Appeal Decision

by [redacted] BSc (Hons) MRICS

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

e-mail: [redacted]@voa.gov.uk

Appeal Ref: 1817836

Planning Permission Ref. [redacted]

Proposal: Retrospective application for erection of 1 dwelling to side of [redacted] with associated works

Location: [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]) and I hereby dismiss the appeal.

Reasons

1. I have considered all of the submissions made by [redacted] (the Appellant) and by [redacted], 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 decision ref [redacted] dated [redacted];

    b) Approved planning consent drawings, as referenced in planning decision notice;

    c) CIL Liability Notice [redacted] dated [redacted];

    d) CIL Appeal form dated [redacted], including appendices;

    e) Representations from CA dated [redacted]; and

    f) Appellant comments on CA representations, dated [redacted].

2. Planning permission was granted under application no [redacted] on [redacted] for 'Retrospective application for erection of 1 dwelling to side of no4 with associated works.'

3. This application followed an earlier permission granted on [redacted] under reference [redacted] for 'Erection of 1.no dwelling to the side of an existing dwelling and associated works.'

4. 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 High' rate of £[redacted] m² plus indexation.

5. The Appellant exchanged emails with the CA querying the charge between [redacted] and [redacted]. The CA confirmed their view that the charge was correct.

6. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £[redacted]. This was calculated on a chargeable area of [redacted] m² at a base rate of £[redacted] /m².

7. The Appellant's grounds of appeal can be summarised as follows:

    a) The planning application was an amendment to an earlier permission, which added a dormer to the loft and increased the total floor area by [redacted] m². The CIL charge should only apply to this additional area.

    b) A payment of £[redacted] was made under the original planning permission ref [redacted]. This amount should not be charged again on the new development.

8. The CA has submitted representations that can be summarised as follows:

    a) The appellant did not submit a Regulation 113 review and therefore the appeal is invalid.

    b) The planning application is a retrospective consent for the whole development and not an amendment to an earlier permission. The GIA of the chargeable area is therefore [redacted] m².

c) The CIL liability for the earlier planning permission [redacted] was based on a net chargeable area of [redacted] m². This was based on a GIA of [redacted] m² and a deduction of [redacted] m² for a detached garage. This garage was demolished prior to the new consent being granted and therefore cannot be deducted from the CIL charge under ref [redacted]. The house that had been built could also not be deducted as it had not been lawfully constructed.

d) The applicant made CIL payments against application [redacted]. These payments cannot be abated against the CIL charge for application [redacted] because a request for abatement was not made prior to the chargeable development commencing. The issue of abatement should also fall outside the jurisdiction of this appeal.

Validity

9. The CA claim that the appellant did not submit a request for a review under Regulation 113 and therefore the appeal is invalid. The appellant agrees that he did not specifically reference Regulation 113 but maintains that the emails he exchanged with the council between [redacted] and [redacted] do constitute a request for a review.

10. Regulation 113 states that a request for review must be made in writing but does not specify the content or format of the request. I consider that the appellants email to the CA on [redacted] does constitute a request for a review and therefore the appeal is valid on this ground.

GIA/Chargeable Development

11. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the "retained parts of in-use buildings" can be deducted from "the gross internal area of the chargeable development."

12. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. The approved plans show all three floors of the house and the consent is for the erection of one dwelling. The chargeable development is therefore considered to be the whole house and not just the loft room.

13. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice definition is used. GIA is defined as "the area of a building measured to the internal face of the perimeter walls at each floor level." The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

14. The CA have determined a GIA of [redacted] m². This area does not appear to be disputed by the appellant and therefore I have accepted this as correct.

In-use buildings / Lawful use

15. The appellant considers that the net chargeable area should be [redacted] m² as this is the additional area created in the loft. This area therefore excludes the remainder of the house.

16. The CA contend that the ground and first floors of the house cannot be deducted as an "in-use building" as they were not built lawfully and there is no evidence they were in use. They also reference a garage that was deducted from the original application as an "in-use building" but which is no longer relevant as it was not on site at the date the current permission was granted.

17. "In-use building" is defined in the Regulations as a relevant building that 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.

18. "Relevant building" means a building which is situated on the "relevant land" on the day planning permission first permits the chargeable development. "Relevant land" is "the land to which the planning permission relates" or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.

19. I agree with the CA contention that the house as built does not constitute a lawful building and cannot be deducted from the chargeable area.

20. It appears that the garage was accepted as a lawful building under the original permission but would not constitute a lawful building under the new application as it was not situated on the relevant land on the day that permission was granted ([redacted] However, 'development credit' can be carried forward to an alternative development under certain circumstances, which I have discussed in the following paragraphs.

Abatement

21. Regulation 74B - *'Abatement: implementation of a different planning permission'* states:-

"(1) This regulation applies where—

a) a chargeable development has been commenced under a planning permission (A);

b) a different planning permission (B) has been granted for development on all or part of the land on which the chargeable development under A is authorised to be carried out; and

c) the charging authority receives notice from a person who has assumed liability to pay CIL in relation to B that the chargeable development under A will cease to be carried out and that the chargeable development under B will commence.

(2) Where this regulation applies a person who has assumed liability to pay CIL in relation to B may request that the charging authority credits any CIL paid in relation to A against the amount due in relation to B."

(3) To be valid a request under paragraph (2) must be—

a) made before the chargeable development under B is commenced; and

b) accompanied by proof of the amount of CIL that has already been paid."

22. In my view, points 1a and 1b are met. Planning permission A ([redacted]) had commenced when planning permission B ([redacted]) was granted and both consents relate to the same piece of land.

23. The appellant did not expressly request abatement under Regulation 74B. He could not notify the CA that the chargeable development under A would cease and development under B would commence because the development under B had already commenced when the retrospective application was granted. As the Appellant could not give notice, Regulation 74B cannot apply.

24. Regulation 74B (paragraphs 12 and 13) have additional demolition credit provisions:-

> *(12) Paragraph (13) applies where a request under paragraph (2) in respect of the amount due in relation to B is made within the period ending three years after the grant of A and that request is granted.*
>
> *(13) Where this paragraph applies, any parts of buildings which—*
>
> *a) were demolished under A,*
> *b) were taken into account in reducing the chargeable amount in relation to A through the operation of regulation 40,*
> *c) would have been taken into account under regulation 40 in relation to B had they not been demolished, and*
> *d) are not otherwise taken into account under regulation 40, are to be taken into account under regulation 40 in relation to B as if they are parts of in-use buildings that are to be demolished before the completion of the chargeable development under B (or, if B is a phased permission, in relation to the first phase of B).*

25. The Appellant does not qualify for abatement under Regulation 74B and therefore the provisions under (13) cannot apply.

<u>Calculation of Chargeable Amount</u>

26. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 provides guidance on the calculation of the chargeable amount. This schedule is split into two parts. Part 1 deals with 'standard cases' and Part 2 deals with 'amended planning permissions.'

27. The CA consider that this application was a new permission and not an amendment to an earlier permission. The appellant states that he submitted an application for a new permission on advice of the CA but that the intention was only to amend the earlier consent to allow for the additional loft space.

28. The Regulations state that Part 2 applies "where a planning permission (B) for a chargeable development, which is granted under section 73 of TCPA 1990, changes a condition subject to which a previous planning permission (A) for a chargeable development was granted".

29. Section 73 of the Town and Country Planning Act 1990 states:

> "(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

"(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."

30. The decision notice for planning permission [redacted] grants consent for the full development and does not only consider the conditions attached to the previous application ([redacted]). It is my opinion that the application does not fall under Section 73 and therefore the CIL calculation should be determined by the calculations in Part 1 of Schedule 1.

31. Schedule 1, Part 1 provides the following guidance on the calculation of the chargeable amount.

"(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

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

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."

32. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[redacted] ([redacted]) and I hereby dismiss the appeal.

[redacted]

[redacted] BSc (Hons) MRICS
Valuation Office Agency
30 May 2023