

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency



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Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED]

Proposal: Retention of [REDACTED] roof extension to main roof of both properties including raising the ridge by [REDACTED] and above part of back additions; formation of roof terrace above two storey back additions with glazed screen surround in connection with provision of [REDACTED] flat.

Location: [REDACTED]

Decision

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

Reasons

1. I have considered all of the submissions made by [REDACTED] of [REDACTED], acting as agent for [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) Planning decision dated [REDACTED], also included a previous planning consent dated [REDACTED].
 - b) A planning inspectors report in relation to the planning consent granted on [REDACTED].
 - c) CIL Liability Notice dated [REDACTED].
 - d) CIL Demand Notice dated [REDACTED].
 - e) A request for a Review of the CIL Liability Notice dated [REDACTED].
 - f) Copies of CIL decisions (redacted).
 - g) CIL Appeal dated [REDACTED].
 - h) Appellant's grounds of appeal document dated [REDACTED].
 - i) CA representations dated [REDACTED], (including a CIL decision (redacted)).
 - j) Appellant's response to the CA representations dated [REDACTED].

- k) Appellant's e-mail of [REDACTED], clarifying CIL calculation in the initial CIL Liability Notice.
- l) Appellant's e-mail of [REDACTED] correcting e-mail sent on [REDACTED].
2. Planning permission was granted on [REDACTED] under reference [REDACTED] for "Retention of [REDACTED] roof extension to main roof of both properties including raising the ridge by [REDACTED] mm and above part of back additions; formation of [REDACTED] above two storey back additions with glazed screen surround in connection with provision of [REDACTED] flat."
3. The CA served a CIL Liability Notice on [REDACTED] in the sum of £[REDACTED], calculated on a total chargeable area of [REDACTED] square metres (sq m). CIL has been charged at the Residential rate of £[REDACTED] per sq m plus indexation for [REDACTED] and at £[REDACTED] per sq m plus indexation for [REDACTED].
4. The Valuation Office Agency (VOA) received a CIL appeal dated [REDACTED], made under CIL Regulations 2010 (as amended) Regulation 114 (Chargeable amount) contending that the CIL liability should be a total of £0 ([REDACTED] of £0 plus [REDACTED] of £0).
5. The appellant's grounds of appeal can be summarised as follows:
- a) That the floor space retained in its lawful use should be taken into account when calculating a charge for CIL purposes under CIL Regulations 2010 (as amended) Regulation 40. This would result in a CIL charge of £0.
 - b) That the CA failed to respond to the request for a Review of the CIL Liability charge within the Notice dated [REDACTED].
 - c) That CIL Regulations 2010, (as amended) Regulation 40 (6), states that floor space retained in its last lawful use should be offset against the new floor space.
 - d) That the planning permission does not include any demolitions, therefore the bracketed part of the formula detailed at CIL regulations 2010 (as amended) Reg 40 (6) is not required, the chargeable amount according to the formula is therefore £0.
 - e) That the Gr element of the formula is the 'chargeable development' and relates to the new floor space, nowhere in Regulation 9 CIL Regulations 2010 (as amended) is it stated that chargeable development is anything other than that to which the permission has been granted. CIL relates only to the floor space for which permission has been applied for.
 - f) That the GIA of the proposed development (Gr) is [REDACTED] sq m and that constitutes the total new floor space for CIL purposes.
 - g) That the CA position states that the retained floor space (K) is zero as it is only retained floor space as part of the development, the parties dispute this. The retained floor space under CIL regulation 40 is the previously existing building of [REDACTED] sq m, as an in-use retained building on the site as at the date the development was first permitted. The building qualifies as 'in-use' under CIL Regulations 2010 (as amended) Reg 40 (11) & Regulation 2 of same regarding the site. The planning permission shows all the development to be granted on the relevant land. The appellants contend that the CIL regulations distinguish between Gr, where it is defined as 'development' and Kr where the definition is 'land' to which the permission relates.

- h) The appellants refer to a VOA redacted decision in [REDACTED] where it is stated that the GIA of existing buildings should be netted off against the GIA of the proposed development.
6. The CA has submitted representations that can be summarised as follows:
- a) In response to the appellants stated the CA failed to respond to the Request for a review of the Liability Notice, the CA confirmed their non-response. The CA stated that they would address the points in the request for review in their representations dated [REDACTED], in response to the Appellants Grounds of Appeal dated [REDACTED].
 - b) The appellants commented on a previous CIL Liability and the CA contended that this is not relevant to this appeal.
 - c) The CA state that the appellants point within the request for review relating to the eaves storage area not being chargeable floor space is not correct as the argument that it is not an area where people normally go (CIL Regulation 40 (11) (1)), contending that it is the entire building and not the eaves space that people normally go, the eaves space is not a building but part of a building.
 - d) The CA state that the test of whether roof space qualifies as floor space for CIL purposes is that the roof space should have fixed staircase access and a structural floor, quoting a previous CIL appeal decision (redacted) as an appendix to their representations.
 - e) The CA contend that the appellants argument that the Gr element of the formula for calculating a CIL charge is in regard to only new floor space but will include all floor space that falls into chargeable development.
 - f) The CA agree the amount of floor space defined as Gr as [REDACTED] sq m
 - g) The CA argue that the ground and first floor of the building will not form part of the chargeable development on completion as they do not form part of the planning permission that was granted. Regulation 9 (1) of the CIL Regulations 2010 as amended.
 - h) The CA further contend that no useful plans of the existing building from which GIA can be measured were made available and there under CIL Regulation 40 (9) the CA can deem the building not to be in use (absence of information).
7. The CA's CIL Liability Notice calculates the CIL charge at £[REDACTED], ([REDACTED] CIL of £[REDACTED] plus [REDACTED] CIL of £[REDACTED]).
8. The appellants responded to the CA's responses in respect of the Grounds of Appeal restating the grounds of appeal and arguing that :-
- That there was no requirement to provide plans of existing building for netting off purposes, the entire building is clearly larger than the chargeable development
 - The planning permission clearly includes floor space of the existing (relevant) building.
 - Contains an interpretation of the Kr element of the formula arguing that the retained mansard roof was part of an in-use relevant building.

- That the Liability Notice issued by the CA contained a calculation error of the charge and should be £[REDACTED] (notwithstanding their contention that the CIL charge is £nil).
9. The appellant and the CA agree that the GIA of the Gr floor space is [REDACTED] square meters
 10. I have considered the grounds of appeal submitted by the appellants, the submissions made by the CA subsequently and the appellant's subsequent responses.
 11. Regulation 2 of the CIL regulations 2010 (as amended) defines 'relevant land' as the land to which planning permission relates. It is my view that the 'land' on which the planning permission was granted is the attic space of the property known as [REDACTED] and not the site on which the pre-existing building stands. The chargeable development as defined in Regulation 9 (CIL Regulations 2010 as amended) as the development for which planning permission is granted, namely the new build, one bedroom flat and associated works. The GIA of the chargeable development is agreed by the CA and the appellant as [REDACTED] square meters measured to GIA.
 12. CIL Regulations 2010 (as amended) Reg 9 (1) defines chargeable development as that for which planning permission is granted.
 13. Therefore under CIL regulations 2010 (as amended) reg 40 (7) the Gr element of the stated formula is [REDACTED] sq m multiplied by the relevant rate of CIL derived from the appropriate Charging Schedules ([REDACTED] and [REDACTED]). The Kr element is then subtracted from Gr, however in this instance the Kr element is £nil.
 14. The only element of [REDACTED] that can correctly be described as 'retained part' or 'in-use' (CIL Regulations 2010 reg 40 (7) (ii)) is the roof space to which the planning permission relates. This part of the building has no GIA as it falls outside the definition of Gross Internal Area (RICS Code of Measuring Practice 6th edition).
 15. Whilst I agree that a Kr element does exist, it is in fact £nil so has no effect on the Gr element (chargeable development)
 16. The failure of the CA to respond to the appellants request for a review of the CIL Liability Notice is not relevant to this decision.
 17. The calculation of the CIL charge as detailed in the Liability Notice is correct as it includes indexation over and above the figure derived from the calculation formula at CIL Regulations 2010 (as amended) Regulation 40 (6).
 18. I therefore do not agree with the appellant's contention the property existing before the planning permission was granted is chargeable development as no part of floor space is part of the planning consent for the purpose of charging CIL. The retained mansard roof alluded to by the appellant has no GIA to subtract from the Gr element as it falls outside the definition of GIA as defined by the RICS Code of Measuring Practice 6th edition. It is my decision that the property existing at [REDACTED] is not part of the chargeable development other than where it relates to the roof space and therefore as none of the roof space has a GIA no netting off is possible under the CIL Regulations 2010 (as amended), more accurately as the GIA of the roof space is nil then there is nothing to net off.
 19. On the evidence before me I therefore conclude that the total CIL charge in this case should be £[REDACTED], ([REDACTED]) calculated on a total chargeable area of [REDACTED] square metres (sq m).

MRICS
Valuation Office Agency

