

Appeal Decision

By [REDACTED] BSc Hons PGDipSurv 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: 1834350

Planning Application [REDACTED]

Proposal: Demolish existing building, erect new bungalow with associated amenity space and parking

Address: [REDACTED]

Decision

I determine a CIL charge of £[REDACTED] [REDACTED] ().

Reasons

1. I have considered all the submissions made by [REDACTED] (the Appellant), acting as the appointed agent for the applicant [REDACTED], and [REDACTED] as 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 reference [REDACTED] dated [REDACTED] for “demolish existing building, erect new bungalow with associated amenity space and parking”.
 - b. CIL Liability Notice ref [REDACTED] dated [REDACTED] for £[REDACTED].
 - c. The CIL Appeal Form dated [REDACTED] submitted by the Appellant under Regulation 114, together with documents attached thereto including proposed and existing internal floorplans (dated [REDACTED] and [REDACTED] respectively).
 - d. The CA’s representations (statement of case and appendices) to the Regulation 114 Appeal dated [REDACTED].

- e. The Appellant's representations.
- f. Email communications between the Appellant and CA prior to the CIL appeal, over a period covering [REDACTED] to [REDACTED].
- g. The CA and Appellant's responses to my letter dated [REDACTED] requesting additional information.

Background

2. A CIL Liability Notice reference [REDACTED] dated [REDACTED] was issued by the CA with the chargeable amount calculated as:-

Chargeable Area [REDACTED] m²
 Less GIA of Buildings to be demolished 0.00m²
 = Total proposed GIA [REDACTED] m²
 X £ [REDACTED]
 = £ [REDACTED] CIL Liability

3. The Appellant was also informed by email dated [REDACTED] (to which the Liability Notice was attached) that deductions relating to existing floor space had not been taken into account during the CIL calculations. The email also informed the Appellant that in order to consider a review of the calculation, existing floorspace evidence would need to be submitted within 28 days of the date of the Liability Notice.
4. The 28 day review period (for the CA to review the CIL calculation) ended on [REDACTED], this being 28 days after the date of the Liability Notice.
5. At the time that the Liability Notice was issued, the CA based their CIL calculations on the plan on which Planning Permission had been granted (Plan ref [REDACTED] dated [REDACTED]) which showed a site layout and an internal plan of the new dwelling. This plan did not show an internal layout of the existing building (the workshop).
6. On [REDACTED] the Appellant emailed the CA (i.e. within the 28 day review period) advising they did consider there was an existing building, asking for it to be offset from the CIL amount and also asking if the CA could advise on the process.
7. The CA responded to this email on [REDACTED] (after the 28 day review period had lapsed) advising that by now it was too late to undertake a review of the CIL calculation as the 28 days had passed. They also stated that a floorplan of the existing building had not been provided and therefore they were unable to deduct that from the chargeable amount. They did indicate that they considered that the subject development would be applicable to benefit from a Self Build Exemption (with links to guidance supplied).
8. After further correspondence by email between the parties, an internal floor plan of the existing building (plan ref [REDACTED] dated [REDACTED]) was sent by the Appellant to the CA on [REDACTED]. Neither party disputes that this plan has now been supplied. I have been supplied with a copy of this plan as part of this CIL appeal.

9. The CA contend that the Appellant did not supply sufficient information to support the deduction of the existing floorspace and did not receive any existing floorspace evidence within 28 days from the date of the Liability Notice as per regulation 113(b). The deadline for a review of the CIL calculation was [REDACTED] and the CA note that they did not receive floorplans of the existing building until [REDACTED] (after the deadline). The CA consider that as they did not receive sufficient information, or information of sufficient quality, on time, they had been correct to deem the existing GIA in question to be nil and they consider they have acted within the CIL regulations.
10. In the further correspondence to the Appellant, dated [REDACTED] and timed at [REDACTED] pm, the CA further suggest that "it is ultimately for the developer/owner and their agents to understand the CIL regime and to take appropriate steps to fulfil CIL demands and it is considered that the Council took all reasonable steps to assist in this respect".
11. Notwithstanding the issue of the CA's view that it is ultimately for the developer/owner and their agents to understand the CIL regime, it is evident in correspondence that the Appellant was unfamiliar with the CIL process and the Appellant's email dated [REDACTED] asked if the CA could advise on the process of excluding the existing building from the chargeable amount. It is noted that whilst this email was sent close to the 28 day time limit, it was sent before the deadline. The further correspondence seems to suggest that the internal floorplan of the existing building was sent to the CA as soon as the Appellant became aware that this was specifically what was required. It is unclear in previous correspondence from the CA that this floor plan was required and it appears that it was never specifically requested.
12. In connection with this CIL Appeal, a letter was sent to each party, dated [REDACTED], seeking clarification whether or not there is a dispute in relation to the existing workshop being an 'in-use building' i.e. that it had been in lawful use for a continuous period of at least six months within the period of three years ending on the [REDACTED]. Both parties replied advising that there was no dispute in relation to the existing workshop being an in-use building. The CA confirmed they had not considered a review of the CIL calculation to take into account existing floorspace as the evidence was submitted outside the review period.

Consideration of the Decision

13. I have considered the representations made by the CA and the Appellant, along with the information provided by both parties.
14. In this case, the Appellant does not agree with the CA's stated chargeable area used in the calculation of CIL. The Appellant suggests the floor area of the existing building (the workshop at an agreed GIA of [REDACTED] m²) should be excluded from the calculation of the chargeable area for CIL because the building was in use.

15. 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.”
16. “In-use building” is defined in the CIL 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.
17. In their responses, neither party disagree that the existing workshop was an ‘in-use building’ i.e. that it had been in lawful use for a continuous period of at least six months within the period of three years ending on the [REDACTED].
18. At the time that the CA made their calculation in respect of the CIL amount payable, it is accepted that they had not received sufficient information, or information of sufficient quality, to demonstrate the existing floorspace was deductible. However, in my opinion the appellant did clearly state on [REDACTED] that they wanted this area deducted from the calculation and they did specifically ask about the process. The CA did not reply to this email until [REDACTED] by which time the deadline had passed and the CA explained it was too late to review the calculation at that point. Whilst a request for a review must be made within 28 days of the date of a liability notice I note there is no deadline specified for the submission of representations connected with this review. Regulation 113(3) says that a request for a review may be accompanied by written representations (emphasis added) and regulation 113(6) says that the collecting authority must consider any representations accompanying this review. However, once an appeal is made to an appointed person regulation 120(4) states that the completed appeal form comprises the appellant’s representations in relation to the appeal and Regulation 120(8) requires that an appointed person must consider any representations made by the appellant and interested parties.
19. In considering this appeal, I must therefore consider all of the information before me, and note that I do have a plan (ref [REDACTED] dated [REDACTED]) and a floor area of [REDACTED] m² GIA of the existing workshop, which neither party is seeming to be in dispute over.
20. It is apparent that both parties now agree that the building that existed on the day Planning Permission in relation to [REDACTED] was granted, was an in-use building in lawful use. There is no area of dispute in relation to this matter.
21. Therefore, I consider that it is correct to deduct the floor area of the existing building (workshop) in the calculation of the CIL chargeable amount. In effect the area of the workshop should be offset to arrive at the net chargeable area.

Calculation of CIL Liability

22. Using the GIA figures as supplied by the parties, and applying the appropriate reduction for the exiting building, the CIL charge is calculated as follows:

Proposed GIA [REDACTED] m²

Less [REDACTED] m² to be offset as existing building 'in use'

= net chargeable area of [REDACTED] m²

[REDACTED] m² x £[REDACTED] = £[REDACTED]

Decision

24. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[REDACTED] ([REDACTED]).

[REDACTED]
BSc (Hons) PGDipSurv, MRICS
RICS Registered Valuer
DVS
Valuation Office Agency
30th January 2024