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]

Planning Permission Ref. [redacted]

Proposal: Retention of two dwellings ([redacted] and [redacted] houses) with associated hard and soft landscaping and parking

Location: [redacted]

Decision

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

Reasons

2. 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:-
   a) CIL Appeal form dated [redacted], including grounds of appeal;
   b) CIL additional information form dated [redacted];
   c) Section 106 agreement dated [redacted];
   d) CIL Liability notice dated [redacted];
   e) CIL demand notice dated [redacted];
   f) Plans ref C/01, C/02, C/03 and S/01 dated [redacted], C/11 and C/12 dated [redacted] and drawing [redacted];
   g) Planning decision notice ref [redacted] dated [redacted];
   h) Planning decision notice ref [redacted] dated [redacted];
   i) Regulation 113 review request dated [redacted] and response dated [redacted];
   j) Representations from the CA dated [redacted]; and
   k) Appellant's comments on the representations from the CA dated [redacted].

3. Planning permission was originally granted on [redacted] under reference [redacted] for "Demolition of existing dwelling and erection of a pair of [redacted] with dormer extension and roof lights."

4. The development was subject to enforcement action by the CA in [redacted] due to non-compliance with approved plans. Planning application reference [redacted] was then submitted and refused.

5. Planning permission was subsequently granted on [redacted] under reference [redacted] for "Retention of two dwellings ([redacted] and [redacted] houses) with associated hard and soft landscaping."

6. The CA served a CIL Liability Notice on [redacted] in the sum of £[redacted], calculated on a chargeable area of [redacted] m². CIL has been charged at the Residential (Lower) rate of £[redacted] per m² plus indexation for [redacted] and at £[redacted] per m² plus indexation for [redacted] CIL.

7. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (Chargeable amount) contending that the CIL liability should be £[redacted] ([redacted]).

8. The appellant's grounds of appeal can be summarised as follows:

   a) The development was not a new build, it was an amendment to an existing development. CIL has been charged on the whole of the original development and not the variation, which was for the addition of a loft room and bathroom.

   b) The CIL payment should not be charged as the buildings were already built and completed.

   c) The planning department did not mention CIL during the application process and no CIL application was completed.

   d) The CIL Charging Schedule did not come into force until [redacted], after the original planning consent was granted

   e) The original dwelling, garage and outbuilding measured approximately [redacted] m² and therefore the CIL charge should be based on [redacted] m² rather than [redacted] m².

9. The CA has submitted representations that can be summarised as follows:

   a) The as-built development was not constructed in accordance with the permission granted under [redacted]. Planning permission was granted under reference [redacted] to regularise the development.

   b) Chargeable development is the development that is granted planning permission. Planning permission was for the full development and was not related to the dormer only.

   c) The existing buildings cannot be netted off from the chargeable area. They were not in lawful use as they were not constructed in accordance with the planning permission granted.

   d) There is no requirement to notify applicants of potential CIL liability or for an applicant to provide a CIL additional information form.

10. The appellant contends that the development only comprises the addition of a loft room and bathroom and not the entirety of the two houses. However, "Chargeable Development" is defined in the CIL Regulations as "The development for which planning permission is granted." In this case, the planning permission grants consent for development comprising the retention of two dwellings ([redacted] and [redacted] houses) and therefore the chargeable development is the entire development.

11. The CIL Regulations, Part 5 Chargeable Amount, s 40 (7) defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development." The appellant contends that the original bungalow measures [redacted] m² and should be deducted from the GIA of [redacted] m².

12. "In-use building" is defined in the Regulations as a relevant 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. "Relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development. The relevant planning permission was granted on [redacted], at which date the original bungalow was not situated on the land. Therefore, this cannot be classed as an in-use building and cannot be deducted from the chargeable area.

13. On the date the planning permission was granted, the buildings situated on the land were the two new build houses. However, these buildings were not in "lawful use" as they were built contrary to the original planning permission. Therefore, at the date the planning permission was granted there was no lawful in-use building that could be deducted from the chargeable development.

14. The appellant contends that the CIL charge should not apply to buildings that have been completed and points out that the CIL Charging Schedule was not in force at the date of the original planning consent. However, as stated above, the CIL regulations provide that the chargeable development is that for which planning permission is granted. Therefore, the charge relates to the 2018 planning permission and not the consent granted in 2013.

15. The appellant further contends that CIL should not be charged as they were not given any notice of an impending CIL charge during the application process. The CIL regulations do not require notice of a charge to be given in advance and therefore this lack of notice cannot impact on the CIL charge. Additionally, under Regulation 114 I can only consider whether or not the CIL charge has been properly calculated.

16. The gross internal area of the two buildings of [redacted] m² does not appear to be in dispute and I have utilised this in calculating the CIL charge.

17. I have reviewed the CIL Charging Schedule for the [redacted] and for the [redacted]. I have confirmed a CIL charge of £[redacted] per sq m plus indexation for [redacted], based on the Residential Development (lower band) and £[redacted] per sq m plus indexation for [redacted] CIL.

18. Having reviewed all of the evidence before me, I conclude that the CIL charge of £[redacted] ([redacted]) is not excessive and I therefore dismiss this appeal.

[redacted] BSc (Hons) MRICS
Valuation Office Agency
[redacted]