Appeal Decision

by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency
[redacted]

Email: [redacted]@voa.gsi.gov.uk

Appeal Ref: [redacted]

Planning Permission Ref. [redacted] ***granted by*** [redacted]

Location: [redacted]

Development: Conversion of redundant barn to holiday accommodation (C1)
[redacted]

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] (the appellant) and [redacted], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

a. The application for planning permission dated [redacted] together with associated plans, drawings and documents.
b. The Decision Notice issued by [redacted] on [redacted].
c. The undated CIL Liability Notice in the sum of £[redacted].
d. The applicant's request for a Regulation 113 Review of the CIL charge dated [redacted] and follow up dated [redacted].
e. The e-mail from the CA dated [redacted] in response to the appellant's request for a Regulation 113 Review.
f. The revised CIL Liability Notice issued by the CA on [redacted].
g. The applicant's request for a Regulation 113 Review of the revised CIL charge dated [redacted]

h. The further CIL Liability Notice issued by the CA on [redacted].
i. The e-mail from the CA dated [redacted] in response to the appellant's request for a review of the revised CIL charge
j. The CIL Appeal form dated [redacted] submitted by the appellant under Regulation 114, together with the 13 documents attached thereto.
k. The CA's representations to the Regulation 114 Appeal dated [redacted].
l. The appellant's response to the CA's representations dated [redacted].

2. The first Liability Notice was issued by the CA in the sum of £[redacted] based upon a chargeable area of [redacted] square metres (sq m) being the entire floorspace of the development, and a rate of £[redacted] per sq m (indexed). The second and third Liability Notices were issued in the sum of £[redacted] based on a chargeable area of [redacted] sq m. It is the second liability notice that is the subject of this appeal.

3. In calculating the reduced chargeable area of [redacted] sq m the CA have only included parts of the building proposed to be used by the owners as their home and have excluded the areas purely allocated to guests. The explanation for this change is given in the CA's email dated [redacted] where the officer stated "Guest accommodation/use I have concluded that the permission given for C1 usage for the holiday accommodation falls outside of the parameter of a dwelling with C3 use and therefore in line with our CIL charging schedule, would be charged at a zero rate and there would therefore be no liability for guest accommodation. However, the [redacted] is clearly within the parameters of a dwelling and should be charged at a rate of £[redacted] per sq m."

4. Within their representations to this CIL appeal the CA have concluded that on a further review of their calculation this reduced area was incorrect and should have included the ground floor utility/shower/study/WC and hall which results in a chargeable area of [redacted] sq m and a liability of £[redacted], but no further liability notice has been issued whilst the CA await the result of the appeal.

5. The appellant is of the opinion that the CIL charge should be £[redacted] based on a net chargeable area of [redacted] sq m at a rate of £[redacted] per sq m (indexed). The appellant has calculated the area of [redacted] sq m by deducting the area of the [redacted] that he claims were in continuous use for a period of at least 6 months within the 3 years preceding the grant of planning permission from the chargeable area of the proposed development as calculated by the CA.

6. The grounds of the appeal are essentially that the ground and mezzanine floors of the barn have been used by the appellant for storage of [redacted] since [redacted] and this use has been both lawful and continuous and hence these areas should be deducted from the area of the proposed development within the net chargeable area calculation.

7. Therefore, both the CA and the appellant are excluding or deducting certain areas from the area of the proposed development within their calculations of net chargeable area and this is the subject of the appeal.

8. The first issue is the exclusion of guest accommodation. [redacted] Charging Schedule stipulates a CIL charge for 'residential development' of £[redacted] per sq m for Charging Zone 5 (within which the subject development lies). The charging schedule stipulates different rates for other Charging Zones and for retail development but for all other uses or development the CIL rate is stated as being £[redacted]. The CA have applied the residential rate of £[redacted] purely to the area of the ancillary owner's accommodation and have treated the guest accommodation as being within Use Class C1 and as such classified as 'other development or use' and subject to a rate of £[redacted].

9. In deciding this appeal, as the Charging Schedule refers to 'residential development' being liable to a CIL charge, I consider that the CIL charges for the various Charging Zones therefore apply to any development that can reasonably be described as 'residential'. In the absence of a definition of 'residential' in the Charging Schedule I consider it is reasonable to have regard to the dictionary definition which is 'designed for people to live in'. Therefore, I do not consider that 'residential' should be restricted to development falling within Use Class C3. The permitted development is essentially designed for people to live in and provides the facilities required for day to day private domestic use. There is nothing in the Charging Schedule to suggest that there is any requirement for any development to be to be occupied as, or given permission to be occupied as, a permanent home before it can be described as 'residential'.

10. Therefore, notwithstanding that the proposed development does not have a Use Class C3 permission and is stipulated to be for conversion to 'holiday accommodation (C1) [redacted], I consider that the chargeable development in its entirety is still reasonably described as 'residential', as specified within the Charging Schedule, and a CIL charge based on the residential rate for the relevant Charging Zone of £[redacted] per sq m is applicable to the entire development as proposed.

11. The second issue is the calculation of the net chargeable area, and in particular what, if any, floorspace should be deducted from the total GIA of the proposed development in order to calculate the net chargeable area. Regulation 40(7) of the CIL regulations 2010 (as amended) provides that the net chargeable area of the proposed development should be calculated based upon a formula which is essentially the GIA of the proposed development **less** retained parts of in-use buildings. An 'in-use building' is defined by regulation 40(11) to mean a building which is a relevant building (a building which is situated on the relevant land on the day planning permission first permits development) and 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. The CA has not made any deduction in respect of 'in-use' buildings and notes in its representations that the description of the development approved states '[redacted]....' The CA states that the last lawful use of the [redacted] Barn was for [redacted] and notwithstanding that owners may have stored items within the disused barn, the CA does not consider that the barn has been in lawful use for a continuous period of 6 months within three years preceding the grant of planning permission. It also refers to the planning history of the site as set out in the officer report for the decision which refers to several planning applications describing the barn as 'redundant'. The CA confirms that the Council's Conservation Officer visited the site in [redacted] and observed the barn and its contents to be shown in the photographs submitted by the appellant.

13. The appellant confirms that he has continuously used the barn as a store for [redacted] equipment, [redacted] equipment and [redacted] in connection with his [redacted] since [redacted], shortly after he purchased the property. He has provided a list of equipment stored at the property and photographs of the interior of the barn and stored equipment with handwritten annotation dating them from [redacted] and [redacted].

14. Since there are no historic planning permissions in relation to the use of the barn the appellant has made investigations as to its historic use in support of his contention that the use as storage is lawful, notwithstanding that the barn has apparently been redundant for [redacted] since the [redacted]'s. The appellant has detailed his enquiries of local residents and in particularly a [redacted] was a [redacted] of the farm and barn from the [redacted] until [redacted] and who [redacted] on the farm until [redacted]. From these enquiries it would appear that the barn and adjacent garage/store has been used for storage even prior to the [redacted]'s when the then [redacted] removed the floors and dividing

wall to accommodate farm equipment until [redacted] when the property was purchased by the appellant and the appellant himself has confirmed a continued storage use since then.

15. The appellant therefore considers that the barns and garage have a lawful use as storage and have been used as such by himself for the period necessary to qualify as an 'in-use' building for CIL purposes and has therefore calculated a net chargeable area by fully off setting the area of the ground floor of the barn and garage and adopting the area of the proposed first floor at [redacted] sq m (as calculated by the CA in their e-mail of [redacted]) and then deducting [redacted] sq m for the [redacted]. This gives a net chargeable area of [redacted] sq m.

16. In deciding this appeal I have considered all of the submitted documentation and representations of both parties. The CA does not appear to dispute that the barn has been used as storage by the appellant for the relevant qualifying period but rather that this use was not a lawful one since the last lawful use was for [redacted] and the barn was therefore redundant. For a change of use to storage to have become lawful, the buildings would have had to have been in such use for at least 10 years. Whether or not the buildings were in use is a question of fact, to be determined by and based upon the evidence and in this particular case I consider there is evidence of the use of the buildings as storage for a period of at least 10 years, albeit there is some question as to whether the storage use prior to [redacted] was agricultural related. On the balance of evidence I consider that it is correct to deduct the floorspace of the existing barn and garage within the calculation of the chargeable area on the basis that the appellant has detailed his own use of the property for the relevant period and the use as storage appears to be an established and lawful one. The description of '[redacted] does not preclude it having a use as storage despite it being redundant from its original agricultural purpose.

17. The CA calculated the GIA of the proposed development to be [redacted] sq m. The applicants have stated in their planning application that the the GIA of the existing building is [redacted] sq m and the GIA of the proposed development is [redacted] sq m. Due to this discrepancy I have scaled the plans submitted with the planning application and have found the GIA of the proposed development to be very close to the area as calculated by the CA and so I have adopted [redacted] sq m. I have scaled the existing barn ([redacted]) and garage plans and calculated a GIA of [redacted] sq m.

18. Based upon this I have calculated a CIL charge as follows:

Proposed GIA (Total)	[redacted] sq m
Less Existing GIA	[redacted] sq m
Net CIL Chargeable area	[redacted] sq m

CIL charge: [redacted] sq m x £[redacted] x ([redacted]/[redacted]) (indexation) = £[redacted] sq m

19. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I therefore confirm a reduced CIL charge of £[redacted].

[redacted]
RICS Registered Valuer
District Valuer
[redacted]