Appeal Decision

by [redacted] BSc (Hons) MRICS

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

Valuation Office Agency (DVS)

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

Appeal Ref: [redacted]

Location: [redacted]

Planning Permission Reference: [redacted]

Development: Erection of two storey extension and alterations following demolition of existing single story extension (as amplified by email and plan received [redacted])

Decision

I determine that the Community Infrastructure Levy payable in respect of the above development should be **£**[redacted] ([redacted]).

Reasons

1. I have considered all the submissions made by [redacted] of [redacted] on behalf of [redacted] (the appellant) and [redacted], the Collecting Authority (CA). In particular I have considered the information and opinions expressed in the following submitted documents:-

a) Community Infrastructure Levy Appeal Form dated [redacted] submitted on behalf of the appellant together with accompanying notes and appendices.

b) Representations received from the CA on [redacted] with accompanying appendices.

c) The appellant's comments made in response to the CA's representations.

2. In brief, the relevant planning history of the development is as follows:-

a) Planning permission was granted on [redacted] for the erection of a two storey extension and alterations following demolition of existing single storey extension (reference [redacted]) ('the [redacted] permission').

b) Non material amendment to [redacted] to alter elevations and increase the length of the extension and projection of the porch was refused on [redacted] (reference [redacted]).

c) Planning permission was granted on [redacted] for the erection of a two storey extension and alterations following demolition of existing single storey extension (reference [redacted]) ('the [redacted] permission').

3. The CA's charging schedule came into effect on [redacted]. The CA issued a Liability Notice on [redacted] detailing their calculation of the chargeable amount of £[redacted]. As the development had commenced the CA issued a Demand Notice at this figure on the same day.

4. The appellant's appeal has been accepted as a valid appeal under Regulation 114 of the CIL Regulations 2010 (as amended). The appellant has indicated that he considers the chargeable amount has been calculated incorrectly and should be either nil or, in the alternative, £[redacted].

5. The grounds of the appeal are:

either;
(a) planning permission [redacted] should be treated as a permission granted under section 73 of the Town and Country Planning Act 1990 and as such the chargeable amount should be nil since the increase in chargeable area between the first permission and the second permission is less than 100 square metres

or;
(b) if [redacted] is not a s73 permission, then the appellant contends that the CA has incorrectly calculated the chargeable area. The appellant contends that the chargeable area should be [redacted] square metres rather than [redacted] square metres as stated in the Liability Notice which would result in a chargeable amount of £[redacted]. The appellant does not agree with the deduction that the CA has made within the calculation of the net chargeable area in relation to the area of the existing in-use building. In particular he considers that loft space should be included as the gross internal area of the in-use building.

Ground (a)

6. In respect of the first ground, the appellant notes the planning application describes the proposed works as an *"amendment of application ref.* [redacted] *to increase the depth of garage by* [redacted] *mm including bedroom above. Increase depth of porch by* [redacted] *mm and to add pitch roof to approved flat dormers."* The appellant also cites the CIL Additional Information Requirement Form in which it was stated that the application was a section 73 application.

7. The appellant agrees that the description of the development permitted under the [redacted] permission did not refer to an amendment of the [redacted] permission but considers that the [redacted] permission should still be interpreted as a permission granted under s73.

8. The CA notes that, despite the stated intention to submit an application under s73 to vary conditions attached to the [redacted] permission, the CA confirms that the application was actually submitted and treated as a separate full application and a full planning permission

was subsequently granted. The CA does not consider that the CIL regulations allow for any discretion in the treatment of planning permissions.

9. Regulation 9(1) of the CIL Regulations 2010 (as amended) states that 'the chargeable development is the development for which planning permission is granted'. In this case the development for which planning permission is granted is: '*Erection of two storey extension and alterations following demolition of existing single story extension (as amplified by email and plan received* [redacted])'. The CA concedes that there may have been some ambiguity in the application process but this is not for me to consider. I can only consider the chargeable amount based on the planning permission that was actually granted. The development described in the planning permission contains no reference to s73, no reference to the earlier planning permission or any new or amended conditions and it has evidently been granted as a new full planning permission and not a permission to vary a condition of an earlier permission granted under s73.

10. As such, the chargeable amount falls to be calculated as a 'standard case' in accordance with Schedule 1 Part 1 of the CIL regulations rather than as an 'amended' planning permission which would fall under Part 4 covering the amount of CIL payable in relation to pre-CIL permissions 'amended' when CIL is in effect. The CIL regulations do not allow for any discretion in the treatment of planning permissions and the detail of my calculation of the CIL charge as a 'standard case' follows below.

Ground (b)

11. This aspect of the appeal relates to the calculation of the chargeable area and the deduction within the calculation in respect of an 'in-use building'. It would appear that there is agreement that the original building situated on the site qualifies as an in-use building. The dispute is effectively in respect of the gross internal area of the chargeable development and the retained parts of the in-use building that are to be deducted in order to arrive at the net chargeable area.

12. Paragraph 6 of Part 1 of Schedule 1 of the CIL regulations sets out the formula for the calculation of the net chargeable area as being:

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—
G = the gross internal area of the chargeable development;
GR = the gross internal area of the part of the chargeable development chargeable at rate R;
KR = the aggregate of the gross internal areas of the following—
(i) retained parts of in-use buildings; and
(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;
E = the aggregate of the following—
(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development;

13. Schedule 1 Part 1(10) states that an "in-use building" means a building which—(i) is a relevant building, and (ii) contains 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; a “relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development, which in this case is [redacted].

14. Neither party has set out their calculations showing the gross area of the chargeable development with deductions for retained parts, or parts that are to be demolished. Both parties have used a short cut method and shown the results of their respective calculations of the additional gross internal area proposed for each floor, which in this case equates to the net chargeable area.

15. There is some discussion within the representations as to whether a single storey wing housing a garage and utility area shown on the ‘existing plans’ should be included as a deduction within the calculation. The single storey element had been demolished by the date of the planning permission. However it would appear that neither party has actually deducted the area relating to this element within their respective calculations. I agree with this as it did not form part of the GIA of the relevant building on the date of the planning permission.

16. The appellant’s calculations result in a net chargeable area of [redacted] square metres (sqm). The annotated plans within the appellant’s representations only show part of the building but from this it appears that the appellant has calculated that the new build area on the ground floor extends to [redacted] sqm. The first floor plans and calculations are shown in two parts, one plan shows an additional [redacted] sqm in relation to the first floor proposed extension whilst a separate plan shows that the appellant has deducted former loft space of approximately [redacted] sqm to arrive at a net chargeable area of [redacted] sqm over both floors.

17. In contrast the CA’s calculation results in a net chargeable area of [redacted] sqm. The CA has calculated an additional GIA of [redacted] sqm on the ground floor and a net additional GIA of [redacted] sqm on the first floor ([redacted] sqm of proposed floor space less an existing first floor projection of [redacted] sqm). These are shown shaded on plans annotated as: ground floor proposed, first floor proposed and first floor existing. The CA has not submitted a ground floor existing plan.

18. The difference in the areas adopted for the ground floor ([redacted] sqm by the CA compared to [redacted] sqm by the appellant) appears to be due to the measured depth of the new build extension. The appellant has measured to the ‘old front line of tower’ whereas the CA has measured to a point flush with the remainder of the building and set back slightly from the ‘old front line of the tower’.

19. The difference in the areas adopted for the first floor ([redacted] sqm by the CA compared to approximately [redacted] sqm by the appellant) appears to be due to the appellant measuring the depth of the first floor extension up to the ‘old front line of tower’ whereas the CA has measured to a point flush with the remainder of the original building. The CA has then deducted the ‘tower’ area of [redacted] sqm, but the former ‘tower’ is not shown as extending to the full width of the new extension at first floor level. Additionally, the appellant has deducted former eaves storage. The appellant states that the eaves storage area in the pre-development property had a full height access door leading to an area with a boarded floor and in the appellants view this would fall to be included as GIA. The CA has quoted the RICS Code of Measuring Practice saying that voids in roof spaces without permanent access should not be included as GIA.

20. The only evidence for me to judge the extent of the net chargeable area, i.e. the proposed new build area compared to the extent of the original building at the date of the planning permission, is by examination of the plans and photographs submitted. Unfortunately the submitted plans of the 'existing' building do not reflect the building as it was at the date of the planning permission when the single storey extension had been demolished. However the CA has submitted some photographs taken on site by the planning officer on [redacted]. These show the former single storey element had been demolished by this date.

21. Based on these photographs I consider that the GIA of the new build element on the ground floor as calculated by the appellant likely to be more accurate since a projection of the ground floor of the tower can clearly been seen and from the appellants plans it is apparent that he has measured up to this point.

22. However in relation to the first floor the appellant has submitted no evidence in respect of the eaves storage for which he is claiming a deduction. The eaves storage was not shown on any existing plans, other than as an annotation by hand, and furthermore there is no access or door marked on the plans. Additionally no photographs have been submitted as evidence. I do not consider this is sufficient evidence to include it as a deduction and in any event I do not consider that the majority of the loft space would qualify as a deduction within the calculation of the net chargeable area as it does not appear to be a 'retained part'. The proposed plans only show a small portion of this floor space to be retained as a dormer addition. It also appears that the CA's treatment of the first floor tower is more accurate since plans and drawings are clear that it does not extend to the full width of the new first floor extension. For these reasons I consider that the area of adopted by the CA in relation to the first floor likely to be more accurate.

23. There appears to be no dispute regarding the CIL rate adopted at £[redacted] per sqm and on the basis of the appellant's calculated net chargeable area of the ground floor ([redacted] sqm) and the CA's net chargeable area of the first floor ([redacted] sqm) I calculate a CIL charge as follows:

[redacted] sqm @ £[redacted] per sqm = £[redacted]

24. On the basis of the evidence before me I consider that the CIL charge in this case should be £[redacted] ([redacted]).

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