Appeal Decision

by [redacted] MRICS VR

an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as amended)

Valuation Office (DVS)
Wycliffe House
Green Lane
Durham
DH1 3UW

E-mail: [redacted]@hmrc.gov.uk

Appeal Ref: 1894920

Address: [redacted]

Proposed Development: Conversion of two flats into a single-family dwellinghouse; rear roof extension to main roof slope; roof extension to rear outrigger; installation of three rooflights to front roof slope; single storey side/rear extension; associated alteration to existing rear extension and rear elevation fenestration; and refurbishment of existing rear first floor external roof terrace.

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 the sum of £[redacted] ([redacted]) and hereby dismiss this appeal.

Reasons

Background

1. I have considered all the submissions made by the Appellant, [redacted], of [redacted], and the submissions made by the Collecting Authority (CA), the [redacted].

   In particular, I have considered the information and opinions presented in the following documents:

   a) CIL Appeal form dated [redacted].

   b) CIL Appeal Statement of Case document from Appellant (Grounds of Appeal document), undated document but received in the Valuation Office (VO) on [redacted].

   c) Grant of Conditional Planning Permission [redacted], dated [redacted].

   d) The CIL Liability Notice (ref: [redacted]) dated [redacted].

e) The CA's Regulation 113 Review (undated document) on an e-mail dated [redacted].

f) Various plans of the subject development.

g) The CA's Statement of Case document, dated [redacted].

h) The CA's citation of two previous VO CIL Appeal Decisions, which considered the conversion of two dwellings into a single dwelling house – CIL Appeal Decision Reference 1677478 (published in 2018) and 1740594 (published in 2020).

i) The Appellant's rebuttal statement to the CA's Statement of Case document; undated document but received in the VO on [redacted].

Grounds of Appeal

2. Planning permission was granted for the development on [redacted], under reference [redacted]. The approved planning permission was:

   "Conversion of two flats into a single-family dwellinghouse; rear roof extension to main roof slope; roof extension to rear outrigger; installation of three rooflights to front roof slope; single storey side/rear extension; associated alteration to existing rear extension and rear elevation fenestration; and refurbishment of existing rear first floor external roof terrace."

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 ([redacted] CIL – Residential Rest of [redacted]). The calculations shown in the Liability Notice are as follows:

   [redacted] CIL ([redacted] CIL)

   [redacted] m² @ £[redacted] per m² (Residential Rest of [redacted]) x index [redacted] = £[redacted]

   [redacted] CIL ([redacted] CIL [redacted])

   [redacted] m² @ £[redacted] per m² ([redacted] CIL Band [redacted]) x index [redacted] = £[redacted]

   Total CIL ([redacted] CIL & [redacted] CIL [redacted]) £[redacted]

   Total Development - [redacted] m²
   Existing Use deduction - ([redacted] m²) existing floorspace eligible
   Chargeable Area [redacted] m²

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 subsequently responded, stating that it was of the view that its original decision was correct and should be upheld.

5. On [redacted], the VO received a CIL Appeal made under Regulation 114 (chargeable amount) from the Appellant, contending that the CA's calculation is incorrect and that the CIL charge amount payable should be nil (zero sum).

6. The Appellant's appeal is a disagreement over the constitution of the chargeable area; specifically, the Appellant opines that the chargeable area should be zero, as the Appellant argues that the amalgamation of two existing flats into a single dwellinghouse does not constitute the creation of a "new dwelling" and argues that CIL Regulation 42 (Minor Development Exemption) should apply to the subject development, which would result in no CIL be payable.

7. It would appear that there is no dispute between the parties in respect of the Charging Rate, the offset accommodation (existing use) area of [redacted] m² or the applied indexation and I have not looked into these factors.

Approved Development in Dispute

8. The property subject to this appeal comprises a single fronted two-storey terraced building, situated in [redacted]. The property was originally constructed as a dwellinghouse in the Victoria era, with a bay window to the ground floor front. The dwelling was converted into two, self-contained one bedroom flats, sometime in the 20th century. The development proposal comprises the conversion of the property back into a single dwellinghouse, with the addition of a single storey rear extension and conversion of the attic space into living accommodation.

Decision

9. The primary dispute between the parties relates to their respective different viewpoints on the constitution of the chargeable area. Specifically, the parties have a disagreement in respect of the interpretation of the development as a "new dwelling" and thus its possible exemption from CIL, under the for minor development provisions of Regulation 42.

10. Before I state my decision, I believe it is of benefit to all concerned to first explain the legislation, which underpins this appeal decision:

11. Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "the development for which planning permission is granted".

12. The CIL exemption for minor development is contained in the CIL Regulations Part 6: Exemptions and Reliefs, Regulation 42, which states:

    "42.—(1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

    (2) But paragraph (1) does not apply where the development will comprise one or more dwellings.

    (3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings."

13. The Appellant points to both CIL Regulation 42 and the Government's Community Infrastructure Levy Guidance (Paragraph 048, Reference ID: 25-048-20190901). The Appellant elaborates on Paragraph 048 of the Guidance, which states:

"Minor development, with a gross internal area of less than 100 square metres, is generally exempt from the levy. However, where minor development will result in a <u>new dwelling</u> (or dwellings), it will be liable for the levy..."

[my emphasis is underlined]

14. The Appellant does not consider that the CA's treatment of the subject development as a 'new dwelling' under Regulation 42 and Paragraph 048 is correct; the Appellant does not interpret the amalgamation of the two existing flats into a single dwellinghouse as the creation of a "new dwelling" under CIL.

15. Conversely, the CA considers the development would create 'a new dwelling' and CIL is payable. Firstly, the CA opines that the proposed development would expunge the two existing flats. Secondly, the CA opines that through the amalgamation of the floorspace, which comprises the two separate flats, together with the floorspace of the ground and second floor extensions to the building, would effectively create a new dwellinghouse. The CA considers the new dwellinghouse to comprise a 'new dwelling' for the purposes of calculating the relevant CIL charge.

16. In support of its decision, the CA has cited two previous VO CIL Appeal Decisions which considered the conversion of two dwellings into a single dwelling house – CIL Appeal Decision Reference 1677478 (published in 2018) and 1740594 (published in 2020). The Appellant counters these previous decisions, citing that they are not determinative.

17. In respect of the cited previous VO CIL decisions, I agree with the Appellant that the earlier VO decisions do not create binding precedent. Each CIL Appeal must be assessed on its own facts and merits. Although not determinative, they may be persuasive and informative, where similar issues arise. Having determined Appeal Decision 1740594 myself, I conclude that it had some similar issues to this appeal. However, in arriving at my decision in this appeal, I have attached only minor evidential weight to both these cited appeal decisions.

18. The Appellant points to HMRC's treatment and distinguishment of the construction of new dwellings and the conversion of existing residential accommodation under the provisions of VAT Notice 708. In arriving at my decision, I have attached no weight to this argument whatsoever, due to the well-established approach of tax statutory interpretation. Each tax is governed by its own legislation and statutory code, and concepts used in one tax regime should not automatically be imported into another, unless Parliament has expressly provided for this. The zero-rating of buildings for VAT purposes is a wholly separate tax governed by the Value Added Tax Act 1994 and there are no importation provisions to the CIL Regulations.

19. The Appellant points out that there is no statutory provision and no statutory clarification that the subject planning permission, which creates a single dwellinghouse from two existing dwellings, will necessarily constitute the creation of a "new dwelling" for the purposes of Regulation 42. I do not disagree with the Appellant on this aspect; indeed, the CIL Regulations and the Government's Community Infrastructure Levy Guidance are silent on the definition of a 'new dwelling'. But a common sense, ordinary interpretation should be considered in my view. In the absence of any guidance on the definition of a 'new dwelling' in the CIL Regulations, then I am obliged to consider the ordinary, common sense meaning of the term 'new dwelling', given the facts of the case.

In its primary sense, the word 'new' is defined in the shorter Oxford dictionary as:

"of recent origin; having lately come into existence" or "recently made, built, created, acquired, or discovered."

In my interrogation of the proposed development plans, it is a factual matter that the proposed development:

- will create [redacted] m² of new, additional floorspace with a new extension and conversion of accommodation into the attic space
- will have an additional (new) staircase, which will be created at second floor level
- will have (in the main), a new configuration and a new layout of the internal accommodation
- will have relocated services and additional services at second floor level plus an additional ground floor WC under the stairs
- will have new stainless steel roof terrace balustrading and obscured glazing
- will have new Velux windows
- will have new electrical installations
- required formal planning permission (which clearly indicates that the proposed development goes well beyond the permitted development rights of the Town and Country Planning Act 1990 and Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO))

20. Whilst I concede that it is a question of fact and degree, given the degree and extent of the above alterations (which, in my view, patently changes the character of the existing building and accommodation), I readily conclude that the proposed development constitutes a single "new dwelling" for the purposes of CIL.

In interpreting the actual text of the Regulation 42 legislation, I note from Reg 42(2) that the minor development exemption (that would ordinarily apply, when the gross internal area of new build in a development is less than 100 square metres) does not apply “where the development will comprise one or more dwellings” and there is no mention of the word ‘new’ in Reg 42(2) which precludes the exemption. Given that I have determined that it is a single new dwelling for CIL purposes, the development cannot be considered to fall under the Minor Development Exemption provisions and is thus liable for CIL.

21. Having fully considered the representations made by both parties and all the evidence put forward to me, I determine that the CA has not erred and the CIL calculation in the Liability Notice is correct.

22. 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
20th August 2026