Appeal Decision

by [redacted] BSc MRICS

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

Valuation Office
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Green Lane
Durham
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e-mail: [redacted]@hmrc.gov.uk

Appeal Ref: 1859401

Planning Permission Ref. [redacted]

Proposal: Erection of a single storey detached dwelling with garage

Location: [redacted]

Decision

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

Reasons

2. I have considered all of the submissions made by [redacted] acting on behalf of her client [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] dated [redacted];

   d) CIL Appeal form dated [redacted], including appendices;

   e) Representations from CA dated [redacted]; and

   f) Appellant comments on CA representations, dated [redacted].

3. Planning permission was originally granted under application no [redacted] on [redacted] ['the [redacted] permission'] for "*erection of a ground floor side extension, conversion and extension of loft with raised ridge height to include front and*

rear gables and dormers to provide habitable use with a balcony to the rear and additional vehicular access via a dropped kerb". The existing bungalow was demolished in [redacted] during implementation of this development, following advice from Building Control that the building was Insafe.

4. Planning permission was subsequently granted under application no [redacted] dated [redacted] [the [redacted] permission] for "*Erection of a single storey detached dwelling with garage".*

5. The CA issued a CIL liability notice on [redacted] in connection to the [redacted] permission in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] square metres at the indexed rate of £[redacted] per square metre.

6. The Appellant requested a review under Regulation 113 on [redacted]. The CA responded on [redacted] confirming the CIL liability notice in the sum of £[redacted].

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

Appeal Grounds

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

    a) The planning permission granted to extend the property in [redacted], subsequently amended in Planning permission [redacted], involved demolishing all but three non-connecting walls of the original building. The fact that this development was exempt from CIL should not prevent demolition credit to be off set against the area of the new building. Demolition credit is available under Regulation 74B.

    b) The CA's calculation of the gross internal floor area (GIA) is erroneous and the total GIA of the new building is [redacted] square metres. The GIA after allowing for the [redacted] square metres of the original building gives a net GIA of [redacted] square metres.

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

    a) The request for abatement under Regulation 74B does not apply.

    b) The CA maintains that the GIA of the new building is [redacted] square metres.

GIA off-set of the demolished bungalow

10. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the *"gross internal area of parts of in-use buildings that are to be demolished prior to completion of the chargeable development"* can be deducted from the GIA 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 Appellant states that all but three non-interconnecting walls of the original bungalow was demolished as part of the original planning permission to extend the property. They argue that demolition was required for the current development to proceed.

14. According to the Building Control inspection by [redacted] and Site Services on [redacted], the existing foundations of the remaining internal walls were unsubstantial and they requested an inspection by a Structural Engineer to justify the adequacy of the existing foundations.

15. The Structural Engineer recommended the use of temporary bracing to support the remaining walls but due to the practical difficulties to achieve adequate support he recommended removal of the walls for safety reasons.

16. The Appellant contends that in accordance with [redacted] ([redacted]) where part of an existing building has been in lawful use for a continuous period of 6 months within the past three years, parts of the building that are demolished can be taken into account and offset against the total area of the new development.

17. The Charging Authority refer to a photo showing that the new property was under construction as of [redacted] and so as at the date when planning was granted for the Chargeable Development, the originally building had been fully demolished.

18. The Charging Authority state there is no evidence to prove that the entirety of the original building required to be demolished for safety reasons prior to obtaining planning permission for the Chargeable Development.

19. In my opinion, the building cannot constitute a "relevant building" under the [redacted] permission. The Appellants suggest that the bungalow was demolished in [redacted] and planning permission was not granted until [redacted]. As it was not situated on the relevant land on the day planning permission was granted, it cannot be offset.

20. The appellants have requested abatement of the CIL charge under Regulation 74B - *'Abatement: implementation of a different planning permission'.* This states:

    "74B.—(1) This regulation applies where—

    a) *a chargeable development has been commenced under a planning permission (A);*
    b) *a different planning permission (B) has been granted for development on all or part of the land on which the chargeable development under A is authorised to be carried out; and*

c) the charging authority receives notice from a person who has assumed liability to pay CIL in relation to B that the chargeable development under A will cease to be carried out and that the chargeable development under B will commence.

(2) Where this regulation applies a person who has assumed liability to pay CIL in relation to B may request that the charging authority credits any CIL paid in relation to A against the amount due in relation to B."

(3) To be valid a request under paragraph (2) must be—
a) made before the chargeable development under B is commenced; and
b) accompanied by proof of the amount of CIL that has already been paid.

[(4) to (11) not copied]

(12) Paragraph (13) applies where a request under paragraph (2) in respect of the amount due in relation to B is made within the period ending three years after the grant of A and that request is granted.

(13) Where this paragraph applies, any parts of buildings which—
a) were demolished under A,
b) were taken into account in reducing the chargeable amount in relation to A through the operation of regulation 40 and Schedule 1,
c) would have been taken into account under regulation 40 and Schedule 1 in relation to B had they not been demolished, and
d) are not otherwise taken into account under regulation 40 and Schedule 1, are to be taken into account under regulation 40 in relation to B as if they are parts of in-use buildings that are to be demolished before the completion of the chargeable development under B (or, if B is a phased permission, in relation to the first phase of B).

21. The Appellant considers the [redacted] permission to be planning permission A (as defined above) and the [redacted] permission to be planning permission B.

22. The Charging Authority state that abatement under CIL Regulation 74B does not apply as the original planning permission was not a chargeable development.

23. The Appellant contends that the Charging Authorities interpretation of CIL Regulation 74B is too narrow as the original development was exempt from CIL as was exempt under Regulation 42.

24. Regulation 74B (13)(a) provides that for the offset to be applied, the building must have been demolished under A. In my opinion, A (the [redacted] permission) did not grant permission for demolition. The permission allowed extensions to an existing building. The demolition that occurred was not in accordance with this permission and therefore the building cannot be offset under Regulation 74B.

GIA

25. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice definition is used. GIA is defined as “the area of a building measured to the internal face of the perimeter walls at each floor level.” The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

26. The Appellant state that the approved plans show the GIA is [redacted] square metres. They have provided unmarked plans with no demonstration of how this area has been reached.

27. The Charging Authority have provided annotated plans showing the floor area of the approved development to be [redacted] square metres.

28. I have fully considered the plans provided by both the CA and the Appellant. In my opinion the CA plans are correct, with the exception of the open fronted porch area, which I have excluded. I am therefore of the opinion that the chargeable area is [redacted] square metres.

29. It appears that there is no dispute between the parties in respect of the applied Chargeable Rate per m² (or to the indexation). I have therefore calculated the chargeable amount based on [redacted] m² at £[redacted]/m².

Decision

30. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine that the CIL charge payable in this case should be £[redacted] ([redacted]).

[redacted]

[redacted] BSC MRICS
Valuation Office
26 March 2025