Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency - DVS
Wycliffe House
Green Lane
Durham
DH1 3UW

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

Appeal Ref: 1777433

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Replacement dwelling, associated landscaping and rear parking area.

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] (the Appellant) 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. Planning application reference [redacted] submitted on [redacted].
    b. Planning permission granted on [redacted] along with the Planning Officer's Delegated Report dated [redacted].
    c. The CIL Demand Notice dated [redacted] issued by the CA at £[redacted] CIL liability including surcharges of £[redacted].
    d. CIL Form 1 "CIL Additional Information" submitted by the Appellant dated [redacted]
    e. The Liability Notice issued by the CA on [redacted] at £[redacted] CIL liability
    f. The Appellant's request dated [redacted] for a Regulation 113 review.
    g. The CA's communication to the Appellant dated [redacted] advising that "*It has not been possible for us to respond to your request for a review of the chargeable amount*".
    h. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
    i. The CA's representations to the Regulation 114 Appeal dated [redacted].

2. Planning application reference [redacted] was submitted by the Appellant to the CA on [redacted] for "*Replacement dwelling including the demolition of the existing bungalow, demolition of the existing garage and associated landscaping of the main garden and rear parking area*." The application stated that "*the work of change of use started on 1*[redacted]".

3. Planning permission was granted by the CA on [redacted] for a "*replacement dwelling, associated landscaping and rear parking area*".

4. From the content of the Planning Officer's Delegated Report dated [redacted] in connection with planning application reference [redacted], it is clear they were of the opinion that the development had commenced and commented "*it is noted that demolition has taken place*" and the CAs intention would appear to have been to recognise this as the date development had commenced.

5. This is further supported by the fact the CA issued CIL Liability Notice reference [redacted] on [redacted] along with a CIL Demand Notice for £[redacted] including two surcharges applied by the CA:-

   Surcharge 80. Failure to assume liability £[redacted]
   Surcharge 83. Failure to submit a commencement notice £[redacted]

6. The CA further explained in a covering email "*We note that demolition took place in* [redacted]*. To use existing floor space as set off against the new floor space the building has to be in existence on the day that planning permission is granted and as it was not there was no existing floor area to offset against the new floor area and so the Liability and Demand notices are for the full amount of £*[redacted]*. We are also obliged to impose surcharges of £*[redacted]* *as … development commenced prior to grant of planning permission …*".

7. CIL Form 1 "*CIL Additional Information*" was submitted by the Appellant dated [redacted], where section 5 states that "*the applicant does not wish to apply for self-build exemption for a whole new home (part c) or a residential annexe or extension (part d)*". The existing GIA is stated as [redacted] m2 + [redacted] m2 (= [redacted] m2 total) and the proposed development GIA is stated as [redacted] m2.

8. The CA issued a Liability Notice on [redacted] stating the original chargeable amount of £[redacted]

9. The Appellant made a Regulation 113 review request to the CA on [redacted].

10. The CA advised the Appellant on [redacted] that "*It has not been possible for us to respond to your request for a review of the chargeable amount*" and reminded the Appellant that he could make an appeal to the Appointed Person.

11. On [redacted] the Appellant submitted a Regulation 114 appeal against the chargeable amount to the Valuation Office Agency dated [redacted].

12. The Appeal is made on the basis that the Appellant points to the existing structure consisting of "*the original building footprint together with associated foundations and the front walls at lower ground level (surrounding a ground floor basement) which are holding up old and new joists, all remain in situ."*

13. The Appellant argues that these elements meet the definition of "building" in the Town and Country Planning Act and therefore constitute an in-use building for the purposes of CIL and should be off-set against the GIA of any new floorspace as follows:-

Proposed GIA [redacted] *m2*
Less
Existing GIA [redacted] *m2*
= Chargeable GIA [redacted] *m2*

The Appellant further proposes that the CIL Liability should be calculated as £[redacted]

14. The CA are of the view that, as all four walls were demolished, they do not consider that any parts of the original building were retained. The only permission for the demolition is the planning permission for replacement, and therefore by starting the demolition they triggered CIL and cannot obtain a self-build exemption once commenced (CIL Regs 54 B (2) (b)). In effect the demolition was unauthorised when it happened and became authorised retrospectively when planning permission was granted.

15. The Appellant's response to the comments by the CA is that "*We did what we thought best under the circumstances as Building Control had recommended, we proceed[*ed*] with partial demolition immediately rather than risk the walls collapsing and potentially being harmful to people or neighbouring properties. We tried to gain proper authorisation from* [redacted] *Planning, but their advice was always vague – in hindsight we never once received a definite answer as to the way to proceed to protect ourselves legally and we were absolutely led to believe that what we were doing was acceptable*."

16. The Appellant further comments "*If it is not possible to allow me to apply for self-build* [relief] *retrospectively then I hope that the Appointed Person will recalculate the liability amount based on an off-set calculation as per the paperwork*."

17. An appeal under Regulation 116B (self-build exemption) can only be made to the Appointed Person if a CA grant exemption and an interested person considers the CA has incorrectly determined the value of the exemption allowed. I understand that the CA have not granted exemption in respect of planning permission reference [redacted] and that no application for self-build relief in respect of this permission was made, so I am unable to consider this matter.

18. The Appellant does not make any reference to appealing against the surcharge amount, but this is not, in any event, something that I can consider in an appeal under Regulation 114. Any appeal against a surcharge should be made to the Planning Inspectorate under Regulation 117.

19. The remaining matter for the Appointed Person to consider is therefore the appropriate level of CIL Liability, as influenced by the existence of any relevant in-use buildings.

20. Disagreement surrounding the issue of identifying the "in-use buildings" has arisen as a result of Schedule 1 of the CIL Regulations 2010 (as amended) which provides for the deduction or off-set of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.

21. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) defines an "in-use building" as a building which:

(i) is a relevant building (i.e. one which is situated on the relevant land on the day planning permission first permits chargeable development);
And
(ii) which contains a part that has been "in lawful use" for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

22. In accordance with the above, the relevant period for at least six months of continuous lawful use would fall within a relevant three year period with an end date being the date that planning permission first permits the development, so the relevant three year period for the purposes of this decision is taken to be [redacted] to [redacted].

23. Planning permission reference [redacted] is not a s.73 permission, so the chargeable amount must be calculated in accordance with standard cases in Schedule 1, Part 1 of the CIL Regulations.

24. Before the matter of whether the structures in question can be considered as relevant in-use buildings, it must be established if indeed those structures were "buildings".

25. The CA view is that almost total demolition of the original building had taken place, leaving only "*the original building footprint together with associated foundations and the front walls at lower ground level (surrounding a ground floor basement) which are holding up old and new joists*" (as described by the Appellant). The Appellant argues that these elements meet the definition of "building" in the Town and Country Planning Act and therefore constitute an in-use building for the purposes of CIL. As far as the calculation of the chargeable amount is concerned, the question is whether or not what was left of the original dwelling comprised a 'building' on the site on the day that planning permission [redacted] first permits the chargeable development.

26. Whilst Schedule 1 of the CIL Regulations 2010 (as amended) discusses the types of building not to be included for CIL purposes, it does not define what a "building" is.

27. The Planning Act 2008 defines "building" as having the meaning given by section 336(1) of the Town and Country Planning Act 1990, which defines "building" as something that "*includes any structure or erection, and any part of a building, as so defined*" and the appellant wishes to rely on this definition. However, the definitions in the Planning Act are not applicable for CIL purposes, being specifically excluded from Part 11 of the Planning Act 2008 which references CIL.

28. In the absence of any clear guidance from Schedule 1 of the CIL Regulations 2010 (as amended) as to what a "building" is, the only obvious option available is to refer to the dictionary for a clear definition as to what constitutes a "building".

29. The Pocket Oxford English Dictionary definition of a building is "*a structure with walls and a roof*" and in my opinion what was left of the original dwelling on the relevant date did not amount to a "building". I therefore consider that the CA are correct not to make a deduction for the area for the original building.

30. The Appellant advises "*Partial demolition started in* [redacted] *but the lower portion of the retaining wall is still intact and the original footings are still in use*." This was the only structure in place at the time planning permission under reference [redacted] was granted on [redacted]. The Appellant had also confirmed in their Application for Planning Permission dated [redacted] Section 5 "Description of the proposal" that "*the work of change of use started on* [redacted]". Considering the information submitted by the Appellant, it is evident that substantial demolition works had been undertaken, leaving no adequate structure as a 'relevant building' for the purposes of considering a deduction within the CIL calculation. It is therefore of no consequence if the lawful use criteria is satisfied or not.

31. The GIA of the proposed development is calculated as [redacted] m2 GIA and both the Appellant and CA would appear to be broadly in agreement with this figure. Similarly, there appears to be no dispute in relation to the area charge or to the indexation.

32. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[redacted] ([redacted]) excluding surcharges to be appropriate and hereby dismiss this appeal.

33. The Appellant does not make any reference to appealing against the surcharge amount, but this is not, in any event, something that I can consider in an appeal under Regulation 114. Any appeal against a surcharge should be made to the Planning Inspectorate under Regulation 117.

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
25 November 2021