Appeal Decision

by [redacted] BSc (Hons) MRICS

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

Valuation Office Agency
[redacted]

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

Appeal Ref: [redacted]

Address: [redacted]

Development: Use as [redacted] self-contained flats ([redacted]) including the [redacted] and r[redacted] of [redacted] at [redacted] and [redacted] levels, [redacted] of [redacted] and [redacted] level. Installation of [redacted] at [redacted] within [redacted] and a [redacted] within an [redacted] within the [redacted] at [redacted] floor level and [redacted] in front [redacted]. Replacement windows and internal alterations

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

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the development is to be assessed in the sum of £[redacted] ([redacted] CIL: £[redacted] [redacted] CIL: £[redacted]).

Reasons

1. I have considered all the submissions made by [redacted] (the agent) on behalf of [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 CIL Liability Notice (LN) issued by the CA on [redacted].

c. A copy of a letter dated [redacted] from the CA to the agent.
d. A copy of the agent's request for a Regulation 113 Review dated [redacted] and a copy of the CA's Review of the LN dated [redacted].
e. The CIL Liability Notice issued by the CA on [redacted].
f. The CIL Appeal Form dated [redacted] with the attached grounds of appeal and other supporting documents including the approved drawings and a Counsel's opinion from [redacted] Q.C. dated [redacted].
g. The CA's representations dated [redacted].
h. The agent's comments on the CA's representations dated [redacted].

2. Planning permission was granted by [redacted] on [redacted].The permission was for 'Use as [redacted] self-contained flats ([redacted]) including the [redacted] and r[redacted] of [redacted] at [redacted] and [redacted] levels, [redacted] of [redacted] and [redacted] level. Installation of [redacted] at [redacted] within [redacted] and a [redacted] within an [redacted] within the [redacted] at [redacted] floor level and [redacted] in front [redacted]. Replacement windows and internal alterations', reference [redacted]. In addition, [redacted] for the works was granted on the same date, reference [redacted].

3. On [redacted] the CA issued a Regulation 65 LN based on a net chargeable area of [redacted] square metres (sqm) in the sum of £[redacted] to include indexation as follows:-

[redacted]	CIL - £ [redacted]
[redacted]	CIL - £ [redacted]

4. The agent requested a Review under Regulation 113 on the [redacted] on the basis that only the new build of [redacted] sqm is chargeable development and the reuse of the listed building is not chargeable because of the effect of Regulation 6(d).

5. The CA issued their decision on [redacted] confirming the CIL charge as set out in the CIL LN dated [redacted].

6. The agent submitted a CIL appeal on the [redacted] under Regulation 114 (chargeable amount) proposing the following CIL charges, subject to indexation:-

[redacted]	- £[redacted]
	- £[redacted]

7. The grounds of appeal relating to the CIL charges were set out in the attached Counsel's opinion which he summarised as follows:-

a. *I agree with [redacted] that [redacted] original reasons for concluding that the whole of the proposed development was liable to CIL were erroneous. In particular, the operation of regulation 6 is not limited to cases where the relevant planning permission only grants permission for change of use.*

b. *However, it does not follow from this that regulation 6 removes the whole of the scheme from liability. Regulation 6 does not apply to the operational development for which planning permission has been given. It is still necessary to consider the extent of that operational development. This conclusion is consistent with the approach taken by the Valuation Officer in*

the VOA appeal decision to which [redacted] has referred, where the extent of the chargeable development was treated as a question of fact and degree.

c. *Approached in that way, it is noteworthy that both the internal and external interventions in the retained building have been deliberately kept to a minimum because of the heritage constraints imposed by the listed building. The main operational works for which planning permission has been granted are the demolition of the existing [redacted], and the replacement [redacted] along with the [redacted] and extension of the [redacted]. Very little of the work to the retained building requires planning permission, rather it requires [redacted], which is not relevant for the purposes of defining the "chargeable development".*

d. *On this analysis, the proposed change of use within the retained building benefits from regulation 6 and it is only the extension that is chargeable development for the purposes of regulation 9, and is therefore subject to a calculation of CIL under regulation 40.*

8. The CA submitted representations on the [redacted] and they included the following:-

a. *As you will be aware the disagreement between [redacted] Council and the agent has arisen in response to the assertion that the proposed development at the above premises is partially exempt from CIL by virtue of Regulation 6 of the CIL Regulations 2010 (as amended).Regulation 6(d) of the Regulations, states that the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses does not constitute development for the purposes of section 208 of the Planning Act 2008 and as such is exempt from CIL. This fact is not disputed by the council.*

b. *The Council maintains its position that Regulation 6 should apply to development that comprises "the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses". The fact of the matter in this case is that the nature of the alterations and extensions to the existing building go beyond a simple change of use from one dwelling to more. On balance the council therefore determines that the chargeable development goes beyond the change of use covered by Regulation 6 and extends to the whole property. On this basis the exemption provided for by regulation 6(d) cannot be applied in this instance.*

c. *This is consistent with the conclusions of a very similar CIL appeal case where the Valuation Office Agency concluded that the chargeable development extended to the whole of the property. This meant that the area of the chargeable development was taken to comprise the area of both the existing house and the extensions. The appeal decision was referenced by the council as supporting evidence in its letter to the appellant's agent dated [redacted] and a redacted copy has been submitted to you with the appeal papers. As the current appeal proposal involves new build floorspace in addition to the change of use to [redacted], and that it does not meet the lawful use tests set out in regulation 40 of the CIL Regulations, then the entire development is liable. Had the buildings at [redacted] satisfied the lawful use tests then only the additional floorspace would have been chargeable.*

d. *You will also note in our letter of the [redacted] that we set out the implications of calculating the CIL liability should the appellant's case be agreed. In this scenario, and had the existing floorspace been in lawful use, then the application of Regulation 40 would result in a negative CIL liability. This cannot be the intent of the Regulations.*

e. *Separately I note that the appellant has submitted as part of their evidence a letter from the council requesting that the freeholder applies for a House in Multiple Occupation licence on the basis that the property was being occupied by [redacted]. The appellant should clarify, as well as provide evidence, to show what period the property was occupied by this group. Should they have been occupying the premises on the date that planning permission was granted the property would have been in Class C4 use as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended). If this is the case then the appellant would not benefit from an exemption under regulation 6(d) in any event as the property would not have been in use as a single dwellinghouse.*

9. The agent submitted comments on the CA's representations summarised as follows:-

a) The building had been temporarily occupied by [redacted] between the end of [redacted] to [redacted], but there were no more than [redacted] occupants in the building at any one time and it was occupied for security purposes only. Therefore, the property did not require a House in Multiple Occupation (HMO) licence and the property remained in use class C3 (relevant correspondence was attached to the comments).

b) As the property was previously used as a single dwelling house in use class C3, Regulation 6(1)(d) applied.

10. 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.

11. The parties to this appeal appear to have agreed the following:-

a) The area of 'new build' in the proposed development exceeds 100 sqm so the Regulation 42 exemption for minor development does not apply.

b) There are no 'in-use' buildings as defined in Regulation 40(11). This is on the basis that the appellant has not argued for, nor provided evidence of, the lawful use of part of the building for a continuous period of 6 months within the period of 3 years ending when planning permission was granted.

12. As regards the issue over the existing use of the property and whether it could be classed as a single dwellinghouse for the purposes of Regulation 6(1)(d) I have noted that the evidence provided by the agent would suggest that the property was occupied by [redacted] at the date planning permission was granted. The agent has said there were no more than five occupants at any one time and they were occupying to mitigate the risk of squatters and to safeguard the building before the development commenced, as a result the property remained within the C3 dwellinghouse use class. However, the CA contend that based on the same evidence it should be treated as an HMO so Regulation 6(1)(d) could not apply. I have concluded that there is nothing to suggest in Regulation 6(1)(d), which is set out below, that

reference has to be made to the definitions within the Town and Country Planning (Use Classes) Order 1987 (as amended).

(1) The following works are not to be treated as development for the purposes of section 208 of PA 2008 (liability)—

(d) the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses."

Therefore, in the absence of any evidence of structural or other alterations to the property whilst it was being occupied, I am of the opinion that the property was to all intent and purposes still what could be described as a single dwellinghouse for the purposes of Regulation 6(1)(d).

13. The main argument put forward by the agent is that the change of use of the existing house should not be treated as part of the development for the purposes of CIL in accordance with Regulation 6(1)(d). Therefore, the chargeable development should only extend to the 'new build' with a floor area of [redacted] sqm. However, although the CA accept that a change of use from a single dwellinghouse to two or more separate dwellinghouses does not constitute development and is exempt from CIL, they are of the opinion that the nature of the alterations and extensions in this case go beyond a simple change of use from one dwelling. Therefore, the chargeable development should extend to the whole development and there should be no exemption from a CIL charge. I have concluded that Regulation 9 effectively means that the 'chargeable development' is all the 'development' as defined for CIL purposes in Regulation 6, for which planning permission is granted. Therefore, as the change of use of the existing house to flats is excluded from the definition of 'development' by virtue of Regulation 6(1)(d) this should not be included within the chargeable development. However, this does not mean that I am necessarily in agreement with the agent's contentions. The question is whether there are other works to the existing house in its entirety that required planning permission, or are the works just installing kitchens, bathrooms, doors and openings etc. that did not in themselves comprise development under either the TCPA 1990 or the CIL definition? I consider this to be a matter of fact and degree with each case being looked at on its own merits.

14. I have looked at the documents submitted with the Appeal including the Approved and Existing drawings, the Design and Access Statement and Planning Statement to determine the extent of the works that were comprised in the development granted planning permission. The works include the demolition of the [redacted] storey '[redacted]' extension and [redacted] totalling [redacted] sqm, the excavation of part of the rear garden to provide [redacted] sqm of new [redacted] floor accommodation and the lower ground floor [redacted] to be removed and a new slightly [redacted] to be created. It is noted from the Design and Access Statement that the original back elevation (at [redacted] and [redacted] floor level) is described as to be 'largely removed and altered'. In addition, a new [redacted] extension over the [redacted] and [redacted] floors is to be built extending to [redacted] sqm and forming part of a [redacted] flat together with part of the existing original house, being a hallway at [redacted] floor level and a living room and part kitchen/diner at [redacted] floor level.

There is also a mezzanine floor comprising a bathroom being added to the [redacted] floor and extending to [redacted] sqm, [redacted] added to the roof, together with four new skylights and internally the accommodation is being rearranged to include changes to

internal partitions, the installation of additional bathrooms and a [redacted] is being installed to serve the [redacted] floors.

15. In view of the substantial nature of the alterations to the existing building I am on balance in agreement with the CA and consider that the chargeable development goes beyond just a change of use from a single dwellinghouse to two or more dwellinghouses. Therefore, on the facts of this case the chargeable development goes beyond the change of use covered by Regulation 6(1)(d) and extends to the whole of the proposed development with its area comprising the area of that part of the property being retained together with the area of the new extension which totals [redacted] sqm which I understand is agreed by the parties.

16. On the evidence before me, having regard to the particular facts of this case, I am dismissing the appeal and can confirm that the CIL charge should be as follows:-

[redacted]

Net chargeable area – [redacted] sqm @ £[redacted] sqm = £[redacted]

Plus indexation = £[redacted]

[redacted]

Net chargeable area – [redacted] sqm @ £[redacted] sqm = £[redacted]

Plus indexation = £[redacted]

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