Appeal Decision

by [redacted] MRICS VR

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]

***Address**:* [redacted]

Proposed Development: Erection of single-storey side and rear infill extension at ground floor level; amalgamation of two residential units to provide a single dwellinghouse. [Retrospective consent sought for amalgamation]

Planning Permission details: Granted by [redacted] on [redacted], under reference [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 the appellant's agent, [redacted] of [redacted] (acting on behalf of the appellant, [redacted]), and the submissions made by the Collecting Authority (CA), [redacted].

2. Planning permission was granted for the development on [redacted], under decision reference [redacted].

3. On [redacted], the CA issued a Liability Notice (Reference: [redacted]) following the grant decision under reference [redacted], for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m², comprising of:

   Mayoral CIL
   [redacted] m² @ £[redacted] per m² (index [redacted]) = £[redacted]

[redacted] CIL
m² @ £[redacted] per m² (index [redacted]) = £[redacted]
£[redacted]

4. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (1) from the appellant. The appellant contends that no CIL should be payable and the appellant's grounds of appeal can be summarised as follows:

   a) CIL liability does not arise as the extension is less than [redacted] m².
   b) The amalgamation of two units is not the creation of a dwelling, but rather a cessation of a dwelling.
   c) The appellant contends that the CIL legislation allows for minor development exemption and that the loss of a dwelling in this instance should fall into minor development with no CIL liability.
   d) The appellant contends that the amalgamation of two dwellings is in many cases, not development at all, citing the case of [redacted] *v Secretary of State for the Environment, Transport and the Regions* ([redacted]).

5. The CA contends that the CIL charge has been correctly calculated and points to the current s.42 Regulations (which have a broader meaning than those previous) which now includes the conversion of multiple dwelling units into one or fewer units. The resultant single unit converted from multiple units can be seen as a 'new' dwelling. Therefore, the CA contends that the development is CIL liable.

6. There would appear to be no disagreement between the CA and the appellant in respect of the floorspace of the chargeable development or the indexation applied.

7. The CIL exemption for minor development is contained in the CIL Regulations Part 6: Exemptions and Reliefs, Regulation 42, which states:

   "42.—(1) Liability to CIL does not arise in respect of a 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 development will comprise one or more dwellings.

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

8. I am required to consider this appeal under the Community Infrastructure Levy Regulations 2010 (as amended). The CIL Regulations are very clear on the meaning of "chargeable development", which is set out in Regulation 9(1), which states:

   The chargeable development is the development for which planning permission is granted.

9. It is a fact that planning permission was granted for the development on [redacted], under reference decision [redacted]. In this case, planning permission is granted for "…*amalgamation of two residential units to provide a single dwellinghouse…"* The chargeable development therefore comprises "*one or more dwellings*" under Regulation 42 (2) and is not eligible for minor development exemption, regardless of size.

10. The appellant's contention that the amalgamation of the two flats is not the creation of a dwelling but rather the cessation of a dwelling, is a questionable statement in my opinion, which I am not persuaded on. At the heart of the matter is the provision and interpretation of Regulations 42 (2) and 42 (3), which the subject development clearly falls under, given that planning permission was granted for a *"…single dwellinghouse…"* Within his appeal, the appellant also contends, that the intention of the minor development exemptions of the CIL Regulations is not to exclude a case, where there is a loss of a dwelling; in addition, where the additional floor space is minor, it should be exempt. Whilst I am not unsympathetic to these views, in considering this appeal, I must nevertheless confine myself to the actual wording of the current CIL Regulations; they are clear in their meaning and it is clear to me that the chargeable development does not attract relief or is exempt. Indeed, the MHCLG website guidance on the minor development exemption states as follows:

    Minor development, with a gross internal area of less than 100 square metres, is generally exempt from the levy. However, where minor development will result in a whole new dwelling, it will be liable for the levy unless it is built be a 'self-builder'.

11. Having read the case, I am of opinion that the appellant's citation and proposed application of the case law of [redacted] *v Secretary of State for the Environment, Transport and the Regions* ([redacted]) is inappropriate in this instance. Whilst *Richmond* is the leading case on the amalgamation of units in planning law and the *requirement* of planning permission, its application is not appropriate in this instance; it is a factual matter that planning consent has already been applied for and granted in this instance, therefore its requirement is not appropriate in considering my appeal decision.

12. I agree with the CA's contention that the amalgamation of two flats to one single home is classed as a new residence and therefore comprises a "new dwelling", hence the extra increase in floor space will be liable for CIL even if it is under [redacted] m². However, I do not agree with the CA's level of extra space (of [redacted] m²) as stated in the Liability Notice dated [redacted]. Given this (relatively small) level of space, it would appear that the CA has accepted that the existing development was in lawful use and could be offset. There is no offered basis (from either party) of the calculation of the [redacted] m² area, which is shown on the Liability Notice and neither party has advanced any representations to me on the make-up of the chargeable area.

    As the plans of decision reference [redacted] are a matter of public record, which are available in the [redacted] planning portal, I have had recourse to the plans and documentation within. No record of the make-up of the chargeable area is contained within the planning portal; accordingly, I have taken scaled measurements from the plans therein and have determined that the net GIA of the chargeable development (the additional space of the ground floor kitchen extension) is [redacted] m².

13. I have reviewed the [redacted] CIL charging schedule and I have confirmed that the property falls under Residential Zone C and therefore attracts a rate of £[redacted] per square metre, plus indexation. I have also reviewed the Mayoral charging schedule (MCIL2, which came into effect from [redacted]) which shows a rate in [redacted] of £[redacted] per square metre, plus indexation.

14. Having calculated the correct area of the chargeable development, I determine that the CIL payable in this case should be as follows:

Mayoral CIL
[redacted] m² @ £[redacted] per m² (index [redacted]) = £[redacted]

[redacted] y CIL
m² @ £[redacted] per m² (index [redacted]) = £[redacted]
£[redacted]

15. In considering the facts of the case, I determine that the CIL payable should be the sum of £[redacted] ([redacted]).

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
[redacted]