

Appeal Decision

by ■■■ MRICS

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

Valuation Office Agency
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Durham
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Appeal Ref: 1844853

Planning Permission Ref. ■■■

Proposal: Application to vary condition 01 (approved plans) – to meet requirement for M4(2) as per planning condition 08, entrance, lobby, WC and living space to be on the same floor plate (no steps) (material amendment of planning permission ■■■ dated ■■■ .

Location: ■■■

Decision

I do not consider the Community Infrastructure Levy (CIL) charge of £ ■■■ (■■■) to be excessive and I therefore dismiss this 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 ref [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 originally granted under application no [REDACTED] on [REDACTED] to “Demolish existing dwelling and erect replacement detached dwellinghouse with associated parking and amenity space (amended proposal).”
3. Subsequent planning permission was granted under application no [REDACTED] on [REDACTED] for “Application to vary condition 01 (approved plans) – to meet requirement for M4(2) as per planning condition 08, entrance, lobby, WC and living space to be on the same floor plate (no steps) (material amendment of planning permission [REDACTED] dated [REDACTED].”
4. The amended planning permission changed the overall height of the proposed dwelling from 5.9m to 6.4m and removed two walls from the covered parking space.
5. We understand that a CIL liability notice was issued following the initial planning application in the sum of £[REDACTED] and this amount was paid in full. We have not been provided with a copy of this earlier liability notice.
6. The CA subsequently issued a CIL liability notice on [REDACTED] in the sum of £0, relating to the amended permission. The notice states “The chargeable amount remains as shown in the most recent liability notice issued ref [REDACTED] in relation to the previous permission ref [REDACTED].” A sum of £[REDACTED] is then stated based on a chargeable area of [REDACTED]m² at the ‘Residential (Classes C3 & C4) Zone 1 rate’. The CA confirm in their statement of case that a credit of £[REDACTED] from previous payments has been applied to reach a liability of £0.
7. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], stating that they consider the CIL charge to be correct.
8. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be based on a GIA of [REDACTED]m².
9. The Appellant’s grounds of appeal can be summarised as follows:
 - a) The covered parking should be excluded from the GIA.
10. The CA has submitted representations that can be summarised as follows:
 - a) The covered parking area sits underneath the upper floors of the building and should therefore be included within the GIA.

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” and can be deducted from “the gross internal area of the chargeable development.”

12. 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.

Including:-

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

Excluding:-

- 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
- Greenhouses, garden stores, fuel stores, and the like in residential property”

13. The CA originally calculated the GIA of the development from the plans approved under the [REDACTED] permission. At this time, the parking area was more enclosed. Following the amended permission, the Appellant considers that the parking area should no longer be included as two of the walls have been removed. They therefore consider that they are due a partial refund of the CIL they have previously paid.

14. The CA states that the removal of the walls does not change their opinion of GIA. They consider that the parking area should be included within the GIA as it still sits within the footprint of the building, with residential accommodation above. To support their view, the CA have provided two CIL Appeal decisions from different cases where open sided parking areas have been included within the GIA.

15. The CIL charging schedule makes no mention of car ports, parking or garages. I have therefore looked to the RICS code of measuring practice to determine the correct assessment of GIA.
16. Car ports and covered parking spaces are not specifically mentioned within the code of measuring practice and I do not consider that they fall within any of the exclusions listed. I consider that the parking areas are internal because they sit within the footprint of the building, underneath the upper floor accommodation. As such, I believe that the area should be included within the GIA in much the same way as internal open-sided balconies or loading bays are included.
17. On the basis of the evidence before me, I do not consider the Community Infrastructure Levy (CIL) charge of £[REDACTED] ([REDACTED]) to be excessive and I therefore dismiss this appeal.

[REDACTED] MRICS
Valuation Office Agency
7 August 2024