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]

[redacted]

Development: Erection of replacement dwelling part one/two storey [redacted] dwelling (retrospective)

Planning permission details: [redacted]. The application was decided on [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] together with attached grounds of appeal letter
(b) Planning history specifically applications [redacted], [redacted] and planning appeal decision [redacted]
(c) x 4 plans relating to the planning permission which accompanying the CIL appeal documentation [redacted], [redacted], [redacted], [redacted]
(d) Demand notice and Liability notice, both of which are dated [redacted]
(e) The appellant's request for a review of the chargeable amount dated [redacted]
(f) Collecting Authorities (C.A's) Regulation 113 review decision email dated [redacted] and their follow up email sent on [redacted]
(g) Comments from appellant received by email on [redacted]

2. Planning permission details: [redacted] granted planning permission for application [redacted] on [redacted] for the erection of replacement dwelling part one/two storey [redacted] dwelling. The permission was retrospective. There had been a number of historic planning applications and a planning appeal which related to the dwelling previously on site prior to demolition. Whilst the planning history provides useful background, it is [redacted] which gave rise to the Liability Notice dated [redacted] and the subsequent appeal against the chargeable amount.

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] = £[redacted]

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] with a follow up email sent on [redacted]. The review concluded that the 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 Nil.

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

That the appellant was not notified of the regulation 113 decision within 14 days of the review start date

That the chargeable amount has been calculated incorrectly due to the fact that the 'new replacement' dwelling granted permission in [redacted] ref [redacted] did not provide for any additional floor space when compared to the dwelling it was replacing (for ease of reference thereon referred to as the 'old' dwelling in this decision). The appellant has calculated this by adding actual physical floor area of the old dwelling to the additional floor area that were intended to be added by way of the outstanding planning permissions benefitting the 'old' dwelling. The applicant states:

These (previous) permissions anticipated the retention of the existing [redacted] and incorporating it within the new extended [redacted].

Development commenced in accordance with these permissions.

The Council's Building Control records show commencement on [redacted].

When work commenced on site, it became apparent that it would be physically impossible to safely retain the original parts of the bungalow as they were structurally deficient.

This had been confirmed by the Council's Building Control Inspector on site and by an engineer's report. Application [redacted] sought permission to address that situation.

The covering letter supporting the application made clear that *"This application is submitted to in effect complete the development for which planning permission has been granted by the Council and on appeal.*
The most appropriate way to complete the development is to renew the [redacted] *with identical dimensions and design.*
The end result is therefore exactly the same as the Council and Planning Inspector found acceptable subject to the conditions attached previously.
The applicant would hope that the Council can permit this application as soon as possible to enable the development to be completed."

8. The CA submitted representations on [redacted]. The representations included planning history and various attachments. The CA representations can be summarised as:

That the review request was accompanied by representations which had been previously addressed in full in the Councils email of [redacted] (document 14) and that the appellant was notified of the outcome of the regulation 113 review within the required timeframe (document 16). The Council responded to the appellant again the following week, reiterating the decision and rational previously provided to the appellant. No cases of self-build relief being granted in identical circumstances were discovered by the Council and none had been provided by the appellant.

On [redacted], the supplied CIL forms were processed by a member of the CIL Team. The plans for the proposed dwelling were measured resulting in a net additional gross internal floor space figure of [redacted] sqm. The floor space of the previous dwelling was not included in the calculation of the CIL Liability because the original dwelling had been demolished prior to the granting of planning permission and the calculation of the CIL liability. This is explained in Regulation 40(7) of the CIL Regulations where it states that only the gross internal area of an in-use building can be included in the calculation if it is to be demolished before completion of the chargeable development. Regulation 40(11) goes on to explain that an 'in-use' building means a building which is a relevant building. A relevant building is defined later in the same regulation as a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

Following this calculation, three CIL notices were generated, as required by the CIL Regulations: an acknowledgement of receipt of Form 1 Assumption of Liability, a Liability Notice and a Demand Notice (Documents 10, 11, 12, pgs 53 - 63). It should be noted that for the purpose of the CIL liability calculation, the floor space measurement was rounded down to [redacted] sqm. A Demand Notice was issued at the same time as the Liability Notice because since the development is classed as retrospective (section 73A), the development is to be treated as commencing on the day planning permission for that development is granted as stated in Regulation 7(5). The demand notice therefore states that the commencement of development date was [redacted].

On the basis of the evidence supplied and detailed above the Council disputes the agent's assertion that this was not a retrospective application. It is important to note that the review and this appeal are undertaken on the basis of Regulations 113 and 114. For development that has commenced, such as at Dawn Corner, review and appeal can only be sought under the CIL regulations if planning permission was granted in relation to that development after it was commenced (i.e. a retrospective planning permission)'.

The Council submits that this appeal under Regulation 114 fails.

9. The appellant provided further comments on [redacted]. They can be summarised as follows:

That the C.A's response to the regulation 113 review request was in two parts and in two e-mails, one dated [redacted], the other dated [redacted]. The C.A's response was therefore not complete until [redacted].

The appellant was not therefore notified of the decision within 14 days as required by the Regulations.

The Council response does not dispute that the development granted planning permission under [redacted] and [redacted] and Building Regulations approval under [redacted] commenced on [redacted].

The development permitted by these permissions is the same in physical form, size, volume and footprint as that permitted under [redacted]. The only difference is that some parts of the development, shown to be retained, had to be renewed. That only became apparent after the commencement on [redacted] of the development permitted under [redacted] and [redacted].

Having accepted that the development commenced in accordance with these permissions, the appellant does not understand (and the Council response does not explain) the statement that it commenced under application reference [redacted] which was not validated until [redacted].

At the time the development permitted by [redacted] and [redacted] commenced there was an in use building on site.

The floor space of this in use building should therefore be taken into the account in any calculation of CIL liability.

The appellant submitted as part of applications [redacted] and [redacted] that the existing and extant floor space was [redacted]m2 and that the permitted floor space was [redacted]m2.

The Council did not dispute these figures.

However, even accepting the figure of [redacted] sqm, there should not be a CIL liability.

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

In respect of the Regulation 113 relating to a review of the chargeable amount, whilst the regulations are clear in stating that a decision should be provided within 28 days of the review start date, there is no penalty should the C.A fail to adhere to this. To ensure that the appellants right to appeal is protected in the event the C.A fails to respond in time, Regulation 114 states that where an appellant is not notified of the decision on the review within 14 days of the review start date, they may appeal to the appointed person on the ground that the revised chargeable amount or the original chargeable amount has been calculated incorrectly. Therefore, there seems little merit in considering this disputed point further.

For the avoidance of doubt, the VOA are unable to consider appeals relating to self-build relief.

Regulation 40 deals with the calculation of the chargeable amount. In order to calculate the net chargeable area, regard must be had to regulation 40 (7). The formula used to calculate the deemed net chargeable area requires a calculation of 'the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development'.

I must therefore consider if those parts of the now demolished bungalow should be accounted for in the calculation of deemed net chargeable area. Regulation 40 defines an in-use building as being i) a relevant building and ii) containing a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development. Whilst ii) appears to be met based on the information provided by the appellant and the C.A, the retrospective nature of the planning applications means that the 'old' dwelling was not in situ as at the date of planning permission and therefore cannot be considered to be a relevant building under regulation 40 (11). A "relevant building" is defined in the regulation as a building

which is situated on the relevant land on the day planning permission first permits the chargeable development and so i) fails.

I considered if the 'new' dwelling could be considered to be a as a relevant building if on site. However, the 'new building', which did not benefit from planning permission prior to the retrospective permission dated [redacted] appears to fail the lawful use test outlined above.

Therefore, whilst it is noted that the development permitted by these permissions may the same in physical form, size, volume and footprint as the 'old dwelling' and historic planning permissions combined, the retrospective nature of the application means that neither the demolished bungalow or the extensions permitted under the historic planning permission can be accounted for in the deemed net chargeable area calculation.

11.

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. This figure appears to have been rounded down by the C.A

ii) Based on the facts of this case and the evidence before me, no credit should be given that 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
RICS Registered Valuer
Valuation Office Agency
[redacted]