Appeal Decision

by [redacted] FRICS

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

Correspondence address:

Valuation Office Agency (VOA)
Wycliffe House
Green Lane
Durham
DH1 3UW

[Please note Durham is our national postal centre, contact by digital channels is preferred]

Email: [redacted] @voa.gov.uk

VOA Appeal Ref: 1856034

Planning Application: [redacted]

Proposal: Planning Permission Granted For: Roof extension involving hip to gable end, 2 no rear dormer windows and 3 no rooflights to the front elevation to facilitate the creation of 1 no self-contained studio flat. Associated refuse/recycling store (Retrospective Application).

Address: [redacted]

Decision

Appeal dismissed.

Reasons

1. I have considered all of the relevant submissions made by [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 in respect of Application No: [redacted], dated [redacted].

    b) CIL Liability Notice: [redacted], dated [redacted] for £ [redacted].

    c) CIL Appeal form dated [redacted] , along with supporting documents referenced as attached.

    d) Representations from the Appellant.

    e) Representations from the CA.

    f) Appellant's Comments on the Representations from the CA.

2. Planning Permission for the subject proposal was granted [redacted].

3. The CA issued a CIL Liability Notice reference: [redacted], dated [redacted] for £[redacted], based on a chargeable area of [redacted] square metres.

4. On [redacted] the Appellant submitted a written request to the CA which was effectively a request for Regulation 113 Review.

5. The CA provided its decision of the review and reasons for the decision on [redacted] . The CA advised that following review the CIL Liability Notice was correct and that the CIL payment should be as stated. The Appellant did not accept this outcome.

6. On [redacted], the Valuation Office Agency received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming the Appellant disagrees with the CA's Regulation 113 Review decision on the basis that the chargeable amount has been calculated incorrectly, with supporting documents attached.

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

    a) The Appellant does not agree with the CA's position that CIL is chargeable.

    b) The Appellant describes the works which are the subject of this Appeal as the sub-division of pre-existing loft conversion and consent to use the loft space as a self-contained flat. Referencing a previous planning consent [redacted], the Appellant describes the physical works as sub-division of pre-existing space which did not involve formation of additional space or change of use. Further, the Appellant highlights the subject unit is under 100 square metres in floor area. The Appellant submits CIL should not be applicable because:

        i. the CA is mistaken in sending the CIL demand [redacted] which was almost six years after Planning Permission was granted.

        ii. the space was developed in [redacted], permitted by a previous consent.

        iii. the subject application was to subdivide the already converted loft space and use it as a separate residential unit.

        iv. The Appellant states they were visited by what is described as the CA's planning inspectors and as well as the full planning committee members – who visited the completed loft conversion prior to the approval of the subject planning application.

        v. no additional space was added or created.

        vi. No change of use occurred.

8. **The CA has submitted representations that I have summarised as follows:**

    a) The CA states there are two relevant planning permissions relating to this appeal, [redacted] *and* [redacted]. Please note that as this is a single reference to [redacted] and my own checks have not uncovered a relevant planning application with this reference, I have assumed this is an error and is intended to be [redacted], which is referenced.

    b) The [redacted] planning permission was for roof extension and loft conversion "*Roof extension involving hip to gable, 2no rear dormer window, 3no. rooflights to front elevation to facilitate a loft conversion.*"

c) The [redacted] permission was granted on [redacted]. The approved drawing, sheet 106 dated , [redacted] shows the loft plan [second floor] as proposed to be a large living room spanning the width of the property, a small storage area behind the proposed stairs and a bathroom to one side in the front roof slope.

d) The [redacted] permission was granted on [redacted]. The approved drawing, Sheet 302, dated [redacted] is labelled 'as built'. The floorplan showed on the drawing indicates a larger storage area spanning the width of the property to the front, a utility space off the bathroom, kitchen units having been installed and internal walls separating the space into 2 rooms (labelled available space) and an area labelled storage next to the stairs.

e) Council Tax records accessible from .gov.uk show that the second floor of [redacted] was in use as a flat from[redacted] .

f) The CA states the Appellant has not provided evidence to prove the loft conversion was built a year in advance of the application which included subdivision. Further, that the Council Tax evidence appears to contradict the Appellant's statement. The CA submits that based on the timelines, it contests the Appellant's explanation that the loft was converted and in use in accordance with the approved drawing sheet 106 between [redacted] and [redacted].

g) The CA states that case law confirms that where what has been constructed is not in accordance with the approved drawings, the permission has not been implemented. Therefore, it is the CA's view that the [redacted] permission was not implemented and therefore new floorspace that existed prior to the granting of [redacted] should be disregarded in the CIL calculation under regulation 40.

h) The CA therefore classed the loft extension as a "new build" enlargement to the existing building under the regulations (Schedule 1 para 1 (10) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings). The floorspace of [redacted] square metres was included on the CIL form submitted by the Appellant's agent and has been used in the calculation.

i) Application [redacted] grants retrospective planning permission for the new floorspace and use as a separate flat. Regulation 9(1) states that the chargeable development is the development for which planning permission is granted. The new floorspace is chargeable even though less than 100 square metres under regulation 42(2).

j) Copies of the approved drawings for the respective planning applications referred to are supplied.

9. **The Appellant submitted comments on the CA's representations which I summarise as follows:**

a) As with the CA's erroneous reference to [redacted], the Applicant makes the same reference which, as above, I have taken to mean [redacted] as I cannot identify [redacted]. The Appellant references the drawings provided as showing that applied for and that as built, with no further expansion to the original (earlier) loft conversion plan.

The Appellant states the structure and space was built as the approved application ref: [redacted] and that the internal use of the space does not require any permission, providing the safety regulation has been considered.

b) The Appellant submits the structure was built according to the loft conversion approved plan and explains that the wall separation was requested by the building controller - without it, the building would not have been approved, therefore, the division was required to satisfy the building controller's need. Further, the Appellant submits this is an internal alteration, not an expansion and does not require planning permission. The Appellant reiterates there has been no further building or expansion post the completion of the loft conversion.

c) The Appellant comments on the CA's representation on the utility space that it was partitioned in order to use it partially as utility and partially as storage, reiterating that this is not an expansion, just an internal change of usage.

d) The Appellant comments of the CA's representation that "*The floorplan showed on the drawing indicates a larger storage area spanning the width of the property to the front*" by clarifying the "useless space" expands the full width of the property, that only a small section is made available for storage, around two "small gates".

e) The Appellant clarifies the reference to a "year apart" was intended to be based on the building being completed in [redacted] / [redacted] – initially completed in [redacted] / [redacted], however, to accommodate the building controller's request, more time was incurred for paperwork completion. The retrospective application was submitted in [redacted], and approved in [redacted], therefore the loft conversion in [redacted] and the retrospective planning application in [redacted] were a year apart.

f) The Appellant explains the loft space was built in accordance with the earlier consent however they were unable to rent the first floor with the loft conversion, and at the time there was more of a demand for two smaller / more affordable rental properties, therefore they rented them separately, paying Council Tax accordingly. Further, the Appellant submits that the fact that the tenants were paying Council Tax from [redacted], proves the loft conversion was completed as no further expansion / building work could have taken place whilst tenants were living there.

g) The Appellant states that in [redacted] / [redacted] the CA's planning officer visited the completed loft conversion and advised them to submit a retrospective application for use of the as built loft conversion to a separate unit.

h) The Appellant contests the CA's view the [redacted] planning consent was not implemented reiterating the earlier explanation of the utility space, storage space and that the partition walls were erected at the request of the CA's building controller and that the CA's planning committee representatives had visited the property prior to the retrospective permission being granted. Further, the Appellant submits the internal layout and its usage does not require permission.

i) The Appellant reiterates the loft expansion size remained as the original [redacted] square metres and there was therefore no further expansion to the existing loft conversion.

j) The Appellant reiterated that the wording in the application [redacted] clarified the only change was the use of the loft conversion to a separate unit and that this was the advice from the CA's planning team. Therefore, this is not a new floorspace nor is it an extension to an already built space and is less than 100 square metres, so should be exempt from the CIL charge.

k) The Appellant summarises their comments on the CA's representations by reiterating a number of points on the physical works and also by stating they have not been provided with an explanation why CIL has been demanded in [redacted] when the subject planning permission was granted in [redacted].

10. **Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal:**

a) In this case, the Appellant does not agree with the CA's imposition of its CIL Charging Schedule and has submitted their views in support of why CIL should not be applicable as summarised above.

b) A request for a Regulation 113 review was effectively made [redacted]. The CA provided its decision of the review and reasons for the decision on [redacted], which is [redacted] days after the review start date and therefore, under Regulation 114. (1)(b) and (3A), this chargeable amount appeal was permitted.

c) The Appellant highlights that the CIL Liability and Demand Notices were received almost six years after the grant of the subject planning permission. Whilst I note the time gap between [redacted] and [redacted], scrutiny of timing is not within the remit of this Regulation 114 – Chargeable Amount Appeal.

d) The Appellant references a previous planning consent [redacted] for the subject property.

CIL Regulation 9 (1), under "Meaning of chargeable development states "*The chargeable development is the development for which planning permission is granted*" therefore, in this case, the chargeable development is that permitted under the planning decision in respect of subject Application No: [redacted] Registered [redacted]; Granted [redacted], being "*Roof extension involving hip to gable end, 2 no rear dormer windows and 3 no rooflights to the front elevation to facilitate the creation of 1 no self-contained studio flat. Associated refuse/recycling store (Retrospective Application).*" Whilst reference to the previous permission provides helpful background information, it has no effect on this Regulation 114 - Chargeable Amount appeal.

e) The CA has highlighted differences between the floor plans approved under the earlier planning application [redacted] and those submitted for approval "as built" with the application reference [redacted] meaning what was physically built after the earlier planning consent differed from the approved design the consent was granted for, therefore a new application was required to obtain planning permission for the loft conversion as built.

f) The CIL Liability was levied under the CA's MCIL[redacted] and BCIL[redacted] CIL Charging Schedule, and S211 of the Planning Act 2008, based on a chargeable area of [redacted].00 square metres. The Appellant has not contested the chargeable area.

g) I confirm that the loft conversion permitted must be considered in the light of the CIL Regulations and in particular Regulation 42 of the CIL Regulations 2010 (as amended) which provides as follows: -

(i) Exemption for minor development

1. *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.*

(ii) *(2) But paragraph (1) does not apply where the development will comprise one or more dwellings.*

(iii) *(3) In paragraph (1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.*

h) Regulation 2 provides that for CIL purposes a 'dwelling' means "*a building or part of a building occupied or intended to be occupied as a separate dwelling*".

i) In this case, the development permitted would add less than 100 square metres of floor space, so the issue is whether it is excluded from exemption by virtue of regulation 42(2) because it is occupied or intended to be occupied as a 'separate dwelling'.

j) In considering whether the development is or will be occupied as a separate dwelling, the CIL Regulations require this to be based on the planning permission granted which in this case states "*…to facilitate the creation of 1 no self-contained studio flat. Associated refuse/recycling store (Retrospective Application)*" and therefore, based on the facts of this case, I am of the opinion it is clear the planning permission granted under reference [redacted] permits the creation of a dwelling meaning the exemption to CIL under Regulation 42(1) does not apply, therefore CIL is chargeable on the additional floorspace permitted.

k) The Appellant raises and reiterates matters out with the scope of this Regulation 114 Appeal including the time gap between the grant of the subject planning permission and the associated CIL Liability Notice being [redacted] and [redacted] respectively. The Community Infrastructure Levy Regulations 2010 Regulation 65 Liability notice states (1) *The collecting authority must issue a liability notice as soon as practicable after the day on which a planning permission first permits development.* Whilst I note the time gap between [redacted] and [redacted], scrutiny of timing is not within the remit of this Regulation 114 – Chargeable Amount Appeal.

11. There is no dispute in relation to the chargeable area, rates adopted or indexation and I therefore dismiss this appeal.

[redacted]FRICS
Valuation Office Agency
21 January 2025