Appeal Decision

By [redacted] MRICS

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

Valuation Office Agency
[redacted]
Email: [redacted] @voa.gov.uk

Appeal Ref: [redacted]

Address of Property: [redacted]

Development: Demolition of existing extensions and garage. Construction of new single and double storey extensions including works to roof and fenestration.

Planning Permission Details: [redacted] granted by [redacted]

Decision

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

Reasons

1. I have considered all the submissions made by the appellant and I have also considered the representations made by the Collecting Authority (CA), [redacted]. In particular, I have considered the information and opinions presented in the following documents:-

(a) Planning permission decision dated [redacted] (b) The CA's Liability Notice dated [redacted] reference [redacted]
(c) The CA's Liability Notice dated [redacted] reference [redacted]
(d) The appellant's Regulation 113 review request which is understood to have been made on [redacted] I have not had sight of the review request however the C.A's review decision refers to a request for review being made on [redacted].
(e) The C.A's Regulation 113 review response dated [redacted]
(f) Completed CIL Appeal form dated [redacted] (with attachments).
(g) Additional supporting documents submitted with the CIL Appeal:-

(i) email by way of evidence from [redacted] containing a photograph and a further embedded email exchange between [redacted] representative and a neighbouring property owner
(ii) existing building plan with annotated dimensions
(iii) drawings relating to the development
(iv) floor space calculations

(h) The CA's emailed written representations and supporting documents including:-
(i) calculation of areas / floor space
(ii) pre-commencement meeting notes from [redacted]
(iii) plans

(iv) charging schedule

(I) The appellant's agent declined to make further comments on [redacted]

2. Planning permission was granted on [redacted] by [redacted] for 'demolition of existing extensions and garage. Construction of new single and double storey extensions including works to roof and fenestration'.

3. (i) On the [redacted] the CA issued a Regulation 65 Liability Notice ([redacted]) in the sum of £[redacted] based on net additional floor space of [redacted] square metres (sq m) as follows:-

[redacted] sq m development with [redacted] sq m to be demolished and [redacted] sq m of buildings in existing use that were to be retained. The chargeable development amounted to [redacted] sq m at a rate of £[redacted] per m2 and indexation at [redacted]. In addition the Mayoral CIL 2 charge was based on a rate of £[redacted] per sq m.

(ii) On [redacted] the C.A issued a revised Liability Notice reference [redacted] in the sum of £[redacted] based on net additional floor space of [redacted] square metres (sq m) as follows:-

[redacted] sq m development with no buildings to be demolished and [redacted] sq m of buildings in existing use that were to be retained. The chargeable development amounted to [redacted] sq m at a rate of £[redacted] per m2 and indexation at [redacted]. In addition the Mayoral CIL 2 was based on a rate of £[redacted] per sq m.

I am uncertain as to why this revised liability notice was issued but it does not appear to be as a result of the appellant's Regulation 113 request which was not made until a day later after the issue of [redacted].

4. The appellant requested a Review of the calculation of the chargeable amount under Regulation 113 on [redacted].

5. The C.A responded to the Regulation 113 review request on [redacted] with an explanation and stating that the calculation on Liability Notice [redacted] was correct and should remain unaltered.

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

7. The grounds of the appeal were not set out in full by the appellant's agent by way of a statement of case or written explanation. However, in considering the additional evidence provided alongside their appeal and the C.A's Regulation 113 responses it is apparent that there is a dispute concerning liability to CIL and the omission of areas a garage / outbuilding areas from the net area. The appellant's agent provides an email from [redacted], a Chartered Surveyor who inspected the site in [redacted] and confirms that the garage had not been demolished as at [redacted].

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

That having had regard to Regulation 42, the development is liable to CIL and is not exempt as the new build floor space is over [redacted] sq m.

That some demolition works were undertaken prior to planning permission approval. That in light of this, insufficient evidence was available as to what areas should be included in the formula for demolition. They were unclear as to what remained on the land at the time planning permission first permitted development. The C.A states that the garage was in situ as at [redacted] but its status as at [redacted] was unknown. The C.A states that it is possible that the garage remained in situ on the date planning permission was granted.

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

10. Liability to CIL

Part 6 of the CIL Regulations deals with exemptions and reliefs. Regulation 42 deals with minor development. Regulation 42 (1) states that liability does not arise if, on completion, the GIA of the *'New Build'* on relevant land is less than [redacted] sq m. *'New build'* is described as part of the development which will comprise of *'new buildings and enlargements to existing buildings'*. The area calculation submitted by the appellant alongside their appeal form shows the existing retained area of the property, excluding any outbuildings, to be [redacted] sq m and proposed GIA is [redacted] sq m. The GIA of the new build would be an increase of [redacted] sq m. The appellant is of the opinion that the areas to be demolished should then be netted off this *'New Build'* figure. It would be erroneous to make deductions for retained parts of in use buildings or buildings that are to be demolished under Regulation 42. To do so would be to confuse the requirements of Regulation 42 with the formulas required in order to calculate the chargeable amount under Regulation 40.

The C.A's calculation, excluding outbuildings, results in a smaller 'new build' area at [redacted] sq meters.

Both calculations show that the development is not exempt having regard to Regulation 42 as the 'new Build' area is over 100 sq and so there is a liability to CIL.

11. Calculation of chargeable amount

In order to calculate the amount of CIL chargeable, I have had regard to Schedule 1 Paragraph 1 and the required formula:

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

G = the gross internal area of the chargeable development which in this case is 267.02 sq m. the parties agree on this area.
GR = the gross internal area of the part of the chargeable development chargeable at rate R, again 267.02 sq m in this case
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; and

I have considered if there should any areas 'netted off' which would reduce the chargeable areas as per KR and E above.

In order for the area of the existing building to be included in the KR or E parts of the formula, it must be a "relevant building" and "in use" under Regulation 40 (11) of the CIL Regulations 2010 (as amended). A relevant building is defined as a "building which is situated on the relevant land on the day planning permission first permits the chargeable development".

Under Regulation 8 (2) of the CIL Regulations 2010 (as amended) "the time at which planning permission first permits development" is further defined as "the day that planning permission is granted for that development". In this case planning permission was granted on [redacted].

The dispute between the parties is mainly around the areas to be demolished. The question is what buildings can be classed as relevant and in use as at [redacted].

The photograph contained within the pre-commencement meeting notes dated [redacted] shows that some demolition works have been undertaken prior to that date. I have compared the photograph in the meeting notes to the Savills sales particulars which would have been prepared prior to the [redacted] property sale. It is clear that the ground floor single storey flat roof breakfast room extension had had been demolished by [redacted]. Also, the bay / semi-circular glazed area comprising of flat roof, dwarf wall and external French doors had also been demolished. These areas should not be 'netted off' as part of the formula.

Having regard to the evidence provided by the appellant from a Chartered Surveyor dated [redacted] and the comments in the [redacted] pre commencement meeting notes that the 'garage will be retained for material storage' whilst the works are undertaken, I consider that on the balance of evidence available it was likely that the garage remained in situ on the date development was first permitted and therefore should be included in the area to be netted off. In respect of any other outbuilding, I conclude there is insufficient evidence to include them in the formula in accordance with Regulation 40, Part 1 (9) of Schedule 1.

The C.A states that GIA area of the retained is [redacted] sq m with an additional [redacted] sq m for the parts to be demolished (garage only).

The appellant also gives the retained area of [redacted] sq m in their calculation. They do not provide an area for the garage.

The chargeable area is therefore:-
£[redacted] x [redacted] sq m x indexation at [redacted] (Ip). This is divided by [redacted] (Ic). The sub total is £[redacted] *

The Mayoral CIL Charge at £[redacted] x [redacted] sq m x indexation at [redacted] (Ip). This is divided by the Ic figure of [redacted] (Ic). The sub total is £[redacted] *

Total CIL Liability is £[redacted]

Total area [redacted]
Relevant in use building to be retained [redacted] sq m
Relevant in use building to be demolished [redacted] sq m

**prior to 2020 the figure for the 1st November the previous calendar year is to be adopted*

12. **Conclusion**

Based on the facts of this case the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in respect of [redacted] is £[redacted] ([redacted])

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]