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: 1796551

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Erection of detached dwelling with attached staff/guest accommodation and associated landscaping following demolition of existing residential care home

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Decision

I determine the Self-Build Relief in this case to 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 Application [redacted] dated [redacted] for "*Erection of detached dwelling with staff/guest accommodation and associate landscaping following demolition of existing residential care home*".
    b. The Planning Officers delegated report [redacted] dated [redacted].
    c. Planning permission [redacted] granted by the CA on [redacted] for "*Erection of detached dwelling with attached staff/guest accommodation and associated landscaping following demolition of existing residential care home (as amplified by Bat Report received* [redacted]*).*"
    d. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
    e. The SELF-BUILD RELIEF CLAIM DECISION issued by the CA dated [redacted] with relief calculated at £[redacted]
    f. The Appellant's request to the CA dated [redacted] for a Regulation 113 review of the chargeable amount.
    g. The CA's decision on the Regulation 113 review dated [redacted].

h. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 116B, together with documents and correspondence attached thereto also dated [redacted].
i. The CA's representations to the Regulation 116B Appeal dated [redacted] together with the Appellant's response dated [redacted].

Background

2. An application for planning permission for "*Erection of detached dwelling with staff/guest accommodation and associate landscaping following demolition of existing residential care home*" was submitted by the Appellant under reference [redacted] dated [redacted]

3. On [redacted] the Appellant requested that the CA amend the description of the development within the planning portal, as the reference to a "detached" guest/staff building acted against the legal covenants on the land for two dwellings.

4. The CA granted planning permission [redacted] on [redacted] for "*Erection of detached dwelling with attached staff/guest accommodation and associated landscaping following demolition of existing residential care home*".

5. Between [redacted] and [redacted] emails were exchanged between the Appellant and CA regarding CIL liability, the Appellant's request for Self-Build Relief and the staff accommodation.

6. On [redacted] the CA granted Self-Build Relief in relation to the development permitted under [redacted] calculated as follows:-

Residential dwellings
10 or less (Zone A) – [redacted]
Total Development [redacted] *m2 GIA*
Less
Chargeable area [redacted] *m2*
= Self Build GIA [redacted] *m2*
@ £[redacted] */m2 indexed at* [redacted] *to £*[redacted] */m2 (rounded)*
= £[redacted] *Self-Build Relief*

7. On [redacted] the CA issued a CIL Liability Notice to the sum of £[redacted] for the staff/guest accommodation calculated as follows:-

Residential dwellings
10 or less (Zone A) – [redacted]
Chargeable Area [redacted] *m2*
@ £[redacted] */m2 indexed at* [redacted] *to £*[redacted] */m2 (rounded)*
= £[redacted]
Less
Self Build-Relief £[redacted]
= £[redacted] *CIL Liability*

8. The Appellant made a request on [redacted] for a Regulation 113 review of the chargeable amount on the basis that Self-Build Relief should apply to the whole property as per the CIL Form 7 they had previously submitted and with reference to Part 6 of the CIL Regulations.

9. An Appeal under Regulation 116B was submitted by the Appellant dated [redacted] and received by the Appointed Person on that date.

10. On the [redacted] the CA issued the outcome of its Regulation 113 Review. The CA state "*Regulation 9 prescribes a definition of "chargeable development", setting out under paragraph (1) that the chargeable development is the development for which planning permission is granted. Planning permission for this chargeable development was granted on the [redacted] for the development described above, which expressly permits, inter alia, "attached staff/guest accommodation". The chargeable area, calculated in accordance with Schedule 1 of the CIL Regulations 2010 (as amended), therefore comprises the Gross Internal Area (GIA) of both the new dwelling and the attached staff/guest accommodation.*"

11. The CA then state that they "*measure the GIA of the proposed development to be [redacted] sqm; comprising both the main dwelling ([redacted] sqm) and the attached staff/guest accommodation ([redacted] sqm). Applying the prescribed formula in Schedule 1, the Council maintain that the deemed net area chargeable at rate R is [redacted] sqm. It is noted that you have not disputed the GIA of the proposed development*."

12. The CA further state that "*eligibility of relief, in respect of the attached accommodation, is not within the scope of this review under Regulation 113 and would be more appropriately considered by the pending appeal under Regulation 116B*".

Appeal Grounds

13. This is a Regulation 116B appeal against the calculation of Self-Build Relief. The GIA of the proposed development does not appear to be in dispute and is not challenged within the Appellant's submissions. The CIL Liability itself has been the subject of a separate Regulation 114 appeal under Valuation Office Agency case reference 1797477.

Consideration of Appeal Grounds

14. The Appellant argues that Self-Build Relief should apply to the whole property as per the details submitted within CIL Form 7 and with reference to Part 6 of the CIL Regulations.

15. The CA states that the chargeable development is the development for which planning permission is granted, and for this scheme the permission includes "attached staff/guest accommodation". They confirm that the chargeable area, calculated in accordance with Schedule 1 of the CIL Regulations 2010 (as amended), therefore comprises the Gross Internal Area (GIA) of both the new dwelling and the attached staff/guest accommodation.

16. An appeal under Regulation 116B (Self-Build Relief) can only be made to the Appointed Person if a CA grant such relief and an interested person considers the CA has incorrectly determined the value of the relief allowed. The issue as to whether or not Self-Build Relief is granted is not a matter for me as the Appointed Person to decide.

17. The Appointed Person's role under Regulation 116B is therefore restricted to ensuring the correct determination of the value of the relief allowed.

18. The CA's calculation of Self-Build Relief was as follows:-

Residential dwellings
10 or less (Zone A) – [redacted]
Total Development [redacted] *m2 GIA*
Less
Chargeable area [redacted] *m2*
= Self-Build GIA [redacted] *m2*
@ £[redacted] */m2 indexed at* [redacted] *to £*[redacted] */m2 (rounded)*
= £[redacted] *Self-Build Relief*

19. The CA have therefore deducted under “Chargeable Area” a GIA of [redacted] m2 for the “attached staff/guest accommodation” before calculating relief on “the main dwelling” only with a GIA of [redacted] m2.

20. It is noted that no off-set has been proposed by either party for existing in-use buildings under CIL Regulations Schedule 1, and as no evidence has been provided to indicate a continuous lawful in use period for the existing buildings within the relevant time period required by the CIL Regulations, this matter is not considered within the present appeal.

21. As the proposed GIA comprising “the main dwelling” ([redacted] m2) and the “attached staff/guest accommodation” ([redacted] m2) is not subject to any dispute between the parties, all that remains for the Appointed Person to consider is whether the apportionment between the [redacted] m2 to Self-Build Relief and [redacted] m2 to the Chargeable Area for CIL purposes is correct, along with ensuring the correct CIL Liability Rate (R) and indexation figures are applied.

22. It is clear from the CIL Liability Notice issued by the CA that the development permitted under reference [redacted] was the basis for the CA’s CIL calculation, described as “*Erection of detached dwelling with attached staff/guest accommodation and associated landscaping following demolition of existing residential care home*”. CIL Regulation 9 (1) is clear on this point, that the “*chargeable development is the development for which planning permission is granted*”.

23. The CA confirm they have measured the GIA of the proposed development using the methodology set out in the RICS Code of Measuring Practice (6th Edition) to be [redacted] m2 comprising “the main dwelling” ([redacted] m2) and the “attached staff/guest accommodation” ([redacted] m2). They confirm they have applied the prescribed formula in Schedule 1 of the CIL Regulations and that the Appellant has not disputed the total GIA of the proposed development. They have, however, only calculated Self-Build Relief on a portion of the total development as follows:-

    Self-Build GIA [redacted] *m2 x Rate R £*[redacted] */m2 indexed to £*[redacted] */m2 = £*[redacted] *Self-Build Relief*

24. The CA have noted that the description of development expressly refers to the “attached staff/guest accommodation”, distinguishing it from the proposed self-build dwelling, and that the wording of this proposal implies that the “adjoined staff/guest accommodation” is functionally divorced from the host dwelling and is afforded the luxury of being self-contained. This notion is reinforced, they argue, by the absence of a planning condition which would otherwise tie the staff/guest accommodation as ancillary to the host dwelling.

25. The CA have also referred to Gravesham Borough Council v Secretary of State for the Environment and another [1982] 47 P & CR 142 where it was held that the distinctive characteristic of a dwelling was its ability to afford to those who use it the facilities required for day to day private domestic existence. The CA argue that the approved floorplans for the attached staff/guest accommodation depict the full suite of facilities one would typically associate with an independent dwelling house, making it plausible that the attached accommodation will be occupied independently of the host dwelling, all without contravening the conditions of the planning permission. They accept that should the staff/guest accommodation exercise its use as guest accommodation, in all likelihood it may be occupied sporadically i.e., not on a permanent basis. However, this would not preclude the accommodation from forming a separate dwelling.

26. The CA submit that the Appellant clearly acknowledges that should the “staff/guest accommodation” be detached from the host dwelling, the planning permission would

permit two dwellings. They reason that the Appellant's argument therefore implies that the physical attachment precludes the "staff/guest accommodation" from being considered a separate dwelling, despite its functional independence and distinctly different use. The CA feel that this is a flawed argument, since it is widely accepted that semi-detached housing will constitute one building, but two dwellings.

27. The Appellant argues that Gravesham found that a building built under a permission for a weekend and holiday chalet, but to be used only in summer, was a dwelling house. They argue that the decision rejected the suggestion that a building occupied only for a part or parts of the year or at infrequent or irregular intervals or by a series of different persons prevented it from still being classed as a dwelling house.

28. 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 detached dwelling (also referred to as the main dwelling) and attached staff/guest accommodation as one development/building.

29. From a consideration of both parties' arguments, it is my decision that in accordance with CIL Regulation 9 (1) the "*chargeable development is the development for which planning permission is granted*" and in this case the chargeable development comprises a "*detached dwelling with attached staff/guest accommodation*". It is, in my opinion, clear from the plans and elevation drawings that the two parts comprise one whole single large dwelling.

30. As the CA have granted Self-Build Relief, it is my decision that the correct GIA to which relief applies is therefore that of the whole chargeable development, which is [redacted] m2.

31. As planning permission was granted on [redacted] the relevant CIL Charging Schedule at the time for residential schemes of less than 10 dwellings in Zone A was £[redacted] /m2 indexed up to £[redacted].m2 based on a BCIS Index of 333 at the time.

32. The Self-Build Relief should therefore be calculated as:-

    Chargeable Area [redacted] *m2 x Rate R £*[redacted] */m2 indexed to £*[redacted] */m2* ***** *= £*[redacted]

    [Index 1 Jan 2021 to 31 Dec 2021 / Index 2019 when CIL started = 333 / 318 = 1.047]

33. This differs slightly from the original CIL Liability calculated at £[redacted] with the difference due to rounding throughout the calculation.

34. It is noted that within their appeal submission the Appellant refers to CIL Regulations - Part 6 –

    "Exemption for residential annexes or extensions

    42A.—(1) Subject to paragraphs (5) and (6), a person (P) is exempt from liability to pay CIL in respect of development if—

    (a)P owns a material interest in a dwelling ("main dwelling");
    (b)P occupies the main dwelling as P's sole or main residence; and
    (c)the development is a residential annex or a residential extension.

    (2) The development is a residential annex if it—

(a)is wholly within the curtilage of the main dwelling; and
(b)comprises one new dwelling.

(3) The development is a residential extension if it—

(a)is an enlargement to the main dwelling; and
(b)does not comprise a new dwelling."

35. On the basis of the above extract from the CIL Regulations, the attached staff/guest accommodation is neither (3) (a) an enlargement to the main dwelling or (b) a new dwelling. The attached staff/guest accommodation is therefore neither a residential annex or residential extension, and as no exemption for residential annexes or extensions has been granted by the CA it is outside the remit of the Appointed Person to address the matter of any Regulation 116A appeal for residential annexes or extensions any further.

Decision on Self Build Relief

36. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine Self-Build Relief to be £[redacted] ([redacted]).

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
20 July 2022