Appeal Decision

by [redacted] BA (Hons) MRICS

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

Valuation Office Agency
[redacted]

Email: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Address of property: [redacted]

Development: Retention of a dwelling for occupation with equine enterprise

Planning permission details: [redacted] decision dated [redacted] issued by [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £[redacted] ([redacted]).

Reasons

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

(a) Appellant's appeal form dated [redacted] with attached grounds of appeal
(b) Application for planning permission stamped as received by [redacted] on [redacted]
(c) x 3 plans relating to the planning permission which accompanying the CIL appeal documentation
(d) Liability notice dated [redacted]
(e) Collecting Authorities (C.A's) Regulation 113 review decision dated [redacted]
(f) The C.A's formal representations in response to the appeal which were received by this office on [redacted]

(g) Comments from appellant on [redacted]
(h) The CA's response to comments dated [redacted] to which they were deemed to have introduced new information in the form of photographs. An extension of 14 days was allowed for appellant to comment on the photographs received.
(i) Appellants further comments dated [redacted]

2. Planning permission decision was issued on [redacted] by [redacted] for the retention of a dwelling for occupation in connection with the equine enterprise

3. On [redacted] the CA issued a Regulation 65 Liability Notice (ref [redacted]) in the sum of £[redacted] based on new development floor area of [redacted] square metres (sq m) as follows:-

[redacted] *m2 x rate of £[redacted] x index of [redacted] (when planning permission was granted)*
[redacted] (Index figure for year charging schedule took effect)

4. The appellant requested a review of the calculation of the chargeable amount under Regulation 113 on [redacted]

5. The CA issued their decision notice on the review on [redacted]. The review concluded that the original liability notice was correct.

6. On [redacted] the appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) stating that the chargeable amount should be £[redacted]

7. The grounds of the appeal can be summarised as follows:-

The granting of the permanent consent is for permission to reside on site so long as it is in connection with the equine business. That the Local Authority have judged and calculated the charge incorrectly and they have not been consistent in their interpretation and application of the legislation. They state the consent is now permanent, even though the building is a temporary structure. As a 'New Building' CIL is triggered, the applicants are not eligible for Self-Build exemption / relief.

The granting of permanent consent is for permission to reside on site so long as it is in connection with the equine enterprise; The Permanent consent therefore is for the 'site' and the building remains a temporary building. We accept that should in the future we wish to 'build' a 'permanent' dwelling, this would be liable for CIL, but naturally we would fit the category then for Self-Build and therefore be exempt from CIL. Whilst the building currently standing is a temporary building we believe the legislation supports that it is not liable for CIL.

8. The CA submitted representations on [redacted]. The representations state that:

The comments made as part of the Regulation 113 review prior to the appeal being submitted remain valid. These can be summarised as:

The legislation does not allow for the granting of a self-build exemption for a temporary dwelling as a temporary dwelling is not chargeable development and does not trigger CIL.

With regard to the planning permission for retention of dwelling on a permanent basis, it does not appear possible to satisfy the requirements of the legislation to allow for the granting of a self-build exemption for the permanent dwelling in this case.

Regulation 40 states that there cannot be a set off / credit for the existing temporary building when calculating the CIL charge.

In addition, the C.A describes the difference between a temporary building and temporary planning permission. They explain why, in their view, self-build relief and a CIL credit / set off for the area of the existing building aren't available in the subject case.

9. The appellant provided further comments on [redacted] stating that they are self-builders rather than developers and the CIL regulations should not apply. They stated that if full planning permission would have been granted in [redacted] than they would have benefitted from self-build exemption.

10. The C.A stated they had nothing further to add in response to the appellant's comments. However, they did supply photographs showing nissen huts in situ at the subject site prior to the temporary dwelling having been constructed.

11. On [redacted] the appellant responded reiterating that if permanent permission had been granted in [redacted] self-build relief would have been available negating any CIL charge.

12. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding the grounds of the appeal:-

i) The appellant mentions the fact that if full permanent planning permission had been granted in [redacted] then they may not have been subject to a CIL charge. It seems to me that as the application was for a rural dwelling, the need for a dwelling in the open countryside would have needed to be proven. It is common in such applications where the need for a rural dwelling is not completely proven for a temporary permission to be allowed for a set number of years to allow the applicant to prove their case for a permanent permission. I am unable to comment on whether the applicants would have met the criteria for full planning permission back in [redacted] and that fact is not one that is required to be determined for the purposes of this appeal. A temporary permission was granted and the later application for the temporary dwelling to be retained on a permanent basis reference [redacted] is the actual subject of this appeal.

ii) Regulation 40 deals with the calculation of the chargeable amount. Regard can be had to areas of existing in use buildings or other relevant buildings when considering the calculation under the KR part of the formula. There are sometimes described as 'credits or set offs'. Regulation 40 (11 iii) states that a building does not include 'a building for which planning permission was granted for a limited period'. Therefore, no credit / set off can be given for the building that previously only benefited from a temporary planning permission. As such, no credit set off can be included within the formula in accordance the CIL regulations. I understand that the appellant is concerned about not including the existing temporary building on S7 of the CIL additional information form. However, as per the above reasoning, the inclusion of the area of the log cabin would not have made a difference to the CIL charge.

iii) The appeal documentation also makes reference to Self-Build Relief. The VOA only look at the **amount** of the exemption if the C.A have actually granted it. In those circumstances, the VOA can consider whether the C.A has incorrectly determined the value of the exemption allowed'. There is no right of appeal to the VOA or anyone else over the decision to grant the relief. I am therefore unable to consider this point in any more detail.

13. Based on the facts of this case and the evidence before me, no credit should be given for the building which had temporary consent that would reduce the CIL charge in the Liability Notice dated [redacted]. I am unable to consider
i) Whether self-build relief would have been granted if the [redacted] planning application for temporary consent would have been for a permanent planning consent or
ii) Whether self-build exemption should apply in relation to planning application [redacted] I hereby determine that the Community Infrastructure Levy payable on this development should be £[redacted] ([redacted]).

14.

i) Based on the facts of this case and the evidence before me I conclude that that the appropriate charge in this case should be based on a net additional area of [redacted] sqm

ii) Based on the facts of this case the evidence before me, no credit should have been given for the existing building that benefitted from temporary planning consent would reduce the CIL charge in the Liability Notice dated [redacted].

iii) I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £[redacted] ([redacted]).

[redacted]

[redacted] MRICS