*. Whilst the basement may have been physically constructed to accord with the approved plans for the basement floor level in terms of its size and construction, it did not accord with the permission description or the approved plans in their entirety which show the ground and first floors as existing ancillary recreational accommodation. Therefore the original planning permission in relation to the basement was not built in accordance with the original permission and the retrospective permission correctly included the entire building.

16. Regulation 40(7) of the CIL Regulations 2010 (as amended) allows for the deduction of floorspace of retained parts of relevant buildings (K) from the gross internal area of the chargeable development (G) to arrive at a net chargeable area (A) upon which the CIL liability is based. It also allows for deduction of parts of in-use buildings that are to be demolished (E). The formula for the calculation of A is as follows:

$$G_R - K_R - \frac{(G_R \times E)}{G}$$

17. To qualify as a deduction as a retained part (K), relevant floor areas must either be, (i) part of an 'in-use building', or (ii) be a part where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development. An 'in use building' must have contained a part that has been in lawful use for a qualifying time period. Since the basement was not built in accordance with approved plans in the earlier planning permission ([redacted]) i.e. as a basement to ancillary recreational accommodation, it does not qualify as having been in lawful use and hence does not qualify as a retained part deduction under either of the two categories for K possible within a net chargeable area calculation.

18. The CA have made a deduction for the area of the original building within their calculation of the net chargeable area shown on both the original and amended liability notices. Parts of demolished buildings are only allowable as a deduction (E) within the net chargeable area calculation if they are within 'relevant buildings'. Regulation 40(11) defines a relevant building as a building which is situated on the relevant land on the day planning permission first permits the chargeable development, in this case [redacted]. On that date the original building had already been demolished and should not therefore qualify as a deduction.

19. It would appear that there is no dispute as to the application of the rate of £[redacted] per sq m or the floor areas shown within the revised liability notice as follows:

Total development: [redacted] sq m
Demolitions: [redacted] sq m
Net Chargeable Area: [redacted] sq m

20. I can only decide an appeal in accordance with the CIL Regulations 2010 (as amended) and cannot allow for a deduction of the original building that had been demolished prior to the date of the planning permission. Therefore on the basis of the evidence before me and having considered all of the information submitted in respect of the calculation of the net chargeable area within the CIL charge calculation, I do not consider that CIL charge detailed within the original Liability Notice dated [redacted] to be excessive and I therefore dismiss this appeal.

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