Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency (SVT)

[redacted]

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

Appeal Ref: [redacted]

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Conversion and extension of disused barn [actually a [redacted]] to form a single dwelling

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Decision

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

Reasons

1. I have considered all the submissions made by [redacted] (the Appellant) and [redacted] (an Interested Party) 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 Grant of Planning Consent [redacted] issued by [redacted] on [redacted].
   b. CIL Liability Notice reference [redacted] issued by the CA on [redacted] at £0 (Nil) CIL liability.
   c. An email dated [redacted] from [redacted] to the Appellant stated that because the application had not been built in accordance with the planning approval, a new retrospective planning application was required.
   d. The Grant of Planning Consent [redacted] issued by [redacted] ([redacted]) on [redacted].

e. CIL Liability Notice reference [redacted] issued by the CA on [redacted] at £[redacted] CIL liability.
f. CIL Demand Notice reference [redacted] issued by the CA on [redacted] at £[redacted] CIL liability including a £[redacted] surcharge.
g. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
h. The CA's representations to the Regulation 114 Appeal dated [redacted].
i. Further comments on the CA's representations prepared by the Appellant and dated [redacted] and [redacted].

2. Planning Consent reference [redacted] for the development was granted and issued by [redacted] ([redacted]) on [redacted].

3. A CIL Liability Notice reference [redacted] was issued by the CA on [redacted] for the amount £0 (Nil) based on the CA's assessment of CIL at £[redacted] with 100% Self Build Exemption applied.

4. Whilst no written calculation of the CIL charge has been shown to the appointed person (the Valuation Office Agency) from this time, it is concluded the calculation would have been:-

GIA of the development: [redacted]m2
Less – GIA of existing building: [redacted]m2
= Chargeable development GIA: [redacted]m2 @ £[redacted]/m2 = £[redacted]

The £[redacted]/m2 CIL Rate was correct at the time CIL was calculated in [redacted].

5. On [redacted] made a site visit, after which they concluded that too much of the existing building had been demolished to class the project as a conversion. The Appellant was advised they would have to make a retrospective planning application to cover the demolition works that had taken place.

6. In an email to the Appellant dated [redacted] the CIL charge was calculated for guidance purposes by the CA as follows:-

[redacted]m2 @ £[redacted]/m2 = £[redacted]

It is noted that an incorrect total GIA of [redacted]m2 was applied to the calculation by the CA, rather than the actual total GIA of [redacted]m2.

The £[redacted]/m2 CIL Rate had been applied. This was based on the original £[redacted]/m2 CIL Rate from [redacted] indexed up to [redacted] using the BCIS All In Tender Price Index, as explained in [redacted] website.

7. The Appellant made an application for further planning permission, ref [redacted].

8. Retrospective Planning Consent reference [redacted] for the development including demolition works that had taken place was granted and issued by [redacted] on [redacted].

9. A CIL Liability Notice reference [redacted] was issued by the CA on [redacted] for the amount £[redacted]

This reflects the total GIA of the development, with no offset of the existing GIA of [redacted]m2, as this had been demolished at the time of this calculation of CIL liability.

The CIL figure is miscalculated and should, however, be £[redacted]

10. On [redacted] issued a CIL Demand Notice reference [redacted] for the sum of £[redacted] including a £[redacted] surcharge.

    Once again, this appears to contain a calculation error by the CA, and the total CIL including a surcharge of £[redacted] plus the CIL charge £[redacted] should equal £[redacted]

11. The £[redacted] surcharge figure comprises:-

    £[redacted] for not notifying the Council [that works had commenced]
    £[redacted] for not serving the Assumption of Liability Form to the Council
    £[redacted] interest for the period [redacted] (date of decision) to [redacted]

12. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL charge should be £[redacted] ([redacted]).

13. With regard to the main grounds of appeal relating to the level of CIL charge proposed, the Appellant has raised three issues:-

    i. The Appellant contends that demolition work was unavoidable as part of the building had collapsed.

    ii. [redacted] requirement that the Appellant would have to apply for further planning permission gave rise to a CIL charge, which the Appellant contests.

    iii. The Appellant's own proposed CIL charge calculation is:-

    Existing floor space [redacted]m2
    Extension [redacted]m2 @ £[redacted]/m2 = £[redacted]

14. With regard to i. the fact that demolition work had been undertaken without planning permission: the Appellant refers to the email from their builder [redacted] to [redacted] of [redacted] dated [redacted] explaining that the rear wall of the potting shed collapsed during construction works and that the front wall was found to be in imminent danger of collapse, and needed to be demolished for safety reasons. This meant that between only 25 and 30% of the existing [redacted] could be retained.

15. With regard to ii. [redacted] requirement that the Appellant make a further planning application to cover the demolition work that took place, which led to a CIL charge: the Appellant is of the view that only partial demolition took place, leaving between 25 and 30% of the existing building standing, and that they should not have had to apply for further planning permission when the reconstructed building followed the same footprint and design criteria as the demolished structure. Their view is that as no additional floor space was added, the CIL charge should be calculated based on the extension only.

16. With regard to iii. the appellant has proposed that the original calculation of CIL charge at £[redacted] with the total GIA offset by the existing building be used, but with no Self Build Allowance.

17. Considering i. Demolition of the [redacted]: The Appellant seems to be of the view that this was only partly demolished.

18. The CA appears to have approached the situation from the viewpoint that almost total demolition had taken place, as demonstrated by their email of [redacted] advising the

Appellant that a retrospective application for further planning permission would be required.

19. It was held in *Shimizu (UK) Ltd v. Westminster City Council [1997] 1 WLR 168; [1997] 1 All ER 481* 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.

20. The *Shimizu* judgement considered 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. The email from the builder [redacted] dated [redacted] to [redacted] states that the rear wall of the [redacted] collapsed during construction works and that the front wall was found to be in imminent danger of collapse, and should be demolished for safety reasons. This meant that between only 25 and 30% of the existing [redacted] could be retained.

21. It would appear that substantial demolition works had therefore been undertaken, even though not initially intended, and these would be in excess of any that could be regarded as "alteration" of the building rather than "demolition", with as much as 75% of the original structure having been removed.

22. Considering ii. The CAs calculation of CIL charge contained in CIL Demand Notice [redacted]: they appear to have calculated the CIL charge as follows:-

    [redacted]m2 @ £[redacted]/m2 = £[redacted]

    This reflects the total GIA of the development, with no offset of the existing GIA of [redacted]m2, as this had been demolished at the time of this calculation of CIL liability.

    The CIL figure is miscalculated and should, however, be £[redacted]

23. The additional £[redacted] surcharge figure comprises:-

    £[redacted] for not notifying the Council [that works had commenced]
    £[redacted] for not serving the Assumption of Liability form to the Council
    £[redacted] interest for the period [redacted] (date of decision) to [redacted]

24. The responsibility of the appointed person is to amend the amount of CIL exemption only if the CA has incorrectly determined the amount of the exemption allowed. It is not the responsibility of the appointed person to decide if the development qualifies as 'self-build housing'.

25. There is no valid appeal under Regulation 116B for permission [redacted], because the CA have not granted exemption. An appeal under Regulation 116B can only be made if, when a CA has granted exemption, an interested person considers that the CA has incorrectly determined the value of the exemption. There is no right to appeal against the CA's refusal to grant exemption, so I am unable to consider the appellant's representations on this matter.

26. With regard to the surcharges applied to the above calculation, the CIL Regulations are as follows:-

    CIL Regulations Part 9, Enforcement Chapter 1 –
    Surcharge for failure to assume liability
    80. *A collecting authority may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if—*

a) nobody has assumed liability to pay CIL in respect of the chargeable development; and
b) the chargeable development has been commenced.

Surcharge for failure to submit a commencement notice
***83.**—(1) Where a chargeable development (D) is commenced before the collecting authority has received a valid commencement notice in respect of D, the collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of D or £2500, whichever is the lower amount.*

27. However, on the matter of appealing against a surcharge:-

Surcharge: appeal
***117.**—(1) A person who is aggrieved at a decision of a collecting authority to impose a surcharge may appeal to the appointed person on any of the following grounds—*
that the claimed breach which led to the imposition of the surcharge did not occur;
that the collecting authority did not serve a liability notice in respect of the chargeable development to which the surcharge relates; or
that the surcharge has been calculated incorrectly.

(2) Where the imposition of a surcharge is subject to an appeal under this regulation, no amount is payable in respect of that surcharge while the appeal is outstanding.

(3) An appeal under this regulation must be made before the end of the period of 28 days beginning with the day on which the surcharge is imposed.

(4) Where an appeal under this regulation is allowed the appointed person may quash or recalculate the surcharge which is the subject of the appeal.

28. It does not appear from the CIL Appeal Form that the Appellant makes any reference to appealing against either surcharge amount. From the CIL Regulations above, this would appear to preclude the appointed person from considering the surcharge calculation.

29. It therefore remains for the appointed person to consider whether the amount of CIL charge calculated in connection with permission [redacted] is correct, and if not, what the correct amount should be.

30. Considering iii. the Appellant's proposed CIL Charge calculation: their proposed CIL rate of £[redacted]/m2 is incorrect, as this was the rate appropriate on introduction of CIL with effect from [redacted]. The CIL Rate is indexed up on 1 April each year, utilising the All In Tender Price Index of the RICS (Royal Institution Of Chartered Surveyors) BCIS (Build Cost Information Service), and the correct rate utilised by [redacted] for planning permissions granted between [redacted] and [redacted] is £[redacted]/m2 based on the relevant planning permission reference [redacted] for this scheme being granted on [redacted]. This information is available on [redacted] website.

31. Regarding the Chargeable Development of [redacted]m2 GIA proposed by the Appellant, once again under permission [redacted] this is incorrect, as the GIA should be [redacted]m2 with no offset of the existing [redacted]m2 potting shed, as this had been substantively demolished at the time this planning permission was granted.

32. It has already been established that the chargeable development of [redacted]m2 GIA utilised by the CA in their calculation of CIL was incorrect, and should have been [redacted]m2 GIA.

33. It has also been established that at the relevant date of [redacted] there was little or no existing structure left to offset against the total GIA of the development, and therefore it is correct to use the total GIA of £[redacted]m2, the existing building at this point in

time having been substantially demolished and the part remaining not capable of occupation.

34. The Net Area Chargeable is therefore correct at £[redacted]m2, and CIL liability has been calculated at the CIL Rate of £[redacted]/m2 for the Higher Rate Residential Charging Zone as identified on [redacted] website, as at the date planning permission was retrospectively granted [redacted] for permission [redacted].

35. The CIL liability should actually be:-

    Proposed floor space [redacted]m2
    Less
    existing floor space 0m2 (having been substantially demolished)
    = Net Area Chargeable [redacted]m2

    x CIL Rate £[redacted]/m2

    = CIL liability £[redacted] plus any surcharge

36. It does not appear that the Appellant makes any reference to appealing against either surcharge amount. From the CIL Regulations, this would appear to preclude the appointed person from considering the surcharge calculation of £[redacted], making the total CIL liability £[redacted]

37. There is no valid appeal under Regulation 116B for permission [redacted], because the CA have not granted exemption. An appeal under Regulation 116B can only be made if, when a CA has granted exemption, an interested person considers that the CA has incorrectly determined the value of the exemption. There is no right to appeal against the CA's refusal to grant exemption, so the appointed person is unable to consider the Appellant's representations on this matter.

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

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