

Appeal Decision

by [REDACTED] BSc(Hons) MRICS

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

Valuation Office Agency (SVT)



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

Appeal Ref: [REDACTED]

Planning Permission Ref. [REDACTED] **granted by** [REDACTED]
[REDACTED] **on** [REDACTED]

Location: [REDACTED]

Development: *Retrospective application for the creation of two separate plots and part demolition of existing dwelling and construction of a new driveway and part retrospective application for the erection of 1 x [REDACTED] detached dwelling and application for a proposed detached double garage ([REDACTED]).*

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], 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 planning application ref [REDACTED] dated [REDACTED] together with approved plans, drawings and associated documents.
- b. The Decision Notice issued by [REDACTED] on [REDACTED].
- c. The CIL Liability Notice issued by the CA on [REDACTED].

- d. The letter from the CA dated [REDACTED] in response to the appellant's request for a review.
- e. The CIL Appeal form dated [REDACTED] submitted by the appellant, together with documents and correspondence attached thereto, received by the Valuation Office Agency on [REDACTED].
- f. The CA's representations to the Regulation 114 Appeal dated [REDACTED].

2. Planning permission for the above development was granted by [REDACTED] on [REDACTED].

3. Prior to the grant of this planning permission a previous application had been made for the site as follows:

- [REDACTED] – Demolition of part of existing dwelling and erection of 1 [REDACTED] detached new dwelling creating two separate plots.

Development under this earlier application was approved and commenced on [REDACTED]. The CA's representations indicate that the appellant sought to implement this earlier planning permission but failed to discharge the pre-commencement conditions prior to works starting on site. It is understood that since this planning application was not lawfully implemented, the current application, which is the subject of this CIL appeal, was submitted in order to regularise the works that had been carried out. This application was therefore retrospective although the garage was not part of the original consent.

4. Following the grant of the second planning permission the CA issued a CIL Liability Notice on [REDACTED] in the sum of £[REDACTED]. This was based on a chargeable area of [REDACTED] square metres at the residential CIL rate of £[REDACTED] per square metre plus indexation. In addition surcharges of £[REDACTED] for failure to assume liability and £[REDACTED] for failure to submit a commencement notice have been charged.

5. At the request of the appellant the CA undertook a review of the CIL charge and confirmed by letter dated [REDACTED] that the development remained liable for CIL and the charge of £[REDACTED] (to include the surcharges) had been calculated correctly.

6. On [REDACTED] the Valuation Office Agency received a CIL appeal contending that the chargeable amount has been incorrectly calculated. The appeal form indicates that the appellant wishes to appeal under Regulation 114 (a Chargeable Amount Appeal) but does not indicate an opinion of a correct calculation or amount. The appellant has also sought to appeal under Regulation 115 (Apportionment of Liability Appeal) and Regulations 116, 116A and 116B in relation to Exemptions and Reliefs appeals but the appeal has been decided by the Valuation Office Agency to be valid as a Regulation 114 appeal only.

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

- i. Where part of an existing building has been in lawful use for a continuous period it should be taken into account.
- ii. CIL has been charged for the floorspace of the garage.
- iii. £[REDACTED] has been charged for not completing paperwork on the second application when not previously required to do so.
- iv. The second planning application took over one year resulting in additional cost for the appellant.
- v. Over £[REDACTED] has been paid as a Section 106 agreement.

- vi. No self build relief has been allowed.
 - vii. The appellant feels he has been unfairly treated and has incurred costs due to his lack of experience as a first time builder.
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8. Within its representations the CA has explained that its calculation of the CIL charge has been based on the new dwelling and a garage comprising a total of [REDACTED] sq m of floorspace and has submitted annotated drawings in relation to this floor space calculation.

9. In relation to the appellant's first ground the CA has explained its view that retrospective demolition should not be taken into account. The CA has provided a copy of the Delegated Planning Officer's report as evidence that the demolition had taken place prior to the grant of planning permission [REDACTED].

10. The CA has addressed the appellant's other grounds as follows:

- Issues raised about the time taken are not relevant to this appeal and have no bearing on the CIL charge.
- Any additional charges imposed as a result of processing a second application are not relevant to the CIL appeal.
- There is no evidence provided by the appellant to substantiate the claim of being 'unfairly victimised for costs'. This is not relevant to the CIL appeal and the charge due but could be investigated formally through the Council's complaints procedure.
- The appellant was made aware of the self-build requirements and this point was explained prior to the commencement work on site for the previous application [REDACTED] which was not lawfully implemented.

11. For these reasons the CA considers the CIL charge of £[REDACTED] (to include surcharges), as set out in the Liability Notice, to be correct.

12. Regulation 9 of the CIL Regulations 2010 states that chargeable development means "the development for which planning permission is granted". The CIL liability herein under appeal therefore relates to the proposed development allowed by the planning permission [REDACTED] which, in summary, is for the part demolition of a dwelling and erection of a [REDACTED] dwelling and a garage. Furthermore Regulation 40 defines that the net chargeable area of a chargeable development is its 'gross internal area' less certain allowable deductions. In respect to the appellant's second ground of appeal I therefore consider that it is correct to include the floorspace of the garage within the CIL calculation since it forms part of the gross internal area of the chargeable development.

13. Regulation 40(7) of the CIL Regulations allows for the deduction of certain existing floorspace from the gross internal area of the chargeable development to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace includes "the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development". In order for the demolished building area to be deducted from the new dwelling area within the net chargeable area calculation, that demolished part must be within a building that is a "relevant building" and be "in use" under Regulation 40 (11) of the CIL Regulations 2010 (as amended). A relevant building is defined as a "building which is situated on the relevant land on the day planning permission first permits the chargeable development". Under Regulation 8 (2) of the CIL Regulations 2010 (as amended) "the time at which planning permission first permits development" is defined as "the day that planning permission is granted for that development". In this case planning permission was granted on 10 April 2019 and the CA has submitted evidence to indicate that the demolition had already been undertaken by this date. I therefore conclude that the 'relevant building' that was situated on the relevant land on the date that planning permission was granted did

not include the demolished part and this floorspace cannot therefore be netted off the area of the new development, as is the appellant's argument in ground 1. This is because this part of the building had been demolished prior to the granting of the permission [REDACTED], notwithstanding that this permission retrospectively permitted the demolition.

14. Grounds (iii) to (vi) of the appeal relate to factors that are not within my remit as the Appointed Person to consider. I can only make decisions in accordance with the provisions of the CIL Regulations 2010 (as amended). Under Regulation 117 an appeal against any surcharges must be made to the Planning Inspectorate. There is no provision within the CIL regulations for me to consider any delay in the grant of planning permission or the financial impact thereof. Similarly, there is no right of appeal in relation to the non-application of self-build relief and there is no provision for offsetting any payment in respect of section 106, which I note in this case was in lieu of an affordable housing requirement. It is not for me to comment on the sequence of events requiring the retrospective permission and whether this was a result of the appellant's inexperience as a first time builder but I am satisfied that the CIL charge has been correctly calculated by the CA in accordance with the CIL regulations.

15. There would appear to be no dispute in the calculation of the floor areas, nor the CIL rates or indexation used and I have therefore calculated the CIL chargeable amount as follows:

[REDACTED] sq m @ £ [REDACTED] / sq m = £ [REDACTED]
Plus indexation = £ [REDACTED]

As indicated above, the issue of any surcharges that are payable in addition to this sum is a separate matter which is outside my remit.

16. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore decide the correct chargeable amount to be £ [REDACTED] and dismiss this appeal.

[REDACTED] BSc(Hons) MRICS
RICS Registered Valuer
Valuation Office Agency
[REDACTED]