Appeal Decision

by [redacted] BSc (Hons) MRICS

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

Valuation Office Agency
Wycliffe House
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Appeal Ref: 1765959

Planning Permission Ref. [redacted] and [redacted]

Proposal: Replacement of rear conservatory with erection of a two storey extension at [redacted] (amended scheme to [redacted]) (retention of part works already undertaken).

Location: [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

Reasons

1. I have considered all of the submissions made by [redacted] of [redacted] on behalf of [redacted] (the Appellant) and by [redacted] 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 appeal decision ref [redacted] dated [redacted]

    b) Approved planning consent drawings, as referenced in planning appeal decision notice;

    c) CIL Liability Notice [redacted] dated [redacted];

    d) CIL Appeal form dated [redacted], including appendices;

    e) Representations from CA dated [redacted]; and

    f) Appellant comments on CA representations, dated [redacted].

2. Planning permission was originally granted under application no [redacted] on [redacted] for 'Replacement of rear conservatory with single storey flat roofed extension with balcony and associated external steps at [redacted]." Building works under this application commenced in [redacted]. Construction of the first floor (which was not part of this planning consent) begun in [redacted], prior to the submission of the revised application.

3. An amended planning application was submitted on [redacted] under reference no [redacted] for 'Replacement of rear conservatory with erection of a two storey extension at [redacted] (amended scheme to [redacted]) (retention of part works already undertaken). Planning permission was refused on [redacted] but subsequently granted under appeal ref [redacted] on [redacted].

4. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m² at the 'Residential – Rural – 125' rate of £[redacted] /m² plus indexation at [redacted]. A demand notice was issued on the same date for a total amount of £[redacted], which included surcharges of £[redacted] for "failure to assume liability" and £[redacted] for "failure to submit a commencement notice."

5. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted], stating that the liability notice was correct.

6. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be Nil.

7. The Appellant's grounds of appeal can be summarised as follows:

    a) The previous application ([redacted]) should be taken into account when assessing the CIL charge, as per regulation 74B. The former conservatory should therefore be deducted from the chargeable area as it was in place at the time the original consent was granted.

    b) The GIA of the proposed scheme as calculated by the CA is incorrect. The correct GIA is [redacted] m² (originally proposed as [redacted] m²).

    c) The GIA of the proposed scheme, less the conservatory at [redacted] m², is less than 100m². Therefore, the CIL charge should be Nil.

    d) The CA did not give sufficient advice or warning regarding any potential CIL charge and the surcharges applied by the CA are unfair.

8. The CA has submitted representations that can be summarised as follows:

    a) Each planning application is assessed individually for CIL liability and previous planning permissions cannot be taken into consideration. Regulation 74B does not apply as the original permission was under 100m² and therefore was not a chargeable development. The conservatory was not in place on the day that planning permission was granted on appeal and therefore cannot be deducted.

    b) The GIA of the proposed scheme is calculated at [redacted] m².

    c) The chargeable area is in excess of 100m² and therefore is liable to CIL.

    d) The appellants were informed of potential CIL charges at various points and the surcharges are reasonable.

Regulation 74B

9. The appellants have requested abatement of the CIL charge under Regulation 74B. This states:

"74B.—*(1) This regulation applies where—*

a) a chargeable development has been commenced under a planning permission (A);

b) a different planning permission (B) has been granted for development on all or part of the land on which the chargeable development under A is authorised to be carried out; and

c) the charging authority receives notice from a person who has assumed liability to pay CIL in relation to B that the chargeable development under A will cease to be carried out and that the chargeable development under B will commence.

(2) Where this regulation applies a person who has assumed liability to pay CIL in relation to B may request that the charging authority credits any CIL paid in relation to A against the amount due in relation to B."

10. Regulation 74B applies when CIL has already been paid in respect of a previous relevant development. In this case, no CIL charge was paid (or demanded) in respect of the original planning consent and therefore Regulation 74B does not apply.

GIA

11. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice definition is used. GIA is defined as "*the area of a building measured to the internal face of the perimeter walls at each floor level."* The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

12. The Appellant and the CA dispute the correct GIA of the scheme. The CA have not provided any breakdown of calculations, whereas the appellants have provided a plan showing their area calculations. I have carried out my own measurements by scaling from the approved PDF plans and have calculated a GIA of [redacted] m^2.

Regulation 42 – Exemption for minor development

13. The appellants state the development should not be liable to CIL because the net chargeable area (in their opinion) is less than 100m^2. However, the exemption for minor development applies to the GIA of the new build and does not factor in any deductions.

14. The provisions of Regulation 42, Exemption for Minor Development are set out below:

"Regulation 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."

15. I therefore consider that the development would be liable to CIL, regardless of any area to be deducted, as the exemption for minor development is not applicable.

Calculation of Chargeable Amount

16. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. Part 1 applies to standard cases and Part 2 applies to 'amended' planning permissions.

17. In this case, the approved planning consent [redacted] was amended from the original consent [redacted] and therefore the CIL calculations should be carried out in accordance with Part 2.

18. Part 2 paragraph 3(1) of the CIL regulations states *'Where a planning permission (B) for a chargeable development, which is granted under section 73 of TCPA 1990, changes a condition subject to which a previous planning permission (A) for a chargeable development was granted, then—*

    (a) where the notional amount for B is the same as the notional amount for A, the chargeable amount for the development for which B was granted is the chargeable amount shown in the most recent liability notice or revised liability notice issued in relation to the development for which A was granted;

    (b) where the notional amount for B is larger than the notional amount for A, paragraph 4 applies; and

    (c) where the notional amount for B is smaller than the notional amount for A, paragraph 5 applies.'

19. Sub-paragraph 2 defines that '*the notional amount for A is the amount of CIL that would be payable in relation to the development for which A was granted, calculated in accordance with paragraph 1, minus any applicable relief for the development for which A was granted' and*

20. Sub-paragraph 3 defines that *'The notional amount for B is the amount of CIL that would be payable in relation to the development for which B was granted, calculated in accordance with paragraph 1 (as modified by sub-paragraph (4)), minus any applicable relief for the development for which B was granted (as modified by sub-paragraph (5)).*

21. The original planning consent (A) had a GIA of [redacted] m², according to the appellants. Regulation 42, Exemption for Minor Development therefore applied and the notional CIL liability was Nil.

22. I have calculated the notional amount for the revised planning consent (B) in accordance with the following formula, contained in Paragraph 1(4):

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

$$\frac{R \times A \times I_P}{I_C}$$

    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."

"(6) The value of A must be calculated by applying the following formula—

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

where—
G = the gross internal area of the chargeable development;

GR = the gross internal area of the part of the chargeable development chargeable at rate R;

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
(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above."

23. As discussed at paragraph 12 of this report, I have determined the GIA of the chargeable development to be [redacted] m².

24. The formula allows for the "*retained parts of in-use buildings"* to be deducted from *"the gross internal area of the chargeable development."*

25. *"In-use building"* is defined in the Regulations 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.

26. *"Relevant building*" means a building which is situated on the *"relevant land"* on the day planning permission first permits the chargeable development.

27. In this case, the conservatory was demolished prior to [redacted], which is the date the planning permission was first permitted. As a result of this, the conservatory cannot be deducted from the net chargeable area. I therefore determine the net chargeable area to be [redacted] m².

28. I have calculated the notional amount for B in accordance with Paragraph 1 at £[redacted] as follows:

$$\frac{R\ (£[\text{redacted}]\ m^2) \times A\ ([\text{redacted}]\ m^2) \times IP\ ([\text{redacted}])}{IC\ ([\text{redacted}])}$$

29. I have not been informed that there is any applicable relief available.

30. Sub-paragraph 4(2) modifies paragraph 1 as follows:

"(2) The amount of CIL payable in respect of the development shall be the chargeable amount for the development minus the relief amount where—
(a) the chargeable amount for the development is—

$$(X - Y) + Z$$

and—
X = the chargeable amount for the development for which B was granted calculated in accordance with paragraph 1;
Y = the chargeable amount for the development for which A was granted calculated in accordance with paragraph 1 (as modified by sub-paragraph (3));
Z = the chargeable amount for the development for which A was granted calculated in accordance with paragraph 1 (as shown in the most recent CIL notice issued in relation to A);"

31. I therefore determine that the CIL liability is £[redacted], calculated as follows:

(X (£[redacted]) – Y (£0)) + Z (£0)

Surcharges

32. The appellants have raised issues with the surcharges that have been applied to the CIL charge and the manner in which the CA have acted in their communications with the appellants.

33. Appeals against surcharges do not fall with the remit of the VOA and I have therefore not given this matter any consideration within my decision. Any appeal against a surcharge should be made to the Planning Inspectorate.

Reliefs

34. Regulation 42a allows for exemption for a residential extension, subject to certain conditions. In order for a residential extension exemption to apply, an application must be made to the CA under the procedure contained in Regulation 42B.

35. Regulation 54A allows for self-build exemption, subject to certain conditions. In order for self-build exemption to apply, an application must be made to the CA under the procedure contained in Regulation 54B.

36. The right of the appellants to make a claim to the CA for residential extension exemption or self-build exemption is not affected by the decision of this appeal and I am not able to consider these matters within my decision.

Decision

37. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]).

[redacted]

[redacted] BSc (Hons) MRICS
Valuation Office Agency
27 May 2021