

Appeal Decision

by [REDACTED] MRICS

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

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Appeal Ref: 1810701

Planning Permission Reference: [REDACTED]

Location: [REDACTED]

Development: "Erection of 2 dwellings following demolition of existing single storey dwelling"

Decision

I confirm a CIL charge of £[REDACTED] ([REDACTED]) as calculated by the Collecting Authority to be appropriate and hereby dismiss this appeal.

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 reference [REDACTED] dated [REDACTED] for the "*erection of 2 dwellings following demolition of existing single storey dwelling.*"
 - b. The CIL Liability Notice [REDACTED] issued by the CA dated [REDACTED] with CIL Liability calculated at £[REDACTED]
 - c. The Appellant's request to the CA dated [REDACTED] for a Regulation 113 review of the chargeable amount.
 - d. The CA's response dated [REDACTED] to the Appellant's request for a Regulation 113 review.
 - e. The CIL Liability Notice [REDACTED] issued by the CA dated [REDACTED] with CIL Liability calculated at £[REDACTED]
 - f. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
 - g. The CA's representations to the Regulation 114 Appeal dated [REDACTED].

Background

2. Following an application dated [REDACTED] planning permission reference [REDACTED] was granted on [REDACTED] for the "erection of 2 dwellings following demolition of existing single storey dwelling".
3. A CIL Liability Notice was issued by the CA on the [REDACTED] with CIL calculated at £[REDACTED] based on [REDACTED] m2 chargeable area with no GIA offset for existing buildings.
4. On [REDACTED] the Appellant requested a Regulation 113 Review of the chargeable amount on the basis that the GIA offset for existing floorspace for CIL calculation purposes should be [REDACTED] m2.
5. On [REDACTED] the CA issued their Regulation 113 review decision, confirming their calculation of the GIA for the existing single storey dwelling as [REDACTED] m2. The CA further noted that the Appellant had "suggested that the existing store building should also be taken into account within the calculator of the chargeable. However, the RICS Code of Measuring Practice (6th Edition) specifically excludes the following from being considered as GIA: Greenhouses, garden stores, fuel stores, and the like in residential property. The Council consider that the existing store building falls under this category and therefore cannot include it within the calculation of the chargeable amount."

6. The CA concluded that CIL should be calculated as:-

$$A = [REDACTED] \text{ m2 } ([REDACTED] - [REDACTED])$$

$$R = \text{£} [REDACTED]$$

$$lp = [REDACTED]$$

$$lc = [REDACTED]$$

$$[REDACTED] \times [REDACTED] \times [REDACTED]$$

$$= [REDACTED]$$

$$= \text{£} [REDACTED] \text{ CIL Charge}$$

7. A further CIL Liability Notice [REDACTED] was issued by the CA dated [REDACTED] at £[REDACTED] CIL Liability.
8. On [REDACTED] the Appellant contacted the CA, noting they had "deducted [REDACTED] m2 for the main bungalow, however the [REDACTED] m2 for the storerooms has not been taken into account. I accept the drawing which I have attached again is not the clearest as it separates the two numbers out, but it is stated under the drawing of the store. I believe the total sqm to be deducted is [REDACTED] m2 ([REDACTED] m2 for the bungalow and [REDACTED] m2 for the store)."
9. The CA responded on [REDACTED] that their Regulation 113 review decision "sets out why the Council have not included the demolition of the existing store within the calculation of the chargeable amount."
10. The Appellant submitted a Regulation 114 Appeal against the chargeable amount on [REDACTED]

Appeal Grounds

11. The Appellant notes that the outbuilding was not taken into consideration as part of the existing building GIA offset and argues that this [REDACTED] m2 of "garage/workshop" should be deducted or offset from the overall GIA, as it will be demolished to allow the redevelopment to take place. The Appellant further states that these buildings "are somewhere people normally go and use".

Consideration of Appeal Grounds

12. The Appellant has cited a previous CIL Appeal decision by the Appointed Person (AP) involving the demolition of an existing garage and outbuildings, which in that particular case were referred to as “*a cabin/summer house*” and were regularly used as ancillary to the main domestic dwelling. The AP in that appeal noted that garages were stated within the RICS Code of Measuring Practice as being included in GIA, but that there was no mention of cabins or summer houses. The AP concluded that “*a cabin/summer house*” constituted a “*building*” and was “*superior*” to a greenhouse or garden store and the actual structure in question was being “*used in the ancillary enjoyment of a domestic property in a similar way to how a garage or conservatory may be*”. Their decision in that appeal was to offset the GIA of the structure when calculating the CIL liability.
13. The Appellant has also submitted two photographs of the interior of the structure being considered for this current appeal.
14. The CA note that the Planning Officer’s report for the planning application and the planning description within it make no reference to any existing buildings to be demolished, and none of the plans supporting the planning application show an ‘*outbuilding*’.
15. The CA further note that within their Regulation 113 review request the Appellant included a building labelled as ‘*Existing Store*’ (included as Appendix 4 to the CA’s CIL Appeal submission) and as part of their appeal the Appellant also submitted two photographs depicting the inside of the ‘*outbuilding*’. The CA consider these photographs show that the ‘*outbuilding*’ is a wooden structure similar to a garden store/shed-like building rather than a garage/workshop building as the Appellant contends. The CA further comment that it is unclear from the information available where the building is situated and what it looks like externally.
16. The CA contend that the RICS Code of Measuring Practice (6th Edition) specifically excludes the following from being considered as GIA: *Greenhouses, garden stores, fuel stores, and the like in residential property*. Taking account of the evidence available, the CA consider that the existing ‘*outbuilding*’ falls under this category and therefore cannot be included within the GIA being offset for CIL calculation purposes.

Consideration of the Decision

17. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.
18. Disagreement surrounding the issue of identifying the lawful in-use buildings has arisen from Schedule 1 of the CIL Regulations 2010 (as amended), which provides for the deduction or offset of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.
19. It appears to be common ground that the GIA of the proposed development is 384 m² as calculated by the CA, and the Appellant does not dispute this in any of the paperwork submitted.
20. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) provides that an “in-use building” means a relevant building which contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

21. Part 1 – standard cases – 1 (10) also provides that “relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.
22. The relevant period of continuous lawful use in accordance with Schedule 1 of the CIL Regulations 2010 (as amended) is [REDACTED] to [REDACTED], and the CA have, in accordance with Schedule 1, confirmed their acceptance that the [REDACTED] m2 GIA of the existing dwelling should be offset from the total GIA of the proposed development within their CIL calculations.
23. Whilst the CA’s decision to consider the existing ground floor dwelling as a relevant in-use building in accordance with Schedule 1, Part 1 of the Regulations might also naturally include the “outbuilding”, it remains an area of dispute between the parties as to whether this [REDACTED] m2 GIA “outbuilding” should actually be included within the GIA offset calculation.
24. The RICS Code of Measuring Practice 6th Edition (May 2015) s2.0 sets out the method of calculating GIA and states it:-

Includes:-

- s2.1 - Areas occupied by internal walls and partitions*
- s2.2 - Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like*
- s2.3 - Atria and entrance halls, with clear height above, measured at base level only*
- s2.4 - Internal open-sided balconies walkways and the like*
- s2.5 - Structural, raked or stepped floors are to be treated as level floor measured horizontally*
- s2.6 - Horizontal floors, with permanent access, below structural, raked or stepped floors*
- s2.7 - Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)*
- s2.8 - Mezzanine floors areas with permanent access*
- s2.9 - 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*
- s2.10 - Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like*
- s2.11 - Projection rooms*
- s2.12 - Voids over stairwells and lift shafts on upper floors*
- s2.13 - Loading bays*
- s2.14 - Areas with a headroom of less than 1.5m*
- s2.15 - Pavement vaults*
- s2.16 - Garages*
- s2.17 - Conservatories*

Excludes:-

- s2.18 - Perimeter wall thicknesses and external projections*
- s2.19 - External open-sided balconies, covered ways and fires*
- s2.20 - Canopies*
- s2.21 - Voids over or under structural, raked or stepped floors*
- s2.22 - Greenhouses, garden stores, fuel stores, and the like in residential property*

25. The Appellant had earlier submitted [REDACTED] to the CA marked with the GIA of the existing ground floor dwelling at [REDACTED] m2 and GIA of the existing store at [REDACTED] m2. The CA annotated a copy of that plan with their own slightly larger calculation of the GIA of the existing ground floor dwelling at [REDACTED] m2, which the Appellant has not disputed.
26. The [REDACTED] shows the “existing store” to be a detached building split across two areas or rooms, one larger than the other and each with separate external access doors and is annotated with a total GIA of [REDACTED] m2. The left-hand (smaller) part has a single door whilst the larger (right-hand) part has double-door access and a window opening to the north-west elevation.

27. Two photographs of the inside of the structure submitted by the Appellant show a concrete floor with internal wooden-framed and wooden “tongue and groove” clad elevations to three sides lined with attached shelving/freestanding shelving units and hanging hooks, along with a relatively small “trials type” motorcycle parked on the floor within the structure. The overall appearance of the interior from these submitted photographs is that of a wooden shed. It is not apparent which part of the “existing store” is depicted in the photographs, but it is assumed that both parts are the same, other than their respective internal dimensions.
28. It is noted that the structure in question is referred to as an “outbuilding” and on other occasions “existing store” or “garage/workshop” by the Appellant. Nevertheless, the evidence from the two photographs would appear to indicate the structure to be akin to a wooden garden shed/store on a concrete base. Whilst the photographs show a small motorcycle being stored within the structure, it would nevertheless appear to be primarily a wooden garden shed/store as opposed to a garage or workshop.
29. The previous CIL Appeal decision submitted by the Appellant does not, contrary to what they suggest, set any precedent but is nevertheless noted. The AP in that earlier decision commented that the “cabin/summerhouse...is seen as a superior structure to a greenhouse or garden store” and as a result they included it within the GIA offset on the basis that it was “used in the ancillary enjoyment of a domestic property in a similar way to how a garage or conservatory may be”. Garages and conservatories are specifically included in The RICS Code s2.16 and s2.17 as to be included in GIA measurements.
30. The RICS Code s2.22 states that “Greenhouses, garden stores...and the like in residential property” should be excluded from GIA measurements. It is my opinion that this “existing store” or “outbuilding” is not substantial enough to be a “garage/workshop” and would fall within the category of “garden stores...and the like” (with emphasis on “...and the like”) in the RICS Code, and its area must therefore be excluded from the GIA of existing buildings and therefore cannot be offset against the GIA of the proposed development for CIL Liability purposes.
31. The total GIA to be offset for CIL calculation purposes in accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) is therefore [REDACTED] m2 for the existing dwelling only.
32. In accordance with Part 1 of Schedule 1, of the CIL Regulations 2010 (as amended) I therefore calculate the chargeable area using the formula within Schedule 1 Part 1:-

$$\text{Net chargeable area} = GR - KR - \frac{(GR \times E)}{G}$$

Where:

G = the gross internal area of the chargeable development.

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

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

Value G (the GIA of the chargeable development): [REDACTED] m2.

Value GR (the GIA of the part of the chargeable development to be charged at rate R) is [REDACTED] m2 as above.

Values KR (i) and (ii): both zero.

Value E (i): [REDACTED] m2.

Value E (ii) is not relevant here, as the planning permission is not phased.

33. Therefore, applying the formula within Schedule 1 Part 1 the net chargeable area is calculated thus:-

$$\begin{aligned} & [REDACTED] \text{ m2} - 0 \text{ m2} - \left(\frac{[REDACTED] \text{ m2} \times [REDACTED] \text{ m2}}{[REDACTED] \text{ m2}} \right) \\ & = [REDACTED] \text{ m2 GIA chargeable area} \end{aligned}$$

34. CIL Liability is calculated using rates and indices at [REDACTED] relevant at the date of planning permission was granted as:-

$$\begin{aligned} A \text{ (Chargeable Area)} &= [REDACTED] \text{ m2} \\ R \text{ (CIL Rate)} &= \text{£} [REDACTED] \\ I_p &= [REDACTED] \\ I_c &= [REDACTED] \\ & [REDACTED] \times \left(\frac{[REDACTED] \times [REDACTED]}{[REDACTED]} \right) \\ & = \text{£} [REDACTED] \text{ (rounded) CIL Liability} \end{aligned}$$

Decision

35. On the basis of the evidence before me and having considered all the information submitted in respect of this Regulation 114 appeal, I therefore confirm a CIL charge of £ [REDACTED] ([REDACTED]) as calculated by the Collecting Authority to be appropriate and hereby dismiss this appeal.

[REDACTED] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
8 February 2023