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: 1852251

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Erection of a part single, part double storey rear extension, front porch, loft conversion with rear dormers and associated internal modifications. (amended description)

Decision

I determine a CIL charge of £[redacted] ([redacted]).

Reasons

1. I have considered all the submissions made by [redacted] on behalf of [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 permission reference [redacted] dated [redacted] .
   b. CIL Liability Notice [redacted] issued by the CA on [redacted] with CIL Liability calculated at £[redacted]
   c. The Appellant's request for a Regulation 113 review dated [redacted].
   d. The CA's Regulation 113 review dated [redacted].
   e. CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.

Background

2. The case before me is a Regulation 114 chargeable amount appeal and I am required to determine if the CIL liability of £[redacted] as stated in notice [redacted] is correct.

3. From the submissions provided, I understand [redacted] is a domestic dwelling occupied by the Appellant. In recent years planning permission has been granted to extend the house. [redacted] was granted on [redacted] and allowed for; "*the erection of a single storey 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 for which the height of the eaves would be* [redacted] *m*" under Permitted Development Rights. A further permission was granted on [redacted] under reference [redacted] which permitted, "*Erection of first floor rear extension with associated alterations."* Permission [redacted] (the subject of this appeal) was granted on [redacted] . I understand that when the Appellant made this application, they sought permission for the following; "*new second floor loft conversion above pre-approved planning application for part single, part double storey extension. Front porch and associated internal modification."* During the validation process [redacted] Council amended the description to; "*Erection of part single, part double storey rear extension, front porch, loft conversion with rear dormers and associated internal modifications (amended description)."*

4. When the subject permission was granted on [redacted] , works had already commenced to implement the earlier two permissions. As part of the Regulation 113 review the CA have included a photograph showing the rear extension at base level only and state this dates from their officer's visit of the [redacted]. The Appellant disputes this point and estimates the photograph provided by the CA dates from around [redacted]. As part of their representations the Appellant has provided photographs from [redacted] showing the internal walls demolished and ground floor walls built up and an inside aspect of the first floor extension. They also provide an external photograph from the [redacted] which shows the extent of the works externally at this point.

5. The Appellant opines that the correct sum of CIL in this case is £[redacted]. They advise this is based on a net chargeable area of [redacted] square metres (sq. m). They explain that the existing dwelling has a gross internal area (GIA) of [redacted] sq. m and the proposed GIA under the subject permission is [redacted] sq. m. They advise that the first permission ([redacted]) looked to increase the area of the ground floor by [redacted] sq. m. The second permission ([redacted]) looked to increase the area of the first floor by [redacted] sq. m. The subject permission looked to create a second floor with a GIA of [redacted] sq. m. They are of the view the GIA of the existing dwelling and the GIAs of the already approved permissions should be offset from the area of the chargeable development leaving a net chargeable area of [redacted] sq. m. The Appellant agrees with the charging rate of £ [redacted] and rate of indexation adopted by the CA in [redacted] .

6. Within their Regulation 113 Review request, the Appellant explained to the CA that in their opinion, Schedule 1(6) of the CIL Regulations 2010 (as amended) states, "*the aggregate of the gross internal areas of … [ii]… retained parts [of other relevant buildings which are in-use buildings]* ***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 permission in that part*** *[Appellant's emphasis**]** on the date before planning permission first permits*

the chargeable development." and as such this allows the floorspace of the commenced development to be offset from the chargeable area of the subject permission. The Appellant referenced Court of Appeal case *R (Giordano Ltd) v London Borough of Camden [2019] EWCA Civ 1544,* to support their view along with Regulation 114 appeal decisions issued in other cases.

7. In response the CA maintained that their calculation of the chargeable amount was correct at £[redacted]. The CA state within their review that the developments approved in the earlier applications were not built and were not in use. The CA further opine that the single storey extension approved under [redacted] must be completed as shown in the approved documents or would lose its Permitted Development status. This permission could not be carried out lawfully as part of the combined development and as such the circumstances do not comply with Schedule 1 (6). The CA state that the subject permission correctly sought planning permission for the combined development in one construction process and as such the liability notice has been correctly issued. The CA state they do not agree with the Appellant's interpretation of the Giordano case nor the appeal decisions the Appellant referred to.

8. The CA have not submitted any additional representations as part of this Regulation 114 appeal.

Decision

9. The subject planning permission does not provide for the removal or variation of a condition in respect of the earlier planning permissions; therefore this is not a S73 permission under the Town and Country Planning Act (1990) (TCPA) and as such is a standard case and the chargeable amount is to be calculated in accordance with Part 1 of Schedule 1 of the Regulations.

10. Schedule 1, Part 1 of the CIL Regulations 2010 (as amended), sets out when a KR reduction can be applied:-

    (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;

11. A "relevant building" is defined in Schedule 1, Part 1, 1(10) as "*a building which is situated on the relevant land on the day planning permission first permits the chargeable development*" and retained parts are defined as; "*part of a building which will be*
    - *(i) On the relevant land on completion of the chargeable development (excluding new build)*
    - *(ii) Part of the chargeable development on completion, and*
    - *(iii) Chargeable at rate R"*

12. Paragraph (10) also defines "new build" as follows: "*that part of the chargeable development which will comprise new buildings and enlargements to existing buildings, and in relation to a chargeable development granted planning*

permission under section 73 of TCPA 1990 ("the new permission") includes any new buildings and enlargements to existing buildings which were built pursuant to a previous planning permission to which the new permission relates";

13. The original dwelling remained in-use by the Appellant and both parties agree that the GIA of this part should be off-set from the total GIA of the proposed development in accordance with KR (i).

14. The Appellant argues that the areas that had already been granted permission should also be offset believing them to fulfil the criteria in KR(ii) whilst the CA argues this space was not built and as such not "in-use" at the date of the subject application. Furthermore, the CA dispute these areas can be offset under KR(ii) as the single storey extension would need to be completed in accordance with approved documents in [redacted] to be carried out lawfully.

15. KR(ii) does not require any retained parts of relevant buildings to have been in a lawful use as claimed by the CA and this point is confirmed in the Giordano case. "*The ability to carry on the use in question – or for it "to be carried on" – rests on the lawfulness of doing so, without any further planning permission having to be granted either for the use itself or for any necessary operational development. It does not depend upon the building being actually occupied in that use on the relevant day, or upon its having already been physically adapted for the use. It entails the possibility of the use being lawfully and permanently carried on. The right to carry it on need not have been exercised yet. An extant and implementable planning permission will suffice.*"

16. However, the definition of retained part specifies that areas of new build are to be excluded when calculating the chargeable area. This is where the subject differs from the Giordano case and the other appeals referred to by the Appellant. In these cases the relevant buildings were complete and the permissions pertained to a change of use rather than any elements of new build. Although these parts of the building did not have to be "in use" at the relevant date, they cannot be offset under KR(ii) as they are, "*part of the chargeable development which will comprise new buildings and enlargements to existing buildings."* Regulation 9 defines the chargeable development as, "*the development for which planning permission is granted."* As the subject permission includes the rear extensions then they constitute a new build under the subject permission and cannot be offset under KR(ii).

17. The Community Infrastructure Levy (CIL) (Amendment) (England) (No. 2) Regulations 2019 (the '2019 Regulations') came into force in England on 1 September 2019. The new Regulation 40 requires the CA to calculate the amount of CIL payable ("chargeable amount") in respect of a chargeable development in accordance with the provisions of Schedule 1 as detailed below.

(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_P}{I_C}$$

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.

(6) 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;
GR = the gross internal area of the part of the chargeable development chargeable at rate R;
KR = 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 Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

18. A small discrepancy has been noted in the opinion of areas quoted by the CA and the Appellant. However, the CA's overall areas produces a slightly lower amount for A than the Appellant's and as such I have adopted the CA's opinion of GIA. I understand there is no dispute about the charging rate and indexation adopted and as such I have calculated the chargeable amount using the following values:

GR= [redacted] sq. m.
KR = [redacted] sq. m.
A = [redacted] sq. m.
R = £[redacted]

IP = [redacted]
IC = [redacted]

19. After applying the above values to the formulas within Schedule 1, I determine the CIL charge in this case to be £[redacted] ([redacted]) and dismiss this appeal.

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