Appeal Decision

by [redacted] BSc (Hons) 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: 1834417

Planning Permission Ref. [redacted]

Proposal: Part retrospective: Construction of single storey side and rear extensions, [redacted].

Location: [redacted]

Decision

I do not consider the Community Infrastructure Levy (CIL) charge of £[redacted] ([redacted]) to be excessive and I therefore dismiss this appeal.

Reasons

1. I have considered all of the submissions made by [redacted], acting on behalf 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) Planning decision ref [redacted] dated [redacted];

    b) Approved planning consent drawings, as referenced in planning decision notice;

    c) CIL Liability Notice [redacted] dated [redacted];

    d) CIL Appeal form dated [redacted], including appendices;

    e) Representations from CA dated [redacted]; and

    f) Appellant comments on CA representations, dated [redacted].

2. Planning permission was granted under application no [redacted] on [redacted] for *'Part retrospective: Construction of single storey side and rear extensions, [redacted].'*

3. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted]m² at the 'Residential Area A' rate of £[redacted] /m² plus indexation.

4. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted], stating their view that the Liability Notice was correct.

5. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £[redacted]. This was calculated on a chargeable area of [redacted]m².

6. The Appellant's grounds of appeal can be summarised as follows:

    a) The external covered way on the western and eastern side of the property should be excluded from the GIA of the chargeable development. The covered ways are external to the building and are therefore excluded from the definition of GIA as described within the RICS Code of Measuring Practice

    b) The RICS Code of Measuring Practice also excludes 'garden stores, fuel stores and the like' in residential properties. Therefore, if the areas are not accepted as external covered ways, they should still be excluded from the GIA under this category.

    c) The external accessway on the western side was already part of the development as an existing lean-to structure. Therefore, if it were to be included within the GIA of the new development, it should also be off-set as part of the existing.

7. The CA has submitted representations that can be summarised as follows:

    a) The areas described by the Appellant are side extensions that form part of the chargeable development.

    b) The extensions form internal space and do not constitute external covered ways.

    c) The category of 'greenhouses, garden stores and the like' is intended to cover small outbuildings. By contrast, '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' are included for GIA. These areas are not therefore excluded from GIA.

    d) Any lean-to extension that may have been historically present was clearly demolished at some point prior to development being undertaken. It cannot therefore be off-set against the proposed GIA.

GIA

8. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. It requires the calculation of "the gross internal area of the chargeable development."

9. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. There is no dispute between the Appellant and the CA over what is included within the chargeable development.

10. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice 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.

11. The Appellant and the CA dispute the categorisation of two areas shown on the approved plans. The appellants refer to these areas as the "external covered way on the western side of the property" and the "external covered way on the eastern side of the property." The CA refers to these areas as side extensions. For clarity, I will refer to the western construction as the West Area ([redacted]m²) and the eastern construction as the East Area ([redacted]m²).

12. The appellant argues that the East Area was an existing accessway. They state the accessway has now been covered but otherwise remains the same, including the original ground surfacing, manhole covers and utility box. The appellant argues that the West Area also forms an external covered way.

13. The appellant refers to a previous CIL Appeal Decision, which describes the differences between internal and external balconies. This decision states that a balcony that protrudes from the main external wall would be classified as an external balcony. The appellant argues that as the East and West Area are outside of the main wall of the dwelling, they should therefore be classed as external.

14. The CA argue that the areas are not external covered ways. They are described as “non habitable internal spaces” within the design and access statement and the quality of the materials used, along with the internal finish (both internally and externally) support that these areas form internal spaces. The CA point out that both areas are fully enclosed front and rear by walls and external doors and have a roof which matches the dwelling house.

15. The RICS definition of GIA excludes “external open-sided balconies, covered ways and fire escapes.” In this case, the Areas are fully enclosed with permanent walls on all sides, under a permanent roof. I do not consider that a fully enclosed area such as this could meet the definition of “external” and therefore I do not agree that the areas should be excluded from GIA as external covered ways.

16. The appellant argues that if the area is not considered to be an external covered way, it would fall under the definition of “greenhouses, garden stores, fuels stores and the like in residential property” which are also excluded from GIA. The CA argue that this category clearly refers to small outbuildings and is therefore not relevant.

17. In my opinion, this category is intended to encompass buildings that are similar to each other. Greenhouses, garden stores and fuel stores are typically expected to be small outbuildings, separated from the main dwelling. The use of a space as garden storage would not in itself result in an area being excluded from GIA. For example, if a room within a house was being used as garden storage, it should not then be excluded from the GIA. I therefore do not consider these Areas to constitute garden stores or similar.

18. In addition, the appellant notes that the primary purpose of the Areas is as access, with storage being ancillary. The appellant accepts that internal accessways do fall within GIA.

19. I do not consider that these Areas have the characteristics of a garden store or of an external covered way. I am therefore of the opinion that both the East Area and the West Area should be included within the GIA.

<u>In-use buildings</u>

20. The CIL Regulations allow for the GIA of “in-use buildings” to be deducted from the chargeable area. The Appellant argues that the West Area was already an accessway with an existing lean-to structure, that has now been tiled and clad. They provide a photograph showing the lean-to in situ.

21. The CA argue that any lean-to that may have historically been present was clearly demolished before the development was undertaken. They point out that the “pre-existing” plans do not show the existence of the lean-to.

22. “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.

23. “Relevant building” means a building which is situated on the “relevant land” on the day planning permission first permits the chargeable development. “Relevant land” is “the land to which the planning permission relates” or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.

24. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of “in-use building” then it can deem the GIA of this part to be zero.

25. Planning permission was granted on [redacted]. The planning consent was described as “part retrospective” and the supplied application form states that works commenced on [redacted] and were completed by [redacted]. Therefore, as at the relevant date of [redacted], the lean-to appears to have been replaced by the West Area.

26. The appellants suggest that the lean-to was not demolished but was effectively converted into the West Area as it currently stands. No evidence has been provided to support this and the planning permission consents new building, rather than conversion of any existing structure.

27. The lean-to would need to constitute a building (or part of a building) to qualify as an “in-use building.” The photograph provided is not clear enough to demonstrate whether this area would have constituted a building and no further detail has been provided. The photograph is undated and therefore is not evidence of the state of the lean-to at the date of the permission.

28. Further, the Appellant would have to prove lawful use during the relevant period. Given that the works begun in [redacted], contrary to planning permission, I do not consider that any use of this area could be considered lawful during the relevant period.

29. I therefore conclude that insufficient evidence has been provided to demonstrate that the lean to was in place on the relevant land on [redacted], constituted a building (or part of a building) and had been in lawful use for the relevant period.

Conclusion

30. On the basis of the evidence before me, I do not consider the Community Infrastructure Levy (CIL) charge of £[redacted] ([redacted]) to be excessive and I therefore dismiss this appeal.

[redacted] BSc (Hons) MRICS
Valuation Office Agency
21 December 2023