Appeal Decision

by [redacted]

an Appointed Person under the Community Infrastructure Regulations 2010 as Amended

[redacted]

e-mail: [redacted]@voa.gsi.gov.uk.

Appeal Ref: [redacted]

Address : [redacted]

Development: Erection of 2 no. agricultural buildings

Planning permission details: Approval granted by [redacted]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case is correctly assessed in the sum of [redacted]

Reasons

1. I have considered all the submissions made on behalf of the Appellants, [redacted] by [redacted] Chartered Town Planners, and those made by the Collecting Authority, [redacted]

2. The Appellants made an application for planning permission on [redacted] for the erection of 2 no. agricultural buildings at [redacted] Planning permission was granted on [redacted]

3. [redacted], as the Collecting Authority, issued a CIL liability notice on [redacted] in the sum of [redacted] (based on a floor area of [redacted] square metres).

4. Further to a request from the Appellants for a review of the chargeable amount, the Collecting Authority confirmed their original decision/calculation to the Appellants in an e-mail dated [redacted].

5. On [redacted] the Valuation Office Agency received a CIL appeal made by the Appellants under Regulation 114 (chargeable amount), contending that the chargeable amount has been calculated incorrectly and that the CIL charge should be £nil on three main grounds:

A. That the development falls outside the scope of the CIL Regulations 2010, insofar as these are buildings into which people do not normally go.
B. That there is no relationship between the use of the buildings and the funding of publicly funded infrastructure [redacted]
C. That the requirement to pay CIL will undermine the viability of the project.

6. Representations were sought from the Collecting Authority, but nothing further was received.

7. Having fully considered the representations made by the Appellants and the comments made by the Collecting Authority, I would make the following observations:-

Ground A: As the buildings are buildings into which people do not normally go, they are exempt by virtue of Regulation 6(2)(a) of the CIL Regulations 2010

8. The Appellants have provided considerable detail on the proposed operations in the new agricultural buildings. The Appellants operate both [redacted] and the nearby [redacted] within [redacted] The latter comprises [redacted] of pasture land and [redacted] rented on an [redacted] A [redacted] and [redacted] operation is run from the farms, as also are some other non-agricultural activities. In addition, a [redacted] rearing enterprise is run with a [redacted] of [redacted] cows, which are bred to a home-owned bull. The two proposed new agricultural buildings will enable the calves to be retained for 18 months rather than being sold after 3-5 months – the primary use for the new barns will be to house the calves during the winter. One of the two buildings will be designed in a more flexible manner so that it can accommodate calves and/or cattle, as well as providing storage for hay, straw, machinery or equipment.

9. The calves would need to be fed daily in the winter. In addition there would be periodic changes of the straw bedding, together with movements of hay/straw and other equipment into and out of the buildings. All of these activities would involve at least one person in going into the buildings on a daily basis in winter, perhaps less frequently in the summer.

10. Regulation 6 of the CIL regulations 2010 (As amended) states the following:-

6 (1) The following works are not to be treated as development for the purposes of section 208 of PA 2008 (liability)-
(a) anything done by way of, or for the purpose of, the creation of a building of a kind mentioned in paragraph (2);and
(b) the carrying out of any work to, or in respect of, an existing building, if, after the carrying out of that work, it is still a building of a kind mentioned in paragraph (2).

6 (2) The kinds of building mentioned in paragraph (1)(a) and (b) are-
(a) a building into which people do not normally go;
(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

11. I do not accept that either of the two proposed barns can be construed as 'a building into which people do not normally go' (paragraph 6 (2) a). As mentioned in paragraph 10 above, the buildings will certainly be entered daily in winter for the purpose of feeding and checking on the livestock. The parties have emphasised that normally one person (singular) rather than 'people' would enter the buildings. I do not think that anything turns on this distinction. It would be reasonable to assume that the word 'people' could cover either one person or more than one person.

12. Paragraph 6 (2) b covers buildings into which people go intermittently 'for the purpose of inspecting fixed plant or machinery' – I am unaware of any fixed plant or machinery to be installed within the buildings, and it is my view that this paragraph cannot apply to the subject property.

13. The Appellants have also argued that that agricultural buildings designed to be used by people are subject to the requirements of the Building Regulations 1991 – buildings not covered are listed in schedule 3 and include greenhouses and agricultural buildings, subject to certain conditions.

14. Agricultural buildings not covered by the Building Regulations have to be constructed in accordance with British Standard BS5502. The Appellants have further suggested that if BS5502 applies to an agricultural building, it is 'de facto' a building not designed for people and Regulation 6 would apply.

15. I think it unnecessary to import this criteria into deciding eligibility for CIL. The question of whether people 'normally go into the building' can be determined in this case on the basis of the proposed use – there will be a reasonable frequency of people going into the buildings, and they are not therefore buildings encompassed by either Regulation 6 (2) a or b.

16. The buildings will be of portal span construction with walls of concrete block to approximately 1.4m height with boarding above. Metal sheeted access gates would be provided at each end. The design of these buildings does not suggest buildings designed to prevent access except on a very restricted basis. There is no suggestion of any significant security system, such that might be expected on a building with heavily restricted access.

GROUND B: That there is no relationship between the use of the buildings and the funding of publicly funded infrastructure

17. The Charging Schedule of the , which took effect from stated that the intended to charge the Community Infrastructure Levy in in respect of all development (other than those mentioned in Table 2) in each of the Table 2 stated the following development would be charged at a Nil rate:

-Development used wholly or mainly for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner
-Development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education.

18. The proposed use for the subject property does not fall within either of the above two Nil rate categories. Unlike some authorities outside has not granted exemption from CIL to agricultural development within the area, nor has it said that CIL should only be charged where there is a relationship between the use of the buildings and the publicly funded infrastructure. It is correct that a CIL charge should be raised in respect of the subject property.

GROUND C: that the requirement to pay CIL will undermine viability of the project

19. The appellants have suggested that the grant of planning permission will not generate any significant increase in the value of the land, particularly after taking into account the cost of erecting the buildings, which has been estimated at £ excluding services, landscaping and professional fees.

20. There are limited exemptions and reliefs available within the CIL Regulations, principally

- Charitable Relief

- Social Housing Relief
- Relief for exceptional circumstances
- Self-build housing
- Residential annexes or extensions

21. Under Regulation 114 I am responsible for determining whether the chargeable amount has been properly calculated in accordance with Regulation 40, I am not generally responsible for deciding whether or not a particular exemption or relief applies to that chargeable amount. The effect of the CIL charge on the viability of the development is not a matter that has any bearing on the calculation of the charge under Regulation 40. If it is considered that 'relief for exceptional circumstances' might be applicable in this instance then this would be a matter for the Appellants to pursue with the CA.

22. However, I note that Regulations 55-56 relate to the procedure for seeking 'Relief for exceptional circumstances' and Regulations 57-58 relate to the procedure for claiming such relief in [redacted]. Relief for exceptional circumstances is a discretionary relief and [redacted] has stated the following in the Explanatory Notes to the Charging Schedule in respect of claims for relief under Regulations 57 and 58:

'Under Regulations 57 and 58, [redacted] may allow relief for exceptional circumstances (relating specifically to developments in respect of which there is also a section 106 agreement, where sums payable under that agreement are higher than the amount of CIL payable and where [redacted] considers that to charge the CIL would have an unacceptable impact on the economic viability of the development). [redacted] does not intend to make this relief available at this point……..'

23. In conclusion, I do not consider that any of the three grounds raised by the Appellants have validity, and I consider that a charge to CIL is correct.

24. I conclude that the appropriate charge in this case should be based on a deemed net area chargeable of [redacted] square metres at the rates applicable from the published charging schedules;

CIL Liable [redacted] £[redacted]

Total CIL payable = [redacted]

[redacted]
RICS Registered Valuer
Valuation Office Agency
[redacted]