

Appeal Decision

by [REDACTED] BA Hons PG Dip Surv

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [REDACTED]@voa.gov.uk

Appeal Ref: 1822624

Planning Permission Reference: [REDACTED]

Address: [REDACTED]

Development: “Application for variation of condition 2 of planning permission [REDACTED] in respect of new windows to side elevation and loft room with rooflights to pitched roof and provision of rooms within roof space.”

Earlier permission [REDACTED] had been granted for “Demolition of existing single storey house and erection of a detached four-bedroom two storey house with revised location of vehicle access.”

Decision

I determine that the Community Infrastructure Levy (CIL) in this case should be, £ [REDACTED] ([REDACTED]).

Background

1. I have considered all of the submissions made by [REDACTED] on behalf of [REDACTED] (the Appellant) and [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 permission reference [REDACTED] dated [REDACTED] for “*Demolition of existing single storey house and erection of a detached four-bedroom two storey house with revised location of vehicle access.*”
- b. Grant of Self Build Exemption by the CA dated [REDACTED].
- c. A planning officer’s delegated report issued on [REDACTED] in respect of [REDACTED].
- d. Planning permission [REDACTED] granted on [REDACTED] “*Application for variation of condition 2 of planning permission [REDACTED] in respect of new windows to side elevation and loft room with rooflights to pitched roof and provision of rooms within roof-space.*”
- e. The CIL Liability Notice [REDACTED] issued by the CA dated [REDACTED] with CIL Liability 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 response dated [REDACTED] to the Appellant’s request for a Regulation 113 review.
- h. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
- i. The CA’s representations to the Regulation 114 Appeal dated [REDACTED] together with the Appellant’s response dated [REDACTED].

Background

2. This appeal has arisen from an order given by Mr Justice Holgate on 11 May 2023 following the Judicial Review of the CIL appeal decision issued under reference 1801243. Mr Justice Holgate ordered that; “*the Claimant’s appeal to the Defendant’s Appointed Person....is remitted to be heard by an Appointed Person other than Mr JS Southern, to determine a revised “chargeable amount” pursuant to reg 114(6) of the CIL Regs*”.
3. Within his Judicial Review, Mr Justice Holgate confirmed that planning permission DA/22/00041/VCON granted on 12 April 2022, was issued under section 73 of the Town and Country Planning Act 1990, and not under section 73A as decided in CIL appeal 1801243.
4. It is clear, after consideration of the representations of both the appellant and the CA as part of appeal 1801243, that it is accepted by both parties that should planning permission [REDACTED] have been granted under section 73 of the Town and Country Planning Act 1990, then the self-build exemption that was granted for original permission [REDACTED] under regulation 54A/B, would have been carried over to the subject permission in accordance with regulation 58ZA.
5. The appeal before me is a Regulation 114 chargeable amount appeal which requires me to, “calculate a revised chargeable amount.” The chargeable amount is calculated in accordance with the regulations and is the liability due pre any reliefs or exemptions that may be granted. It was not within the remit of this appeal to consider any exemptions or reliefs that may be applicable.

Grounds of Appeal

6. The appellant made their regulation 114 chargeable amount appeal on the grounds that the property should not be subject to a CIL charge as permission reference [REDACTED] was a section 73 variation to the earlier planning permission [REDACTED], which had been granted a self-build exemption. The Appellant opined that the existing self-build exemption granted by the CA should also cover permission [REDACTED] as a section 73 variation permission under Reg. 58ZA resulting in a CIL liability of zero pounds.
7. Mr Justice Holgate has resolved this ground of appeal by declaring that planning permission 22/00041/VCON was granted under section 73 of the Town and Country Planning Act 1990 in his Judicial Review dated 11 May 2023. I will therefore calculate the CIL liability reflecting his decision.

Decision

8. As I understand it, the parties are in agreement with the gross internal areas (GIA) adopted and the charging rates and rates of indexation applied, with none of these items being cited as a source of dispute within the representations submitted.
9. The Community Infrastructure Levy (CIL) (Amendment) (England) (No. 2) Regulations 2019 (the '2019 Regulations') came into force in England on 1 September 2019. Regulation 5 of the 2019 Regulations requires the substitution of paragraph 9(8) (along with 9(6) and 9(7)) of the 2010 Regulations) with – "(6) *Where a planning permission is granted under section 73 of TCPA 1990, the chargeable development is the most recently commenced or re-commenced chargeable development*".
10. Furthermore, the new Part 5 also amends Regulation 40 to now require the chargeable amount to be calculated in accordance with the provisions of Schedule 1. Schedule 1 Part 2 sets out the basis of the calculation of the chargeable amount for "amended" planning permissions, these permissions are defined under Regulation 3(1) of Schedule 1 Part 2. '*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*'. Given this Appeal relates to a section 73 permission, this is a non-standard 'amended planning permission' and CIL will fall to be assessed under Schedule 1 Part 2 of the 2019 Regulations.
11. The rules relating to 'amended planning permissions' in Schedule 1 Part 2 are summarised below:
 - Where a s73 permission is granted, it is necessary to compare the 'notional amount' for the s73 permission (B) and the 'notional amount' for the previous permission (A). (The 'notional amount' is essentially the chargeable amount that would be payable minus any applicable relief but calculated as if B was permitted on the same day as A, and Ip for B were the index figure for the calendar year in which A was granted. (Ip is the

index figure for the calendar year in which planning permission was granted).

- Where the 'notional amount' for B is the same as for A, the chargeable amount is that shown in the most recent liability notice for permission A.
 - Where the 'notional amount' for B is greater than for A, paragraph 4 applies.
 - Where the 'notional amount' for B is less than for A, paragraph 5 applies.
12. Sub-paragraph 2 of Part 2 states that '*the notional amount for A is the amount of CIL that would be payable in relation to the development for which A was granted, calculated in accordance with paragraph 1, minus any applicable relief for the development for which A was granted*' and
13. Sub-paragraph 3 of Part 2 states that '*The notional amount for B is the amount of CIL that would be payable in relation to the development for which B was granted, calculated in accordance with paragraph 1 (as modified by sub-paragraph (4)), minus any applicable relief for the development for which B was granted (as modified by sub-paragraph (5)).*
14. Subparagraph 4 of Part 2 then states that; '*For the purposes of calculating the notional amount for B, paragraph 1 applies as if—*
- (a) B first permits development on the same day as A;*
 - (b) IP for B were the index figure for the calendar year in which A was granted;*
 - (c) a reference to a relevant charging schedule were a reference to the charging schedule of the charging authority which was in effect—*
 - (i) at the time A first permits development; and*
 - (ii) in the area in which the development will be situated.*
15. Paragraph 1, referred to within the sections above, sets out the calculation of CIL for 'standard cases' where the amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times IP}{IC}$$

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,

and the value of A must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—

G = the gross internal area of the chargeable development;

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

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

16. In this case, I understand the net chargeable area under permission (A) was [REDACTED] square metres (sq. m) (GIA of chargeable development [REDACTED] sq. m, less GIA existing buildings [REDACTED] sq. m). I understand the net chargeable area under permission (B) was [REDACTED] sq. m (GIA of chargeable development [REDACTED] sq. m less GIA of existing building [REDACTED] sq. m). The aforementioned net chargeable areas being those that would have been calculated as at the date of planning permission A i.e. [REDACTED] when the relevant buildings that were due to be demolished, were still situated on the relevant land. Therefore, I calculate the notional amount for B to be higher than A and have applied paragraph 4.

17. According to Paragraph 4 of Part 2 of Schedule 1, the CIL charge for an ‘amended planning permission’ is calculated by the formula:

$$(X - Y) + Z$$

Where:

X = the chargeable amount for the development for which B was granted calculated in accordance with paragraph 1;

Y = the chargeable amount for the development for which A was granted calculated in accordance with paragraph 1; (but per sub para (3) this must be calculated using the indexation relevant to the date that B was permitted)

Z = the chargeable amount for the development for which A was granted calculated in accordance with paragraph 1 (as shown in the most recent CIL notice issued in relation to A);

18. The RICS CIL index when planning permission A was granted was [REDACTED]. The RICS CIL index for the date when permission B was granted was [REDACTED]. The RICS CIL index when the CA's charging schedule was adopted was [REDACTED].

19. Having considered the 'amended planning permission' calculation route, I calculate the CIL charge as follows:-

$$X = [REDACTED] \text{ m}^2 @ \text{£} [REDACTED] \text{ per m}^2 \times [REDACTED] = \text{£} [REDACTED]$$

$$Y = [REDACTED] \text{ m}^2 @ \text{£} [REDACTED] \text{ per m}^2 \times [REDACTED] = \text{£} [REDACTED]$$

$$Z = \text{£} [REDACTED] \text{ as stated in Liability Notice } [REDACTED] \text{ issued on } [REDACTED]$$

$$(X - Y) + Z = (\text{£} [REDACTED] - \text{£} [REDACTED]) + \text{£} [REDACTED] = \text{£} [REDACTED]$$

20. We are required to carry out the above calculation as at the date planning permission B was granted i.e. [REDACTED]. Therefore, in calculating X and Y, there is no deduction for the demolished buildings within the calculation of the net chargeable area, as the buildings in question were demolished prior to permission B having been granted.

21. Therefore in accordance with Part 2 of Schedule 1 contained within Community Infrastructure Levy (CIL) (Amendment) (England) (No. 2) Regulations 2019 (the '2019 Regulations') and the facts and evidence before me, I determine a CIL charge of £[REDACTED] ([REDACTED]).

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RICS Registered Valuer
Valuation Office Agency
20 July 2023