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)

Email: [redacted] @voa.gov.uk

Appeal Ref: 1767584

Address: [redacted]

Proposed Development: Erection of two storey detached garage with habitable accommodation and associated works (revision of [redacted]).

Planning permission details: Granted on [redacted] under reference [redacted].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (nil).

Reasons

1. I have considered all of the submissions made by [redacted] of [redacted] acting on behalf of [redacted] and [redacted] (the Appellants) and [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. Notice of the grant of planning permission issued by [redacted] on [redacted].
b. The CIL Liability Notice issued by the CA on [redacted].
c. The letter from the CA dated [redacted] in response to the Appellants' request for a review.
d. The CIL Appeal form dated [redacted] submitted on behalf of the Appellants under Regulation 114, together with documents and correspondence attached thereto.
e. The CA's representations to the Regulation 114 Appeal dated [redacted].
f. Further comments on the CA's representations sent on behalf of the Appellants in an email dated [redacted].

2. Planning permission [redacted] was granted on the [redacted] for the erection of a garage and store with hobby room above and associated works by [redacted]. It is understood this was a minor development and consequently there was no CIL liability.

3. Application was made under Section 73 to vary Condition 1 of [redacted], to allow alterations to the windows, providing two dormer windows. This permission was granted on [redacted]. This was also deemed a minor development and again did not produce any CIL liability.

4. Works commenced following the granting of permission [redacted], but instead of constructing two dormer windows, one was constructed along with some changes to the ground floor. Retrospective permission was sought and obtained on the [redacted] under reference [redacted]. The drawings for this application show a shower room within the hobby room at first floor level.

5. The CA issued a CIL Liability Notice on [redacted] under reference [redacted], in the sum of £[redacted]. The calculation is based on a chargeable area of [redacted] square metres (sq. m) @ £[redacted] per square metre indexed.

6. The Appellant requested a Regulation 113-Review of Chargeable amount on the [redacted] .

7. The CA issued their Regulation 113 – Review of Chargeable Amount on [redacted], confirming a CIL liability of £[redacted] as stated in the Liability Notice [redacted]. It is noted this deviates from the £[redacted] that is contained within the aforementioned notice. I can find no explanation for the change in the stated amount. However, scrutinising all of the information provided to me, this seems to be the original CIL liability of £[redacted] plus surcharges amounting to £[redacted] for failure to assume liability and failure to submit a commencement notice.

8. On [redacted] the Valuation Office Agency received a CIL appeal under Regulation 114 (a chargeable amount appeal) submitted by the Appellants contending that the chargeable amount should be nil.

9. The Appellants contend that the CIL charge calculated by the CA is incorrect because the development is exempt from a CIL charge as it falls to be a minor development under Regulation 42 of the Community Infrastructure Levy Regulations 2010 (as amended).

10. The Appellants do not agree that the development is an annex or CIL liable for the following reasons:

a) The development comprises, on the ground floor, two open sided/open fronted garage bays, garden store and open sided lean to log store. In the first floor loft space the development includes a hobby room and shower room, only accessible via an external staircase from the garden of [redacted].

b) The development is within the curtilage of the host dwelling and can only be accessed via the private garden of [redacted]. It cannot be accessed directly from the garage, driveway or road.

c) Permission was sought and granted via a householder application for a garage etc - not a full application for a dwelling.

d) The Appellants advise that application [redacted] was submitted with the same description as the previous application – Garage and Store with Hobby Room Above, but the Council changed the description to Erection of two storey detached garage with habitable accommodation when they validated the application.

e) The floor area of the development is less than 100 sq. m.

f) Part 6 of the CIL Regulations set out that a development is an annex if it is wholly within the curtilage of the main dwelling and comprises of one new dwelling.

11. The Appellants state that the development does not comprise one new dwelling for the following reasons:

a) it Is not occupied or intended to be occupied as a separate dwelling – it is a garage, store and hobby room located in the loft space.

b) The CA states the area of the chargeable development to be [redacted] sq.m which is just the hobby room and shower room. The shower room was intended for use by the family after muddy sport activities such as running and football as an additional facility to the shower in the house. This does not constitute a building which is used as a single private dwellinghouse and for no other purpose since the ground floor is ancillary storage associated with [redacted].

c) the first floor comprises [redacted] sq. m of enclosed floor area. This space cannot be used independently of [redacted] as a separate unit of accommodation due to the lack of kitchen space and its small size.

12. The CA contend that their calculation of the chargeable amount is correct because the development is deemed to be an annex for the purposes of the CIL Regulations. The CA note that the CIL Regulations state a development is a residential annex if it is wholly within the curtilage of the main dwelling and comprises a new dwelling.

13. The CA have noted that the eaves space appears to be accessible and used as storage in the photographs provided by the Appellants. The CA advise that the plans they were provided with did not show this area and the CA have requested that if I determine the relevant building to be an annex then they require full plans to be provided so they can re-measure and include this area in line with RICS Code of Measuring Practice (6th Edition) (COMP).

14. The Appellants have replied to the above point and confirm they believe this area of eaves storage with a height below 1.5 metres is included within the [redacted] sq. m.

15. Whilst there does seem to be some discrepancies over areas adopted, it does appear that both parties agree the development is sub 100 sq. m.

16. This leaves two issues for consideration. The first being whether the development constitutes minor development under CIL Regulations 2010 Reg 42 (1). "*Liability to CIL does not arise in respect of a development if, on completion of the development, the gross internal area of new build on the relevant land will be less than 100 square metres*". As outlined above, both parties do not appear to dispute that the area of the development is sub 100 sq. m.

17. The second issue is whether the development is a new dwelling and therefore a chargeable development under CIL Regulations 2010 reg 42(2). The CA has deemed the development to be an annex (and thus a dwelling) and therefore considers it incorrect to apply the minor development exemption for the purposes of CIL. Regulation 42(2) states "*But paragraph (1) does not apply where the development will comprise one or more dwellings*."

18. It must therefore be decided whether the permitted development is a dwelling or not. If it is not a dwelling, then by default it cannot be considered to be an annex under the CIL Regulations as Regulation 42A (2b) states that an annex must comprise a dwelling.

19. The Appellants are of the view that the development comprises garage bays, garden store, log store and first floor loft space that includes a hobby room and a shower room. The space is not able to be used independently of the main house as it does not contain the correct facilities to enable this to occur.

20. The CA notes that the CIL Regulations 2010 (as amended) define an annex to be a development that is wholly within the curtilage of the main dwelling and comprises one new dwelling. They note that the development is wholly within the curtilage of [redacted], the main dwelling and includes habitable accommodation to the first floor including a bathroom (shower, sink and w/c).

21. The CA point to the definition of a dwelling within the CIL Regulations as, "a building or part of a building occupied or intended to be occupied as a separate dwelling." They state that their legal advice is; "that although the definition above refers to a dwelling being one which is intended to be occupied as a separate dwelling, it does not state that it must be intended to be independently occupied. Therefore, an annex could be ancillary to the main dwelling and may not therefore require all of the features one would associate with an independent dwelling. The permitted habitable accommodation, which includes a full bathroom, and allows the permitted development to be occupied as a separate dwelling."

22. In my view the very definition of separate is independent. The Cambridge English Dictionary defines separate as, "existing or happening independently or in a different physical space." To be separate there needs to be independence. Both parties agree that this property could not be occupied independently from the main house, [redacted]. There is an insurmountable reliance on [redacted] to gain access to the subject property and there is also a need to use additional facilities located in the main house to allow this space to be used as living accommodation.

23. There is no provision for deeming accommodation to be an annex or a dwelling within the CIL Regulations 2010 (as amended). Regulation 42(2) only nullifies Regulation 42(1) of the minor development exemption where the development **will comprise** one or more dwellings. As the CA have stated, the CIL Regulations define a dwelling as "a building or part of a building occupied or intended to be occupied as a separate dwelling". There is no reference to habitable accommodation that is to be occupied with a main dwelling. The development permitted in this case is for 'Erection of a two storey detached garage with habitable accommodation and associated works.' It is permission for ancillary accommodation and not for a separate dwelling and there is no evidence available to me that confirms the development is, could, or will be, used as a separate dwelling.

24. In addition, Condition 3 of Planning Permission [redacted] States, "the garage, store and hobby room hereby permitted shall not be occupied at any time other than for the purposes ancillary to the existing use of the dwelling known as [redacted] as a single family dwelling." I therefore conclude the development as permitted does not comprise a separate dwelling in my opinion. I therefore consider the development qualifies as an exemption as minor development under Regulation 42.

25. On the evidence before me I conclude that is it appropriate that there should be a £0 (nil) charge in this case.

[redacted] BA Hons, PG Dip Surv, MRICS
RICS Registered Valuer
Valuation Office Agency
08 June 2021