Appeal Decision

by [redacted] BA Hons PG Dip Surv 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]

Location: [redacted]

Planning Permission Reference: [redacted]

Development: Variation of the wording of Condition 4 of planning permission reference: [redacted] dated [redacted] [redacted] for the 'Erection of additional floors at roof level to property nos. [redacted]' to state that the carrying out and completion of roof extension as a combined building operation, can only occur when practical and feasible.

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 of the submissions made by [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 with accompanying documents.

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

c) The appellant's comments made in response to the CA's representations received on [redacted].

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

a) Planning permission was granted on [redacted] for the erection of additional floors at roof level to property nos. [redacted] (reference [redacted]) ('the [redacted] permission').

b) [redacted] was granted on appeal on the [redacted]. [redacted] sought to vary condition 4 of the [redacted] permission that stated ' The development hereby approved, consisting of mansard roof extension to [redacted] as shown on the approved drawings, shall be carried out and completed as a single combined building operation. No part of any of the extensions shall be occupied until the development has been completed with all external materials and finishes in place.' The applicant wished to vary the condition to include the phrase 'where practical and feasible.'

c) The Inspector's decision under reference [redacted] states both the original Condition 4 and the appellant's proposed variation would fail the six tests of reasonableness and Condition 4 was removed in its entirety from the [redacted] permission. The Inspector's decision reads, 'the appeal is allowed and planning permission is granted for mansard roof extensions to a terrace of five residential properties at [redacted] in accordance with application Ref [redacted] without compliance with condition number 4 previously imposed on planning permission Ref [redacted] dated [redacted] but subject to the conditions set out in the attached schedule.

3. On [redacted] the CA issued a Regulation 65 Liability Notice ([redacted]) in the sum of £[redacted] based on a Gross Internal Area (GIA) of [redacted] square metres as follows:-

Residential Zone North
[redacted] m² @ £[redacted]
Plus indexation @ [redacted] = £ [redacted]

Mayor

[redacted] m² @ [redacted]
Plus indexation @ [redacted] = £ [redacted]

Total = £[redacted]

4. The appellant requested the CA review the calculation of the chargeable amount on [redacted] under Regulation 113. They sought to reduce the CIL liability to nil stating that the development will only be [redacted] m² and that the [redacted] m² relates to the entire street.

5. The CA issued their decision notice on the [redacted].

The CA determined that the CIL Notice was correct as the planning permission secured was for a single development of [redacted] m².

6. On [redacted] the appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) stating that the chargeable amount should be nil.

7. The grounds of the appeal were contained in a covering letter the contents of which can be summarised as follows:-

a) The additional space to be created at [redacted] is [redacted] m² and no new dwelling will be created. Therefore, CIL would not be applicable.

b) The CIL Liability Notice refers to the chargeable area as [redacted] m². The appellant points out that this relates to the total additional area across 5 separate properties, [redacted], each in separate and unconnected ownership.

The appellant explains he made a planning application that related to [redacted] to comply with pre-planning advice that emphasised the value of a uniform approach and the maintenance of visual consistency in any mansards along the street.

c) The appellant states that the reality that this is not a single development but five separate households and building projects was recognised by the Planning Inspectorate when condition 4, which required the extensions to be built at [redacted] at the same time was removed.

[redacted] held as none of the householders have any control over their neighbours' land or conduct, it was not appropriate to treat the completion of the extensions as a single operation.

The appellant considers the same approach should be taken to the CIL. Treating this as a single development that adds [redacted] m² rather than five separate mansards adding approximately [redacted] m² each in no way reflects the reality of the situation acknowledged by the Planning Inspectorate.

d) The appellant states the CIL Liability Notice makes him personally liable for a very large payment of £[redacted], reflecting additional space at his neighbours' properties from which he would receive no benefit and over which he has no control. As there is no mechanism to enforce a contribution from his neighbours other than mutual agreement, the appellant considers this in practice would prevent him from undertaking the mansard extension to his own property, [redacted]. The appellant considers the chargeable amount under Regulation 114 should be zero to reflect the reality of the situation.

e) The appellant considers that it is wrong that one homeowner could be liable for the entire CIL charge due for the whole street. Even if CIL is imposed it should be spread proportionately across the five properties. The appellant is of the view this has not been done because each property's development would be below [redacted] m² and would not attract CIL.

8. The CA submitted representations on [redacted] which can be summarised as follows:-

a) Instead of seeking five separate planning applications for development at each of the five individual properties, the applicants chose to do this as one single planning application. The implication of this decision is that the five separate developments are treated, in planning terms, as a single development. The planning permission granted on [redacted] was therefore for the total development of [redacted] m² and not five individual developments of circa [redacted] m² each.

b) The CIL legislation establishes that CIL liability is calculated upon and runs with the planning permission granted. In this case, for a single development of net additional residential floor space of [redacted] m².

c) The term 'developer' applies to anyone proposing development. All developers in this context are liable for their CIL liability resulting from their planning permission.

d) As stated above, the planning permission secured was for a development of [redacted] m², therefore more than the [redacted] m² threshold for CIL liability to be triggered.

e) The removal of the condition on appeal, regarding implementation as a single operation, has no bearing on the fact that the planning permission granted was for the total development and not five individual developments. As such, it also has no bearing on the CIL liability as a result.

f) Having regard to the relevant legislation, there is no lawful means by which to interpret the assessment and application of CIL liability in the terms the applicant is seeking. Effectively they are asking the CIL Charging Authority to interpret the planning permission granted as five separate developments – this is not what was granted. As stressed above, we (the CIL Charging Authority) cannot lawfully depart from the planning permission granted in determining the application of CIL liability.

g) The CA states the only remedy available, would be to not implement planning permission [redacted] and to put in separate planning permissions for each of the five properties.

9. The appellant submitted further representations on the [redacted] which can be summarised as follows:-

a) The appellant considers that his property falls under the exemption for Residential Annexes or Extensions set out in the legislation under S42 a and b. The appellant advises he owns a material interest in the property, occupies it as his sole residence and the development is a residential extension.

b) The CIL Liability Notice issued by [redacted] is incorrect. The CIL Liability Notice dated [redacted] refers to "Variation of the wording of Condition 4 of planning permission reference [redacted] dated [redacted] for the 'Erection of additional floors at roof level to nos[redacted]' to state that the carrying out and completion of roof extensions as a single combined building operation can only occur when practical and feasible".

The appellant states this is incorrect as the Inspector removed condition 4 in its entirety making it in effect a single household extension, not a group development.

10. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding the grounds of the appeal.

11. The appellant made a CIL appeal under Regulation 114. This pertains to the chargeable amount only. It is beyond the scope of this appeal to consider any issues relating to exemptions from, or apportionment of, any potential CIL liability.

12. Under the Community Infrastructure Levy Regulations, Part 2, section 9-(1) the Meaning of Chargeable Development is stated to be “the development for which planning permission is granted.”

13. Planning permission [redacted] relates to [redacted]. Erection of additional floors at roof level to property nos. [redacted].

14. Planning permission [redacted] considered under Appeal Ref [redacted] also relates to [redacted]. The appeal removed condition 4 meaning it is no longer a requirement for the development to be carried out and completed as a single operation. However, the permission still pertains to the extension at [redacted] rather than solely to number 8, the appellant’s residence. This is made clear a number of times within the appeal decision itself. In paragraph 1, Decision, it states, “The appeal is allowed and planning permission is granted for the mansard roof extensions to a terrace of five residential properties at [redacted] t.” In paragraph 2, Procedural Matter, it states, “The application form details the site address as [redacted]. However, it is clear that the proposal relates to [redacted] and it is on this basis that I have considered the appeal.”

15. From the above it is clear that planning permission was granted for the erection of additional floors at roof level to property nos. [redacted]. Therefore, despite the logistics around the execution of the works and the removal of the requirement that it be carried out as a single development, the planning permission itself was unchanged and still relates to extensions at all five properties. As such the chargeable development is the total area to be developed at those five properties, i.e. [redacted] m².

16. I understand from the further representations submitted by the appellant on the [redacted], and the subsequent response from the CA, that the appellant has now submitted a planning application that relates solely to his property [redacted] and that permission has now been granted for a mansard roof extension to number 8 in isolation.

17. Furthermore, I understand that four out of the five residents have had exemptions confirmed with the CA. However, it should be noted that if this permission were ever implemented then, unless someone assumes liability for the whole sum, the liability would fall on the individual land owners and the charge would need to be apportioned between them in accordance with regulation 34. If such an apportionment is made then an appeal against the apportionment can be made under regulation 115.

18. Returning to the matter of the chargeable amount, which is the subject of this appeal, it would appear that the appellant and the CA accept that the total area to be developed at [redacted] is [redacted] m². Given there is no dispute as to the area of the chargeable development, the rates or indexation applied and on the evidence before me I therefore dismiss this appeal and confirm a total CIL charge of £[redacted] as set out in the Liability Notice dated [redacted].

[redacted] BA (Hons) PG Dip Surv MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]