

Appeal Decision

by [REDACTED] BA (Hons) MRICS

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

[REDACTED]

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

Appeal Ref: [REDACTED]

Address of property: [REDACTED]

Development: Demolition of existing outbuilding and erection of a replacement building to be used for 2 holiday lets and one separate dwelling at [REDACTED].

Planning permission details: [REDACTED]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in respect of the above development should be £ [REDACTED] ([REDACTED] and [REDACTED]).

Reasons

1. I have considered all the submissions made by [REDACTED] (the appellant) and I have also considered the representations made by the Collecting Authority (CA), [REDACTED]. In particular, I have considered the information and opinions presented in the following documents:-

- (a) Planning permission decision letter dated [REDACTED].
- (b) The CA's Liability Notice dated [REDACTED].
- (c) The CA's Decision Notice on review of CIL chargeable amount dated [REDACTED].
- (d) Completed CIL Appeal form dated [REDACTED] (with covering letter containing the Grounds of Appeal).
- (e) Additional supporting documents submitted with the CIL Appeal:-
 - (i) Plans including site plans, floor plans, design and access statement, block plan, location plan, as existing plans, proposed elevations, floor plans and section plans.
 - (ii) Photograph of property in use
 - (iii) Planning application
- (f) The CA's representations dated [REDACTED] with the following supporting documents

- (i) Plan
- (ii) CIL additional information form
- (iii) Desktop study document

(g) The appellant provided further comments in response via email on [REDACTED] which included new information, a Certificate of Lawful Development or Use (proposed)

(h) the CA's representations in response to the new information were received on [REDACTED]

2. Planning permission was granted on [REDACTED] by [REDACTED] for the demolition of existing outbuilding and erection of a replacement building to be used for 2 holiday lets and one separate dwelling.

3. On [REDACTED] the CA issued a Regulation 65 Liability Notice [REDACTED] (reference number) in the sum of £[REDACTED] based on net additional floor space of [REDACTED] square metres (sq m) as follows:-

[REDACTED] m2 x rate of £[REDACTED] x index of [REDACTED]

4. The appellant requested a Review of the calculation of the chargeable amount under Regulation 113 on [REDACTED].

5. The CA issued their decision notice on the review on [REDACTED] confirming the figure in the Liability Notice.

6. On [REDACTED] the parties submitted a CIL Appeal under Regulation 114 (chargeable amount) stating that the chargeable amount should be £[REDACTED].

7. The grounds of the appeal can be summarised as follows:-

The grounds of appeal were set out in a document attached to the appeal form. They were two main areas of appeal:

- a. Area in use of existing building to be demolished.
- b. The calculation of areas for the proposed development in accordance with the planning permission.

8. The CA submitted representations on [REDACTED] which can be summarised as follows:-

That the existing lawful use of the building was agricultural and it hadn't been used for agricultural purposes since [REDACTED]. In fact, the building was used for equestrian and storage of building materials. As such, the test as to whether a building is an in-use building for CIL purposes requires the building, or a part of the building, to have 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 was failed. In addition, with regard to the area of the proposed development, in accordance with the RICS Code of Measuring Practice, the inclusion of limited head height areas was correct in accordance with the definition of Gross Internal Area and as such the calculation should remain unchanged.

9. The appellant provided further information alongside their comments on [REDACTED].

This was a Certificate of Lawful Development or Use (proposed) dated [REDACTED] confirming that planning permission for conversion of an agricultural building into [REDACTED] holiday let units with associated access was implemented.

Alongside this information, the appellant reiterated his view that part of the area of the existing building should be taken into consideration when calculating the CIL charge. The point on the other issue in the appeal, the limited headroom areas, was stated to be conceded.

10. The CA was invited to make further comments on the new information. In their response of [REDACTED] they stated that the provision of the certificate of lawfulness could be construed as new evidence and therefore was not in the spirit of regulation 120(4). In addition, they stated that even if the lawful use of the building in planning terms is holiday lets as a result of the aforementioned certificate being granted (and they do not agree it necessarily is), it does not mean that the building is being used for its lawful purpose. Regardless of if the lawful use is agricultural or as holiday lets, the building was not actually in use for either lawful purpose.

11. Having fully considered the representations made by the appellant and the CA, I would make the following observations regarding the grounds of the appeal:-

- i) CIL is calculated by multiplying the net increase in the floor space of a development by the CIL rate set out in the charging schedule (plus indexation) with a credit given for existing buildings so as to reduce the overall liability. The credit applies to the areas of 'in-use buildings' that are to be demolished or retained. An 'in use building' is defined as a building which contains a part of an existing building that has been in lawful use for a continuous period of 6 months within the past three years before the grant of the planning permission. This means the area of development chargeable to CIL may be reduced by the gross internal area of the existing building.
- ii) In order for the gross internal area (GIA) of an existing building to be demolished to be deducted from the GIA of a proposed new building, the existing building has to be a "relevant building" and "in use" under Regulation 40 of the CIL Regulations 2010 (as amended). A "relevant building" is defined as a "building which is situated on the relevant land on the day planning permission first permits the chargeable development". "In-use" means a building which is relevant building 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".
- iii) Whether buildings are in use is a matter of fact and degree. The word document attached to the appeal form states that prior to the appellant's purchase, the buildings were used to store items including feed bins, fencing materials, domestic items and roof tiles. Following the purchase, the appellant continued to utilise the buildings for equine purposes and for storage of roofing materials. It is acknowledged by the appellant that part of the building was not in any use due to its condition.
- iv) In addition, it is understood that the buildings to be demolished have a Certificate of Lawfulness ([REDACTED]). The CA's comments suggest that the certificate was issued to the previous owners of the property due to partially implemented building works. However, the buildings were used by the appellant as described above and not for holiday let purposes in accordance with their certificate of lawfulness stated use. This is proven by the photographs submitted alongside the

CIL appeal form. In addition, the buildings were no longer agricultural. Part of the building was in no use at all as acknowledged by the appellant.

- v) Regulation 40(7) in effect allows the deduction of parts of 'in-use buildings' that are to be demolished before completion of the chargeable development. Regulation 40(11) defines 'in-use building' as a relevant building that has been in 'lawful use' for the required period. I must therefore consider if the buildings are both in use and in lawful use. The case of R (Hourhope Ltd) v Shropshire Council [2015] related to a disputed CIL liability due on a planning permission to demolish a pub and erect residential units and the application of the demolition deductions that are set out in the Community Infrastructure Levy Regulations 2010 (as amended). The case provides a useful clarification of the terms 'in lawful use' and 'in-use buildings' in relation to regulation 40(7) of the CIL Regulations 2010. The Court rejected the developer's argument and held that for a building to be 'in lawful use' and an 'in-use building', in order to apply the CIL credit, requires the building to actually be used for its lawful purpose. It is not sufficient that the building has a lawful use to which it could be put.
- vi) Relating this information to the subject development, it appears that the building in question is used for general storage. The degree and intensity / frequency of use is unknown. It is not however used in accordance with the certificate of lawfulness as holiday let accommodation. Nor is it used for the previous lawful agricultural use.
- vii) As a result, no CIL credit in accordance with regulation 40 for demolished buildings would be appropriate in this case.
- viii) The appeal also queries the 'useable floor space' of the proposed building. In the appellant's email of [REDACTED] to this office the appellant states "I concede on my point of asking that floor space below 1m is not included in the calculation as the charging authority has recalculated the floor space in alignment with the RICS Code of Measuring Practice and I assume you will concur with their calculation". The new RICS International Property Measurement Standards came into effect on 1st May 2018. IPMS Residential (internal) does not exclude areas under 1.5 m useable head height. Therefore the area appears to be correct.

12. My decision is as follows:-

- i) Based on the facts of this case and the evidence before me, I conclude that that the appropriate charge in this case should be based on a net additional area of [REDACTED] sq m.
- ii) Based on the facts of this case and the evidence before me, no credit should be given for the existing building that would reduce the CIL charge in the Liability Notice dated [REDACTED].
- iii) I therefore determine that the chargeable amount should be £ [REDACTED].

[REDACTED] MRICS
RICS Registered Valuer
Valuation Office Agency
Date – [REDACTED]