Appeal Decision

by [redacted] 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]

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

Location: [redacted]

Development: New single storey annexe & roof terrace to replace demolished two storey extension.

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 [redacted] of [redacted] (agent for the appellant, [redacted]) and [redacted] Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following documents:-

a. Planning Application dated [redacted]
b. Delegated planning report by CA dated [redacted]
c. Planning consent dated [redacted]
d. CIL Liability Notice dated [redacted]
e. Review Request dated [redacted]
f. Review Decision from CA dated [redacted]
g. CIL Appeal Form dated [redacted]
h. E-mail from CA to appellant regarding the planning condition within the consent dated [redacted]
i. Grounds of Appeal from Appellants agent dated [redacted] including a redacted CIL Decision (undated)
j. CA representations dated [redacted]
k. Redacted copy of a CIL decision supporting appeal
l. CA representations contained in an e-mail dated [redacted]
m. Appellants response to the representations by CA dated [redacted]

2. Retrospective planning permission for the above development was granted by [redacted] on [redacted]. The council implemented its CIL Charging Schedule for this location on [redacted].

3. Following the grant of retrospective planning permission the CA issued a CIL Liability Notice Reference Number [redacted] on [redacted] in the sum of £[redacted]. This is based on a net chargeable area of [redacted] square meters @ £[redacted] per square metre.

5. The Appellant's agent issued a request for review of the Liability Notice, on [redacted] to the CA.

6. The CA completed a review of the CIL Charge issuing their response in writing on [redacted], indicating no change to the CIL charge.

7. The Valuation Office Agency received a CIL appeal dated [redacted], contending that CIL should not have been charged. The appeal form indicated that the Appellant's agent wished to appeal under Regulation 114 (Chargeable Amount Appeal).

8. The appellant's grounds of appeal for a £[redacted] CIL charge are:-

i. That the development approved within the planning consent was an annexe ancillary to the dwelling and did not comprise one or more dwellings, and should be treated as minor development CIL Regulations 2010 as amended Regulations 42 (1) and (2)
ii. That the annexe was less than 100 sq.m in area.
iii. That the annexe did not comprise one or more dwellings as per Reg 42 and also referred to the delegated planning report Reference [redacted] dated [redacted] where the officer stated that a condition should be attached to the consent for ancillary use to the dwelling.
iv. The planning consent imposed a condition that restricts its occupation to that of the main dwelling and could not be occupied separately.
v. The development shows direct access to the annexe from the main house and the roof terrace can only be so accessed from the main house.
vi. The acceptance by the CA of the planning fee for an extension evidenced the development was not a new dwelling.
vii. That the CA review of the Liability Notice refers to CIL Regulations 2010 as amended Regulations 42A, B and C, these regulations relate to the application for exemption and are not relevant to this matter.
viii. The approved development is not a residential annexe for the purposes of CIL because it does not comprise a new dwelling, in fact it is a residential extension in accordance with CIL Regulation 42A (3).
ix. The CA confirmed the purpose of the occupancy planning condition within the consent in an email dated [redacted] and therefore the development cannot consist of one or more dwellings.
x. The appellant referenced a previous redacted and undated decision by the VOA supporting their contention that the development was not a dwelling.
xi. That the CA contended that the sale of the main dwelling or the annexe to 'not the same person at the same time' is a disqualifying event under CIL Regulation 42C (2) is thought perverse by the appellant as an annexe cannot be ancillary to the main dwelling if it is in a separate ownership.
xii. CIL Regulation 2010 Reg 42 (2) states that that Reg 42(1) does not apply if the development comprised one or more dwellings. The development is not a dwelling as it cannot be occupied separately as stated in definition of dwelling within the CIL Regulations 2010.
xiii. The appellant has made an application for costs pursuant to CIL Regulations 2010 as amended Regulation121.

9. The Council implemented its CIL Charging Schedule [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge.

10. The CA made their submission via e-mail [redacted] also containing a copy of their initial review of the Liability Notice, the main points are detailed below:-

- That both parties agree the size of the development at [redacted] square metres
- That the application was for a self-contained annexe within the grounds of the main house and is capable of being used as a separate dwelling.
- CIL Regulations (unspecified) describe a residential annexe as one that is wholly in the curtilage of the main dwelling and compromises a new dwelling.
- The purpose of the exemption is to enable exemption but to ensure payment if a disqualifying event occurs and the appellant was so advised.
- That the occupancy condition attached to the consent is planning law and not relevant to an appeal under the CIL Regulations.
- That observations regarding physical access to the annexe indicate access to the road via a gate.
- That the applicant should have applied for consent on a full planning application.
- That the referred to VOA CIL decision relates to a basement flat and not an annexe.

11. The appellant responded to the CA representations at para 10. above on [redacted]. A summary of the points made are detailed below

- That any future change of use is liable to CIL now, is incorrect.
- The VOA CIL decision is relevant as the appointed person had to consider the CA`s contention the development constituted a dwelling and decided that the proposal was clearly an enlargement of an existing basement flat.
- Noted that the CA had not responded to the application for costs.

12. There are two distinct issues at dispute in this appeal, the first being whether the development consented under planning ref: [redacted] constitutes minor development under CIL Regulations 2010 Reg 42 (1) or as contended by the CA is a new dwelling and therefore chargeable development under CIL Regulations 2010 Reg 42(2).

13. In order for Reg 42(1) not to apply (as it agreed the area of the chargeable development is well below 100 square metres) the development must be seen to constitute a dwelling under the definition for CIL purposes. That definition is contained in Regulation 2 CIL Regulations 2010 as amended and states a dwelling *means a building or part of a building occupied or intended to be occupied as a separate dwelling*. The annexe is not able to be occupied as a separate dwelling as it has no access other than through the main house or the garden and such occupation is not permitted under a condition placed on occupation within the planning consent [redacted]. As the annexe cannot be occupied separately it cannot be considered a new dwelling.

15. As it is my considered view that the annexe does not constitute a new dwelling, then Regulation 42(2) CIL Regulations 2010 as amended, does not apply.

16. CIL Regulation 42(1) CIL Regulation 2010 does apply and the development is considered minor development as the GIA is well below 100 square metres at an area of either [redacted] metres as agreed by both parties.

17. The CA's contention that CIL Reg.42A is relevant does not apply as it is an exemption that could have been applied for but was not done so prior to the development being commenced (this was a retrospective planning permission) However and further to the preceding any commentary on qualification for exemption under Reg.42A, and any matters relating are outside of the scope of this appeal.

18. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that the CIL charge in this matter is £[redacted]

19. The appellant has applied for an award of costs against the CA in this matter. I fully considered the matter and have decided that the CA have not acted unreasonably and no award to costs should be made. The appeal process is designed for an independent third party to consider differing opinions and interpretations relating to the CIL charge (in this instance) and that the CA made a different interpretation of the Regulations to the appellant, it does not follow that CA were acting unreasonably in this particular matter.

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency