

Appeal Decision

by [REDACTED] MRICS, BA(Hons), MSc

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

Valuation Office
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Appeal Ref: 1877014

Planning Permission Ref. [REDACTED]

Proposal: DEMOLISH EXISTING BUILDINGS, ERECT FOUR STOREY DWELLING HOUSE WITH ASSOCIATED CAR PARKING, BIKE/BIN STORES, LAYOUT LANDSCAPING, INCLUDING FELLING OF PRESERVED YEW TREE AND REPLACEMENT TREE PLANTING AND ENGINEERING WORKS TO SOUTHEAST CORNER OF THE SITE TO CREATE STEPS AND RETAINING WALL AND FORM NEW VEHICLE CROSSOVER ONTO [REDACTED] (PART RETROSPECTIVE)

Location: [REDACTED]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £[REDACTED] ([REDACTED]).

Reasons

1. I have considered all of the submissions made by [REDACTED] who are the representatives 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 ref [REDACTED] dated [REDACTED].
 - b) The Liability Notice Boundaries Plan;
 - c) The floor plans from decision notice [REDACTED] and the plans from decision notice [REDACTED] as well as the decision notice in respect of planning permission [REDACTED] which was subsequently provided on [REDACTED].
 - d) CIL Liability Notice [REDACTED] dated [REDACTED].
 - e) CIL Appeal form dated [REDACTED], including appendices;

- f) Representations from CA dated [REDACTED] and
- g) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for “demolish existing buildings, erect four storey dwelling house with associated car parking, bike/bin stores, layout landscaping, including felling of preserved yew tree and replacement tree planting and engineering works to southeast corner of the site to create steps and retaining wall and form new vehicle crossover onto [REDACTED] (part retrospective)” this will be referred to as the [REDACTED] permission for the purposes of this decision.
 3. Within the appeal, the appellant refers to an earlier permission under reference [REDACTED] which was granted on [REDACTED]. The description of the permission is “demolish existing dwelling, erect one four storey dwelling house with associated car parking, bike/bin stores at lower grounds level and layout landscaping”. For the purposes of this decision, this will be referred to as the [REDACTED] permission.
 4. The appellant also refers to a [REDACTED] permission within their submission which is in relation to [REDACTED]. This is referred to as the [REDACTED] permission however this was applied for and obtained by the appellants neighbour [REDACTED].
 5. 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 Zone 3 rate of £ [REDACTED]/m² plus indexation.
 6. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], stating that CIL applies to development with planning permission (Regulation 9(1)), so the levy is based on permission [REDACTED]. Demolished buildings were not included in the calculation because they were not present on the land when permission first allowed the chargeable development (Schedule 1, Paragraph 1). Therefore, the CIL amount in the Liability Notice remains unchanged. The CA note the applicant disputes the deemed commencement date, but since the development includes works already carried out (demolition), it is treated as retrospective. Under Regulation 7(5), for retrospective development, the commencement date is the date permission is granted. Thus, the CA opine that the deemed commencement date of [REDACTED] on the Demand Notice is correct.
 7. On [REDACTED], the Valuation Office received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be £0.
 8. The Appellant’s grounds of appeal can be summarised as follows:
 - a) A successful self-build exemption was obtained in respect of the [REDACTED] permission, with the [REDACTED] permission subsequently lawfully commenced.
 - b) The Appellant’s position, that development has yet to be commenced, means that he should have the opportunity to apply for a further self-build exemption in respect of the [REDACTED] Permission and separately, there is also the possibility for the floorspace of the pre-existing dwelling, now demolished, to be credited in the CIL calculation. That dwelling was lawfully constructed and in lawful use for the prescribed period of time such that its floor area can, and should, be taken into account when calculating the area of additional floorspace liable to CIL.

- c) Works carried out on Land on the West Side were carried out in commencement of the [REDACTED] Permission.
- d) It was the Council who advised that the [REDACTED] Permission needed to include the works that had been carried out on Land on the West Side which effectively ensured that the [REDACTED] Permission would become a retrospective permission for which development had commenced, and no CIL credit or exemptions were available or could be obtained.
- e) The Council have issued Demand Notices in respect of the [REDACTED] Permission and the [REDACTED] Permission, the redlines of which both encompass Land on the West Side and are trying to claim the CIL twice over.
- f) A material operation comprised in the development has not been carried out since the decision granting the [REDACTED] Permission.
- g) The Council has acted unreasonably in issuing the Liability Notice and Demand Notice in their current forms and has discretion to act reasonably now.

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

- a) CIL Regulations state that a CIL charge may be reduced if the development site includes existing buildings that are in lawful use and which are to be demolished or to be re-used as part of the development. The in-use building must be a 'relevant building' - it must exist on the land shown within the red line site plan of the planning permission on the day permission first permits the development. Previously demolished buildings are not 'relevant buildings' and cannot be taken into account as they did not exist on the land on the day permission first permits the development.
- b) The Council notes that the Appellant does not dispute the fact that existing buildings had already been demolished lawfully under an earlier permission prior to the grant of planning permission [REDACTED]. The applicant submitted the Planning Application Form on which they selected "yes" to the question "Has the work or change of use already started." This is also reflected on the Planning Decision Notice dated [REDACTED] which states that the works proposed are part retrospective.
- c) A CIL Liability Notice for £ [REDACTED] was issued dated [REDACTED]. No existing floorspace was deducted from the calculations as the previous dwelling had already been demolished. The Liability Notice clearly states that subject to the criteria set out in CIL Regulation 113 (as amended), a review of calculations should be submitted within 28 days of the date of this notice. Additionally, it states that any additional evidence in relation to any existing floorspace to be considered as "in use," and thus be deducted in accordance with CIL Regulation 40 (as amended), must be received during the 14 day appeal review period. The Appellant did not provide any evidence of existing floorspace during the review period as the previous dwelling had already been demolished under an earlier permission.
- d) The Council did not receive sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, and according to CIL Regulations paragraph 1 of Schedule 1 the Council deemed the existing gross internal area in question to be zero and the liability notice remained unchanged after the regulation 113 review.

- e) Self-build exemption cannot also be applied for on planning permission [REDACTED] as this permission is a retrospective permission as it included in its description works that had already been implemented. The exemption cannot be applied because the development is considered to have commenced before the exemption could be applied for.
- f) The Council notes that the Appellant states in the appeal statement that self-build exemption was granted for an earlier permission and this exemption should be carried forward to planning permission [REDACTED]. The Council does not dispute that self-build exemption was granted for the earlier permission, however this exemption cannot be carried over to a separate chargeable development granted on a FULL permission. If a new FULL planning permission is granted, the exemption must be reapplied for. The Council does not also dispute that the reasons behind the grant of FULL permission rather than an amended application under section 73 and the reasons behind retaining the description relating to demolition may have been discussed between the appellant and the case officer however, it must be emphasised that any such discussions would have pertained solely to planning application matters and not CIL matters.
- g) The Planning Officer is not responsible for advising on CIL procedures, and the Council does not provide unsolicited advice on CIL compliance. Comprehensive guidance is readily available through the CIL Regulations 2010 (as amended), National Planning Practice Guidance, the Planning Portal and the Council's own website. It is both reasonable and expected that applicants will consult these resources or seek appropriate professional advice to ensure compliance. It is the responsibility of the applicant, their agents, or appointed professionals to ensure they are fully informed of their obligations under the CIL regime. The Council does not make assumptions about any CIL advice an applicant may require, and at no point was such advice requested from the CIL Team during the planning application process.
- h) It is well established in previous appeal decisions that it is ultimately for the developer/owner and their agents to understand the CIL regime and to take the appropriate steps to comply with the regulations. The Council acted appropriately and in accordance with the CIL Regulations 2010 (as amended) and the Appellant's failure to comply with the regulatory requirements cannot be attributed to any fault or omission on the part of the Council.

10. The appellants agents submitted a response to the CA's representations on [REDACTED] that can be summarised as follows:

- a) The Appellant maintains that the Deemed Date of Commencement in the Demand Notice is incorrect because works under the [REDACTED] Permission have not commenced. All previous works were carried out under the [REDACTED] Permission, which had a valid self-build exemption.
- b) Since development under the [REDACTED] Permission has not started, the Appellant should be allowed to apply for a new self-build exemption. Therefore, the CIL Liability in the Notice is wrong.
- c) The Council accepts that demolition was lawfully completed under the [REDACTED] Permission. It is unclear why this demolition is treated as commencement of the [REDACTED] Permission. The description was made part-retrospective only because the Council advised the Appellant to submit the application that way.

- d) Under Regulation 7(2), development commences when material operations begin under the relevant permission. No such operations have occurred for the [REDACTED] Permission. Thus, it has not commenced.
- e) The Council's stance that the [REDACTED] Permission is retrospective is based solely on wording they required. No other works are retrospective. The Appellant should still be able to apply for a self-build exemption, as the scheme is only a minor amendment of the [REDACTED] Permission.
- f) The Planning Officer advised on wording but claims no responsibility for CIL implications. Given the Council's experience with CIL, it is unreasonable to frame an application in a way that creates liability. The Council should exercise discretion and allow a new exemption application.
- g) The current CIL liability and inability to apply for relief result entirely from the Council's own instructions. This outcome contradicts the intent of CIL Regulations for self-builders. The Appellant complied fully with the Regulations and acted in good faith. The Council's position is therefore unreasonable.
- h) Under Regulation 121 of the CIL Regulations, the appointed person may make an order as to the costs of the parties to the appeal and as to the parties by whom such costs are to be paid.
- i) In accordance with this Regulation, the Appellant seeks a full award of costs against the Council in respect of this Appeal. This appeal and the costs incurred stems wholly from how the Council unreasonably told, or demanded/directed, the Appellant to make the [REDACTED] Application, and the Council have thereafter been unreasonable and obstructive in respect of the CIL position forcing the Appellant to submit this appeal against a considerable CIL liability which did not previously arise and would not have arisen had the [REDACTED] Permission only been prospective in its terms (i.e. excluded the works of demolition authorised by the [REDACTED] Permission).
- j) Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. One of the aims of the cost's regime is to encourage local planning authorities to properly (i.e. rationally and reasonably) exercise their development management responsibilities. For the reasons more fully set out by the Appellant (in its Grounds of Appeal but also above) and in all the circumstances, the Appellant invites the Inspector to make a full award of costs against the Council.

Reasoning

Chargeable Development

11. Regulation 9(1) defines the chargeable development as the development for which planning permission is granted.
12. The appellant argues that planning was granted as "retrospective" due to the requirements of the CA but that in reality, the [REDACTED] permission has not commenced and therefore it should not be treated as a retrospective permission. They argue that the [REDACTED] permission is merely an amendment to the [REDACTED] permission.
13. This appeal is in respect of the planning permission referenced [REDACTED] which supersedes the planning application referenced [REDACTED] granted [REDACTED].

14. The liability notice issued on [REDACTED] in the sum of £ [REDACTED] which is the subject of this appeal is in respect of the latter planning permission reference [REDACTED].
15. The appellant has suggested that other than a minor amendment to straighten a wall in the basement, there are no further changes to the planning permission. However, from review of the liability notice in respect of the earlier planning application reference [REDACTED], it would appear that there has been an increase in the development area from a proposed area of [REDACTED] sqm to [REDACTED] sqm. In addition to this, the description of the proposed development has also altered to include, "including felling of preserved yew tree and replacement tree planting and engineering works to southeast corner of the site to create steps and retaining wall and form new vehicle crossover onto [REDACTED]".
16. From the site plan provided, it is shown that the [REDACTED] permission which is the subject of this appeal now forms a larger site which is inclusive of the land to the west of [REDACTED].
17. In the CA's representations, it has been clearly noted that the CA acknowledges the reasons for which a new full planning permission was granted instead of using a Section 73. This would imply the latest planning permission is reflective of a Section 73A.
18. Having reviewed the two planning applications, I have noted that the plans provided in respect of each planning permission have varied. In the latest permission the plan of the basement floor now shows a larger area.
19. It is also my view that within the proposal description the phrase 'part retrospective' is in relation to the demolition which occurred within the original planning permission.
20. As the land to the west was purchased after the [REDACTED] permission, it has led to the submission of a consequential planning permission. However, the [REDACTED] permission does reflect a larger development and does not propose the initial development is to remain identical to the [REDACTED] permission.
21. In my view, as the [REDACTED] planning permission does alter the original development even if only slightly and the fact the council in their representations acknowledge this is not a S73 notice, I conclude the [REDACTED] permission is retrospective.

Commencement Date

22. The appellant has contested that as the development under the [REDACTED] permission has not commenced, the commencement date on the notice is in fact incorrect.
23. The appellant states that that under the [REDACTED] permission, a Form 6 commencement notice was issued to the CA on the [REDACTED] which referenced the commencement date to be [REDACTED]. The appellant has confirmed in their representations that demolition works in respect of the existing dwelling was carried out in [REDACTED].
24. The [REDACTED] permission is a retrospective planning permission and there has been mention by both the appellant and CA that the works under the [REDACTED] permission have lawfully commenced. The CIL Regulations state "7(5) Development for which planning permission is – a) granted under section 73A of TCPA (planning permission for development already carried out) ... is to be treated as commencing on the day planning

permission for that development is granted or modified (as the case may be).” As such, it is correct for the CA to adopt the commencement date of [REDACTED] which is the date the retrospective planning permission was granted.

Self Build Exemption

25. 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.
26. The council accepts that in respect of the [REDACTED] planning application a valid self-build exemption was obtained. However, as there has been a further planning application made which forms part of this appeal and is deemed to be a retrospective application, the self-build exemption is not transferable and cannot be considered as part of this appeal.
27. The decision of whether or not to offer self-build exemption sits with the CA and cannot form part of a Regulation 114 Appeal. I am therefore unable to consider this matter within my decision.

Multiple Liabilities

28. The appellant contests that CIL has been charged twice in respect of the land to the westside. I am unable to comment on the liability notice of [REDACTED] as it does not form part of this appeal.

Award of costs

29. The appellant has requested an award of costs on the grounds that the council has acted unreasonably because of informing the appellant to make a [REDACTED] application. They have also been obstructive in respect of the CIL position forcing the appellant to submit an appeal against the CIL liability which did not previously arise.
30. The CA did not respond to this in the representations.
31. Regulation 121 gives the appointed person authority to make orders as to the costs of the appeal. Guidance on awarding costs states that costs will normally be awarded where the following conditions have been met:
 - a party has made a timely application for an award of costs;
 - the party against whom the award is sought has acted unreasonably; and
 - the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Appointed Person, or part of the expense because of the manner in which a party has behaved in the process.

32. In my opinion, the CA have not acted unreasonably as the advice in respect of the planning application would not have considered CIL liabilities. The council have previously explained that their planning officer would not be responsible on advising on CIL procedures and the council does not provide unsolicited advice on CIL compliance. I believe the appellant should have obtained advice from the available resources ahead of submitting a further planning application as all information around CIL regulation is readily available. I therefore deny the request for an award of costs.

Conclusion

It is my view that the [REDACTED] planning permission was retrospective following the slight amendment of the proposed development under the [REDACTED] permission as such, this matter has been considered correctly and I therefore dismiss this appeal.

[REDACTED] MRICS

Valuation Office
26 March 2026