Appeal Decision

by [redacted] BEM MRICS

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

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

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

Appeal Ref: 1893155

Address: [redacted]

Proposed Development: Part retrospective planning application for demolition of the existing building and erection of two (replacement) buildings to provide 10 x residential units with associated amenity space, waste/recycling and cycle stores (follow up to application [redacted]).

Planning Permission details: Granted by [redacted] on [redacted] under Planning Reference [redacted].

Decision

I uphold this Appeal and determine that the Community Infrastructure Levy (CIL) in this case should be a total of £0 (zero).

Background

1. Initially I considered all of the submissions made by [redacted] for and on behalf of [redacted] (the Appellant) and by [redacted], the collecting authority (CA) in respect of this matter. In particular I considered the information and opinions presented in the following documents:-
    a) Planning decision ref [redacted], dated [redacted];
    b) CIL liability notice dated [redacted] (Liability Notice Reference [redacted]);
    c) Planning decision ref [redacted] dated [redacted];

d) Form 1 CIL additional information form relevant to application reference [redacted];
e) CIL levy notice dated [redacted] (no original CIL liability notice relevant to [redacted] was received);
f) Proof of payment in the form of the Appellant's bank statement showing payment of £[redacted] dated [redacted];
g) Regulation 113 review request ([redacted]) and subsequent emails sent to the CA on [redacted] and [redacted];
h) CIL Appeal form dated [redacted], including grounds of appeal and relevant plans and supporting information relating to Planning decision ref [redacted] and [redacted].
i) Representations from CA dated [redacted] including:
    - Copy of CIL liability notice dated [redacted] (liability notice Reference [redacted]);
    - CIL forms 2 & 6 with receipt;
    - CIL charging rate for [redacted];
    - CIL demand notice for [redacted];
    - Statement of account dated [redacted];
    - CIL liability notice for retrospective consent [redacted];
    - Planning decision notice for [redacted];
    - VO CIL Regulation 114 Appeal.
j) Appellant's Final Comments on CA representations dated [redacted].

2. Having reviewed the information initially submitted, I wrote to the CA on [redacted] and [redacted], copying the Appellant and Interested Parties, to seek clarification regarding the source of the gross internal area (GIA) relied upon, together with the supporting documents used in its determination. No response was received. In the absence of this information, I have determined the appeal on the basis of the evidence before me.

Grounds of Appeal

3. Originally an approval was received under [redacted] ("**the Original Permission"**) on the [redacted] for the Demolition of the existing building and erection of two (replacement) buildings to provide 9 x residential units with associated amenity space, waste/recycling and cycle stores (follow up to application [redacted]). The CA issued a CIL liability notice dated [redacted] for £[redacted], which was based on a chargeable development GIA of [redacted] square metres (sqm) as confirmed with the CA's Representation. Payment of £[redacted] was documented as having been received by the CA dated [redacted]. No dispute of GIA was raised at this time from the information provided.

4. The Subject Application ([redacted] – "**the [redacted] Permission**") was a "Part retrospective planning application for demolition of the existing building and erection of two (replacement) buildings to provide 10 x residential units with associated amenity space, waste/recycling and cycle stores (follow up to application [redacted]). This was approved [redacted].

5. The CA issued the liability notice (Liability Notice Reference [redacted]) for £ [redacted] on [redacted] based on [redacted] sqm.

6. On [redacted], the Valuation Office received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability stated by the CA was incorrectly calculated. The Appellant is of the opinion that they have already paid the required CIL under the Original Permission and no additional GIA has been created by the [redacted] permission.

7. The Appellant's grounds of appeal can be summarised as follows:
   a) The payment of £[redacted] was made in respect of the Original Permission based on a chargeable gain GIA of [redacted] sqm. The Appellants consider the CIL was assessed and paid at the time.
   b) The Appellants have not created any additional floorspace in the [redacted] Permission, therefore, no additional CIL is payable.

8. There is no dispute around the charging rate or indexation adopted. The Appellant has questioned the GIA/approach the CA adopted when calculating the CIL liability for the [redacted] Permission.

9. Both parties initially advanced to me evidence in support of their respective viewpoints. I have based my decision on all of the information and representations I have received.

Reasoning

10. The core dispute between the parties relates to whether provisions of Regulation 74B should apply for the [redacted] Planning Permission & the calculation of chargeable gain GIA, etc.

11. As per **Regulation 9(1)** of the CIL Regulations 2010 (as amended) '**the chargeable development is the development for which planning permission is granted'**. In this case the development for which planning permission is granted is application reference [redacted]: 'Part retrospective planning application for demolition of the existing building and erection of two (replacement) buildings to provide 10 x residential units with associated amenity space, waste/recycling and cycle stores (follow up to application [redacted])".

    Regulation 5 of the CIL Regs defines the term planning permission as including "(a) planning permission granted by a local planning authority under section 70, 73 or **73A of TCPA 1990**".

12. The CA in their representations appear to have recalculated the CIL liability adopting abatement of the previous payment of £[redacted] made in respect of the Original Permission. In terms of abatement provisions in the Regulations:

    Abatement: Section 73 Applications
    74A.—(1) This regulation applies where—

    CIL has been paid in respect of a chargeable development;

a new planning permission is later granted in relation to that development under section 73 of Town and Country Planning Act 1990 (TCPA 1990); and

the CA has issued a new or revised liability notice in respect of that development because the chargeable amount has changed.

Abatement: implementation of a different planning permission

74B.—(1) This regulation applies where—
a chargeable development has been commenced under a planning permission (A);

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

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—

made before the chargeable development under B is commenced; and

accompanied by proof of the amount of CIL that has already been paid.

(4) Subject to the following paragraphs of this regulation, the charging authority must grant any valid request made under paragraph (2).

(5) This regulation does not apply where B is a planning permission granted under section 73 of TCPA 1990.

6) Any CIL paid in relation to A can only be credited against the CIL due in relation to B to the extent that the CIL paid in relation to A relates to buildings (“relevant buildings”) that—

have not been completed when the request is made; and

are not taken into account in reducing the chargeable amount in relation to B through the operation of regulation 40 and Schedule 1.

(7) Where—

B is a phased planning permission; and

the amount to be credited against the CIL due in relation to B is greater than the amount due in relation to the first phase of B commenced after a request under this regulation has been granted, the remainder must be credited against the next phase or phases of B until there is no remainder.

(8) Paragraph (9) applies where—

a request under paragraph (2), which is a valid request, is made in respect of the amount due in relation to B;
a relevant building is completed under A after the valid request is made (whether the completion occurs before or after the chargeable development under B commences); and

a reduced amount of CIL is paid in relation to B as a result of the grant of the request under this regulation.

(9) Where this paragraph applies the person who was granted the abatement under this regulation must pay to the CA an amount equal to the amount of CIL paid in relation to that relevant building which was credited against the amount due in relation to B.

(10) For the purposes of this regulation the amount payable under paragraph (9), if paid, is to be treated as CIL paid in relation to B.

(11) Abatement may be granted more than once in relation to a planning permission.

13. For the purposes of this appeal, it is important to recognise that abatement under Regulations 74A **applies only** where a new planning permission granted under **section 73** of the TCPA 1990 results in a revised chargeable amount for a development on which CIL has already been paid. An abatement under Regulation 74B applies to other permissions but a request for abatement must be made before the chargeable development commences. Abatement enables the CIL previously paid under the original permission to be credited against the liability arising from the amended permission, ensuring that a developer is not charged twice for substantially the same development. However, if no request has been made before development commences, abatement **will not** apply to retrospective permissions granted under section 73A, as such permissions relate to development that has already taken place and do not fall within the regulatory framework governing amendment permissions. It does not appear to be disputed by either party that planning application ref [redacted] is a 73A TCPA 1990 planning approval.

14. **Regulation 40** therefore provides that for a s.73A permission, the CA must calculate the amount of CIL payable ("**chargeable amount**") in respect of a chargeable development in accordance with the provisions of CIL Regulations **Paragraph 1 of Schedule 1** in respect of 'standard cases'.

$$\frac{R \times A \times Ip}{Ic}$$

Where:
A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);
IP = the index figure for the calendar year in which planning permission was granted;
And IC = the index figure for the calendar year in which the charging schedule containing rate R took effect.

15. **Schedule 1 (6) of the 2019 Regulations "KR**" allows for the deduction of floorspace of certain existing buildings from the GIA of the chargeable development, to arrive at a net chargeable area upon which the CIL liability is based. The deductible floorspace of buildings that are to be retained includes;

    i. retained parts of 'in-use buildings', and

    ii. **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.**

    "Relevant building" means a building which is situated on the relevant land on the day planning permission first permits the chargeable development.

16. From the information available during the representations stage, the chargeable amount specified in the liability notice dated [redacted], relating to the Original Permission, was calculated on the basis of a net GIA of [redacted] sqm. Both parties appear to agree that the [redacted] Permission has not resulted in any additional GIA being created but instead comprises a reconfiguration of the development previously approved under the Original Permission.

17. Taking account of the available evidence, I am satisfied that a building existed on the site on the date planning permission was granted. Accordingly, Schedule 1(6) of the CIL Regulations 2010 (as amended) and the provisions relating to KR, KRi and KRii have been considered.

18. In my view, the KRi offset does not apply because there is insufficient evidence to demonstrate that the relevant building was in lawful use for the requisite period. However, I consider that KRii does apply. Schedule 1(6) provides for an offset in respect of "other relevant buildings" or retained parts where the intended use following completion of the chargeable development is a use that was capable of being carried on lawfully and permanently, without further planning permission, in that part on the day before planning permission first permitted the chargeable development.

19. On the evidence before me, I am satisfied that, immediately prior to the grant of the [redacted] Permission, there was a relevant building on the site and a residential use could have been carried on lawfully and permanently without further planning permission by virtue of one of the earlier planning permissions. Accordingly, I consider that the requirements of KRii are met.

20. Taking these matters into account, and applying the calculation set out in the CA's representations, if the net chargeable area attributable to the Original Permission was [redacted] sqm and the existing building measured [redacted] sqm (as stated on the Form 1), this indicates that the Original Permission authorised development with a total GIA of [redacted] sqm. By comparison, the liability

notice dated [redacted] records a chargeable GIA of [redacted] sqm for the [redacted] Permission. On this basis, the [redacted] Permission does not appear to have resulted in any increase in GIA beyond that previously authorised and therefore has not created any additional chargeable floorspace for CIL purposes once the KRii deduction is applied.

Decision

21. To conclude, on the basis of the evidence before me and having considered all of the information submitted, I uphold this appeal and conclude the CIL charge should be zero.

[redacted]

[redacted] BEM MRICS
Principal Surveyor
RICS Registered Valuer
Valuation Office

Date: 16 September 2026