Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency - DVS
Wycliffe House
Green Lane
Durham
DH1 3UW

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

Appeal Ref: 1848093

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Change of use of land to residential for the proposed erection of 1 no. detached dwelling and garage following demolition of the existing garage and agricultural outbuilding. (Part retrospective)

Decision

I determine the Community Infrastructure Levy (CIL) payable in this case of £ [redacted] ([redacted]) 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 Approval reference [redacted] issued by the CA dated [redacted] for "*Change of use of land to residential for the proposed erection of 1 no. detached dwelling and garage following demolition of the existing garage and agricultural outbuilding. (Part retrospective)*" and approved plans.
   b. The delegated officer report dated [redacted] .
   c. CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL liability calculated at £ [redacted]
   d. Prior approval [redacted] granted by the CA dated [redacted] for "*Erection of a single storey rear extension, which would extend beyond the rear wall of the original house by [redacted] m, for which the maximum height would be [redacted] .m and the height of the eaves [redacted] m*".
   e. CIL Form 1 - Additional Information – dated [redacted].
   f. The design and access statement submitted by [redacted] dated [redacted]
   g. Appellant's complaint letter to the CA dated [redacted] including photographs on pages 2, 3 and 4.
   h. Photographs submitted by the CA following site visits on [redacted] and [redacted]

i. CA response letter to Appellant dated [redacted].
j. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
k. The CA's representations received on [redacted] together with documents and correspondence attached thereto.
l. The Appellant's further comments dated [redacted].
m. Drawings [redacted] Rev. A (dated [redacted]) [redacted] dated ([redacted]) as provided by the Appellant.

Background

2. Planning Approval reference [redacted] dated [redacted] was issued by the CA for "*Change of use of land to residential for the proposed erection of 1 no. detached dwelling and garage following demolition of the existing garage and agricultural outbuilding. (Part retrospective)*".

3. CIL Liability Notice [redacted] was issued by the CA dated [redacted] with liability calculated as:

Residential development – Rest of Borough
Chargeable area [redacted] m2 GIA
X CIL Rate £ [redacted] per m2 indexed at [redacted]
= £ [redacted] CIL Liability

4. The Appellant lodged a complaint to the CA in a letter dated [redacted], which the CA responded to by letter dated [redacted].

5. In their [redacted] reply the CA confirmed their view that the original dwelling had been demolished and planning permission was required to rebuild it. In view of Community Infrastructure Levy (CIL) Regulation 54B (b), self-build relief on new/rebuilt dwellings can only be granted prior to the commencement of development. The CA's view was that as demolition had occurred CIL is payable on the new/rebuilt dwelling.

6. A Regulation 114 Appeal against the chargeable amount was submitted by the Appellant to the VOA dated [redacted].

Appeal Grounds

7. The key issue upon which this Appeal is made is that the CA have calculated CIL with no existing GIA off-set, whereas the Appellant argues that the GIA of the original house should be off-set from the GIA of the proposed development, with a resultant CIL liability of £ [redacted].

Consideration of the Parties' Submissions

8. The Appeal relates to Planning Approval [redacted] dated [redacted], where CIL Liability was calculated by the CA at £ [redacted] based upon a chargeable area of [redacted] m2 GIA with no GIA off-set for an existing building.

9. The Appellant refers to a proposed total GIA for the development of [redacted] m2 with an existing GIA of [redacted] m2, thus [redacted] m2 gain in GIA as per the information contained on their completed *CIL Form 1 Additional Info* dated [redacted].

10. The CA however calculate the proposed GIA total as [redacted] m2 comprising 3 storeys and a garage.

11. An earlier prior approval [redacted] had been granted on [redacted] for "*Erection of a single storey rear extension, which would extend beyond the rear wall of the original house by [redacted] m, for which the maximum height would be [redacted] m and the height of the eaves [redacted] m*". The

Appellant argues that they commenced work under that approval and demolished part of the original house in order to start to construct the single storey side extension, the foundations being poured on [redacted] with the slab and walls constructed directly thereafter. There are photographs [undated] submitted by the Appellant showing some of the original structure still in place whilst the new extension floor slab was being laid.

12. The Appellant contends they have provided evidence that the existing building had not been demolished, but that "*parts of the building had failed and no longer stood, but critically a number of external walls and features remained standing*" with the extension under prior approval [redacted] having been substantially built. They further refer to their letter to the CA dated [redacted] including photographs on pages 2, 3 and 4 showing the house not to have been demolished, with a significant portion of wall standing, the floor slabs and foundations in place and the extension undergoing construction.

13. The Appellant contends that as the legislation does not define "demolition" its meaning must therefore be interpreted, subject to any relevant judicial authorities, and refers to the decision of the House of Lords in Shimizu, which concerned a listed building where the definition of "demolition" fell to be considered.

14. Lord Hope of Craighead pointed out that in the Court of Appeal Russell L.J. had said that the question whether a particular activity was "demolition" or "alteration" of a building was essentially a question of fact to be determined in the light of all the relevant circumstances. It was noted by Lord Hope that the discussion in the Court of Appeal was conducted throughout on the basis that the expression "building," (except in so far as the context otherwise requires) includes "*any part of a building*" and went on to consider the meaning of "demolition" where according to its ordinary meaning the word "demolish" when used in reference to a building means to pull the building down — in other words, to destroy it completely and break it up. Lord Hope agreed that demolition, with or without replacement, on the one hand, and alteration, on the other, are mutually exclusive concepts.

15. The Appellant argues that at no time has the entire building/house been removed from the site and contends that the precedent is set in Williams v The Secretary of State for Communities and Local Government & Anor [2012] EWHC 3466 (Admin) (the Williams Case) which demonstrates that the property was not demolished.

16. The Appellant also includes a copy [Annexe 2 to their submission] of a letter concerning another CIL matter at 177a Nine Mile Ride which their agent represented in relation to a similar position with [redacted] as CA, which centred on the degree of demolition and retention of fabric and whether the works would involve the creation of a new build and any CIL liability. This matter was resolved in favour of the Appellant, which they argue demonstrates a clear acceptance of the facts by [redacted] Council following legal advice.

17. The Appellant also contends that demolition work is included within the meaning of "development and "new development" following The Town and Country Planning Act 1990 Section 55 -

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
F1[(1A)
For the purposes of this Act " building operations " includes—

(a) demolition of buildings;
(b) rebuilding;
(c) structural alterations of or additions to buildings; and
(d) other operations normally undertaken by a person carrying on business as a builder.]
(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—
(i) affect only the interior of the building, or
(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

18. The CA notes the Appellant's reference to the Williams Case, but argues the facts as found by the Inspector were that planning permission existed to alter and extend the building concerned to provide ten stables and associated facilities. In the course of construction, engineering difficulties forced an alteration of the design, as a consequence of which the resulting building was significantly different from that approved and did not represent the implementation of the permission. All that remained of the former barn in that case were vertical steels which had been encased in brick and used to support the new first floor, and the court ruled that the effect of the development was the erection of a new building, regardless of whether it involved works on a pre-existing structure and that demolition and construction are distinct in planning terms, even if part of the same operation. The CA note that the subsequent challenge to that appeal decision was dismissed ([2013] EWCA Civ 958) and contend that the case therefore supports their view that the original dwelling has been demolished in the current case under consideration.

19. The CA note that the issue of conversion as opposed to rebuild was further considered in the case of Hibbitt v Secretary of State for Communities and Local Government [2016] EWHC 2853, where the court concluded that whilst the conversion of an agricultural building can constitute permitted development, the rebuild of a building cannot. Again, they argue this decision supports the CA's view in the current case.

20. The CA also refer to the case of Shimizu (U.K.) Ltd. v. Westminster City Council [1997] 1 W.L.R. 168 where the concept of "demolition" was deliberated to determine when a building operation ceases to be "alteration" and becomes "*demolition and reconstruction*". Lord Hope of Craighead deliberated the meaning of "demolition" and made a distinction in the case of what is popularly known as "*facadism"*, where the façade is left standing while clearing the remainder of the site for redevelopment. This would amount to the demolition of the building for all practical purposes. It would go far beyond what could reasonably be described as its alteration, as the works would be so extensive and so much would be pulled down and taken away, although the façade would be retained. It is, however, a question of fact for the decision of the relevant tribunal and so his lordship did not think that any more precise definition of this expression was required.

21. The Appellant states that during work under prior approval [redacted] they had to demolish the remainder of the existing building, as it had become structurally unsafe, and at the time of the planning enforcement officer's visits [[redacted] and/or [redacted]] they had largely built an extension to the house and a substantial portion of the house remained, so it could not therefore be suggested that the entire property had been demolished nor had it been the intention of the Appellant to demolish the property.

22. The Appellant argues that prior approval [redacted] enabled them to carry out the necessary building work, including demolition, and that the CA had misinformed them in stating that total demolition was a breach of planning control and that a planning application would

need to be submitted in order to erect the new house. This had then been submitted under reference [redacted] dated [redacted] .

23. The Appellant contends that all demolition work was undertaken in line with earlier approval [redacted], whilst the CA argues that the Appellant was in breach of planning control when they demolished the original building, and thus the later permission [redacted] was required to regularise that breach.

24. The CA argue that at the date permission [redacted] was granted there was no relevant building in place for GIA off-set purposes, as it had been demolished prior to permission being granted on [redacted] . They evidence photographs taken during a site visit on [redacted] that show the existing dwelling no longer in-situ and on another site visit on [redacted] that show further progression of the development. They also refer to the design and access statement submitted by the earlier agent [[redacted]] in [redacted] which states that the residential dwelling has recently been demolished. Finally, the delegated officer report [dated [redacted]] also states that the former farmhouse on the site has been demolished and retrospective building works have commenced for a replacement dwellinghouse.

25. The CA argue that GIA floorspace to be demolished can only be used for offsetting against the proposed GIA if the relevant building is situated on the relevant land on the day planning permission is granted. The existing dwelling was demolished prior to the grant of planning permission and therefore the existing dwelling cannot be taken into consideration in reducing the chargeable amount.

26. They further cite CIL regulation Schedule 1 – Calculation of the chargeable amount which defines 'in-use building' and 'relevant building'.

    "in-use building" means a building which—
    (i) is a relevant building, and
    (ii) 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;
    "relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;

27. The CA's view is that the evidence suggests that the GIA of the existing dwelling that the Appellant believes should be offset against the proposed GIA does not meet the criteria for "relevant building" within the community infrastructure regulations for calculation of the chargeable amount, and their view is that the original dwelling had been demolished and planning permission was needed to rebuild it. They note that as stated in Community Infrastructure Levy (CIL) Regulation 54B (b), self-build relief on a new/rebuilt dwelling can only be granted prior to the commencement of development, and in the current case as demolition had occurred and the development is part retrospective, CIL is payable on the new/rebuilt dwelling.

Consideration of the Decision

28. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

29. Disagreement has arisen due to Schedule 1 of the CIL Regulations 2010 (as amended) which provides for the deduction or off-set of the GIA of existing buildings from the GIA of the total development in calculating the CIL charge. The appellant is of the view that the original building was not demolished and so the GIA of the original building should be offset.

30. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (4) states the amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the relevant formula,
where—
A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);

31. Subparagraph 1 (6) states the value of "*A"* must be calculated by applying the following formula:

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

This formula includes possible deductions for "*E"* and "*KR"* in relation to existing buildings.

32. Value "*E"* represents,
(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development

Value "*KR*" represents,
(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;

33. Schedule 1 of the CIL Regulations 2010 (as amended) Part 1 – standard cases – 1 (10) defines an "in-use building" as a building which:
(i) is a relevant building (i.e. one which is situated on the relevant land on the day planning permission first permits chargeable development);
And
(ii) which contains a part that has been "in lawful use" for a continuous period for at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

34. Therefore for either an "*E"* or a "*KR"* deduction to apply there must be a "relevant building" on the relevant land on the day planning permission first permits the chargeable development".

35. It is clear from the CIL Liability Notice issued by the CA that the development permitted under reference [redacted] was the basis for the CA's CIL calculation, described as "*Change of use of land to residential for the proposed erection of 1 no. detached dwelling and garage following demolition of the existing garage and agricultural outbuilding. (Part retrospective)*". CIL Regulation 9 (1) is clear on this point, that the "*chargeable development is the development for which planning permission is granted*".

36. The extensive demolition work would appear to have been carried out in breach of the prior approval [redacted] dated [redacted] for "*Erection of a single storey rear extension, which would extend beyond the rear wall of the original house by.* [redacted]*m, for which the maximum height would be.* [redacted]*m and the height of the eaves* [redacted]*m*", which does not appear to refer to or permit full or partial demolition work, and thus required the later

planning permission [redacted] to regularise the development. Planning permission [redacted] is a new full permission for the erection of a house and garage.

37. The Appellant has argued that "development" includes "demolition", and that this commenced under prior approval [redacted] for an extension to the existing C3 dwelling, whilst the CA have argued that the prior approval for an extension could only have been implemented provided that it commenced before the dwelling was demolished (otherwise there would have been no dwelling house to extend). Their contention appears to be that the main house was demolished at the early stages of the extension's construction, meaning that the latter is not really an extension to an existing dwelling because that dwelling no longer exists, making the whole development in effect a new build – as per the latter permission [redacted], to which this Regulation 114 Appeal relates.

38. The CA does not believe that a relevant building existed on the site at [redacted]- the date planning permission was granted. They point out that at the time planning permission was granted the original building had been demolished and that rebuilding of many of the walls for the new dwelling had already started. Based on the evidence available to them, the CA did not agree that the original building was situated on the relevant land on the day that planning permission was granted.

39. The Appellant considers, however, that the dwelling should be classed as a "relevant building" for CIL purposes.

40. Whilst Schedule 1 of the CIL Regulations 2010 (as amended) discusses the types of building not to be included for CIL purposes, it does not define what a "building" is.

41. The Planning Act 2008 defines "building" as having the meaning given by section 336(1) of the Town and Country Planning Act 1990, which defines "building" as something that "*includes any structure or erection, and any part of a building, as so defined*". However, the definitions in the Planning Act are not applicable for CIL purposes, being specifically excluded from Part 11 of the Planning Act 2008 which references CIL.

42. In the absence of any clear guidance from Schedule 1 of the CIL Regulations 2010 (as amended) as to what a "building" is, the only obvious option available is to refer to the dictionary for a clear definition as to what constitutes a "building".

43. The Pocket Oxford English Dictionary (POED) definition of a building is "*a structure with walls and a roof*".

44. The Appellant states that their letter to the CA dated [redacted] includes photographs [pages 2, 3 and 4] that show the house "*not having been demolished, with a significant portion of walling standing, the floor slabs and foundations in place and the extension being constructed*" but there is no indication or comment as to exactly when these photographs were taken. This could not have been after [redacted] when the CA's photographs show none of that original structure in place at least 9 months before Planning Approval reference [redacted] (dated [redacted]) was granted.

45. In an email dated [redacted] from the CA to [redacted] [the original agent to the Appellant] the CA stated "*I met your client on site this morning and the dwelling has been demolished. I understand this was not the intention of your client but due to structural problems this is what has occurred*".

46. The photographs submitted by the CA following that site visit on [redacted] show none of the original building remaining, with only the new foundation slabs and internal block/external brick walls for the extension under construction. A further CA site visit and photographs taken on [redacted] show further work on the new construction, and again would indicate that none of the original building remained at that time.

47. By [redacted] only the newly constructed walls would appear to be in place, with no original structure remaining. My understanding is that this was the only structure in place when planning permission [redacted] was granted on [redacted] . Considering the information submitted by both parties it is evident that substantial demolition works had been undertaken, leaving no adequate structure as a "relevant building" in place at that date for the purposes of considering off-set of GIA within the CIL calculation.

48. The case of Shimizu (UK) Ltd v. Westminster City Council [1997] has been referenced by both parties. It was held that demolition of only part of a building not amounting to demolition of the whole, or substantially the whole, of the building is to be regarded as an "alteration" of the building rather than demolition. It has, however, been established above for this current case under consideration that the works undertaken to the buildings prior to the grant of planning permission did amount to demolition of the whole or substantially the whole, with insufficient / no structure remaining that could be classified as a "building".

49. No evidence has been provided to me in relation to the state of the structure that stood on the relevant land on the [redacted] . However, the photographs provided by the CA dated [redacted] are sufficient evidence to demonstrate that the original building had been demolished by this date. If the rebuilt dwelling had been rebuilt to such an extent that it could be described as a building by the date of the permission it would still not be a retained part as it required planning permission to be lawful, hence the subject planning permission (part retrospectively) permitted the erection of a dwelling. I therefore consider that the CA are correct not to make a deduction for the area for the original building.

50. The GIA of the proposed development is calculated by the CA as [redacted] m2 GIA, whilst the Appellant refers to a proposed total GIA for the development of [redacted] m2 on *CIL Form 1 Additional Info* dated [redacted]. The CA's calculation comprises the following:

    Ground Floor [redacted] m2 GIA
    First Floor [redacted] m2 GIA
    Second Floor [redacted] m2 GIA
    Garage [redacted] m2 GIA
    Total [redacted] m2 GIA

51. I have checked the floor areas using the *Adobe PDF Measuring Tool* on drawings [redacted] *A* dated [redacted] and [redacted] dated [redacted] as provided by the Appellant within their Appeal submissions dated [redacted] and confirm the above GIAs to be correct. As the Appellant has offered no other plans or calculations in support of their own much lower GIA figure, I am satisfied that the GIA of the proposed development is [redacted] m2.

52. The GIA of the proposed development is therefore [redacted] m2 GIA for the purposes of calculating CIL, and there appears to be no dispute in relation to the area charge or to the indexation rate used in calculating CIL Liability.

Decision

53. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £ [redacted] ([redacted]) to be appropriate and hereby dismiss this appeal.

[redacted] MRICS
RICS Registered Valuer
Valuation Office Agency
4 September 2024