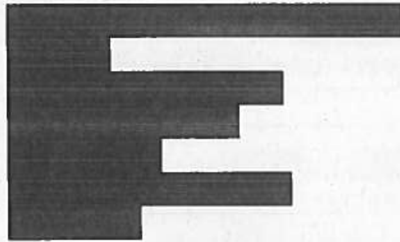
Appeal Decision

by MRICS

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



e-mail: @voa.gsi.gov.uk.

Appeal Ref:

Planning Permission Ref:

Address: .

Development: House.

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ (and).

Reasons

1. I have considered all the submissions made by (the appellants) and their agent and ( ), 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 Planning Permission reference granted on by .
   b. The letter dated from to as agents for the appellants regarding unpermitted demolition works.
   c. The Planning Permission reference granted on by .
   d. The CIL Liability Notice in respect of planning permission issued on by the CA at CIL charge £
   e. The CIL Demand Notice in respect of planning permission issued on by the CA at £ CIL charge including surcharges.
   f. The corrected CIL Liability Notices issued by the CA to both in respect of , on at £ CIL charge.

g. The corrected CIL Demand Notices issued by the CA to both [redacted] in respect of [redacted], on [redacted] at £[redacted] CIL charge including surcharges.
h. The Planning Permission reference [redacted] granted on [redacted] by [redacted].
i. The CIL Liability Notice in respect of [redacted] issued on [redacted] by the CA at CIL charge £ [redacted] including a 100% Self Build Exemption.
j. The CIL Appeal Form dated [redacted] submitted by the appellants under Regulation 114 and Regulation 116 received [redacted], together with documents and correspondence attached thereto.
k. The CA's representations on the appeal dated [redacted].
l. Comments on the CA's representations from the appellants dated [redacted] [redacted].

2. Planning Permission [redacted] was granted on [redacted] by [redacted] for a first floor extension, new roof on the existing extension, a single storey rear extension with roof lights and a pitched roof canopy to the front elevation of an existing [redacted].

3. On [redacted] [redacted] wrote to [redacted] as agents for the appellants advising that following a site inspection, they noted the demolition of the existing [redacted] and erection of a replacement structure had been undertaken, neither of which had been allowed under Permission [redacted].

4. [redacted] confirmed it was "non-expedient" for them to take enforcement action, and advised the householder to apply for retrospective Planning Permission for a replacement dwelling, which the latter subsequently did under Planning Application [redacted], permission for which was granted on [redacted].

5. The CA issued a CIL Liability Notice on [redacted] for the amount £[redacted] ([redacted] [redacted]), and then subsequently issued a CIL Demand Notice on [redacted] including a surcharge totalling £[redacted] added for the appellants' failure to submit an assumption of liability form and for failure to submit a valid commencement notice, resulting in a total CIL liability of £[redacted] ([redacted] [redacted]).

6. Following a realisation by the CA that they had, up to this point, only addressed correspondence to one of the appellants, the CA issued new CIL Liability Notices to both [redacted] along with corrected CIL Demand Notices to each on [redacted] at the same sums referred to in paragraph 5 above.

7. Planning Application [redacted] was subsequently lodged by the appellants, seeking to demolish and replace the existing dwelling. [redacted] Key Issues on Planning Application document under Application [redacted] dated [redacted] notes that this proposal appears to be identical to the dwelling already in situ, and only recently built.

8. Planning Permission [redacted] was granted on [redacted].

9. The CA issued a CIL Liability Notice in respect of [redacted] on [redacted], with CIL liability calculated at £[redacted] but reduced zero as 100% exemption had been granted following submission of Self Build Exemption form.

10. The CA reviewed the chargeable amount contained in the Liability Notice relating to [redacted] under Regulation 113 and issued their decision on [redacted] confirming the sum of £[redacted]. This was based on [redacted] square metres (sq m) of proposed floor space (with no deduction for existing floor space) at £[redacted] per sq m plus indexation.

11. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) and 116B (exemption for self-build housing) contending that the CIL charge should be £[redacted]. The appeal was accepted as a valid appeal under Regulation 114 but not under Regulation 116B. This was because an appeal under Regulation 116B can only be made if a CA grant exemption and an interested person considers the CA has incorrectly determined the value of the exemption allowed (an appeal cannot be made against a CA's decision not to grant exemption).

12. This appeal is in respect of the CA's calculation of the chargeable amount relating to planning permission reference [redacted].

13. The appellants' grounds of appeal are essentially as follows:-

    a. The appellants' intention was to extend the original property by less than [redacted] sq m, but they rebuilt more of the built fabric than was originally planned. However, a new dwelling was not created because a side wall and the foundations of the original dwelling remained. It was held in Shimizu (UK) Ltd v Westminster City Council (1997) that demolition of only part of a building not amounting to demolition of the whole or substantially the whole of the building is to be regarded as an alteration of the building rather than as demolition.

    b. The appellants followed [redacted] advice and submitted a new planning application and were not forewarned that such an application would attract a CIL charge. The appellants could possibly have submitted a s.73 'Minor Material Amendment' application instead.

    c. The proposed CIL charge renders the development unviable.

    d. The development has always been a self-build project and the appellants were not aware that an application for self-build exemption needed to be made before development commences.

    e. The CA in their Liability Notice for permission [redacted] have confirmed that if the dwelling as it now stands were replaced with an identical dwelling there would be no CIL liability.

    f. Regulation 65(9) provides that a liability notice in respect of a chargeable development ceases to have effect if liability to CIL would no longer arise in respect of that chargeable development and the CA have now confirmed (in their relation to permission reference [redacted]) that there would be no liability for the development.

14. The CA essentially contend that the chargeable sum of £[redacted] has been calculated correctly in accordance with Regulation 40 based on floor space of [redacted] sq m, that being the gross internal area of the house for which permission reference [redacted] granted permission. Regulation 40(11) provides that floor space of any existing building can only be deducted if it was situated on the relevant land on the day planning permission first permits the chargeable development. The CA do not consider that the floor space of the original dwelling can be deducted because it had been completely demolished prior to the date planning permission reference [redacted] was granted on [redacted]. The CA have confirmed that at no stage during the processing of application [redacted] was a request for self-build relief made. The CA consider that planning permission [redacted] is the only planning permission which has been implemented and disagree with the appellants' claim that only application [redacted] has been implemented.

15. As stated above, this appeal relates to planning permission [redacted] and in determining this appeal under Regulation 114 all I can consider is whether or not the CA have correctly calculated the 'chargeable amount' in accordance with Regulation 40.

Regulation 40 requires the CA to calculate the chargeable amount in respect of a 'chargeable development' and Regulation 9 defines the chargeable development as the development for which planning permission is granted. All I can therefore consider is whether or not the CA have correctly calculated the chargeable amount for planning permission reference [redacted]. It is not for me to determine which planning permission ([redacted] or [redacted]) has actually been implemented.

16. There does not appear to be any dispute that the gross internal area of the house for which planning permission was granted in permission reference [redacted] is [redacted] sq m. With regard to the question of whether or not any deduction should be made for the original building, Regulation 40 essentially provides that in calculating the chargeable floor space the gross internal areas of certain 'relevant buildings' which are either to be retained as part of a development, or demolished before completion of the chargeable development, can be deducted. However, Regulation 40(11) defines 'relevant building' as 'a building which is situated on the relevant land on the day planning permission first permits the chargeable development'.

17. The CA view is that almost total demolition of the original building had taken place, as demonstrated by their photograph of the property taken on [redacted], which indicates that only the left hand elevation, a small amount of the front elevation and perhaps some of the footings remain in place. The appellants are of the view that these works amounted to only "partial" demolition as per the Shimizu (UK) Ltd v. Westminster City Council [1997] case and also seemingly supported by the way the Building Control Surveyor from the CA had signed off the works. However, as far as the calculation of the chargeable amount is concerned, the question is whether or not what was left of the original dwelling comprised a 'building' on the site on the day that planning permission [redacted] first permits the chargeable development. The dictionary definition of a building is 'a structure with walls and a roof' and in my opinion what was left of the original dwelling on the relevant date did not amount to a 'building'. I therefore consider that the CA are correct not to make any deduction for the area for the original building.

18. With regard to the appellants' grounds of appeal in paragraph 13 above I would comment as follows:-

    a. I am only able to consider the calculation of the correct chargeable amount for the planning permission reference [redacted] granted on [redacted].

    b. I appreciate the appellants' may have acted on the CA's advice but I can only consider the planning permission that was actually granted.

    c. I am unable to consider the effect of a CIL charge on the viability of a development in an appeal under Regulation 114.

    d. As stated above, an appeal under Regulation 116B (self-build exemption) can only be made to the VOA if a CA grant exemption and an interested person considers the CA has incorrectly determined the value of the exemption allowed. I understand that the CA have not granted exemption in respect of planning permission reference [redacted] and that no application for self-build relief in respect of this permission was made, so I am unable to consider this matter.

    e. I understand the CA's calculation of the chargeable amount for planning permission reference [redacted] is £[redacted] but that they have granted self-build exemption as this development has not commenced (i.e. the demolition of the recently constructed house and its replacement with a new identical house). This is not relevant to the calculation of the chargeable amount for permission reference [redacted].

f. Regulation 65(9) does provide that a liability notice in respect of a 'chargeable development' ceases to have effect if liability to CIL would no longer arise in respect of that chargeable development. However, the planning permission reference [redacted] relates to a different 'chargeable development' as it involves the demolition of the recently constructed house and its replacement with a new house. In addition, the CA have only accepted a CIL liability of nil for this chargeable development because they have granted self-build exemption for this particular planning permission/chargeable development, which has not yet commenced.

19. The appellants do not make any reference to appealing against the surcharge amount but this is not, in any event, something that I can consider in an appeal under Regulation 114. Any appeal against a surcharge should be made to the Planning Inspectorate under Regulation 117.

20. In conclusion, the proposed floorspace adopted by the CA when calculating the chargeable amount at [redacted] sq m appears to be correct and has not been challenged by the appellants. The CA are in my opinion correct not to make any deduction for existing floorspace due to the fact that all but the foundation footings, left hand elevation and some of the front elevation had been demolished before the relevant date.

21. The net area chargeable is therefore correct at [redacted] sq m, and CIL liability has been calculated at the correct CIL Rate of £[redacted] per sq m with the appropriate indexation adjustment.

22. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[redacted] ([redacted]).

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