Appeal Decision

by [redacted] MRICS VR

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: 1778925

***Address**:* [redacted]

Proposed Development: Reserved matters application (appearance, layout, scale and landscaping) for the erection of 3no. detached dwellings (Phases 3, 4 and 6a) pursuant to outline planning permission [redacted] Outline application for a self-build residential development comprising up to 8 detached dwellings with all matters reserved save for access).

Planning Permission details: Granted by [redacted] on [redacted], under reference [redacted].

Decision

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

Reasons

Background

1. I have considered all the submissions made by the appellant, [redacted], and the submissions made by the Collecting Authority (CA), [redacted] .

   In particular, I have considered the information and opinions presented in the following documents:-

   a) CIL Appeal form dated [redacted].

   b) Outline Planning consent [redacted] dated [redacted].

   c) The CIL Liability Notice (ref: [redacted]) dated [redacted].

   d) Undated Statement of Case representations from the CA, which were received in the VOA on [redacted].

e) Approved Site Layout plan for [redacted], phasing plan submitted under [redacted] and revised phasing plan submitted under [redacted].

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

Grounds of Appeal

2. On [redacted], the CA issued a Liability Notice (Reference: [redacted]) for an apportioned sum of £[redacted], following the approved reserved matters application under [redacted]. The apportioned £[redacted] sum was based on a net chargeable area of [redacted] m² and a Charging Schedule rate of £[redacted] per m², with indexation at [redacted]. The Liability Notice recorded that the total CIL liability was the sum of £[redacted].

3. On [redacted], the Valuation Office Agency received a CIL Appeal from the Appellant. Confusingly, on the CIL Appeal form, the Appellant stated that the CA has incorrectly determined the value of the exemption or relief on the grounds set out in Regulations 116, 116A and 116B; however, this Appeal clearly relates to a Regulation 115 Apportionment of Liability. CIL has been charged on three plot elements - Plots 2, 3, & 5 were applied for, and approved, under [redacted] ([redacted]).

4. The background and circumstances leading up to the issue of the Liability Notice are complex. However, at the heart of the matter, this Appeal relates to the reserved matters application approved under [redacted], which was for 3no. detached dwellings (Phases 3, 4 and 6a). The appellant disputes the apportionment of CIL liability, as he does not believe that Plot 5 (Phase 6a) has yet fallen liable to CIL. Specifically, the Appellant contends that although the development has commenced, the CIL charge on Plots 2 and 3 is correct, but contends that no CIL should be payable on 'Plot 5/6a' (sic).

   The Appellant contends that the planning application was put forward to the Local Planning Authority in error. In addition, the Appellant contends that there has always been some confusion with regards to plots on the subject site and CIL required the development to be phased, requiring Plot 5 to became Plot 6a.

   Contextually, Plot 5 (Phase 6a) forms part of a wider development. The wider development was for a self-build residential development comprising up to 8 detached dwellings, with all matters reserved save for access as described under outline planning application ref: [redacted]. This application was phased following advice to the appellant from the CA. Various plots were sold to different parties, who submitted applications for reserved matters for their plots. One of these parties (notably not the appellant) submitted reserved matters for three plots (Phases 3, 4 and 6a) under [redacted], which triggered the Liability Notice. Given that a then pending sale of Plot 5 to this party fell through, the appellant has been left with an apportionment of CIL liability.

5. The CA contends, that as all three plots were approved under one singular planning application ([redacted]) the CIL charge is correct and thus the apportionment is correct. As per Regulation 7(2) development has commenced. Furthermore, the CA contends, that as all three plots were approved under [redacted], then any material operations on site are commencement of the development, not individual plots, as the reserved matters application itself is not phased.

Decision

6. It appears that there is no dispute between the parties on the level of the apportionment, the applied Chargeable Rate per m² or to the indexation.

7. It is clear to me, that the only commenced and approved reserved matters application for Phases 3, 4 and 6a (Plots 2, 3, & 5) is [redacted].

8. Whilst the appellant originally agreed a sale of all three plots to the applicant of [redacted] and then recanted one plot, at no point was an amendment to the reserved matters application submitted.

9. Having studied the submitted evidence, I readily agree with the CA's opinion that the reserved matters application is not phased (only the outline application was phased) – this is a factual matter. I also agree with the CA, that the plots would only be separated for commencement, if the reserved matters application had been phased.

10. The Appellant points to the confusion in plot numbering. Whilst I agree that the renumbering and split of the plots is not easy to discern, by following the information in the phasing plan submitted under [redacted] and revised phasing plan submitted under [redacted], a straightforward conclusion can be arrived at, on the split and identification of the phases/plots. Accordingly, I agree with the CA that there is no confusion over the identification of the phases/plots.

    I agree with the CA that Plot 5 has not become Plot 6a; I also agree that Phase 6 originally held Plots 5 and 6 - an amendment to the phasing plan under [redacted] saw Phase 6 become Phase 6a (Plot 5) and Phase 6b (Plot 6). Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means *"the development for which planning permission is granted*". Accordingly, given the factual matter that the reserved matters application is not phased, Phase 6a was granted permission following the approved reserved matters under [redacted]. I have therefore concluded that the trigger conditions have been met for CIL on all three plots - Phases 3, 4 and the disputed Phase 6a, which is at the heart of this Appeal.

11. The Appellant opines that the planning application was put forward to the Local Planning Authority in error; whilst the CA counters that it only assesses and approves or refuses planning applications based upon the information submitted – the information submitted was for all three plots and approved as such by the CA. The planning application is a factual matter and I can see no error in the submitted documentation. The Appellant states that he was not aware of the submission of a reserved matters application to the CA on Phase 6a and I have no reason to dispute this. In this regard, I am very sympathetic towards the Appellant. It is unfortunate from the Appellant's perspective, of the circumstances which led to the triggering of the CIL liability; nevertheless, in arriving at my decision, I am constrained by the factual information that this event did indeed occur. Regretfully, I cannot offer any redress to the Appellant under the legislation for these particular circumstances; in arriving at my decision, I must make my determination based upon the submitted facts of the case, determined under the Community Infrastructure Levy Regulations 2010 (as amended).

12. The Appellant also states that a different planning application has been submitted for Phase 6a, and that a separate CIL Form has been filed for this plot, to request Self-Build Exemption. He also states this was done prior to commencement of Plots 2 and 3. This planning application reference ([redacted]) was submitted on [redacted], after the date of deemed commencement of [redacted]. The CA is of the view that planning application [redacted] cannot be used in deliberation of this Appeal, at this moment in time, as the planning application is still under consideration. I concur with the CA's opinion. Accordingly, I have had no regard to this pending application in arriving at my appeal decision.

13. Having determined that the CA is correct to include Phase 6a, there remains the decision on the apportionment calculation. Regulation 34 provides that where liability

to pay CIL has to be apportioned between each material interest in the relevant land the owner (*O*) of a material interest in the relevant land is liable to pay an amount of CIL calculated by applying the following formula:-

$$\frac{Vo \times A}{V}$$

Where *V* = an amount equal to the aggregate of the values of each material interest in the relevant land; and

A = the chargeable amount payable in respect of the chargeable development.

Where *O* is granted relief in respect of the chargeable development, *O* is liable to pay an amount of CIL equal to the amount calculated in accordance with the above formula less the amount of relief granted to *O*.

14. The Appellant has not offered an alternative apportionment sum from that put forward by the CA. From interrogating the submitted plans under [redacted], all three dwellings appear to be of a similar style and of equal GIA. I calculate from a simple division of the total CIL liability sum of £[redacted] by the three dwellings (with indexation) the resultant sum approximates the apportioned sum of £[redacted], as calculated by the CA. Based upon the submitted evidence, I see no reason to depart from this apportioned sum, which is based on an equal liability split of the three dwellings.

15. In conclusion, having considered all the evidence put forward to me, I therefore confirm the apportioned CIL charge of £[redacted] ([redacted]) as stated in the Liability Notice dated [redacted] and hereby dismiss this appeal.

[redacted] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
29th November 2021