

Appeal Decision

By [REDACTED] BSc FRICS

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

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VOA Appeal Ref: 1857384

Planning Application: [REDACTED]

Proposal: Planning Permission Granted For: Demolition of existing precast reinforced concrete dwelling and erection of replacement dwelling.

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) VOA CIL Appeal form dated [REDACTED], along with supporting documents referenced as attached.
- d) Written representations from the Appellant.
- e) Written 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 and submits that that CIL should be £Nil.
 - b) The Appellant requests two aspects are considered:
 - i. Exemption for self-build housing, or if not accepted,
 - ii. Off-set of in-use building, as end result matches approved footprint and layout.
 - c) The Appellant describes the works which are the subject of this Appeal in detail which I summarise as follows:
 - i. Appellant purchased the property, a non-traditional pre-cast reinforced concrete [PRC] framed semi-detached house, as their home, [REDACTED].
 - ii. Planning Permission [REDACTED] – not the 'subject' permission] was obtained for works to replace the solid [PRC] construction external walls with cavity construction walls – and contemporaneously extend the property with double storey extension on the gable end, replace conservatory at rear with a single storey extension incorporating kitchen and a single storey extension to the front. It is worth noting that whilst the planning permission for these works included new build floorspace, the total additions were less than 100 square metres and therefore were not liable for CIL.
 - iii. Appellant describes how during the permitted works, roof coverings were removed to storage and the roof structure was replaced with prefabricated truss system instead of extending the existing, achieving same end result. Further, it was discovered that the floor slab was not insulated and did not have a membrane so the Appellant consulted Building Control and broke

out the ground floor slab and replaced – this differed from the consent to create a new slab for the new footprint and tie into the existing.

- iv. Following a complaint over non-compliance, a Planning Enforcement Officer inspected [REDACTED] and noted the property had been demolished and that a new structure was under construction.
- v. CA's Planning Enforcement Team requested a retrospective planning application was made for the existent works to ensure full planning compliance. It was the grant of this planning permission [REDACTED] that is the subject of the associated CIL liability.

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

- a) The CA summarises the relevant history of the planning applications referenced in this case [REDACTED]; [REDACTED]; [REDACTED] the latter being the basis of this Regulation 114 Chargeable Amount Appeal.
- b) The previous grant of planning permission [REDACTED], for the front, rear and side extensions and subsequent non material amendments [REDACTED] did not create a chargeable development because the new floorspace proposed measured [REDACTED] square metres, therefore less than the 100 square metre additional new build floor area limit above which CIL becomes chargeable.
- c) The subject planning permission [REDACTED] supersedes those referenced above and included consent for the demolition of the PRC dwelling and erection of replacement dwelling.
- d) The CA's CIL charging schedule was implemented [REDACTED] meaning planning permissions granted from that date are potentially liable for CIL. Two criteria applicable to the subject property result in it being a chargeable development – its location within the area designated Zone A and the development permitted by [REDACTED] includes over 100 square metres of new build floor area.
- e) The approach to the calculation of the CIL Liability of £[REDACTED] is explained as the gross internal area [GIA] of the development less any eligible existing buildings whereby the GIA of the existing can be deducted or off-set from the proposed GIA. The CA paraphrases the CIL Regulation [CIL Reg's Schedule 1 part 1 Chargeable amount: standard cases paragraph 1(10)] which states the requisite criteria for the GIA of an existing building to be eligible for deduction.
- f) It is the CA's assertion that any potentially eligible building [the existing PRC dwelling] had been demolished prior to the date the subject planning permission was granted. The CA references its Enforcement Officer's findings from a site inspection undertaken [REDACTED] – in that the original [PRC] dwelling had been demolished and that a new structure was under construction.
- g) The chargeable amount was calculated using the proposed new build floor area of [REDACTED] square metres, the Chargeable Rate of £[REDACTED] per square metre adjusted by index [REDACTED] "(rounded)". The CA highlights the Appellant has not challenged the Rate, indexation or GIA so it is taken these elements are not in dispute.

- h) Turning to the Appellant's request for a self-build exemption claim, the CA refers to CIL Regulation 54B which states that exemption claims lapse where the chargeable development commences before the CA has the opportunity to notify the claimant of its decision on the claim. Therefore, in this case, because the development had commenced before the grant of planning permission and before

any self-build exemption claim was made, these requests cannot be considered. In addition, whether or not a self-build exemption claim can or cannot be made is beyond the scope of this Regulation 114 appeal and is not something that I am able to take into account.

- i) The CA concludes by reiterating it was unable to consider a claim for self-build exemption because under CIL Regulation 54B, the exemption criteria were not met as development had already commenced. Further the CA states it has correctly applied the meaning of Schedule 1 of the [CIL] Regulations in relation to an "in-use building" and "relevant building" because the CA has verified there was no relevant building extant on the date the subject planning permission permitted the development.

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

- a) In response to the CA's representations, the Appellant submitted their understanding of the previous [PRC] dwelling's GIA. Subsequently, the CA responded to this with a different [larger] GIA culminating in the Appellant accepting the CA's GIA figure because the Appellant had omitted the conservatory floor area which the CA had included.
- b) The CA acknowledged the Appellant's clarification of the previous [PRC] dwelling GIA however, the CA reiterated that Schedule 1 of the CIL Regulations mean there was no "relevant building" as at the date planning permission was granted and therefore there can be no off-setting of the previous dwelling GIA.

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 CIL charge 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 made [REDACTED]. The CA provided its decision of the review and reasons for the decision on [REDACTED], which is 15 days after the review start date and therefore, under CIL Regulation 114. (1)(b) and (3A), this chargeable amount appeal was permitted.
- c) The Appellant has explained the reasons why the building works were undertaken, namely that repair and replacement works were required to their home, a PRC dwelling, in order for the property to be considered mortgageable by lenders and improve the performance of the building. Specifically, the Appellant described the PRC repair works as involving replacement of the envelope including the isolation and replacement of the concrete frame with cavity construction walls. These works typically involve propping up the roof whilst the walls are isolated and replaced.
- d) The Appellant goes on to explain that during the works it was discovered that the timber elements were in poor condition, so the Appellant decided to replace these. Additionally the ground floor slab was found to be substandard as it did not

have a membrane so the Appellant decided to break out the existing floor slab and replace with a new insulated and membrane protected one. The Appellant submits these works increased construction safety and were to improve the quality of the developed building. The Appellant advised all works were undertaken in consultation with Building Control.

- e) The Appellant has therefore explained the reasons why the works were desired in the first instance and also their reasons for undertaking specific works as the construction project progressed.
- f) Referenced above are the CA's Planning Enforcement Officer's findings from undertaking a site inspection on [REDACTED], which was prior to the subject planning application. As it was found that the subject dwelling [PRC semi detached house] had been demolished, the CA requested the Appellant make a retrospective application for planning permission to match the extent of the works being undertaken by the Appellant.
- g) The CIL liability in this case has been generated by the grant of this planning permission combined with the physical attributes of the Appellant's property on the date planning permission first permitted the development, [REDACTED].
- h) Turning to the off-setting of the floor area of the previous dwelling from that of the new build floor area, this is covered by Schedule 1 Part 1 – Chargeable amount: standard cases. This part of the CIL Regulations covers what makes a building eligible so that its floor area can be off-set from the floor area of the proposed development. Most pertinent to this case is the criteria for a "relevant building" which means a building which is situated on the relevant land [relevant land means the land on which the chargeable buildings will stand] on the day planning permission first permits the chargeable development. In this case, the day planning permission first permitted the chargeable development was [REDACTED] and therefore, as verified by the CA, no such building existed on that date because it had already been demolished.
- i) It is therefore the unsanctioned demolition, when considered against the CIL Regulations, which is the reason why the two reliefs / exemptions [self-build and in-use building] are unavailable to the Appellant.
- j) Unfortunately, when circling back to the timeline and facts presented, relative to subject planning permission and chargeable development, the property was demolished prior to grant of retrospective permission. The CIL Regulations are clear in respect of the criteria for exemption for self-build and off-setting the floor area of an eligible building which is to be demolished as part of a new build development.
- 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.

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Valuation Office Agency
18 February 2025