Appeal Decision

by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency (DVS)
[redacted]

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

Appeal References: [redacted] ***and*** [redacted]

Address: [redacted]

Development: Two storey extension and conversion into 4 1-bed flats and demolition of outbuilding.

Planning permission details: Planning permission [redacted] ***granted by*** [redacted] ***on*** [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) charge in this case should be £[redacted] ([redacted]).

I determine that the amount of exemption for self-build housing under Regulation 54A Community Infrastructure Levy Regulations 2010 (as amended) in respect of the development is to be assessed in the sum of £[redacted] ([redacted]) and the amount payable should therefore be £[redacted] ([redacted]).

Reasons

Background

1. I have considered all the submissions made by [redacted] (the appellant) and the representations made by 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 the CA's decision on the claim for exemption for self-build housing dated [redacted].
   d. The CIL Appeal Form dated [redacted] with attached grounds of appeal and other supporting documents submitted under regulation 116B (Appeal Ref: [redacted]) on the basis that the CA have incorrectly determined the value of self-build relief.
   e. The CA's representations dated [redacted].
   f. The appellant's further comments dated [redacted].
   g. The CIL Appeal Form dated [redacted] with attached grounds of appeal and other supporting documents submitted under Regulation 114 on the basis that the CIL Charge has been incorrectly calculated (Appeal Ref: [redacted]).
   h. The CA's representations dated [redacted].
   i. The appellant's further comments dated [redacted].

2. Planning permission was granted on [redacted]. The permission was for a two storey extension and conversion into 4 1-bed flats and demolition of outbuilding.

3. On [redacted] the CA issued a Regulation 65 Liability Notice, seeking a CIL payment of £[redacted]. This figure was derived from a net chargeable area of [redacted] square metres (m^2) giving an 'Area Charge' of £[redacted]. The net chargeable area of [redacted] m^2 has been derived from the following:

   Gross internal area (GIA) of the total development - [redacted] m^2
   Less [redacted] m^2 for demolished floor space
   Less [redacted] m^2 for existing floor space
   Net Chargeable Area = [redacted] m^2

4. The CA confirmed their decision on a claim for Self-Build Relief on the same date, confirming a total sum of £[redacted] although no explanation as to how this was arrived at was given. This left a CIL liability of £[redacted].

5. The appellant submitted an appeal under Regulation 116B (Exemption for self-build housing) on [redacted] seeking the CIL payment be reduced to £[redacted] ([redacted]).

6. The appellant later submitted an appeal under Regulation 114 (Chargeable amount appeal) on [redacted].

Grounds of Appeal

7. The grounds of both appeals are as follows:-

a) CIL Charge

The appellant notes that the project is to convert an existing property into 3 flats and construct a new build extension to the side of the existing property comprising a 4th dwelling ([redacted]). The appellant and his family intend to move into the new build extension ([redacted]) as their primary and only family residence immediately on completion. The appellant considers that conversions do not attract CIL, and since all of the new build floor space will become his primary residence, he believes that the circumstances exempt him from all liability for CIL contributions.

The appellant understands the CA's position to be that, when there is no additional floor space created, conversions of a single dwelling to two or more dwellings do not attract CIL, but once additional floor space is created, as is the case with the approved development, it becomes liable for CIL in accordance with CIL Regulation 40 and relief will only be awarded proportionate to the overall development. The CA estimate the GIA for [redacted] to be [redacted]sqm which represents [redacted]% of the total development ([redacted]sqm). They considered Self-Build Relief should be [redacted]% of the liability (£[redacted]). This was later amended on [redacted] to [redacted]% (£[redacted]).

In summary the appellant believes that the floor space of the conversion should not be included in the chargeable development for CIL calculation purposes.

b) Self-Build Relief

The Appellant notes an appeal decision with regard to self-build relief (as submitted by the CA) but considers that the appeal decision circumstances are different from his own and makes the following observations:

1. *The CIL Amendment Regulations 2014 54(A) Exemption for Self-Build Housing (7) states, 'In this regulation, "relevant development" means development which is authorised by the same planning permission as the self-build housing in question, but which does not include the self-build housing.'*
   So it would appear to the appellant that self-build housing is not included as relevant development for any calculation relating to CIL. This would seem to fit with the intent of this Exemption for Self-Building being to promote rather than restrain self-building.

2. *The appellant has attached a copy of another redacted decision. He notes that Paragraph 10 records that the conversion of a single family dwelling into two or more separate dwellings should be excluded from the definition of development for CIL purposes and 'should not be included in the chargeable development'. Although it was further decided in that case that the whole development was chargeable because it exceeded change of use. That aspect is not relevant to this case in the view of the appellant.*

The appellant notes that the CA disagrees with the appellant's interpretation of regulation 54(A) paragraph 7. The CA consider paragraph 7 is for definition purposes, in reference only to the inclusion of communal self-build areas referred to in paragraphs 3 - 6 of the regulation.

The appellant says CIL regulation 54 Part 7 begins with the words 'In this regulation', which indicates relevance to the entirety of regulation 54 not only parts 3-6. The appellant contends that it is self-evident Part 7 is intended to relate to both self-build housing and self-build communal development, 'In this regulation, "relevant development" means development which is authorised by the same planning permission as the self-build housing in question, but which **does not include the self-build housing or the self-build communal development**' (emphasis appellant's).

The CA's Representations

8. The CA submitted representations in relation to the regulation 116B appeal on the [redacted], the main points of which are as follows:-

This appeal relates to the amount of self-build relief allocated to the appellant and how it has been calculated. The CA has calculated the self-build relief as a proportion of the entire chargeable development. The appellant argues that the wording of regulation 54A indicates that self-build housing should not be included in any calculation for CIL purposes, the CA dispute this for the following reasons;

- Fundamentally if self-build housing is not meant to be included in any CIL calculation there would be no need for self-build relief.

- The CA believe that where regulation 54A – (7) states 'In this regulation, "relevant development" means development which is authorised by the same planning permission as the self-build housing in question, but which does not include the self-build housing.' It is in reference to calculating self-build communal floor-space, the only place where 'relevant development' is written within regulation 54A is where the calculation for self-build communal floor-space is explained.

- Regulation 54A - (1) states "subject to paragraphs (10) and (11), a person (P) is eligible for an exemption from liability to pay CIL in respect of a chargeable development if it comprises self-build housing or self-build communal housing."

9. The meaning of chargeable development is defined in Regulation 9-(1)"The chargeable development is the development for which planning permission is granted." The CA has submitted a link to a redacted Appeal Decision which in their view, although different to the subject case, supports the method of calculating the amount of self-build relief awarded to the applicant in so much as agreeing a method of apportionment, where no calculation is specified within the Regulations. The Appointed Person (valuer) concluded that they supported the CA's method which 'effectively apportions the total chargeable amount broadly in proportion to the total floor area of each dwelling'.

Given the lack of specific guidance as to how to calculate the value of exemption, CA says that CAs have no option but to look at:

- Other calculations within the regulations that can be applied
- Previous appeal decisions that relate to similar circumstances.

10. The CA further submitted representations in relation to the Regulation 114 appeal on the [redacted] the main points of which are as follows:-

- The liability has been calculated in accordance with the Community Infrastructure Levy Regulations 2010 (as amended). From previous correspondence with the appellant it seems that the query on the calculation is whether the additional floorspace should be liable as it is under 100m2. Regulation 42, exemption for minor development, states that the exemption does not apply where the chargeable development will comprise of one or more dwellings.

- Exemption for minor development:

  42.— (1) Liability to CIL does not arise in respect of a chargeable development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

  (2) But paragraph (1) does not apply where the chargeable development will comprise one or more dwellings.

  (3) In paragraph (1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.

- The proposed floor-space is [redacted] m^2, with [redacted] m^2 retained use and [redacted] m^2 demolition leaving [redacted] m^2 of liable floor-space. In line with the calculation detailed in Regulation 40 of the Community infrastructure Levy Regulations the total liability for this development has been calculated as £[redacted]

Regulation 114 Appeal Decision

11. Having fully considered the representations made by the appellant and the CA, I make the following observations on the representations and the grounds of the appeal.

12. The appellant's grounds for both appeals relate to the calculation of the CIL charge and the calculation and application of self-build relief under regulation 54A. Since the appellant has made appeals under both regulations 114 and 116B I will firstly consider the calculation of CIL and then the application of self-build relief under regulation 54A. It is noted that the parties appear to be broadly in agreement with regard to the proposed and existing floor space, the appropriate CIL rates and indexation.

13. The appellant considers that the floor space of the conversion should not be included as chargeable development for CIL calculation purposes. The appellant is effectively contending that the conversion of the existing house should not be treated as part of the development for the purposes of CIL. Therefore, the chargeable development should only comprise the new extension.

14. The CA's view is that the 'chargeable development', which is defined in regulation 9 as 'the development for which planning permission is granted', should therefore comprise all of the development described in the planning permission.

15. However, regulation 6 paragraph (1)(d) is also relevant as to what is treated as 'development' for CIL purposes. It states:-

(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 dwelling house to use as two or more separate dwelling houses."

16. I believe that it is appropriate to adopt the CIL definition of 'development', so in my view 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 three flats is excluded from the definition of 'development' by virtue of regulation 6(1)(d) this should not be included in the chargeable development.

17. If the CA's interpretation were correct then I think regulation 9 would be at variance with regulation 6, because if a development for which planning permission was granted only comprised a change of use (i.e. there were no extensions) then the 'chargeable development' would still comprise the whole building. If the building had not previously been in lawful use then the whole floor area would be liable despite regulation 6, which I do not believe is the intention of the regulations.

18. Although I am accepting that, prima facie, the chargeable development does not include the conversion of the existing house to three flats, it must also be considered if there are other substantial works to the converted flats that might require planning permission, or are the works just installing kitchens, bathrooms, doors and openings etc. that do 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.

19. I have looked at the plans that formed part of the planning permission and the works in this case appear to largely comprise internal re-configuration and additional stair case installation. The main structural walls and form of the original building are retained with the 4th flat being contained in an attached two storey new build extension.

20. Therefore, in view of the limited nature of the alterations to the existing building, I am of the opinion that on balance the chargeable development does not include the three converted flats. On the facts of this case the chargeable development does not include the three converted flats excluded by regulation 6 and therefore extends to the new build extension (Flat 4) only.

21. The CA have mentioned the minor development exemption which they consider not to be applicable. Regulation 42 is set out below:-

(1) Liability to CIL does not arise in respect of a chargeable development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.
(2) But paragraph (1) does not apply where the chargeable development will comprise one or more dwellings.
(3) In paragraph (1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.

22. I agree that the minor development exemption does not apply in this case because the chargeable development comprises a dwelling, notwithstanding that the chargeable development is less than 100 square metres.

23. The plans submitted with the planning application note the GIA of the new build flat to be [redacted]m^2 whilst the appellant has identified that the demolished areas (comprising a porch and garage) to total [redacted]m^2. I therefore calculate the net chargeable area to be as follows:

Chargeable development	-	[redacted]m^2
Demolished area	-	[redacted]m^2
Net chargeable area	-	[redacted]m^2

I have taken measurements from the plans that have been provided and I am of the opinion that the areas proposed are reasonable and acceptable. I have not included a conservatory or garden store within the demolished areas since the former is not shown on the plans and the latter is not included within the RICS definition of GIA.

24. On the evidence before me, having regard to the particular facts of this case, I conclude that the appropriate charge should be based on a net additional area of [redacted]m^2 as set out below:-

Net chargeable area - [redacted]m^2 @ £[redacted] = £[redacted]

Plus indexation ([redacted]) CIL Charge = £[redacted]

25. I therefore confirm a CIL charge of £[redacted] ([redacted]).

Regulation 116B Appeal Decision

26. In consideration of the appeal in respect of self-build relief made under regulation 116B the relevant references to self-build relief in the Regulations are as follows:-

54A.—(1) Subject to paragraphs (10) and (11), a person (P) is eligible for an exemption from liability to pay CIL in respect of a chargeable development, or part of a chargeable development, if it comprises self-build housing or self-build communal development.

(2) Self-build housing is a dwelling built by P (including where built following a commission by P) and occupied by P as P's sole or main residence.

116B.—(1) An interested person who is aggrieved at the decision of a collecting authority to grant an exemption for self-build housing may appeal to the appointed person on the ground that the collecting authority has incorrectly determined the value of the exemption allowed.

27. The appellant contends that the CA has incorrectly calculated self-build relief due to the application of regulation 54(7). However regulations 54A (3) – (8) are in relation to self-build communal development which is defined under regulation 54A (4) as development that *'is for the benefit of the occupants of more than one dwelling that is self-build housing, whether or not it is also for the benefit of the occupants of relevant development'.* The chargeable development under consideration in this case comprises a single flat and would appear to qualify for relief as self-build housing. It is not for the benefit of the occupants of more than one dwelling and is not therefore self-build communal development. The appellants representations in respect of the

application of regulation 54A (7) are therefore not relevant to the calculation of self-build relief.

28. In assessing the self-build relief the CA has followed an approach detailed in another appeal decision and has apportioned the relief in proportion to the GIA of the self-build housing compared to the GIA of the development as a whole. This is on the basis that the regulation 40 calculation is derived from the chargeable development comprising the whole development, including the converted units, and the demolition floor space is then deducted from the total floor area of the chargeable development, not from any particular part of that development in the calculation. On this basis the CA have calculated that the Self Build Relief would be [redacted]% of the liability. This was later amended to [redacted]% i.e. £[redacted] of a total CIL Liability of £[redacted].

29. The CA note that an approach to the calculation is not specified within the regulations but they have followed an approach used in an appeal to which they have referred. In that appeal both the CA and the appellant had undertaken separate regulation 40 calculations for each dwelling approved under the planning permission and apportioned the demolition floor space between the two permitted dwellings. The Appointed Person confirmed that his decision was in respect of the amount of the exemption granted only and it was solely on this issue that he made his decision. He noted that the approach of undertaking separate regulation 40 calculations for each dwelling approved under the planning permission was an approach for which there is no support in the regulations. In deciding the regulation 116B appeal the Appointed Person could not review the regulation 40 calculation. In that particular case, since both the CA and the appellant had undertaken separate regulation 40 calculations for each dwelling, the Appointed Person favoured the CA approach and apportioned the self-build relief between the two units in the same way that the demolition floor space had been offset in the regulation 40(7) calculations.

30. In this case, pursuant to my decision in respect of the regulation 114 appeal above, I do not consider that there is a requirement for the self-build relief to be apportioned. I have decided that the chargeable development under regulations 9 and 6(2) comprises the new build [redacted] only and since the CA agree that self-build relief applies in principle, the relief will then apply to the entirety of the charge.

31. On the evidence before me, having regard to the particular facts of this case, I confirm the amount of the self-build relief exemption to be the full charge as follows:-

Chargeable Amount: £[redacted]
Self-Build Relief Exemption: £[redacted]

The amount payable should therefore be [redacted]

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