Appeal Decision

by [redacted] BSc (Hons) MRICS

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

[redacted]

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

Appeal Ref: [redacted]

Address: [redacted].

Development: 1 no. 2 storey [redacted] dwellinghouse with rooms in the roof and 1 no. [redacted] with basement [redacted] dwelling house (following demolition of existing dwelling at [redacted]

Planning permission details: Planning permission [redacted] was granted by [redacted] on [redacted].

Decision

I determine that the amount of exemption for self-build housing under Regulation 54A Community Infrastructure Levy Regulations 2010 (as amended) in respect of the development is to be assessed in the sum of £[redacted]: £[redacted], [redacted]: £[redacted]).

Reasons

Background

1. I have considered all the submissions made by [redacted] (the appellant) and the representations received from the Collecting Authority (CA) [redacted]. In particular I have considered the information and opinions presented in the following documents:-

a. The planning permission in respect of the development dated [redacted].
b. The revised CIL Liability Notice (LN) (stated by the CA to supersede any previous LNs) issued by the CA on [redacted].
c. A copy of the CA's decision on the claim for exemption for self- build housing contained in an email dated [redacted].
d. The CIL Appeal Form dated [redacted] with the attached grounds of appeal and other supporting documents.
e. The CA's representations dated [redacted].

2. Planning permission was granted on [redacted]. The permission was for 1 no. 2 storey [redacted] dwelling house with rooms in the roof and 1 no. [redacted] with basement [redacted] dwelling house (following demolition of existing dwelling at [redacted].

3. On [redacted] the CA issued a revised Regulation 65 LN which was stated to supersede any previous LNs, seeking a CIL payment of £[redacted]. This figure was arrived at based on a chargeable area of [redacted] square metres (sqm) giving an Area Charge as follows:-

[redacted] - £[redacted]
Less Self-Build Relief £[redacted]
£[redacted]

[redacted] - £[redacted]
Less Self-Build Relief £[redacted]
£[redacted]

4. The CA confirmed their decision on the claim for Self Build Relief on [redacted] granting it in the total sum of £[redacted] although no explanation as to how this was arrived at was given, other than it represented the total chargeable amount less the CIL payment being sought.

5. The appellant submitted an appeal under Regulation 116B (Exemption for self-build housing) on [redacted] seeking the CIL payment be reduced to £[redacted] and the Self-Build Relief increased to £[redacted].

Grounds of Appeal

6. The grounds of appeal are as follows:-

There is common ground regarding the floor areas and the appeal relates only to the apportionment of the existing floorspace on the site and the implications of this on the CIL Liability.
Please refer to Drawing [redacted] (attached) Site Layout of the planning consent.
This is a single application for two detached dwellings:
***House 1**: Detached house on frontage which replaces the existing house [redacted]. The area of the new house is agreed at [redacted]sqm and the existing house to be demolished is agreed at [redacted]sqm.*
***House 2**: [redacted] detached house in the rear garden of [redacted] which the appellant wishes to live in with his family with total floor area agreed at [redacted]sqm. A CIL form [redacted] has been submitted and accepted for this dwelling.*
Total Development area is agreed at [redacted]sqm

Demolitions are agreed at [redacted] sqm
Chargeable Area is agreed at [redacted] sqm

Para 3.12 of the VOA Guidance notes states:
Exemptions or reliefs are not relevant to the calculation of the amount of CIL payable in regulation 40. As the term 'chargeable development', as defined in regulation 9, makes no mention of any exemptions or reliefs the chargeable development for the purposes of regulation 40 is simply the whole of the relevant development.
The application of exemptions or reliefs is calculated separately to the level of CIL and acts to reduce the amount payable in respect of that development. This is reflected in the wording of the exemptions and reliefs, which are expressed in terms of "relief from liability to pay CIL" and "exempt from liability to pay CIL".

On this basis the appellant believes that the [redacted] sqm of self-build house should be applied to the chargeable area after the calculation and will be 'exempt from liability to pay CIL'. The remaining net chargeable area is [redacted] sqm resulting in a CIL liability of £[redacted].
CIL is levied on the net increase in floor area arising from the development and this is arrived at by deducting existing buildings which rightly act as a credit for the developer because they already exist. In this case the Council have removed a proportion of this credit by incorrectly applying it to floor space that is exempt from the liability to pay CIL. Their resulting CIL liability is £[redacted].

The CA's Representations

7. The CA submitted representations on the [redacted] the main parts of which are as follows:-

In the appellant's statement, reference is made to the VOA guidance note paragraph 3.12. The Council contends that this guidance is not relevant to this appeal as it relates specifically to an appeal under Regulation 114 (chargeable Amount: appeal). The Council understands that the chargeable amount is not under dispute but it is the value of the self-build exemption that is the focus of this appeal.

The CIL Regulations 2010 (as amended) (CIL Regulations) allow for exemption to be granted for part of the CIL payable. However, the only method explicitly stated for calculating the value of the exemption where it is only part of the CIL payable within the CIL Regulations is in relation to self-build communal development (Regulation 54A(6)). As this development is comprised of a qualifying dwelling and a dwelling that does not qualify for the self-build exemption the communal development formula is not applicable.

It should be noted that the chargeable amount, and therefore the CIL payable, includes within it a credit for demolished floorspace.

The Council's position is that, in cases such as this, it should grant exemption for the proportion of the CIL payable that relates to the qualifying dwelling. However, the value of the exemption plus the remaining CIL that must be paid should equal the chargeable amount of the chargeable development, to ensure the Council collects the overall amount of CIL due.

The demolition credit affects the total chargeable amount from which the exempt amount must be derived. As both the CIL Regulations and the guidance documentation provided by the Ministry of Housing, Communities and Local Government (MHCLG) are silent on how to calculate the value of the exemption, the Council must take the a consistent approach that can be applied to all development scenarios where part exemption may apply. This approach enables the Council to act fairly and reasonably

in cases where there may be multiple owners within a chargeable development, all of whom request full demolition credit for their proportion of the development.

The appellant has suggested that the correct approach would be to allocate all of the demolition credit to the dwelling that attracts a CIL payment rather than apportion it between the two dwellings that form part of the chargeable development. However in doing so, the total amount of CIL associated with the development will not equal the total chargeable amount (see Appendix B). Should the appellant experience a disqualifying event, and the CIL currently exempt becomes payable, it would not be possible to receive the full chargeable amount using the suggested approach.

The methodology used by the Council to calculate the value of exemption granted includes a proportion of the demolished floorspace. To determine the proportion it has used the apportionment of demolition credit found within Regulation 40(7), and which has also been used to determine the original chargeable amount. By carrying out a Regulation 40 calculation for each dwelling house, and apportioning the demolition credit between them, the Council is using a formula already found in the CIL Regulations (see Appendix A).

Decision

8. Having fully considered the representations made by the appellant and the CA, I would make the following observations on the representations and the grounds of the appeal.

9. For the sake of clarity, I can confirm that my decision is in respect of the amount of the exemption granted and it is on this issue only that I will make my decision. Therefore, I will not comment on the calculation of the total CIL chargeable amount before allowing for the relief, nor will I include in my decision the CIL charge to be payable having allowed for the amount of the exemption. However, it is noted that the parties appear to be broadly in agreement with regard to the net chargeable area, the appropriate CIL rates and indexation.

10. The appellant has effectively carried out two calculations under Regulation 40 assuming each of the dwellings was a separate chargeable development. He has netted off the whole area of the demolished floorspace from the area of the dwelling not granted relief, because it is on the site of the original dwelling, and then calculated the CIL payable based on this net area. The appellant has I assume carried out a similar calculation for the dwelling receiving the relief with no deduction for the demolished floorspace. The appellant has referred to this approach being supported by the VOA Guidance note at 3.12:-

Exemptions or reliefs are not relevant to the calculation of the amount of CIL payable in regulation 40. As the term 'chargeable development', as defined in regulation 9, makes no mention of any exemptions or reliefs the chargeable development for the purposes of regulation 40 is simply the whole of the relevant development.

The application of exemptions or reliefs is calculated separately to the level of CIL and acts to reduce the amount payable in respect of that development. This is reflected in the wording of the exemptions and reliefs, which are expressed in terms of "relief from liability to pay CIL" and "exempt from liability to pay CIL".

The CA do not agree with this approach and have stated the guidance note is not relevant to this appeal as it specifically relates to an appeal under Regulation 114 (calculation of the chargeable amount). I can agree with the CA insofar as the

comments in the guidance note are only intended to clarify the calculation of the Regulation 40 CIL charge when reliefs or exemptions are applicable (they are ignored for the purposes of determining the extent of the chargeable development and the level of the CIL charge) and do not give any guidance as to how the amount of any exemption should be calculated.

11 The CA consider that the only fair approach to ensure the CIL charge associated with the development will equal the total chargeable amount is to carry out separate Regulation 40 calculations for each dwelling, but in their case apportioning the demolition floorspace between the two dwellings. Effectively what would be the case if each dwelling was to attract different rates of CIL. They consider that to do otherwise would mean that if there was a disqualifying event and the exemption had to be repaid it would not be possible to receive the full chargeable amount and that this conclusion is supported by their calculations. However, I can see no reason why this should be the case in this instance as the total net chargeable area on both approaches should be [redacted] sqm, but having looked at their calculations they appear to have made a typing error in Appendix B adopting [redacted] sqm as G in the formula in Regulation 40(7) for the house which does not attract relief, rather than the correct figure of [redacted] sqm.

12. The CA have also supported their approach by saying that the methodology they have adopted is using a formula already in the CIL Regulations and used for the apportionment of the demolition credit in Regulation 40(7).

13. I can agree with the CA that there is no specific guidance in the Regulations as to how to calculate the value of the exemption. The relevant references to self-build relief in the Regulations are as follows:-

54A.—(1) Subject to paragraphs (10) and (11), a person (P) is eligible for an exemption from liability to pay CIL in respect of a chargeable development, or part of a chargeable development, if it comprises self-build housing or self-build communal development.

116B.—(1) An interested person who is aggrieved at the decision of a collecting authority to grant an exemption for self-build housing may appeal to the appointed person on the ground that the collecting authority has incorrectly determined the value of the exemption allowed.

14. Although both parties have carried out Regulation 40 calculations of each dwelling, an approach for which there is no support in the Regulations, the specific approach adopted by the CA effectively apportions the total chargeable amount broadly in proportion to the total floor area of each dwelling. Although neither party have provided compelling reasons as to why their approach is appropriate, on balance, I favour the approach adopted by the CA. The chargeable development defined in Regulation 9 is the development for which planning permission has been granted and this includes both dwellings and in calculating the total chargeable amount the demolition floorspace is deducted from the total floor area of the chargeable development not from any particular part of that development in the calculation. Therefore, although the dwelling not attracting relief is built on the site of the demolished dwelling I see no support in the Regulations or otherwise for effectively carrying out a Regulation 40 calculation of each individual dwelling on the basis they were each a separate chargeable development. It is noted that if the dwellings had been built under separate planning permissions then in all likelihood the appellant would have been able to claim the full demolition credit in respect of the house not attracting the relief. However, I can see no reason from the wording in the Regulations to conclude that this should be the approach when clearly the chargeable development in this case extends to both dwellings.

15. On the evidence before me, having regard to the particular facts of this case, I dismiss

this appeal and confirm the amount of the exemption in the LN as follows:-

[redacted]

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