Appeal Decision

by [redacted] 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: 1854456

Planning Permission Ref. [redacted]

Proposal: Erection of extensions and alterations to bungalow to form a chalet bungalow including dormer windows, rooflight and Juliette balcony following demolition of existing conservatory.

Location: [redacted]

Background

I determine that the Community Infrastructure Levy (CIL) charge in this case should be £0 (nil).

1. I have considered all of the submissions made by [redacted] who is representing [redacted] of [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) CIL Liability notice [redacted] dated [redacted].
    b) Planning decision notice dated [redacted];
    c) Regulation 113 request from the appellant dated [redacted].
    d) The CA's Regulation 113 review decision issued [redacted].
    e) The CIL appeal form submitted by the appellant to the Valuation Office (VO) on the [redacted] along with documents and correspondence attached thereto.
    f) Representations received from the CA on the [redacted].
    g) Comments received from the appellant on the [redacted].
    h) Additional comments received from the appellant on the [redacted].

2. [redacted] is a detached bungalow that the appellant sought to extend under [redacted]. I note from the representations provided that the existing conservatory was

demolished before permission [redacted] was granted on [redacted] in preparation for the pending construction works.

3. The CA served CIL Liability Notice [redacted] on [redacted] . This stated the CIL liability to be £ [redacted] ([redacted]). This is based upon a chargeable area of [redacted] square metres (sq. m.) at a rate of £ [redacted] per sq. m with indexation at [redacted] .

4. The appellant submitted a Regulation 113 request for a review to the CA on [redacted]. Within this request, the appellant attached a revised CIL Form 1 and asked the CA to cancel the CIL liability as he had incorrectly stated the additional floor area in the original request. The appellant opined in this request that the area of the additional floor space was [redacted] sq. m. as opposed to the CA's calculation at [redacted] sq. m.

5. The CA issued their Regulation 113 review decision on the [redacted], maintaining that their calculation of CIL at £ [redacted] was correct.

6. On [redacted], the appellant submitted a Regulation 114 chargeable amount appeal to the VO stating that the CIL liability should be nil.

7. The VO found this appeal to be invalid under Regulation 114 (3) and (3A) noting that the CA had deemed the development to have commenced on [redacted] .

8. I understand there has been continued correspondence between the appellant and the CA and that both parties have agreed to adopt the [redacted] (the date of planning permission) as being the date of commencement. As a consequence, the VO has now determined the appeal to be valid.

9. In support of this valid appeal, the appellant has confirmed what his grounds of appeal are and these can be summarised as follows:

    a) The CA's calculation of the gross internal area (GIA) is erroneous . The appellant opines that the CA have incorrectly scaled the approved hand drawn plans on a computer which has led to multiple mistakes. The appellant opines that the area of the chargeable development is [redacted] sq. m. and that from this, the area of the existing conservatory should be deducted to leave a net chargeable are of [redacted] sq. m.

    b) The appellant advises that it has been realised post planning consent, that it is not possible to extend the ground floor out as far as the [redacted] metres (m) shown on the approved plans. This means that the actual additional floorspace to be built is well below 100 sq. m.

    c) As the extension is below 100 sq. m. the development will be exempt under Regulation 42 – Exemption for minor development.

10. The CA maintains that the GIA of the chargeable development is correct at [redacted] sq. m.

a)Regulation 42 does not apply and CIL is chargeable at £ [redacted]. The CA state that the information provided by the appellant infers that the conservatory was demolished prior to planning permission having been granted. Therefore, it was not a relevant building at that date and its area cannot be offset under Schedule 1, Part 1 (6) E (i). The CA point out that even if the conservatory was not demolished prior to planning permission being granted, the area of the existing conservatory cannot be offset as there is no evidence of it being in continuous lawful use leading up to the relevant date.

b) The CA point out that Regulation 9 states that, (1) "the *chargeable development is the development for which planning permission is granted."* This mandates that the chargeable development should be completed in accordance with the approved plans. The changes described by the appellant which will reduce the size of the build are not in accordance with the approved plans and do not constitute the approved chargeable development.

Reasons

11. The provisions of Regulation 42, Exemption for Minor Development are set out below:

Regulation 42

(1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.
(2) But paragraph (1) does not apply where the development will comprise one or more dwellings
(3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings

12. The development for which planning permission has been granted in this case does not comprise a dwelling. The development comprises an extension and as a result, if its GIA is below 100 sq. m. Regulation 42 will apply.

13. Regulation 9 states, "*the chargeable development is the development for which planning permission has been granted*". Therefore, I agree with the CA, it is the approved plans which should be used to calculate the GIA.

14. From the evidence provided by both parties, I consider it likely that the conservatory was demolished prior to planning permission being granted and as such its area cannot be netted off from the chargeable development as it was not a relevant building ("*a building which is situated on the relevant land on the day planning permission first permits the chargeable development." Schedule 1 Part 1 (10))* when the permission was granted.

15. The appellant has highlighted that hand drawn plans should be scaled by hand and not by computer. I agree, and requested the appellant provide me with the hardcopy approved plans which I have manually scaled.

16. Schedule 1 Part 1 (6) states that it is the gross internal area (GIA) of the chargeable development that is to be used to calculate the chargeable amount. GIA is not defined within the Regulations and therefore the RICS Code of Measuring Practice 6th Edition May 2015 (COMP) 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." The areas to be excluded from this are 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; and greenhouses, garden stores, fuel stores and the like in residential property. After scaling the plans in accordance with the COMP, I calculate the total GIA of the chargeable development to be [redacted] sq. m.

Decision

17. Given the GIA falls below 100 sq. m., and the development is not a new dwelling, Regulation 42 applies and consequently the proposed development is exempt from CIL.

18. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that the CIL charge in this case should be £0 (nil).

[redacted]MRICS
Valuation Office Agency
13 December 2024