

Appeal Decision

by [REDACTED] MRICS

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

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Appeal Ref: 1784894

Planning Permission Reference: [REDACTED]

Location: [REDACTED]

Development: Erection of extensions to form a first floor level with habitable roof space, together with change of use of part of ground floor from office to residential to provide 3 dwellings with ground floor access and provision of new shopfront.

Decision

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

Reasons

1. I have considered all the submissions made by [REDACTED] (the Appellant) and [REDACTED] as 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 permission [REDACTED] granted on [REDACTED] for the “*erection of extensions at first floor to provide two dwellings together change of use of part of ground floor to provide access (as amended by plans received [REDACTED]) at [REDACTED]*”.
 - b. CIL Form 2: Assumption of liability along with CIL Form 7: Self Build Exemption Claim Form submitted by the Appellant regarding planning permission [REDACTED] on [REDACTED].
 - c. CIL Form 6: Commencement notice submitted by the Appellant regarding planning permission [REDACTED] on [REDACTED].
 - d. Acknowledgement Notice for CIL Form 6: Commencement Notice issued by the CA on [REDACTED].
 - e. The CIL Demand Notice issued by the CA on [REDACTED] regarding Liability Notice reference [REDACTED] for planning permission [REDACTED] for the sum of £[REDACTED].
 - f. Prior Approval reference [REDACTED] issued by the CA on [REDACTED] under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as

amended) for Prior Notification Application G.P.D.O. Part 3, Class O - Change of use of rear ground floor from Use Class B1a (office) to Use Class C3 (residential) use to provide 1 dwelling (as amended and amplified by plans and information received [REDACTED]).

- g. Planning permission [REDACTED] issued [REDACTED] for the “*Erection of extensions to form a first floor level with habitable roof space, together with change of use of part of ground floor from office to residential, to provide 3 dwellings with ground floor access; and provision of new shopfront (amended description).*”
- h. CIL Liability Notice reference [REDACTED] issued by the CA on [REDACTED] regarding planning permission [REDACTED] at £[REDACTED] CIL Liability.
- i. CIL Demand Notice reference [REDACTED] issued by the CA on [REDACTED] regarding planning permission [REDACTED] for a CIL Liability of £[REDACTED] including surcharges totalling £[REDACTED].
- j. The CA’s decision on the Regulation 113 review of the chargeable amount dated [REDACTED].
- k. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
- l. The CA’s representations to the Regulation 114 Appeal dated [REDACTED] together with the Appellant’s response dated [REDACTED].

Background

2. Planning permission [REDACTED] was originally granted by the CA on [REDACTED] for the “*erection of extensions at first floor to provide two dwellings together with change of use of part of ground floor to provide access (as amended by plans received [REDACTED]) at [REDACTED]*”.
3. *CIL Form 2: Assumption of liability* was submitted by the Appellant in relation to planning permission [REDACTED] on [REDACTED] along with *CIL Form 7: Self Build Exemption Claim Form*.
4. *CIL Form 6: Commencement Notice* was then submitted by the Appellant in relation to planning permission [REDACTED] on [REDACTED] stating the development commencement date to be [REDACTED].
5. On [REDACTED] the CA issued an *Acknowledgement Notice* for the *CIL Form 6: Commencement Notice* along with a *CIL Demand Notice* in respect of Liability Notice reference [REDACTED] for planning permission [REDACTED] for the sum of £[REDACTED].
6. On [REDACTED] the CA granted prior approval [REDACTED] under the *Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)* in accordance with section 60 (2B) and (2C) of *The Town and Country Planning Act 1990 (as amended by section 4(1) of The Growth and Infrastructure Act 2013)* for *Prior Notification Application G.P.D.O. Part 3, Class O - Change of use of rear ground floor from Use Class B1a (office) to Use Class C3 (residential) use to provide 1 dwelling (as amended and amplified by plans and information received [REDACTED])*.
7. A further planning application [REDACTED] for the “*Erection of extensions to form a first floor level with habitable roof space, together with change of use of part of ground floor from office to residential, to provide 3 dwellings with ground floor access; and provision of new shopfront (amended description).*” was then submitted by the Appellant and granted planning permission by the CA on [REDACTED].
8. On [REDACTED] the CA issued CIL Liability Notice [REDACTED] in respect of planning permission [REDACTED], with liability calculated as:-

Residential dwellings – 10 or less
Zone A
Chargeable area [REDACTED] m2 GIA

X £ [REDACTED] /m2
= £ [REDACTED] CIL Liability

9. On [REDACTED] the CA also issued CIL Demand Notice [REDACTED] in respect of planning permission [REDACTED] for a CIL Liability of £ [REDACTED] including surcharges as follows:-

Failure to assume liability £ [REDACTED]
Failure to submit a commencement notice £ [REDACTED]

10. The CA also advised the Appellant “*planning permission ([REDACTED]) was recently granted. This permission is an independent full planning permission and therefore is liable for the CIL.*” and “*It is acknowledged that there have been previous permissions on the site for similar works, however, a site visit by Officers indicated that it is this permission that has been implemented. It is recognised that works permitted by [REDACTED] are substantially completed. Given these works have commenced, it is not possible for the Council to consider any application for self-build relief (as was permitted for [REDACTED]).*”
11. The CA further stated “*We are aware that you have already paid the CIL in relation to [REDACTED] which permitted ‘Erection of extensions at first floor to provide 2 dwellings together with change of use of part of ground floor to provide access’. It is clear that [REDACTED] had been commenced rather than [REDACTED].*” The CA then advised the Appellant on how to claim a refund for the payment already made against [REDACTED].
12. The Appellant requested a Regulation 113 review of the chargeable amount on [REDACTED]
13. On [REDACTED] the CA issued the outcome of its Regulation 113 review of the chargeable amount in respect of planning permission [REDACTED], commenting “*This Review can only address matters relating to the calculation of the chargeable amount, in accordance with Regulation 113 of the CIL Regulations 2010 (as amended). The granting of relief is outside the scope of this Review under Regulation 113. However, a claim for self-build relief must be applied for using the relevant forms as the Council cannot grant any relief without the process outlined within the CIL Regulations 2010 (as amended) being undertaken. It should be noted that any claim for self-build relief must be received prior to commencement of the chargeable development. To date the Council have not received ‘CIL Form 7: Self Build Exemption Claim Form - Part 1’ in relation to this permission. Therefore, the Liability Notice does not currently account for any self-build relief, as this relief has not been applied for, or granted.*”
14. The CA further confirmed they had measured the GIA of the chargeable development using the methodology set out in the *RICS Code of Measuring Practice (6th Edition)*, and maintained that the GIA of the chargeable development should be [REDACTED] m2 with a deduction for retained parts (the change of use of rear ground floor from office to residential use) to provide one further dwelling of [REDACTED] m2 to give a net area chargeable of [REDACTED] m2, and further confirmed they had calculated the chargeable amount at £ [REDACTED].
15. An appeal under Regulation 114 against the chargeable amount along with Regulation 116, 116A or 116B concerning exemption or relief dated [REDACTED] was submitted to the VOA on the same date.

Appeal Grounds

16. The appeal is made on two grounds:-

1) *The Appellant believes that, due to previous permissions granted at the site, planning permission [REDACTED] should not be liable to CIL, given it is the result of minor alterations to previous planning permissions.*

2) *The Appellant believes that the CA has incorrectly calculated the deemed net chargeable area (GIA).*

17. The Appellant also argues that if the planning application decision notice for [REDACTED] dated [REDACTED] had been issued within “*the stipulated eight week time frame*” they could have applied for exemptions prior to the commencement of the alterations. CIL liability was previously agreed with exemptions for the earlier planning permission [REDACTED] and, considering the nature of planning application [REDACTED] being for minor alterations and the “*delayed*” planning decision, they request the Appointed Person to consider that the exemptions applied under earlier permission [REDACTED] should also be applied to later permission [REDACTED].

Consideration of the appeal

18. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

19. With regards to Appeal Ground 1: The Appellant argues that planning application [REDACTED] was for minor alterations to previous planning permission [REDACTED]. These minor alterations consist of a new shop front and flat 2 being converted from a one-bedroom to a two-bedroom flat. The Appellant notes that the CA appear to consider this internal change in layout as a full planning application for the entire development rather than minor alterations.

20. The Appellant further contends that considering the nature of the latest planning application (minor alterations) they wish the Appointed Person to consider exemptions applied under previous planning permission [REDACTED] should also be applied to permission [REDACTED].

21. The CA argues that the Appellant did not apply for a variation to any of the existing planning permissions, and that the changes were requested via an application for full planning permission, and the CA therefore subsequently granted full planning permission under reference [REDACTED], which is the subject of this appeal. This planning permission allows the creation of three new dwellings and therefore is a CIL liable development. As a result, the CA believes it has correctly calculated the chargeable amount and issued a Liability Notice for the planning permission granted in accordance with the CIL Regulations 2010 (as amended).

22. It is clear from CIL Liability Notice [REDACTED] that the development permitted under reference [REDACTED] was the basis for the CA’s CIL calculation, described as “*Erection of extensions to form a first floor level with habitable roof space, together with change of use of part of ground floor from office to residential, to provide 3 dwellings with ground floor access; and provision of new shopfront (amended description).*” CIL Regulation 9 (1) is clear on this point, that the “*chargeable development is the development for which planning permission is granted*”.

23. The planning permission notice [REDACTED] issued on [REDACTED] specifically refers to alterations to the ground floor to provide a further flat, along with amendments to the layout of the first and second floors. This permission was granted to enable the creation of three dwellings, whereas the previous permission [REDACTED] had allowed only two dwellings along with some reconfiguration of the ground floor layout to enable access to the new accommodation.

24. These changes from the earlier planning permission [REDACTED] required the later permission [REDACTED] before they could commence and went beyond the Appellant’s claim of being only minor alterations to the earlier permission. I am therefore of the opinion that planning

permission [REDACTED] is a new full permission and does not merely change a condition within an earlier planning permission.

25. As such, the chargeable amount must be calculated in accordance with Schedule 1 - Part 1 – standard cases - of the CIL Regulations.

26. With regards to Appeal Ground 2: The Appellant has submitted “*approved floor plans*” dated [REDACTED] titled “*First floor extension comprising two self contained flats*” references [REDACTED] and [REDACTED] along with [REDACTED] dated [REDACTED] with their main representations to the appeal dated [REDACTED] and also in their response dated [REDACTED] to the representations made by the CA on [REDACTED].

27. The plans submitted by the CA titled “*Amendments to previously approved planning no. [REDACTED]*” reference [REDACTED] are dated [REDACTED] and are assumed to be the most up to date approved floor plans for the scheme under planning permission [REDACTED] for the purposes of calculating the GIA of the proposed development.

28. It is noted that between these two sets of plans the later plan reference [REDACTED] differs from the earlier plans referenced [REDACTED] and [REDACTED] insofar as the shop is allocated all of the ground floor area on the earlier plans, whereas the later plan has a self-contained flat to the rear portion of the ground floor and the provision of a toilet on the ground floor of the later plan for use by the shop intrudes slightly into the GIA of the ground floor flat. The first floor on earlier plan [REDACTED] contains two separate self-contained flats A and B with further accommodation in the converted loft/second floor plan [REDACTED], whereas later plan [REDACTED] shows flat 3 as having accommodation on the first and second floors, with flat 2 contained within the first floor only.

29. The boundaries of the proposed GIAs are marked-up by the CA in plan [REDACTED] as follows:-

GF flat – [REDACTED] m2
FF flat – [REDACTED] m2
Loft flat – [REDACTED] m2
Total = [REDACTED] m2

30. The CA advise they have calculated the total GIA of the chargeable development at [REDACTED] m2 with a deduction or off-set for retained parts of [REDACTED] m2 GIA to give a net chargeable area of [REDACTED] m2 GIA. This follows Schedule 1 of the CIL Regulations 2010 (as amended) which provides for the deduction or off-set of the GIA of retained parts of existing buildings from the GIA of the total development in calculating the CIL charge.

31. *The RICS Code of Measuring Practice 6th Edition (May 2015) section 2.1 states that areas occupied by internal walls and partitions should be included in GIA. RICS Note GIA 2 - Separate buildings - further states that “GIA excludes the thickness of perimeter walls, but includes the thickness of all internal walls. Therefore it is necessary to identify what constitutes a separate building”.*

32. *The RICS Code of Measuring Practice sets out the method of calculating GIA but it does not give guidance on what is to be measured for CIL purposes. As Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – Standard cases - 1 (3) refers to the GIA of “the chargeable development” this would in my opinion point to calculating the GIA of the whole development, treating the three proposed self-contained flats as one development/building, and thus treating a party wall as an internal partition to be measured through for GIA purposes.*

33. The RICS Code of Measuring Practice section 2.0 defines GIA as the “*area of a building measured to the internal face of the perimeter walls at each floor level*” with further reference to *Note GIA 4* regarding what is meant by “*internal face*” and states that GIA:

Includes:-

- *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*

Excludes:-

- *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 stores, and the like in residential property*

34. The CA have marked-up plan reference [REDACTED] rev C dated [REDACTED] with the perimeters of the three proposed dwellings, delineated by a thick black line which indicates that all the floorspace within that line, including areas taken up by internal walls and partitioning, has been included within the GIA measurement as per the *RICS Code*.

35. The correct total GIA of the proposed development would therefore appear to be [REDACTED] m² as calculated by the CA.

36. Following Schedule 1 of the CIL Regulations 2010 (as amended) the CA have deducted or off-set [REDACTED] m² from the above total GIA to calculate the net chargeable area as [REDACTED] m².

37. The Appellant argues that the chargeable area should be [REDACTED] m², but as they have not indicated how they arrive at this figure it is necessary to establish the amount of floor area the Appellant is proposing to off-set from the total overall GIA. Applying the total proposed GIA [REDACTED] m² as a starting point, then deducting from this the [REDACTED] m² the Appellant proposes as the chargeable area, the difference would equate to a deduction or off-set of [REDACTED] m² covering the GIA of those parts of rear ground floorspace being changed from office to residential use (to include the ground floor access to the upper flats). The shop area to the front remains in use as a shop.

38. Using the architect’s annotated internal dimensions for the rear ground floor *office, w/c, storeroom, pantry and stairs* from the existing building plan reference [REDACTED] (dated [REDACTED])

█), and including the approximate depth of internal partition walls, I have calculated the total GIA of these areas to be █ m2. It is noted that plan reference █ marked-up by the CA shows the area of the rear ground floor *office, w/c, storeroom, pantry and stairs* as █ m2, but they have only off-set █ m2 within their calculation of CIL liability. As the stairs are (along with the other rear portions of the ground floor) a retained part, following Schedule 1 of the CIL Regulations 2010 (as amended) all █ m2 of this existing area must be deducted or off-set from the total GIA of the proposed development █ m2, which according to my calculations results in a chargeable area of █ m2 GIA.

Calculation of CIL

39. Applying the correct chargeable area of the proposed development, the CIL Liability is therefore to be calculated as follows:-

Residential dwellings – 10 or less
Zone A
GIA of the proposed development █ m2
Less
Existing in use GIA █ m2
= Chargeable Area █ m2 GIA
X £ █ /m2
= £ █ CIL Liability

CIL exemptions

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

41. The issue as to whether or not self-build relief is granted is not a matter for me as the Appointed Person to decide. In an appeal under Regulation 114 the Appointed Person's role is restricted to matters only relevant to the calculation of the 'chargeable amount' in accordance with Schedule 1, Part 1 or 2 of the CIL Regulations 2010 (as amended), against which relief may, or may not, be granted by the CA.

Decision on CIL Liability

42. 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 £█ (█) to be appropriate.

█ DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
1 February 2022