

Appeal Decision

by [REDACTED] MRICS VR

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: 1874601

Address: [REDACTED]

Proposed Development: Erection of attached dwelling including variation of approved condition 2, attached to [REDACTED], to allow for changes to windows, flat roof lantern, rear extension roof and omission of roof window.

Planning Permission details: Granted by [REDACTED], on [REDACTED], 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 the Appellant, [REDACTED], 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 Planning Permission [REDACTED] dated [REDACTED].
- c) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED] in respect of planning application reference [REDACTED]. The Liability Notice stated that the CIL amount which was due, was the sum of £[REDACTED].
- d) The CA's Regulation 113 Review, dated [REDACTED].
- e) Various plans of the subject development.

- f) The CA's Statement of Case letter, dated [REDACTED], which references the CA's Regulation 113 Review, dated [REDACTED].
- g) The Appellant's e-mail dated [REDACTED], which comments upon the CA's Statement of Case letter.

Grounds of Appeal

2. Conditional Planning Permission was granted for the development on [REDACTED], under [REDACTED]. With the address of [REDACTED], the approved planning permission was:-

Erection of attached dwelling including variation of approved condition 2, attached to [REDACTED], to allow for changes to windows, flat roof lantern, rear extension roof and omission of roof window.

3. On [REDACTED], the CA issued a Liability Notice (Reference [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 (Residential Area 4) with indexation at ([REDACTED]).
4. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [REDACTED], stating that it was of the view that its original decision was correct.
5. On [REDACTED], the Valuation Office Agency received a CIL Appeal from the Appellant, contending that the CA's calculation is incorrect and opines that the CIL charge should be for a [REDACTED] m² building with a deduction from this of [REDACTED] m², to reflect an existing garage.

It would appear that there is no dispute between the parties in respect of the Charging Rate, the applied indexation or the definition of Gross Internal Area (GIA).

6. At the heart of this Appeal is a dispute between the parties in respect of two interrelated issues; specifically, a disagreement over the measurement of the development ([REDACTED] m² GIA opinion of the Appellant, versus a [REDACTED] m² GIA opinion of the CA), with a further disagreement over the offset of [REDACTED] m² of a garage. The offset dispute in respect of the garage is intrinsically a disagreement between the parties over 'in-use' accommodation.

In addition, the Appellant opines that he was not offered the opportunity of a Self Build Exemption for the subject planning permission.

Approved Development in Dispute

7. The property subject to this Appeal comprises a roughly rectangular shaped parcel of land, which effectively, is an infill single residential development plot. The Appeal site is a garage and garden site, located on [REDACTED] in the historic market town of [REDACTED]. The site is surrounded by terraced properties. Shops and services are located in the wider area. The immediately adjacent properties are of a relatively uniform design, and are built close to the footpath.

The development proposal comprises a two-storey, three bedroom dwelling house, with the third bedroom and an ensuite bathroom set in the roof space.

Decision

8. The background of this appeal stems from a previous planning application ([REDACTED]), which was granted planning permission on [REDACTED].

The subject Appeal decision relates to planning permission ([REDACTED]), which was granted on the [REDACTED], to vary condition 2 of planning permission [REDACTED], which permits changes to the windows, flat roof lantern, rear extension roof and omission of a roof window. Indeed, the approved planning permission to which this Appeal relates is:-

Erection of attached dwelling including variation of approved condition 2, attached to [REDACTED], to allow for changes to windows, flat roof lantern, rear extension roof and omission of roof window.

9. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this Appeal decision:-
10. Schedule 1 of the 2019 Regulations allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace of buildings that are to be retained includes;
- a. retained parts of 'in-use buildings', and
 - b. for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits 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. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "the development for which planning permission is granted".
13. The Appellant opines that Gross Internal Area (GIA) of the development has been miscalculated by the CA, and contends it is [REDACTED] m². In addition, the Appellant contends that a garage of [REDACTED] m², "which has been identified in plans and photos in official documentation has been demolished to make way for a new building and no deduction has made in CIL for this."
14. I will commence my decision by responding to the Appellant's primary dispute – the GIA of the scheme. Having studied and scaled the submitted plan (Drawing No [REDACTED], dated [REDACTED]) in line with the accepted definition of GIA (i.e. the RICS Code of Measuring Practice (6th Edition)), I am in agreement with the CA that the GIA of the proposed accommodation is [REDACTED] m².
15. I will now turn to the offset dispute between the parties. The CIL Form 1 (dated [REDACTED]) submitted with planning application, stated an existing garage measuring [REDACTED] m² was to be demolished. Whilst I note that the garage was ticked 'still in use' on the CIL Form 1, beyond this document dated [REDACTED], I have not been provided with any supporting evidence from the Appellant to support that the building was an 'in-use' building, for its accommodation to be off-set in the CIL calculation. The CA points out that whilst the garage was shown on the

submitted Constraints and Opportunities Plan (drawing number [REDACTED]), no existing floorplans of the garage were submitted with the application. It is clear to me, that the signed date of CIL Form 1 of [REDACTED], clearly falls outside of the acceptable date range, which precedes the grant of permission (of [REDACTED]) in order to be acceptable for CIL.

The CA further elaborates that the garage has now been demolished and development commenced and it is not possible to submit evidence retrospectively to allow the floorspace of the now demolished garage to be deducted from the chargeable area.

Regulation 40(9) states that “Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building”.

Given that no evidence has been provided to me, it cannot be established that the accommodation of the garage was in existence or indeed in lawful use for 6 months out of the 3 years preceding the grant of permission. Accordingly, I have concluded that the garage cannot be offset against the chargeable area. Having reached this conclusion, I agree with the CA that the GIA of the chargeable area of the scheme is [REDACTED] m².

16. As part of his Appeal, the Appellant opines that he was not offered the opportunity of a Self Build Exemption for the subject planning permission. 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 right of the Appellant to make a claim to the CA for residential extension exemption or self-build exemption is outside the scope of my remit and I am not able to consider these matters within my decision. However, it would appear to me that no such exemption was applied for and it is not possible to apply for an exemption retrospectively.

17. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[REDACTED] ([REDACTED]), as stated in the Liability Notice dated [REDACTED] and hereby dismiss this appeal.

[REDACTED] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
24th October 2025