

Appeal Decision

By [REDACTED] BA (Hons) PG Dip Surv MRICS

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

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

Appeal Ref: 1833167

Address of property: [REDACTED]

Development: Demolition of existing bungalow and erection of a two storey building comprising of 4 self contained flats [REDACTED].

Planning permission details: [REDACTED].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £[REDACTED] ([REDACTED]). (Mayor [REDACTED]).

Reasons

1. I have considered all of the submissions made by the appellant's agent [REDACTED] 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 for application [REDACTED] granted [REDACTED].

(b) Liability Notice [REDACTED] issued [REDACTED].

(c) The CA's Regulation 113 Review dated [REDACTED] following the Appellant's request for said review on the [REDACTED].

(d) Completed CIL Appeal form dated [REDACTED] submitted by the Appellant together with documents and correspondence attached thereto.

(e) Representations prepared by the CA dated [REDACTED], submitted in response to this Regulation 114 appeal.

(f) Counter representations submitted by the appellant on the [REDACTED].

Background

2. Planning permission was granted by [REDACTED] on [REDACTED] under reference [REDACTED] for; "Demolition of existing bungalow and erection of a two storey building comprising of 4 self contained flats [REDACTED]."

3. On [REDACTED], the CA issued a Regulation 65 Liability Notice, ([REDACTED]), in the sum of £[REDACTED] based on net additional floor space of [REDACTED] (sq. m) as follows:-

[REDACTED]

4. The appellant requested a review of the calculation of the chargeable amount under Regulation 113 on [REDACTED]. The CA issued their decision in respect of this review on the [REDACTED] in which they confirmed the CIL charge as above.

5. On [REDACTED], the appellant submitted a CIL Appeal under Regulation 114 (chargeable amount) to this Agency. The appeal centres around the chargeable area with the appellant believing the correct chargeable area to be [REDACTED] sq. m. and consequently, a total CIL liability of £[REDACTED] comprising of £[REDACTED] charge and £[REDACTED] MCIL2.

6. The appellant opines that the CA should have netted off the GIA of the building attached to the side of the existing bungalow as they consider this to be a garage and note that the RICS Code of Measuring Practice 6th edition (COMP) includes garages within the gross internal area (GIA) of residential properties. They consider the CA are mistaken in classifying this building as a shed and note that the CA netted off this building under an earlier permission ([REDACTED]) as shown in [REDACTED] which was issued on the [REDACTED] based upon a chargeable area of [REDACTED] sq. m and submitted within the representations to this appeal.

7. Within their representations dated [REDACTED], the CA explain their position on this point. The CA advise they have not netted off the area of the building in question as they consider it to be a shed/store rather than a garage. The CA highlights that the COMP explicitly excludes "greenhouses, garden stores and the like" from the GIA of residential property. The CA have provided photographs from their site visit to support their view on the matter and they highlight that the buildings in question are referred to as sheds on the plans of the existing building submitted with planning application [REDACTED]. They advise that there were miscalculations within the CIL liability notices issued for earlier permissions that should not form a precedent for future cases. The CA advise that they need to re-issue the CIL liability in respect of [REDACTED] with the correct demolition credit applied.

8. In response to the CA's representations, the appellant has provided the Cambridge dictionary definition of a shed as; "a small building usually made of wood used for storing things." The appellant notes the buildings in question are brick built

and were built to be garage structures and can be lawfully re-used as a garage without further consent. The appellant highlights that many garage structures designed to store a car are now used solely for domestic storage but that does not make them a shed. The appellant states, “I do not believe any reasonable person would describe the buildings as sheds.”

Decision

9. 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. In this case it is the deemed net chargeable area that is in dispute. Paragraph (6) of Schedule 1 details the formula by which the deemed net chargeable area (A) must be calculated. This formula provides for the deduction of ‘the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development’ from the ‘gross internal area of the chargeable development’.

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

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 paragraph (8)), 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.

10. “In-use building” is defined in the Regulations as a relevant building that 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. I understand there is no dispute between the parties on this point with both accepting these were “in-use buildings” on the relevant date.

11. I also understand that both parties agree upon the GIA of the chargeable development, the GIA of the respective parts of the existing buildings, as well as the

charging and indexation rates applied. The dispute centres solely around whether the buildings to the side of the bungalow are to be excluded or included within the GIA of the existing building.

12. Gross Internal Area (GIA) is not defined within the Community Infrastructure Levy Regulations 2010. The generally accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6th edition) and I have applied this definition.

GIA is the area of a building measured to the internal face of the perimeter wall 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 fires*
- *Canopies*
- *Voids over or under structural, raked or stepped floors*
- *Greenhouses, garden stores, fuel stores, and the like in residential property*

13. The first building in question is brick-built and attached to the side of the existing bungalow. It has two large timber doors to the front, hinged on either side and two pedestrian doorways to the side providing access from the back garden. It appears

to have a predominantly flat roof with a corrugated covering that is now in disrepair. Rainwater goods are present along the western elevation. At the rear of this main building, there is a smaller brick building with a cement flat roof, pedestrian doorway to the side and timber framed single glazed window to the rear. I understand from the plans provided there is no direct access inside between the two buildings. The plans provided show the larger building to have a GIA of [REDACTED] sq. m and the smaller, a GIA of [REDACTED] sq. m.

14. The CA do not go into detail as to why they do not consider these buildings to be garages but point to their site photographs which they consider support their view that the buildings are sheds/stores. The photographs show the buildings being used for domestic storage as well as items being stored outside of the front of the garage which would prevent it being accessed by a vehicle at the time of the CA's inspection.

15. The Oxford English Dictionary of a garage is, "A building, either private or public, intended for the storage and shelter of motor vehicles while not in use." It is noted here that the subject has a narrow access but this access with a width of over 2 metres (m) and the width of the building itself at [REDACTED] m is wider than a standard family car which is circa 1.8 m. There are no set dimensions to which a garage must conform, and a small car could feasibly be housed within the front building should the owner so wish. As the appellant points out, many garages are used solely for domestic storage and the use of the subject as storage at the time of the CA's inspection does not mean the building is no longer a garage. The construction of this building with brick elevations and rainwater goods and a GIA of [REDACTED] sq. m is much more substantial than one would expect from a shed or garden store. I therefore agree with the appellant that this building is a garage and as such should be included within the GIA of the existing residential building.

16. However, I do consider the smaller building to the rear of this garage to be a garden store rather than a garage. This building does not have vehicular access and at [REDACTED] sq. m, it is smaller than one would expect a garage to be. Therefore, the GIA of this building should not be included within the GIA of the existing residential building.

17. I consider the deemed net chargeable area (A) to be as follows:
[REDACTED] sq. m (GR) – [REDACTED] sq. m (KR) ([REDACTED] + [REDACTED]) = [REDACTED] sq. m (A)

18. Schedule 1 (4) states how to calculate the amount of CIL chargeable. "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."

19. Based upon the evidence before me and having regard to the particular facts of this case, I conclude that the CIL charge should be £ [REDACTED] ([REDACTED] calculated as follows:-

$$\begin{aligned} \text{Brent} &= \text{£} [REDACTED] * [REDACTED] * [REDACTED] = \text{£} [REDACTED] \\ \text{MCIL 2} &= \text{£} [REDACTED] * [REDACTED] * [REDACTED] = \text{£} [REDACTED] \\ \text{Total} &= \text{£} [REDACTED] \end{aligned}$$

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RICS Registered Valuer
Valuation Office Agency
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