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

Email: [redacted]@voa.gov.uk

Appeal Ref: 1851887

Address: [redacted]
Proposed Development: Construction of a tennis court, including fencing, outbuilding and swimming pool (as amplified by block plan received [redacted] and Ecological Impact Assessment received [redacted])

Planning permission details: Granted on [redacted] under reference [redacted].

Decision

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

Reasons

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. Notice of the grant of planning permission issued by [redacted] on [redacted].
b. The CIL Liability Notice issued by the CA on [redacted].
c. The Appellant's request for a Regulation 113 review dated [redacted].
d. The CA's Regulation 113 review dated [redacted].
e. The CIL Appeal form dated [redacted] submitted on behalf of the Appellant under Regulation 114, together with documents and correspondence attached thereto.
f. The CA's representations to the Regulation 114 Appeal dated [redacted].

g. Further comments on the CA's representations sent on behalf of the Appellant dated [redacted].

2. Planning permission for the above development was granted by [redacted] on [redacted].

3. The CA issued a CIL Liability Notice on [redacted] in the sum of £[redacted] ([redacted]). The liability is based upon a chargeable area of [redacted] square metres (sq. m) with a chargeable rate of £[redacted] per sq. m and indexation at [redacted].

4. On [redacted] the Valuation Office Agency received a CIL appeal under Regulation 114 (a chargeable amount appeal) submitted by the Appellant contending that the chargeable amount should be [redacted].

5. The Appellant cites two grounds of appeal. The first being that the CIL charge calculated by the CA is incorrect because the development is below the [redacted] sq. m. threshold for the Minor Development Exemption outlined in Regulation 42 and as such should be exempt from CIL. The second being, that should the Appointed Person consider the subject to constitute a dwelling, then the gross internal area (GIA) of [redacted] sq. m. adopted by the CA is incorrect. The Appellant opines the CA's area wrongly includes the veranda which they consider should be excluded from the GIA in line with the RICS Code of Measuring Practice 6th Edition (COMP) as this area is akin to a canopy. The Appellant considers the correct GIA to be [redacted] sq. m.

6. In response to the Appellant's first ground of appeal, the CA contends that the subject development should be treated as an annex for CIL purposes and as such they consider that it does not qualify for the minor development exemption under Regulation 42.

7. The CA also disagree that their calculation of the GIA is incorrect. They consider that the veranda area is to be included within the GIA as it is within the envelope of the proposed building, the edge of which is delineated by the roof line above and balustrades and posts.

8. It is clear the key to this appeal is whether the development consented under [redacted] constitutes minor development under Regulation 42 (1) of the CIL Regulations or whether as contended by the CA, the development is a new dwelling and therefore chargeable under Regulation 42 (2).

9. In support of their position that the development qualifies for exemption under Regulation 42 (1) the Appellant explains that the development is a sports pavilion and is not intended to be used by the owner nor anyone else as an independent dwelling. The Appellant quotes the definition of a dwelling contained in Regulation 2; "*a building or part of a building occupied or intended to be occupied as a separate dwelling (other than for the purposes of Part 7).*" The Appellant opines the subject building is not a dwelling nor is it intended to be a separate dwelling. The Appellant has provided a Statutory Declaration signed by the owner of [redacted] confirming that he does not intend to reside in the pavilion outbuilding or to permit anyone else to do so. The owner explains the building is intended to be used in conjunction with the adjacent tennis court and swimming pool facilities that also form part of this development.

10. The Appellant states that the outbuilding is designed as a sports pavilion as evidenced by the approved drawings which show that the building comprises of a small gymnasium, lounge area and changing/wet room area. The Appellant considers that describing the sports pavilion and gym as a separate dwelling is "*straining the reality of this permission"* and notes that it is common for gyms, pools etc. to have changing and showering facilities nearby but this does not make them a dwelling. The Appellant advises the kitchenette is a creature comfort comprising only of sink, storage cupboards and a fridge with no cooking facilities intended. The Appellant points out the building has no bedroom and is closely located next to the family's substantial home and is only intended as an ancillary outbuilding.

11. The Appellant disputes that the building is an annex as claimed by the CA stating that, *"the building can only be considered an annex if it is considered a dwelling."* And quotes Regulation 42A (2) *"The development is a residential annex if it – a) is wholly within the curtilage of the main dwelling; and b) comprises one new dwelling. (3) The development is a residential extension if it – a) is an enlargement to the main dwelling; and b) does not comprise a new dwelling."* In light of this the Appellant concludes that [redacted] is the main dwelling and the sports pavilion and extension is a new ancillary outbuilding not a dwelling nor an annex.

12. The Appellant contends that the legislation does not apply to speculative possibilities as suggested by the CA but to the specifics of the planning permission. The Appellant highlights that the subject permission makes no reference to either a dwelling or an annex. The Appellant has provided a previous CIL appeal decision in support of their view. This appeal determined that the Regulations apply to what the development "will comprise" and not a theoretical possibility of what it might.

13. In response the CA have explained their position in greater detail. The CA state that the regulations refer to a separate dwelling, they do not make the distinction that an annex must be occupied as an independent dwelling. They therefore consider that an annex does not require all of the features one would normally expect of an independent dwelling as it can be ancillary to the main dwelling.

14. The CA confirm that in their view, the development permitted does comprise an ancillary dwelling (i.e. a dwelling which is capable of being occupied as dwelling but where it does to some extent rely on the main dwelling). The CA note the features of the development include a full bathroom, kitchen and living area which are associated with an ancillary development and can be used as such once constructed. The CA do not consider themselves to be considering future scope or potential use of the building and for that reason do not consider this case akin to the appeal decision cited by the Appellant.

15. In respect of the minor development exemption, Regulation 42(1) of the CIL Regulations 2010 (as amended) states "*Liability to CIL does not arise in respect of a development if, on completion of the development, the gross internal area of new build on the relevant land will be less than* [redacted] *square metre*s". In Regulation 42(1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings. Regulation 42(2) then states, "*But paragraph (1) does not apply where the development will comprise one or more dwellings*."

16. It is not in dispute that the gross internal area of the development in this case is less than [redacted] sq. m. (although the Appellant opines the GIA is [redacted]sq. m. and the CA [redacted] sq. m). What is in dispute, is whether the development '*will comprise'* a dwelling and hence if it will satisfy the requirements for a minor development exemption.

17. After consideration of the matter in detail I find in favour of the Appellant and consider the CA mistaken in their application of the Regulations in this case.

18. Regulation 9 defines the chargeable development as, *"the development for which planning permission is granted."* The development permitted was for the construction of a tennis court, outbuilding and swimming pool. There is no reference to either a dwelling or an annex within the planning permission nor permission for the residential use of the outbuilding. The approved plans describe the outbuilding as a tennis pavilion and it is evident from these plans the building has been designed to complement the sporting facilities also planned as part of this permission.

19. In order for Regulation 42(1) not to apply (as it agreed the area of the chargeable development is well below 100 square meters) the development must be seen to constitute a dwelling under the definition for CIL purposes. That definition is contained in Regulation 2 which states a dwelling "*means a building or part of a building occupied or intended to be occupied as a separate dwelling"*. Given the above, I do not consider the chargeable development to constitute a dwelling. Many buildings have a sink, toilet and shower, but this does not make them a dwelling/annex nor permit them to be used as such. The Regulations do not make reference to accommodation that *could* be used as a separate dwelling to be deemed as one.

20. Consequently, CIL Regulation 42 (1) does apply and the development is considered minor development. As it is my considered view that the outbuilding does not constitute a new dwelling, then Regulation 42 (2) does not apply.

21. The CAs reliance upon Regulation 42A is misplaced as this relates to a separate exemption for residential annexes or extensions that has to be applied for. It does not define what a dwelling is under Regulation 42.

22. As both parties agree the area of the chargeable development is under [redacted] sq. m. the second ground of appeal which concerns whether the veranda area should be included or excluded from the GIA becomes a moot point.

23. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I am therefore of the view that the CIL charge in this matter is £[redacted] ([redacted]l).

24.The Appellant has applied for an award of costs against the CA. After full consideration of the matter, whilst the CA have failed to apply the Regulations correctly this appears to be down to a lack of understanding of the Regulations rather than an unreasonable attempt to extract CIL. The CA were entitled to argue their position under the appeal process and as such I will not be awarding costs on this occasion.

[redacted]MRICS
RICS Registered Valuer
Valuation Office Agency
14 November 2024