

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency - DVS
[REDACTED]

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

Appeal Ref: [REDACTED]

Planning Permission Reference: [REDACTED] granted by [REDACTED] on [REDACTED]

Location: [REDACTED]

Development: Demolition of dwelling house and erection of five dwellings including formation of access road, parking and landscaping works.

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] of [REDACTED] (the Appellant) and [REDACTED] as the 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 Decision Notice ref [REDACTED] issued by the CA on [REDACTED]
 - b. CIL Liability Notice [REDACTED] issued on [REDACTED] by the CA at £[REDACTED] CIL Liability.
 - c. CIL Liability Notice [REDACTED] issued on [REDACTED] by the CA at £[REDACTED] CIL Liability.
 - d. The CAs letter of [REDACTED] reference [REDACTED] in response to the Appellants request for a Regulation 113 Review.
 - e. CIL Liability Notice [REDACTED] issued on [REDACTED] by the CA at £[REDACTED] CIL Liability.
 - f. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
 - g. The CA's representations to the Regulation 114 Appeal received on [REDACTED].

h. Further comments on the CA's representations prepared by the appellant and dated [REDACTED].

2. Planning Permission ref [REDACTED] was granted on [REDACTED] for the demolition of a single dwelling house and erection of five replacement dwellings including formation of an access road, parking and landscaping works at the subject location.
3. A CIL Liability Notice reference [REDACTED] was issued by the CA on [REDACTED] at £[REDACTED] CIL liability ([REDACTED]) based on a chargeable area of [REDACTED] m2 Gross Internal Area (GIA) reflecting a deduction of [REDACTED] m2 for existing in use buildings.
4. This CIL liability was calculated by the CA as follows:-

GIA of the development [REDACTED] m2 GIA
Less GIA of demolitions [REDACTED] m2
= Chargeable Area [REDACTED] m2 GIA

Thus:-

$$\frac{\text{£ [REDACTED] /m2 x [REDACTED] m2 GIA x [REDACTED] index}}{\text{[REDACTED] base index}}$$

= £[REDACTED] CIL Charge

5. The Appellant then challenged the GIA of [REDACTED] m2 used by the CA for the existing buildings, stating that in accordance with the original marketing particulars prepared by [REDACTED] for the old bungalow the GIA should be [REDACTED] m2.
6. The CA, on further consideration, determined that as the old bungalow had already been demolished when planning permission was granted on [REDACTED], it could not therefore be considered as a relevant in-use building, and its GIA should not be deducted from the GIA of the total development when calculating the CIL charge.
7. A CIL Liability Notice reference [REDACTED] was issued by the CA on [REDACTED] at £[REDACTED] CIL liability ([REDACTED]) based on a chargeable area of [REDACTED] m2 Gross Internal Area (GIA) with no deduction for existing in-use buildings.
8. This CIL liability was calculated by the CA as follows:-

GIA of the development [REDACTED] m2 GIA
Less GIA of demolitions zero
= Chargeable Area [REDACTED] m2 GIA

Thus:-

$$\frac{\text{£ [REDACTED] /m2 x [REDACTED] m2 GIA x [REDACTED] index}}{\text{[REDACTED] base index}}$$

= £[REDACTED] CIL Charge

9. On [REDACTED] the Appellant requested a Regulation 113 review from the CA, who responded in a letter dated [REDACTED] reference [REDACTED] that they did not consider there to be any relevant in-use buildings present on the site, as these had been demolished prior to planning permission being granted.

10. The CA further confirmed their calculation of the chargeable development GIA at [REDACTED] m2 comprising the total GIAs of the five new dwellings as follows:-

Unit A [REDACTED] m2
Units B & D [REDACTED] m2
Unit C [REDACTED] m2
Unit E [REDACTED] m2

Total [REDACTED] m2 GIA

11. The CA further explained that the CIL charge contained in their prior Liability Notice ref [REDACTED] at £[REDACTED] had been amended under the Regulation 113 review, as the index used should have been [REDACTED] (which came into effect on [REDACTED] before planning permission was granted) rather than the [REDACTED] they had initially applied. This resulted in a slight reduction in the CIL charge.

12. A CIL Liability Notice ref [REDACTED] dated [REDACTED] was subsequently issued by the CA with liability calculated as follows:-

GIA of the development [REDACTED] m2 GIA
Less GIA of demolitions zero
= Chargeable Area [REDACTED] m2 GIA

Thus:-

$$\frac{\text{£[REDACTED]}}{\text{[REDACTED] m2}} \times \text{[REDACTED] m2 GIA} \times \frac{\text{[REDACTED] index}}{\text{[REDACTED] base index}}$$

= £[REDACTED] CIL Charge

13. On [REDACTED] the Valuation Office Agency received a CIL appeal dated [REDACTED] made under Regulation 114 (chargeable amount).

14. The appeal is made on the basis that the old bungalow was a relevant in-use building and its GIA of [REDACTED] m2 should be off-set against the total development GIA of [REDACTED] m2, with a resultant Chargeable Area GIA of [REDACTED] m2 being used to calculate CIL at £[REDACTED].

15. The appeal therefore requires two specific matters to be addressed:-

- 1) The identification of relevant in-use buildings and calculation of their GIA.
- 2) The correct calculation of the CIL Charge.

16. With regards to appeal matter 1): The identification of relevant in-use buildings and calculation of their GIA: the Appellant is of the view that the "old bungalow" with a GIA of [REDACTED] m2 was a relevant in-use building.

17. With regards to appeal matter 2): The correct calculation of the CIL Charge: the Appellant contends that CIL should be calculated using a Chargeable Area of [REDACTED] m2 GIA with a resultant CIL liability of £[REDACTED] ([REDACTED]).
18. The identification of relevant in-use buildings and calculation of their GIA: Disagreement surrounding the issue of identifying the “in use buildings” has arisen due to the effect of Regulation 40(7) of the CIL Regulations 2010 (as amended), which provides for the deduction or “off-set” of the GIA of existing in use buildings from the GIA of the total development in calculating the CIL charge.
19. Regulation 40(11) provides that an “in use building” means a building which 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.
20. Regulation 40(11) also provides that “relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.
21. The Appellant confirms that the old bungalow was demolished in mid [REDACTED]. The CA’s own checks showed that there had been a Building Control application for demolition of a dwellinghouse on the site prior to the granting of planning permission on [REDACTED], and Building Control confirmed that their records show the old bungalow had been demolished in [REDACTED].
22. It is accepted that the GIA of the old bungalow was incorrectly stated as [REDACTED] m2 within information provided by the Appellant’s agent [REDACTED] of [REDACTED] in the Planning Portal CIL Form submitted on [REDACTED]. The Appellant’s submission to the CA included the original marketing particulars prepared by [REDACTED] with a stated total floor area of [REDACTED] m2.
23. A deduction or off-set of this GIA cannot however be made, as the requirements of Regulation 40(11) are not met - the “relevant building” (the old bungalow) had already been demolished approximately twelve months beforehand, and was thus not situated on the relevant land on the day planning permission first permits the chargeable development on [REDACTED].
24. The old bungalow does not therefore meet the requirement for an “in-use building” in accordance with Regulation 40(11) of “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”.
25. The correct calculation of the CIL Charge: The CIL Regulations as amended set out the calculation required to determine the chargeable amount in Schedule 1 Part 1 paragraph 1(4):

“(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times Ip}{Ic}$$

Where:-

A = the deemed net area chargeable at rate R, calculated in accordance with sub-paragraph (6);

Ip = the index figure for the calendar year in which planning permission was granted; and

lc = the index figure for the calendar year in which the charging schedule containing rate R took effect."

26. The CA's most recent calculation contained in Liability Notice reference [REDACTED] is thus correctly calculated as:-

$$\frac{[REDACTED]}{[REDACTED]} \times [REDACTED] \times [REDACTED]$$

which results in a CIL chargeable amount of £[REDACTED] using the corrected lower index (Ip) of [REDACTED].

27. CIL is therefore correctly calculated as follows:-

GIA of the development [REDACTED] m2 GIA

Less GIA of demolitions zero

= Chargeable Area [REDACTED] m2 GIA

Thus:-

$$\frac{£[REDACTED]}{[REDACTED] \text{ m2} \times [REDACTED] \text{ m2 GIA} \times [REDACTED] \text{ index}} \times \text{base index}$$

$$= \text{Total CIL Liability} = £[REDACTED] ([REDACTED])$$

28. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[REDACTED] ([REDACTED]) to be appropriate.

[REDACTED] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
[REDACTED]