

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 National Taxation Team
Wycliffe House
Green Lane
Durham
DH1 3UW

E-mail: [REDACTED]@voa.gov.uk

Appeal Ref: 1782536

Address: [REDACTED]

Proposed Development: Bungalow and Garage

Planning Permission details: Granted by [REDACTED] on the [REDACTED] under reference [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] (the Appellant) and by the Collecting Authority, [REDACTED] (CA) in respect of this matter. In particular I have considered the information and opinions presented in the following documents: -
 - a) Planning decision ref [REDACTED] dated [REDACTED]
 - b) Approved planning consent drawings, as referenced in the planning decision notice.
 - c) CIL Liability Notice dated [REDACTED].
 - d) CIL Appeal form received [REDACTED] including appendices.
 - e) Further information provided by the Appellant on the [REDACTED].
 - f) Representations from CA dated [REDACTED]; and
 - g) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application reference [REDACTED] on [REDACTED] for a 'Bungalow and garage'. I understand from the CA's representations that this permission was granted retrospectively as construction had already commenced under earlier planning permission references [REDACTED] and [REDACTED] which permitted the erection of two

garages. However, the buildings being constructed differed from the approved plans and planning permission [REDACTED] was required to regularise the unauthorised works.

3. 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 zone 3 rate of £[REDACTED] m² plus indexation.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA and the Appellant were in correspondence between this date and the [REDACTED] when I understand from the CA's representations, that the Appellant advised he did not require the CA to provide their formal 113 review as he had enough information and would seek to pursue an appeal direct to the Valuation Office Agency.
5. On the [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be based upon a chargeable area of [REDACTED] m² at a base rate of £[REDACTED]/m² plus indexation.
6. The Appellant's grounds of appeal can be summarised as follows:
 - a) The GIA of the chargeable development should be [REDACTED] m² not [REDACTED] m². The CA have included the first floor above the garage. This should not be included as there will be no permanent staircase providing access, only a pull-down loft ladder. The plans submitted with planning application [REDACTED] are incorrect and the staircase shown has been included in error by the architect.
7. The CA has submitted representations that can be summarised as follows:
 - a) The CA has adopted the Gross Internal Area (GIA) shown on the planning application form at Q.6 for [REDACTED] that states [REDACTED] m². The CA also notes the approved plans clearly show a steel access staircase in the garage as opposed to a pull-down loft ladder. (Plan No. [REDACTED]).
 - b) The CA advise that they understand GIA to include the following: "all new build floor space within the external walls of a building, including circulation and service space such as corridors, storage, toilets, lifts etc. GIA also includes attic rooms that are useable as rooms but excludes loft space accessed by a pull-down loft ladder. It also includes garages, conservatories, sheds and any other ancillary residential buildings contained within a Planning Application".

2. Decision

8. 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—

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

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.”

Subparagraph (6) sets out how A is calculated using 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;

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

K_R = 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 E_x (as determined under sub-paragraph (7)), unless E_x is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

9. Gross Internal Area (GIA) is not defined in the Community Infrastructure Levy Regulations 2010. The generally accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6th edition) and I have applied this definition.

GIA is the area of a building measured to the internal face of the perimeter wall at each floor level;

Including

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays

- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

Excluding;

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fires
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stored, and the like in residential property

10. It is clear from the representations that all parties agree, and the Code of Measuring Practice confirms, that a first floor with permanent access should be included within the GIA and that a first floor without permanent access would not fall to be included within the GIA.
11. It is also evident that both parties agree the total GIA of the project is [REDACTED] m². The discrepancy relates to whether the [REDACTED] m² of first floor storage space above the garage should be included as the CA contend or excluded to provide a floor area of [REDACTED] m² as the Appellant asserts.
12. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. Approved plan, Plan No. [REDACTED], shows a steel access staircase providing permanent access between the ground and first floor within the garage. It is also noted that planning permission [REDACTED] states; "2 The development hereby approved shall be carried out in accordance with the approved plan(s) no(s) [REDACTED] Proposed Ground Floor and First Floor Plans (Received [REDACTED])." The chargeable development is therefore considered to be that which is shown on the approved plan [REDACTED].
13. Thus, whilst the Appellant may not have intended and by all accounts still does not intend to create a permanent staircase between the ground and first floors within the garage, the planning permission applied for and granted clearly shows a permanent staircase. It is that which constitutes the chargeable development and for that reason, the GIA of the first floor should be included within the CIL charge.
14. In conclusion, having considered the facts of the case and all the evidence put before me, I confirm the CIL charge of £[REDACTED] ([REDACTED]) as stated in the Liability Notice dated [REDACTED] and hereby dismiss this appeal.

[REDACTED] BA Hons, PG Dip Surv, MRICS
 RICS Registered Valuer
 Valuation Office Agency
 14 December 2021