

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency - DVS
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Durham
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Appeal Ref: 1797477

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

Decision

I determine the Community Infrastructure Levy (CIL) payable in this case calculated at £ [REDACTED] ([REDACTED]) before any deductions for Self-Build Relief to be correct, and the Appeal is therefore dismissed.

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 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]).*"
 - b. The CIL Liability Notice [REDACTED] issued by the CA dated [REDACTED] with CIL Liability calculated at £ [REDACTED]
 - c. The SELF-BUILD RELIEF CLAIM DECISION issued by the CA dated [REDACTED] with relief calculated at £ [REDACTED]
 - d. The Appellant's request to the CA dated [REDACTED] for a Regulation 113 review of the chargeable amount.
 - e. The CA's decision on the Regulation 113 review dated [REDACTED].
 - f. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto also dated [REDACTED].

- g. The CA's representations to the Regulation 114 Appeal dated [REDACTED] together with the Appellant's response dated [REDACTED].

Background

1. 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]
2. 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.
3. 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".
4. 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.
5. 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

6. 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) – 452
Chargeable Area [REDACTED] m2
@ £ [REDACTED] /m2 indexed at 1.047 to £ [REDACTED] /m2 (rounded)
= £ [REDACTED]
Less
Self-Build Relief £ [REDACTED]
= £ [REDACTED] CIL Liability

7. 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.
8. 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.”

9. 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.” They then confirm the CIL liability as per their Liability Notice at £[REDACTED]
10. An Appeal on the basis of Regulation 114 was submitted by the Appellant dated [REDACTED] and received by the Appointed Person on that date.

Appeal Grounds

11. This is a Regulation 114 appeal against the chargeable amount. 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 results from the calculation of CIL from the remaining GIA after the area subject to Self-Build Relief is deducted. The calculation of Self-Build Relief is the subject of a separate Regulation 116B appeal under Valuation Office Agency case reference 1796551.

Consideration of Appeal Grounds

12. 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.
13. 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.
14. 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”.
15. 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.
16. 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.
17. The matter as to the calculation of Self-Build Relief is addressed in a separate Regulation 116B appeal decision, whilst this current Regulation 114 appeal decision is restricted to

the matter of whether the chargeable amount has been correctly calculated for CIL purposes before any such exemptions are applied.

18. The CA's calculation of the chargeable amount for CIL purposes was as follows:-

*Residential dwellings
10 or less (Zone A) – [REDACTED]
Chargeable Area [REDACTED] m2
@ £ [REDACTED] /m2 indexed at [REDACTED] to £ [REDACTED] /m2 (rounded)
= £ [REDACTED]*

19. From the above total a deduction for Self-Build Relief of £ [REDACTED] was applied to arrive at a CIL Liability of £ [REDACTED]

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 (marked as "Chargeable Area" in the above calculation) is not subject to any dispute between the parties, all that remains for the Appointed Person to consider is whether the CIL Liability Rate (R) and the indexation figures used by the CA in their calculations are correct, and that the correct CIL Liability has been calculated.

22. 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.

23. The CIL Liability, before any Self-Build Relief is applied, is therefore correctly calculated at:-

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

**[$\frac{\text{Index 1 Jan 2021 to 31 Dec 2021}}{\text{Index 2019 when CIL started}} = \frac{333}{318} = 1.047$]*

24. It is noted that the amount shown in the CA's CIL Liability Notice dated [REDACTED] the calculation (shown as "Area Charge") = £ [REDACTED]

25. The difference between the two figures is negligible and appears to be the result of rounding within the indexation element.

26. 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.*

27. On the basis of the above extract from the CIL Regulations, the attached staff/guest accommodation is neither (2) (b) one dwelling nor (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 CIL Liability

28. 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]) before any deductions for Self-Build Relief to be appropriate and hereby dismiss this appeal.

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