Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency
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Appeal Ref: 1853379

Planning Permission Ref. [redacted]

Proposal: Erection of extension and alterations to ancillary outbuilding; erection of garage and car port following demolition of existing garage/car port and garden building.

Location: [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil)

Reasons

1. I have considered all of the submissions made by [redacted] of [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] and [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 '*Erection of extension and alterations to ancillary outbuilding; erection of garage and car port following demolition of existing garage/car port and garden building.'*

3. The CA issued an initial CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m² at the *'residential dwellings – 10 or less (Zone A)'* rate of £[redacted]/m² plus indexation.

4. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted], accepting the appellant's evidence that two of the outbuildings had been in lawful use, but rejecting the other claims.

5. Following the Reg 113 review, the CA issued a revised liability notice on [redacted] in the sum of £[redacted], based on a net chargeable area of [redacted]m².

6. On [redacted], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be Nil.

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

    a) The GIA of the existing building is [redacted] m². This was in lawful use and should be offset against the proposed development.

    b) The development is an extension to the existing dwelling as the planning restrictions prevent it from being used as anything other than ancillary to the existing dwelling. It therefore should not be classed as an annexe.

    c) The new build is less than 100m² and does not create a new dwelling, so minor development exemption should apply.

    d) An award of costs is claimed as the appeal would not have been necessary if the CA had properly considered the Reg 113 request.

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

    a) The development comprises an annexe with a kitchen, living room, two bathrooms and three bedrooms. Therefore, minor development exemption does not apply.

    b) The appellant should not be awarded costs as the CA have not acted unreasonably or caused the appellants to incur any unnecessary costs.

9. The appellant and the CA have both discussed whether the development should comprise an annexe or an extension to the existing dwelling.

10. The discussion around residential annexes and residential extensions appears to relate to Regulation 42a of the CIL Regulations. This allows exemption for the development of both residential annexes and residential extensions and the relief would apply equally, whether the development was considered an annexe or extension. To benefit under Regulation 42a, a claim must be made to the CA in accordance with Regulation 42B.

11. The representations from the appellant do not suggest whether relief has been applied for under Regulation 42a. Therefore, I have considered this appeal by looking at Regulation 42.

Regulation 42 – Exemption for minor development

12. 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

13. The original liability notice included a total GIA of [redacted] m². The appellant has not disputed this figure and therefore it is assumed that this is the correct GIA of the development.

14. The development comprises both new build and conversion of an existing building. The requirement for Regulation 42 to apply is that the GIA of the new build will be less than 100m². I have considered the approved plans and I have confirmed that the only new build is a small ground floor extension to the proposed living area and a replacement garage and car port. I am therefore content that the area of new build is less than 100m², with the remainder being conversion of the existing buildings.

15. The appellant and the CA have both discussed whether the development should comprise an annexe or an extension to the existing dwelling. However, the important consideration for Regulation 42 is whether the development comprises a dwelling.

16. "*Dwelling*" is defined in the CIL regulations as *"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)"*

17. In this case, the development has the features of a dwelling including a kitchen, living space, bedrooms and bathroom. I am of the opinion that it could reasonably be considered an annexe.

18. However, condition 3 of the planning decision states *"The outbuilding the subject of this application shall not be occupied at any time other than for the purposes ancillary to the existing use of the dwelling, currently known as [redacted] , as a single family dwelling."* In my opinion, this condition prevents the development from being used as a separate dwelling.

19. I therefore consider that the development meets the requirements of Regulation 42 and minor development exemption should be apply.

20. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil)

Award of Costs

21. The appellants have requested an award of costs on the grounds that the appeal would not have been necessary had the CA properly and thoroughly considered the Reg 113 request.

22. The CA maintain that they have not acted unreasonably and have not caused the Appellant to incur unnecessary or wasted expense in the appeal process.

23. Regulation 121 gives the appointed person authority to make orders as to the costs of the appeal. Guidance on awarding costs states that costs will normally be awarded where the following conditions have been met:

    - a party has made a timely application for an award of costs;
    - the party against whom the award is sought has acted unreasonably; and
    - the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Appointed Person, or part of the expense because of the manner in which a party has behaved in the process.

24. In my opinion, the CA have not acted unreasonably. The appeals process exists to resolve disputes and I consider that the CA were entitled to pursue their opinion regarding the status of the development as a separate dwelling. Although I have not agreed with their view, I do not accept that this automatically suggests their behaviour was unreasonable. I therefore deny the request for an award of costs.

[redacted]

[redacted] MRICS
Valuation Office Agency
2 December 2024