Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency
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Green Lane
Durham
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Appeal Ref: 1837935

Planning Permission Ref. [redacted]

Proposal: Two storey, 2-bed, terraced dwelling with associated parking and amenity space.

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] (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] – CIL No [redacted].' dated [redacted];

    d) CIL Appeal form received [redacted] including appendices; and

    e) Representations from CA dated [redacted].

2. Planning permission was granted under application no [redacted] on [redacted] for '*Two storey, 2-bed, terraced dwelling with associated parking and amenity space.'*

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 '[redacted] CIL 2 Zone B south'

rate of £[redacted] /m² plus indexation and the CIL Rate of £[redacted] /m² plus indexation.

4. The Appellant requested a review under Regulation 113 on [redacted]. We have not been provided with any response from the CA.

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

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

    a) An existing house sat on the site for over ```redacted`` years, before being destroyed by fire. The new house is a rebuilding of the old house and is not an additional property.

    b) The replacement house has no detrimental impact on local services such as doctors, transport etc and therefore CIL should not be chargeable.

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

    a) The appellant has not disputed the CA's calculation of the CIL charge;

    b) There are no applicable exemptions or reliefs available under the current CIL regulations. The original house was demolished prior to the submission of the planning application so existing floorspace cannot be netted off. The property is not owner occupied and will be let to tenants so self-build exemption cannot apply. There is no S106 agreement in place and therefore exceptional circumstances relief cannot apply.

    c) The CA support a proposed change to the CIL Regulations to provide a 'disaster relief' exemption. However, under the current Regulations it has no option but to charge CIL.

8. The appellant has not disputed the calculation of the CIL charge but has disputed the fairness of this charge. As Appointed Person, I am only able to consider the appeal in accordance with the current CIL Regulations.

9. The CIL regulations include a number of exemptions and reliefs that can act to reduce or remove any CIL charge. These have been referenced by the CA in their representations and by the letter from [redacted] MP, supplied as part of the appellant's representations. I have therefore addressed each of these exemptions and reliefs in turn.

Chargeable Development

10. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This allows "the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development" to be deducted from "the gross internal area of the chargeable development."

11. "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.

12. “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.

13. The planning design and access statement dated [redacted] confirms that the former property was demolished between [redacted] and [redacted]. It was therefore not situated on the relevant land when planning permission was granted on [redacted].

14. As the building was not on the land when planning permission was granted, it cannot be treated as a relevant building and the floor area cannot be netted off from the GIA of the chargeable development.

Regulation 42 – Exemption for minor development

15. 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

16. The appellants argue that the development does not constitute a “new” development as it is a like-for-like replacement of the former dwelling.

17. In my opinion, the development could not qualify for minor development exemption because it does comprise the building of a new dwelling, albeit one that is replacing a former dwelling.

Reliefs

18. I am not able to consider the granting of reliefs, as this is outside of my jurisdiction as Appointed Person. However, I have briefly referenced below the reliefs that were mentioned within the representations.

19. Regulation 54A allows for self-build exemption, subject to certain conditions. In order for self-build exemption to apply, an application must be made to the CA under the procedure contained in Regulation 54B. The CA have confirmed that the property will be let to tenants and not occupied by the appellants so self-build exemption cannot apply.

20. Regulations 55-58 allows for discretionary relief for exceptional circumstances. The CA have confirmed that this relief is not available because the development does not have a s106 agreement.

21. The right of the appellants to make a claim to the CA for relief is not affected by the decision of this appeal.

Conclusion

22. The original house was demolished prior to planning permission being granted. Therefore, there was no lawful in use space that could be netted off from the chargeable area.

23. The appellant has not disputed the calculation of the CIL charge but consider the charge itself to be unfair, given the circumstances under which the development is required. The current CIL regulations do not allow for any exemption or relief for development necessitated by fire or similar. The other possible exemptions and reliefs do not appear to apply in this case. I therefore have no option but to agree with the CA determination of the CIL charge.

24. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable of £[redacted] ([redacted]) is not excessive and the appeal should be dismissed.

[redacted]

[redacted] MRICS
Valuation Office Agency
5 March 2024