Appeal Decision

by [redacted] MRICS FAAV

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: 1847779

Planning Permission Ref. [redacted]

Proposal: Variation of condition 2 of Planning Permission [redacted] to allow amended plan (amendments to design) (retrospective).

(Planning permission [redacted] : Proposed replacement dwelling; detached garage with solar panels on roof and electric charging port; landscaping including raising ground level.)

Location: [redacted]

Decision

The appeal is dismissed.

Reasons

1. I have considered all of the submissions made by [redacted] 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 Permission reference [redacted].

   b) Emails between the appellant and the CA dated [redacted], [redacted] , [redacted], [redacted] and [redacted].

   c) Letter from the CA to the appellant dated [redacted] stating the Section 73 planning application, ref [redacted] for Variation of Conditions to [redacted] has been registered and that the enforcement file had therefore been closed.

   d) Letter dated [redacted] confirming CIL Liability from CA to appellant stating [redacted] sqm GIA with CIL Liability of £[redacted] payable.

e) CIL Liability Notice dated [redacted], ref application [redacted] for Variation of Condition 2 of planning application [redacted]. Liability £[redacted] payable.

f) CA's Regulation 113 Review Response, dated [redacted], following the appellants request to review the chargeable amount (received [redacted]), as stated on the Liability Notice dated [redacted]. Date of Review request not supplied.

g) Plans, showing differences in the built development, from the approved plans which formed Planning Permission [redacted].

h) CIL Regulation 114 Appeal Form dated [redacted].

i) CA's response to appellants appeal under Regulation 114.

2. Planning permission (ref [redacted]) was granted by the [redacted] on [redacted] for: 'Proposed replacement dwelling, detached garage with solar panels on roof and electric car charging port; landscaping including raising ground level.'

3. An email from the CA to the appellant dated [redacted] confirmed aspects of the built development did not accord with the plans granted under planning application [redacted]. These included:

a) The incomplete, west boundary wall was not built as per approved design.
b) A brick retaining wall had been built to the front and side.
c) The pedestrian path to the front door was wider than approved.
d) Brick piers had been built either side of the pedestrian access.
e) The approved plans showed the exterior walls of the garage and dwelling to be brick to DPC level and rendered blockwork above. This had been changed to all brick elevations.
f) The approved windows and rooflights had been changed in size and number.

It was stated by the CA in the email, that revised plans could be submitted and a non-material minor amendment applied for, but the planning authority must be satisfied that the amendment was non material in order to grant the application. If the change was decided to be material then a Variation of Conditions application, Section 73 of the Town and Country Planning Act would have to be applied for.

4. The CA confirmed in an email dated [redacted] to the appellant that the application for a Non Material Amendment could not be processed as the plans submitted were not acceptable. However, as the proposal resulted in changes to the external details that would materially alter the appearance of the building the Development Management Officer considered these revisions should be regularised under a Variation of Condition application (VoC). The proposal would vary Condition 2 of application ref [redacted].

5. A letter from the CA to the appellant dated [redacted] confirmed that Section 73 planning application ref [redacted] for 'variation of condition 2 of planning permission [redacted] to allow amended plan', had been received and the enforcement case was closed.

6. A letter confirming CIL Liability was issued [redacted] stating the CIL Liability for planning application ref [redacted] was sent to the appellant stating the CIL Liability for [redacted] sqm (new dwelling house) was calculated to be [redacted]£.

The letter also informed the appellant that developments consented retrospectively through a Section 73A permission are not able to obtain relief or exemption from the levy (other than minor development exemption), including when the S73A permission in effect replaces a pervious permission which had been subject to a relief of exemption. The previously obtained exemption is not carried over to development consented through a section 73A permission, nor can an exemption in respect of the section 73A permission be obtained.

7. The CA provided further explanation to the appellant that the self-build exemption could not be applied for retrospectively (as per an email of [redacted]).

8. A further email from the CA to the appellant stated the S73A application [redacted] () is a planning application in its own right and is therefore CIL liable. They mention that the CIL Regulations state retrospective applications can not be considered for self-build relief, nor can earlier relief that may have been granted, be applied. They reference case law, Gardiner v Hertsmere Borough Council (2022) EWCA Civ 1162 Court of Appeal.

9. The CIL Liability Notice for application [redacted] was issued to the appellant on [redacted]. Description: Variation of condition 2 of planning permission [redacted] to allow amended plan (amendments to design) (retrospective). Amount payable £[redacted].

10. The appellant requested a Regulation 113 Review on [redacted] . A review response as per Regulation 113 of the CIL Regulations was issued by the CA [redacted]. The review confirmed the Liability Notice to be correct with [redacted] sqm GIA to be liable to CIL.

11. The appellant appealed to the Valuation Office Agency under Regulation 114 on [redacted].

12. The CA issued their representations to the Regulation 114 appeal.

Grounds of Appeal

13. The Appellant's grounds of appeal as set out in their Appeal Form (Regulation 114) are:

    a) The appellant is not a developer and the property has been built for private occupation.

    b) The appellant has adhered to every aspect of the CIL process and has been guided by professionals which includes the planning authorities.

    c) At no point was it made clear that the adopted route for approval of the amended planning permission would give rise to CIL payment.

    d) The appellant considers all changes made to the approved development were minor and 'non-material'.

    e) The option of applying for a 'non material application' was not accepted by the CA due to the submission of inadequate plans and it was this which resulted in him pursuing the VoC planning application route.

CA's Response to Appellants Appeal

14. The CA issued a response to the Regulation 114 appeal submitted by the appellant.

15. The CA provide a background to the case, including planning applications, the CIL Charging Schedule, assumption of liability dated [redacted], correspondence between the appellant and the CA and their response to the Regulation 113 Review he requested.

16. The CA provide workings, showing their calculation of the CIL charge (as per the CIL regulations).

17. Case law, was considered and relied upon by the CA and they include this is in their response; Gardiner v Hertsmere Borough Council 2021. A developer had to apply for retrospective planning consent under Section 73A of the Town and Country Planning Act 1990 due to inadequate foundations (for a planned extension). They also submitted a claim for self-build relief. Planning permission was granted but the Court agreed with the Council that because retrospective consent authorises development from the date it started, CIL's procedural requirements could not be satisfied, and the development was therefore not eligible for relief.

18. It is held by the CA that as application [redacted] was retrospective there was no option for CIL relief granted under [redacted] to be transferred to [redacted], nor could relief be applied for.

Decision

19. In arriving at my decision I have considered the following facts:

    a) The built development at the site address differs from the development approved in planning application [redacted]. There are a number of differences between the approved plans and the built property.

    b) A section 73A application was applied for as a result of the non compliance with the earlier planning permission granted.

    c) The section 73A application was approved [redacted] and thus a new planning application was created, which was CIL Liable.

    d) The CIL charge was based upon the plans attached to planning application [redacted], in accordance with the CIL regulations. A GIA (Gross Internal Area) of [redacted] sqm at a CIL rate of £[redacted]/sqm (Index linked using the RICS CIL Index) to produce a CIL charge of £[redacted].

    e) Self build relief is not something that I can consider in a regulation 114 appeal, however the application of the regulations means that self build exemption/relief can not be applied for in such circumstances, and any relief gained and attached to the earlier planning permission, can not be brought forward (as relief must be granted prior to the commencement of the development).

f) It is not possible to gain the benefit of self-build exemption for retrospective planning permission. Case law; Gardiner v Hertsmere Borough Council & Anor [2022] concerned the interpretation of the self-build exemption from CIL in the context of a retrospective grant of planning permission under section 73A of the Town and Country Planning Act 1990. The Court of Appeal dismissed the appeal and held that the self-build exemption was not available for a retrospective permission.

g) CIL guidance states 'Developments consented retrospectively through a S73A permission are not able to obtain relief or exemption from the levy (other than the minor development exemption) including when the s73A permission in effect replaces a previous permission which had been subject to a relief or exemption.

20. On the basis of the above and acting in accordance with the CIL Regulations, I dismiss the appeal.

[redacted]MRICS FAAV
Valuation Office Agency
10 September 2024