Appeal Decision

by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency (SVT)
[redacted]

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

Appeal Ref: [redacted]

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

Location: [redacted]

Development: Application [redacted] ***of outbuildings/barns with guest accommodation, stable*** [redacted], [redacted] ***flat, and*** [redacted] ***area.***

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] of [redacted] on behalf of [redacted] (the Appellant) and by [redacted], the Collecting Authority (CA).

2. Planning permission for the above development was granted by [redacted] on [redacted].

3. It is understood that prior to the grant of the above mentioned planning permission recent planning history on the site was as follows:-

[redacted] - Erection of replacement dwelling house, together with [redacted] garage, following demolition of existing farmhouse and [redacted]. outbuildings/farm structures.

[redacted] - Amendment to design of replacement dwelling and garages approved under and new proposal for access from [redacted].

[redacted] - Erection of replacement dwelling and conversion of farm outbuildings. Amendment to approved application [redacted].

[redacted] - Non-material amendment for a basement. Plan No [redacted]

[redacted] - Non-material amendment for changes to windows and materials and deletion of rear bay.

[redacted] - Application to vary Condition No. 14 of approved [redacted]

[redacted] - Variation of condition 14 of approved planning permission [redacted].

[redacted] - Application to [redacted] outbuildings/barns with guest accommodation, [redacted]

[redacted] - Retrospective application for variation of condition 14 of approved planning permission [redacted] for the variation of condition 14 of approved planning permission [redacted] for the erection of a replacement dwelling and conversion of farm outbuildings to allow the addition of balconies and changes to materials in accordance with drawings [redacted], to allow extensions to the side elevations.

4. Following grant of planning permission [redacted] the CA issued a CIL Liability Notice (reference [redacted]) on [redacted]. The CIL charge is based on a chargeable area of [redacted] square metres (sq m) at a rate of £[redacted] per sq m plus indexation giving a total liability of £[redacted] plus surcharges.

5. On [redacted] the appellant contacted the CA to request a review of the CIL charge.

6. On [redacted] the CA completed the review of the CIL charge and concluded that the chargeable amount stated on the Liability Notice had been correctly calculated.

7. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 of the CIL Regulations 2010 (as amended) (a chargeable amount appeal).

8. The appellant contends that the CIL Charge should be nil as the barns were constructed prior to the implementation of the CIL Charging Schedule and prior to the date of planning permission [redacted].

9. The CA maintains that their calculation of the chargeable amount is correct and explains that planning permission [redacted] was required as a retrospective planning application under section 73A of the Town and Country Planning Act 1990 (TCPA) to regularise development that was commenced on [redacted] pursuant to planning permission [redacted] but was not built in accordance with the approved plans. The retrospective permission was required since an outbuilding had been demolished and rebuilt when the previous planning permission allowed the outbuilding to be converted.

10. Within its representations the CA explain that the original planning permission ([redacted]) was granted prior to the local Charging Schedule implementation and hence no CIL was originally levied. The subsequent retrospective planning application ([redacted]) required to regularise the unauthorised development was granted on [redacted] and, under Regulation 7(5)(a) of the CIL Regulations, development is deemed to have commenced on the same date. The date of the retrospective permission is after the CIL Charging Schedule which was brought into effect on [redacted] and the development is therefore liable to CIL.

11. The CA further explain that a CIL liability notice and demand notice was issued in accordance with Regulation 7(5)(a). Self-build relief was not granted in accordance with Regulation 54B(3) since the development had commenced. The floor space of the previously existing outbuilding was not deducted within the calculation since it had been demolished prior to the relevant planning permission and the floor space of the re-built outbuilding was not deducted as a 'retained part' since on the day before the retrospective application, the accommodation, did not have a use that could be carried on lawfully since the development had not been built in accordance with the approved plans. Therefore the floor area of the existing building, as a whole or in part, does not qualify as deductible floorspace.

12. The CIL calculation was based upon the following formula set out in Regulation 40 of the CIL Regulations 2010 as amended:

$$\frac{R \times A \times I_p}{I_c}$$

The figures used resulting in a liability of £[redacted] were:

Rate: £[redacted]
Area: [redacted] sq m
Index (Ip): [redacted]
Index (Ic): [redacted]

13. The Council implemented its CIL Charging Schedule on [redacted] and all planning permissions granted on or after that date are potentially liable to a CIL charge. It does not appear to be in dispute that the planning permission giving rise to the CIL charge is the result of a retrospective application (ref: [redacted]) made under S73A of the TCPA.

14. Regulation 9 of the CIL Regulations 2010 states that chargeable development means "the development for which planning permission is granted". The CIL liability herein under appeal therefore relates to the development allowed by the planning permission [redacted] which is for the replacement of outbuildings/barns with guest accommodation, stable blocks, grooms flat, and exercise area.

15. Regulation 40(7) of the CIL Regulations allows for the deduction of floorspace of buildings that are to be demolished, but in order to qualify the building must be a 'relevant building' which means a building which is situated on the relevant land on the day of the planning permission. The appellant considers that the floor area of the original barns ([redacted] sq m) which were demolished should be deducted and hence there should be a nil charge. However the original barns had been demolished by the date of the retrospective application, [redacted], and hence they do not qualify as a deduction.

16. Regulation 40(7) also allows for the deduction of floorspace of certain existing buildings from the gross internal area of the chargeable development to arrive at a net chargeable area upon which the CIL liability is based. Deductible floorspace in relevant buildings includes "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".

17. On the day before the retrospective application, the re-built accommodation did not have a use that could be carried on lawfully since the building had not been built in accordance with the [redacted] approved plans; hence the requirement for the retrospective consent for its erection. The accommodation does not therefore qualify as deductible floor space. The appellant considers that at the very least the western section should be deducted as a retained part since the [redacted] permission allowed for an elevation to be rebuilt. However this was still within the remit of the original conversion and subsequently it has transpired that all elevations and the roof have been replaced within the western section which was not in accordance with the approved plans and I therefore do not consider that this area should be deducted.

18. The gross internal area of the development as built is stated by both parties as being [redacted] sq m. There would appear to be no dispute in the calculation of this area.

19. The CIL charge has been calculated at a rate of £[redacted]/sq m and neither this rate nor the indexation rate appears to be in dispute.

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

[redacted] BSc(Hons) MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]