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
Wycliffe House
Green Lane
Durham
DH1 3UW

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

Appeal Ref: 1761980

Address: [redacted]

Planning Permission Reference: [redacted]

Development: Replacement Dwelling (retrospective)

Decision

I consider that a Community Infrastructure Levy (CIL) charge of £[redacted] ([redacted]) is not excessive and I therefore dismiss this appeal.

Reasons

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

    a. Planning permission [redacted] granted [redacted] together with approved plans and associated documents.
    b. Planning permission [redacted] granted [redacted] together with approved plans and associated documents.
    c. The CIL Liability Notice issued by [redacted] on the [redacted] under reference [redacted].
    d. The Appellant's request for a Regulation 113 review dated [redacted].
    e. The email dated the [redacted] from the CA to the Appellant issuing their decision in respect of the Regulation 113 review.
    f. The CIL appeal form dated [redacted] completed and 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 the [redacted].
h. The Appellant's further comments on the CA's representations received on the [redacted].

2. Planning permission for development, "Replacement Dwelling (retrospective)" was granted by [redacted] on [redacted] under reference [redacted]. The Council implemented its CIL Charging Schedule in [redacted]

3. It is understood that prior to the grant of the above mentioned planning permission the recent planning history was as follows:-

- [redacted] - Extensions and alterations to include replacement roof, to allow for a first floor and changes to fenestration. Planning permission for this development was granted on the [redacted].

4. Once planning permission [redacted] was granted, the CA issued a CIL Liability Notice on [redacted]. This liability is based on a chargeable area of [redacted] square metres (sq.m). The charge has been calculated at a rate of £[redacted] per sq.m plus indexation, in the sum of £[redacted].

5. On the [redacted] the Appellant contacted the CA to request a review of the CIL Charge.

6. On the [redacted] the CA completed their review of the CIL Charge concluding that the chargeable amount stated on the Liability Notice had been correctly calculated.

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

8. The Appellant contends that the CIL Charge calculated by the CA should be NIL for the following reasons:-

1) Reg 114 – Planning approval and development began before CIL was introduced.

The Appellant considers the CA issued the Liability Notice in response to considering planning application [redacted] in isolation. The Appellant believes the permission should be considered in conjunction with the original planning application [redacted] which was submitted in [redacted] before CIL was introduced. The Appellant states, "as the original permission ([redacted]) for our self-build house was given in [redacted] before CIL was introduced in [redacted], it is evident to me that the project was started before CIL was introduced."

2) No additional requirement for infrastructure funding.

The Appellant notes CIL is intended to contribute funds to the local council to enable it to meet the additional demand on local facilities and infrastructure created by new development. As there was an existing dwelling on site that had been utilised as a home before the replacement dwelling was complete, the Appellant considers the development has not created any additional demand on local facilities and

infrastructure and is of the view that the requirement for them to pay the levy is unfair and unreasonable especially as they are private citizens not property developers.

3) Reg 115 – Disagreement with apportionment

The Appellant does not think anyone should be apportioned liability to pay the CIL due in this case.

4) Reg 116B – Exemption from self-build housing appeals

The Appellant notes they were not given the option of claiming for an exemption as when they undertook the project in [redacted], CIL was not in place and the relief was therefore not available.

9. The CA contend that their calculation of the chargeable amount is correct because:-

a. Regulation 9(1) requires the CA to determine the liability and the chargeable amount based on the planning permission granted, which in this case is the retrospective permission [redacted] replacement dwelling (retrospective).

The house that has been constructed is a new dwelling authorised by planning permission granted in [redacted] under ref [redacted]. It is not the development that was granted permission in [redacted] under ref [redacted] before CIL was introduced.

The CA notes permission [redacted] was for extensions and alterations to the existing dwelling and therefore has no bearing on the case that the CIL Liability Notice is based upon.

The CA highlights the existing dwelling was demolished and a replacement dwelling constructed in its place. This new dwelling was retrospectively authorised by the [redacted] planning permission [redacted].

b. The CA advise that they are not aware of the development meeting any of the exemptions in the CIL Regulations.

c. The CA has calculated the liability on the difference in floorspace between the new and previously existing dwelling. Consequently, the CA does not see any grounds for an appeal to succeed.

10. The Appellant's appeal has been accepted as a valid appeal under Regulation 114 of the CIL Regulations 2010 (as amended) and as such I am concerned with determining whether the calculation of the chargeable amount is correct.

11. In relation to this point, the Appellant is effectively contending the development should not be liable to any charge, as the development should be considered in conjunction with planning permission [redacted] which was granted before CIL was implemented in Wiltshire.

12. It is understood that upon commencing development in accordance with planning permission [redacted], the Appellant encountered structural issues that forced them to abandon their intended development and embark upon developing something different to that contained within their original planning application. These structural issues effectively required the existing building to be demolished and a new dwelling to be built around the original structure.

13. It would appear that the new project was not undertaken as a conscious decision but flowed from the problems encountered whilst works were undertaken to develop in accordance with the permission granted in [redacted]. It was not until the development's completion in [redacted] that it was realised that the development had deviated from permission [redacted] to such an extent that in effect a new dwelling had been erected and a new planning application was required to be submitted for approval to regularise the issue.

14. Consequently an application was made and permission granted under reference [redacted]. At the time this application was made and the permission granted, CIL had been adopted by [redacted] and as such this development was liable to the charge.

15. Regulation 9(1) defines that the chargeable development is the development for which planning permission is granted. Since the charging schedule was in operation by [redacted], I consider that the development, as approved by the [redacted] permission and being the development of the replacement dwelling, is a chargeable development that is potentially liable for a CIL charge.

16. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 provides guidance on the calculation of the chargeable amount. This states:

> "(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—
>
> $$\frac{R \times A \times I_P}{I_C}$$
>
> where—
> A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);
> IP = the index figure for the calendar year in which planning permission was granted; and
> IC = the index figure for the calendar year in which the charging schedule containing rate R took effect."

17. I note the CA have calculated the net chargeable area based upon the gross internal areas contained within the planning application [redacted] as follows: total gross internal area proposed = [redacted] sq.m less existing gross internal area of [redacted] sq.m equals net chargeable area of [redacted] sq.m. The Appellant does not appear to have challenged the area, rate applied nor the indexation figures adopted by the CA.

18. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."

19. "In-use building" is defined in Schedule 1 Part 1 Paragraph 1(10) of the CIL Regulations 2010 (as amended) as a relevant building that 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. “Relevant building” means a building which is situated on the “relevant land” on the day planning permission first permits the chargeable development. “Relevant land” is “the land to which the planning permission relates” or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.

21. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of “in-use building” then it can deem the GIA of this part to be zero.

22. Having considered the circumstances of this case, I conclude that the CA have taken a reasonable approach when calculating the net chargeable area and are correct in determining that the chargeable development was the development approved by the [redacted] permission.

23. I now turn to the Appellant’s second ground of appeal that being, “no additional requirement for infrastructure funding.” CIL is a charge payable on most new developments in areas where the Local Authority have adopted it. As the charge relates to the development, it falls to be paid by both property developers and private citizens alike. There is no scope within this appeal or within the CIL Regulations to determine who is and is not liable based upon how much additional demand will be placed on local facilities and infrastructure.

24. With regard to the Appellant’s grounds for appeal 3 and 4, Reg 115, disagreement with apportionment and Reg 116B CA’s refusal to grant exemption for self-build housing, this is not a matter that I have authority to consider.

25. The appeal has not been treated as valid under Regulation 115 because these cases deal with the apportionment of the charge between different landowners. As far as I am aware the Appellant is the only landowner in this case. Therefore there are no other landowners to apportion the charge between.

26. The appeal has not been treated as a valid appeal under Regulation 116B because appeals under this regulation can only be made if a CA **grants** exemption. An exemption has not been granted in this case therefore there is no calculation of the amount of exemption granted for me to determine.

27. As I conclude the development regularised by planning permission [redacted] is liable to CIL and, there appears to be no dispute as to the area of the chargeable development, the rates or indexation applied and on the evidence before me, I dismiss this appeal and confirm a total CIL charge of £[redacted] ([redacted]) as set out in the Liability Notice [redacted] dated [redacted].

[redacted] BA (Hons) PG Dip Surv MRICS
RICS Registered Valuer
Valuation Office Agency
21 April 2021