Appeal Decision

by [redacted] MRICS

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

Valuation Office Agency - DVS
[redacted]

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

Appeal Ref: [redacted]

Planning Permission Reference: [redacted]

Location: [redacted]

Development: Full planning consent for the conversion of traditional farm buildings to five dwelling houses.

Decision

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

Reasons

1. I have considered all the submissions made by [redacted] (the Appellant) and [redacted] as 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 Application Decision Notice ref [redacted] issued by the CA on [redacted].
    b. CIL Liability Notice [redacted] issued on [redacted] by the CA at £[redacted] ([redacted]) CIL Liability.
    c. The CAs Regulation 113 Review response letter dated [redacted] reference [redacted].
    d. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
    e. The CA's representations to the Regulation 114 Appeal received on [redacted].

2. A Planning Application reference [redacted] for the *"Conversion of traditional farm barns to 5 no residential dwellings"* was made by the Appellant on [redacted] and approved by the CA on [redacted].

3. A CIL Liability Notice reference [redacted] was issued by the CA on [redacted] at £[redacted] ([redacted]) based on a chargeable area of [redacted] m2 Gross Internal Area (GIA) with no deduction for existing in use buildings.

4. This CIL liability was calculated by the CA as follows:-

   Total Development GIA [redacted] *m2*
   X £[redacted] */m2 @ Index* [redacted]
   = £[redacted] *CIL Charge*

5. The Appellant requested a Regulation 113 Review of the CIL calculation, with the CA's response received on [redacted] advising that under Regulation 40 the three year lawful in-use period runs from [redacted] to [redacted]. Their conclusion was that evidence submitted by the Appellant was not sufficient to prove that an active and sustained agricultural use is made of the buildings within the meaning of in-use building in the CIL regulations and by virtue of Regulation 40(9) would lead them to conclude that the buildings cannot be considered an in-use building. The CIL charge as previously calculated at £[redacted] was therefore confirmed.

6. On [redacted] the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount).

7. Evidence submitted by the Appellant in connection with this appeal as evidence to prove the buildings were in lawful in-use buildings comprises:-

   i - Statement from [redacted] dated [redacted] along with a signed Affidavit dated [redacted] both confirming he has undertaken contracting work at the farm on numerous occasions during the past ten years. He confirms during that time all the buildings have been in continuous use, where a number of farming activities have been undertaken.

   ii - Email string for grain covering discussions between [redacted] and [redacted] regarding storage of oat grain and the farm machinery to be used in connection with the transportation, movement and storage of 30 tons of oat grain along with an invoice for this dated [redacted].

   iii - Farmers Weekly Article printed on [redacted] highlighting how [redacted] is still working on the farm aged 86.

   iv - Affidavit dated [redacted] signed by [redacted] confirming the buildings remained in "full agricultural use throughout the reference period [redacted] to [redacted].

   v - Receipts dated [redacted], [redacted] and [redacted] for purchase of woodchip to feed a biomass boiler at the site from [redacted].

8. Disagreement surrounding the correct GIA to apply within the CIL Liability calculation has arisen due to the effect of Regulation 40(7) of the CIL Regulations 2010 (as amended), which provides for the deduction or "off-set" of the GIA of existing in-use buildings from the GIA of the total development in calculating the CIL charge.

9. Regulation 40(11) provides that an "in-use building" means a building which 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.

10. Regulation 40(9) states that *"where a CA does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building"* and Regulation 40(10) states that *"where a CA does not have sufficient information, or information of a sufficient quality, to enable it to establish – a) whether part of a building falls within a description in the relevant definition or b) the GIA of any part of a building falling within such a description, it may deem the GIA of the part in question to be zero".*

11. The Appellant believes they have demonstrated through the evidence provided along with the appeal that, in accordance with Regulation 40(11), the buildings in question were lawful in-use buildings and their total GIA should thus be offset against the total GIA of the proposed development in calculating the CIL Charge.

12. The CA, in their representations submitted on [redacted], have considered the matter again and reviewed the fresh information provided by the Appellant as part of the CIL Appeal process (as listed above), and now comment *"in view of the evidence now presented and the balance of probabilities, it would be reasonable to take into account the existing floor space as a deduction in the calculation of CIL liability with a resulting CIL charge of £[redacted]"*.

13. The information the Appellant has provided as part of their appeal submission covers the three year lawful in-use period under Regulation 40(11) that runs in this particular case from [redacted] to [redacted]. It is apparent from this information that farming operations have continued to take place from these buildings during that time and the CA are in agreement with this, and therefore Regulation 40(11) is satisfied in that these buildings with a total GIA of [redacted] m2 should thus be offset against the total GIA of the proposed development in calculating the CIL Charge.

14. It is noted that within the CAs CIL Liability Notice reference [redacted] dated [redacted] the Chargeable Area is stated as being [redacted] m2. The Appellant submitted a form entitled *"Community Infrastructure Levy (CIL) - Determining whether a Development may be CIL Liable"* on [redacted] stating the proposed new floor space would total [redacted] m2 GIA.

15. The CA have commented that "whilst there is some additional first floor space in *Unit A [*[redacted]*]*, it is noted that some of *Unit D [*[redacted]*]* is to be demolished to provide for a car parking space. This would off-set the additional floor space."

16. The only plans submitted in connection with this appeal are the documents provided by the Appellant titled *"Proposed Site Plan"* by [redacted]. reference Drawing No. [redacted] dated [redacted] that lists the internal floor areas for each building totalling [redacted] m2 GIA and the plan titled *"Existing Site Plan Showing Access"* by [redacted]. reference Drawing No. [redacted] dated [redacted] with no building areas stated.

17. It is therefore unclear as to where the higher GIA of [redacted] m2 for the proposed development comes from, and as the CA themselves, who presumably have access to a complete set of the plans and other documents in connection with the scheme, have concluded that *it "would be reasonable to take into account the existing floor space as a deduction in the calculation of CIL liability with a resulting CIL charge of £*[redacted]*"* the

only way to do so is to utilise the same [redacted] m2 GIA for both the proposed development and the existing in-use GIA in calculating CIL:-

Total Development GIA [redacted] *m2*
Less
GIA of existing in-use buildings [redacted] *m2*
= Chargeable GIA [redacted] *m2 (* [redacted] *)*
X £[redacted] */m2 @ Index* [redacted] *= £*[redacted] *(*[redacted] *) CIL Charge*

18. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I therefore determine a CIL charge of £[redacted] ([redacted]) to be appropriate.

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
[redacted]