Appeal Decision

by [redacted] MRICS

an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as amended)

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

E-mail: [redacted]@voa.gov.uk

Appeal Ref: 1856250

Address: [redacted]

Proposed Development: Proposal to erect a new detached (four bedroom) dwelling and associated parking to the rear of [redacted] .

Planning Permission details: Granted by [redacted] on [redacted] , under reference [redacted] after appeal to the Planning Inspectorate under reference [redacted].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [redacted] ([redacted]).

Reasons

Background

1. I have considered all the submissions made by [redacted] (the Appellant) and the submissions made by the Collecting Authority (CA), [redacted] .

   In particular, I have considered the information and opinions presented in the following documents:-

   a) CIL Appeal form dated [redacted].
   b) Grant of Conditional Planning Permission [redacted], dated [redacted].
   c) The CIL Liability Notice (ref: [redacted] - [redacted]) dated [redacted] .
   d) The CA's Regulation 113 Review dated [redacted].
   e) The Appellant's Appeal Statement of Case documents which are summarised below.
   f) Plans of the proposed development.

Grounds of Appeal

2. The background to this Appeal stems from a planning application, [redacted], which was granted on [redacted] , for permission "to erect a new detached (four bedroom) dwelling and associated parking to the rear of [redacted] .

3. This Appeal Decision relates to the CA's Liability Notice [redacted] - [redacted], for a sum of £[redacted]. This was based on a Net Chargeable Area of [redacted] m² and a Charging Schedule rate of £ [redacted] per m² without indexation.

4. The CA carried out a review of the CIL charge under Regulation 113 on [redacted] . On [redacted] , the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount), contending that the CA's calculation is incorrect. and CIL in the sum of £0 (zero) should be payable.

5. The Appellant's appeal can be summarised to a single core point:-

   The Appellant disputes the requirement to pay any CIL charge due the delay in the planning process. Planning permission was refused on [redacted], before the CA charging schedule came into effect. extending the eventual granting of planning permission to a date from before the CIL charging regime came into effect to a date after the charge came into effect i.e. prior to and post [redacted].

   It would appear that there is no dispute between the parties in respect of the applied Chargeable Rate of £[redacted] per m² or the floor area of the proposed buildings used for the calculation.

Decision

6. The CA did not provide any representations to this appeal. I have been provided with a copy of their Regulation 113 Review dated [redacted] which states their position. This is as follows.

   The calculation of the chargeable amount is required to be made in accordance with Regulation 40 and Schedule 1 of the Regulations.

   The chargeable amount is calculated in respect of the "chargeable development" . Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. Regulation 5(1)(b) in turn defines planning permission as including planning permission granted by the secretary of state at appeal under section 79 of the Town and Country Planning Act 1990.

   Regulation 128 states that liability to CIL does not arise in respect of development if, on the day planning permission is granted for that development, it is situated in an area in which no charging schedule is in effect.

   The charging schedule in the Borough came into effect on 1 April 2024. Planning permission for this new dwelling was granted on [redacted]. Therefore, the charging schedule was in effect on the date planning permission was granted.

   The proposed development is a development for a use for which the charging schedule identifies a relevant charging rate. The CA's understanding is that the appellant does not dispute the calculation of the chargeable floorspace nor the applicable rate.

While the CA understands the appellant's frustration that his planning permission was granted after CIL came into effect, not before, now CIL is in effect there is no discretion over this.

The CA note that the appellant stated in his letter that he feels that he should have been informed that the Community Infrastructure Levy would be introduced and what the cost to him, were his appeal to be successful, would be. In response to this, the CA has pointed out that the council first undertook a public consultation on its draft CIL charging schedule in October 2022. Further public consultations were undertaken in May 2023 and August 2023, before the charging schedule was submitted for independent examination on 23 October 2023. The independent examiner's report was received by the council on 4 January 2024.

Details of the council's intention to introduce CIL were published on the council's website, in local newspapers and hard copies of relevant documents were available in libraries. This information was all in the public domain at the time the appellant submitted his application in [redacted] and when he submitted his appeal on [redacted]. Indeed, on the latter date it was made clear on the Council's website that the introduction of CIL was imminent.

7. The Appellant has made the following representation.

The CIL charge should not be applied as at the time the application was raised and incorrectly rejected by the CA the CIL process was not in place. The CIL process was also not in place at the time the appeal was granted.

This application was only subject to a CIL charge due to:

a) the time it took the CA to incorrectly reject the application.

b) the time incurred by the appeal process to correct this decision.

Whilst I'm aware that clauses state that decisions made at appeal are still subject to CIL charges I believe these clauses were written assuming CIL process was in place at the time the application was submitted, i.e. if the application was rejected (no CIL charges applicable) but overturned at appeal then those CIL charges would be re-introduced.

However I do not believe these clauses were written as a means to allow a council to retrospectively apply CIL charges.

In this was the case a party knowing CIL was to be introduced at a later date could wrongly reject an application with the knowledge that the delays introduced would allow a financial gain once an appeal corrected their decision. To me this cannot be a correct interpretation of the clauses.

8. Having fully considered the representations made by both parties and all the evidence put forward to me, I agree with the position of the CA on the grounds that the calculation of the chargeable amount is required to be made in accordance with Regulation 40 and Schedule 1 of the Regulations.

As they have stated the chargeable amount is calculated in respect of the "chargeable development" and that Regulation 9(1) defines the chargeable development as the development for which planning permission is granted. Regulation 5(1)(b) in turn defines planning permission as including planning permission granted by the secretary of state at appeal under section 79 of the Town and Country Planning Act 1990.

Regulation 128 states that liability to CIL does not arise in respect of development if, on the day planning permission is granted for that development, it is situated in an area in which no charging schedule is in effect.

I am informed that the charging schedule in this Borough came into effect on 1 April 2024. Planning permission for this new dwelling was granted on [redacted]. Therefore, the charging schedule was in effect on the date planning permission was granted and as per the Regulations it is correct (irrespective of the circumstances that the Appellant has described) that the charge is made.

[redacted]

The Net Chargeable Area of the development does not appear to be in dispute and has therefore been accepted at [redacted]m² as per the Liability Notice [redacted] - [redacted] dated [redacted].

9. In conclusion, having considered all the evidence put forward to me, I therefore confirm that a CIL charge of £[redacted] ([redacted]) should be payable and hereby dismiss this appeal.

[redacted]MRICS
Principal Surveyor
Valuation Office Agency
20 January 2025