

Appeal Decision

by [REDACTED] BSc FRICS

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

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VOA Appeal Ref: 1820275

Planning Application: [REDACTED]

Proposal: [REDACTED]

Address: [REDACTED]

Decision

Appeal dismissed.

Reasons

1. I have considered all of the relevant submissions made by [REDACTED] (the Appellant) and by the [REDACTED] - the Charging Authority (CA), which is also a Collecting Authority for Mayor [REDACTED] Community Infrastructure Levy (MCIL), in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:-
 - a) Planning decision in respect of Application No: [REDACTED], dated [REDACTED].
 - b) CIL Liability Notice ([REDACTED]), dated [REDACTED].
 - c) CIL Liability Notice Reference ([REDACTED]), dated [REDACTED].
 - d) CIL Appeal form dated [REDACTED], along with supporting documents referred to as attached.
 - e) Representations from Appellant.
 - f) Representations from CA.
2. Planning permission was granted as detailed within the Decision Notice for Application [REDACTED], dated [REDACTED], for the demolition of the existing detached [REDACTED] bed house & adjoining garage and construction of [REDACTED] semi-detached dwellinghouses with [REDACTED].

3. The CA issued a CIL Liability Notice (██████) on ██████ for £██████ stating this was based on proposed accommodation of ██████ sqm and demolition of [existing accommodation] ██████ sqm, resulting in a net chargeable area of ██████ sqm.
4. The Appellant requested a Regulation 113 Review of chargeable amount on ██████.
5. The CA responded on ██████, explaining it had re-assessed the net chargeable area as ██████ sqm, comprising ██████ sqm of existing accommodation and ██████ sqm of proposed [accommodation]. The reason for the difference was given as the CA's Case Officer had previously omitted the existing ██████, which were then added to the proposed accommodation GIA.
6. The CA issued a revised CIL Liability Notice (██████) on ██████ for £██████ based on the revised net chargeable area.
7. On ██████, the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the chargeable area should be ██████ sqm equating to CA CIL of £██████ plus Mayoral CIL of £██████, Totalling £██████, with supporting documents attached.
8. The Appellant's grounds of appeal can be summarised as follows:
 - a) The Appellant does not agree with the CA's calculation of net chargeable area.
 - b) The Appellant calculates the net chargeable area to be ██████ sqm comprising proposed accommodation of ██████ sqm less existing accommodation of ██████ sqm. The Appellant has provided a spreadsheet stating their GIA figures for Existing and Proposed.
9. The CA has submitted representations that can be summarised as follows:
 - a) The CA explains the contextual history by advising there was a previous permission, Reference ██████, which expired ██████ and this was identical to the new full permission ██████. The CA further states that under the previous / expired ██████ permission, there was a Regulation 113 review requested and the results of the review was that the net chargeable area was ██████ sqm. This was based on proposed ██████ sqm and ██████ sqm demolition.
 - b) The CA explained the Appellant had raised concerns regarding the differences in net chargeable area between the two permissions, there followed a Regulation 113 review on the floor area related to the new full permission ██████ and the CA would not consider findings from any previous Regulation 113 review related to another permission (i.e. ██████).
 - c) The CA described how it highlighted that an error had been made in the Regulation 113 review related to the previous / expired permission ██████ and the proposed floor area had been miscalculated.
 - d) The CA stated its position that the error should not be the basis upon which the Regulation 113 review of ██████ should be undertaken, clarifying that the Regulation 113 review was to check the workings of the case officer related to the ██████ permission.
 - e) The results of the CA's Regulation 113 review for permission ██████ showed that the Case Officer had omitted the garage and utility space from their existing

measurements and they had also omitted measurements of the storage space of [REDACTED] sqm, understood to be the Storage at second floor level.

- f) The CA submitted a table showing the Regulation 113 review measurements, comparing the case officers workings with the measurements suggested by the Appellant together with five drawings showing the workings of the case officer. The CA submits that based on examination of the drawings, it appears the Appellant has omitted the dividing walls between the two proposed houses and this accounts for part of the difference.
- g) The CA concludes that the current scheme [REDACTED] has been correctly measured and although it acknowledges the previous identical scheme was not correctly measured, that has no bearing on the current scheme.

10. The Appellant did not submit comments on the CA's representations.

11. Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal:

I cannot comment on, or determine, the validity of decisions made on applications for planning permission or previous CIL reviews, including the matters raised within the CA's representations regarding the previous planning permission ref. [REDACTED], which the CA has advised expired [REDACTED].

In this case, the Appellant does not agree with the CA's stated net chargeable area used in the calculation of CIL.

Both the Appellant and CA have respectively submitted marked up plans as part of their representations from which measurements have been taken – the Appellant's plans are marked indicatively with a yellow coloured line to show the perimeter of the measured area, the CA's a red line.

The CA's CIL Charging Schedule states at "Calculating the Chargeable CIL" that "*CIL applies to the gross internal area [GIA] of the net increase in development. The amount to be charged for each development will be calculated in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended).*"

Gross Internal Area is defined within the prevailing edition of the RICS Code of Measuring Practice, at the date Planning Permission was granted, [REDACTED], is the 6th edition, May 2015. Within, GIA is defined as:

"...the area of a building measured to the internal face of the perimeter walls at each floor level (see note GIA 4)".

Note GIA 4 provides clarification [how to use GIA]:

"Internal face – means the brick/block work or plaster coat applied to the brick/block work, not the surface of internal linings installed by the occupier"

Regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended) now contained in Schedule 1 Part 1 of the Community Infrastructure Regulations (amendment)(England) (No.2) 2019 details the formula to be used in the calculation of chargeable amount – this is effectively the same as the equation detailed in the "How we calculated this figure" section of the CIL Liability Notice.

The Appellant has indicated on their representation plans that they have measured the two proposed semidetached houses independently as self-contained houses, thereby

omitting the area of the dividing party wall at each of the three floor levels. This is incorrect for the purposes of GIA for CIL purposes as the whole GIA for the proposed building should be adopted when calculating the net chargeable area, otherwise the net increase in development referred to in the CA's CIL Charging Schedule would be understated.

I have undertaken my own check measurements of the existing and proposed plans. My check measurements align with those adopted by the CA and therefore I am of the opinion the CA has measured the respective GIA's and calculated the net chargeable area correctly as [REDACTED] sqm, arrived at by deducting the existing GIA, which is to be demolished, of [REDACTED] sqm from the proposed GIA of [REDACTED] sqm.

There appears to be no dispute in relation to the rates adopted or indexation. In summary, I am of the opinion that the net chargeable area has been calculated correctly by the Charging Authority and I therefore dismiss this appeal.

[REDACTED]

[REDACTED] BSc FRICS
Valuation Office Agency
28 June 2023