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: 1841008

Planning Application: [redacted]

Proposal: Planning Permission Granted For: Subdivision and conversion of the existing dwelling into two self-contained dwellings, together with the erection of a two-storey rear extension, insertion of a first floor window into the eastern elevation, and associated landscaping.

Address: [redacted]

Decision

Appeal dismissed.

Reasons

1. I have considered all of the relevant submissions made by [redacted] 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 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 referred to 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 Proposal was granted as detailed [redacted].

3. The CA issued a CIL Liability Notice 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 requesting a Regulation 113 Review.

5. A Regulation 113 Review was undertaken and the CA responded to the Appellant in writing [redacted] explaining the review found that 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 a re-submission of a previously lapsed consent allowing two houses to be used as two homes, plus a new build extension to No. [redacted]. The Appellant submits CIL should not be applicable because:

i. the extension is exempt as less than 100 square metres. The extension is to create the second entrance, staircase, hall and equitable bedroom space on the first floor.

ii. the proposed development is exempt as it would not create a new dwelling.

iii. The properties, [redacted] and [redacted], are held on two separate titles.

iv. The Owner has always paid two domestic rates bills.

v. The 'house' has always been used as one dwelling.

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

a) The existing property is a single dwelling.

b) The development for which planning permission has been granted comprises the subdivision and conversion of the property to form two dwellings and a two storey extension. Therefore, for the purposes of Regulation 42 (2) the development in this case comprises a new dwelling.

c) The extension would be an integral part of the additional new dwelling that would be created. Where the change of use of existing floorspace to create a new dwelling involves an extension, CIL is chargeable on the additional floorspace being created, regardless of whether or not it is under 100sqm as the development comprises a dwelling.

d) The CIL chargeable for the development has been calculated on the basis of the GIA of the extension only. The Appellant has not disputed the GIA figure on which the CIL is based, however the CA states this was reviewed ([redacted] square metres) and confirmed correct.

e) In this case, the "new build" element of the proposal is under 100 square metres GIA. However, the development comprises one or more dwellings. This exemption does not therefore apply, and the development is CIL liable.

f) The CA understands the appeal is made solely on the basis that the Appellant considers the development not to be CIL liable, and no comments were made on the measurements and calculation made.

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

a) The case revolves around consent to form two houses out of one (even though the 'twin' house is a semi-detached pair with separate titles, and on which two lots of community charge (Council Tax) have been paid in the past few years.

b) The extension for which consent was granted on No [redacted] is under 100 square metres.

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) The Appellant references a previous, lapsed planning consent for the subject property.

CIL Regulation 9 (1) 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 Application No: [redacted] , dated [redacted], being subdivision and conversion of the existing dwelling into two self-contained dwellings, together with the erection of a two-storey rear extension, insertion of a first floor window into the eastern elevation, and associated landscaping and the previous lapsed permission is of no relevance.

c) The CIL Liability was levied under the CA's CIL Charging Schedule and S211 of the Planning Act 2008, based on a chargeable area of [redacted] square metres.

d) Notwithstanding that Regulation 6(1)d states that the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwelling houses is not to be treated as development for the purposes of section 208 of PA 2008. I confirm that the new build extension 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.

e) 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*".

f) In this case, the development 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'.

g) 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 "*…subdivision and conversion of the existing dwelling into two self-contained dwellings…*" and therefore, based on the facts of this case, I am of the opinion it is clear the planning permission granted 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.

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

[redacted] FRICS
Valuation Office Agency
16 April 2024