# Appeal Decision

## by [redacted] BSc(Hons) MRICS

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

Valuation Office Agency (DVS)
[redacted]

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

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**Appeal Ref:** [redacted]

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

**Location:** [redacted]

**Development: Retention of storage barn and stables, and conversion to holiday accommodation**

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### Decision

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

### Reasons

1. I have considered all the submissions made by [redacted] and his representative [redacted] of [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 Decision Notice issued by [redacted] on [redacted].
b. The CIL Liability Notice dated [redacted].
c. The applicant's request for a Regulation 113 Review of the CIL charge dated [redacted].
d. The e-mail and response from the CA issued on [redacted] in response to the appellant's request for a Regulation 113 Review.
e. The CIL Appeal form dated [redacted] submitted by the appellant under Regulation 114, together with the explanatory letter of the same date and all supporting documents and plans attached thereto.
f. The CA's representations to appeal submitted in an email dated [redacted].
g. The appellant's response to the CA's representations dated [redacted].

2. A Liability Notice in respect of the development was issued by the CA on [redacted] in the sum of £[redacted] based upon a chargeable area of [redacted] square metres (sq m), being the entire floorspace of the development without deductions, and a rate of £[redacted] per sq m (indexed).

3. 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 net increase in area as being [redacted] sq m based on additional development of [redacted] m in length by [redacted] m.

4. The grounds of the appeal are that the existing floor area should be deducted within the calculation of the CIL charge on the basis that the original buildings were in continuous lawful use for a period of at least 6 months within the 3 years preceding the grant of planning permission.

5. In relation to this argument the appellant notes:

i) The buildings were constructed consistent in size with an earlier permission in [redacted].

ii) Their use has been constant since their construction and in line with the granted permission, for a period of greater than 3 years.

iii) The current permission ([redacted]) granting retention of the existing buildings, including the minor design deviation from the original consent, retrospectively formalises the prior 'lawful use'.

6. As evidence in verification of the actual use the appellant has submitted a statement obtained from the previous owner confirming that the use of the buildings was in line with the original permission during the required period.

7. The appellant is of the opinion that the buildings were built consistent in size with the earlier permission, however he does acknowledge that there were a minor design deviation in their construction in relation to roof pitch, height and building orientation which required the subject permission for retention of the existing buildings. The appellant argues that this retrospectively formalises the prior 'lawful use'.

8. In addition, the appellant also asserts another argument with regards to the appealed CIL liability being detrimental to the deliverability and viability of the development.

9. The CA has submitted plans showing that the gross internal area of the development, to include the existing buildings, is [redacted] sq m. The CA has not made any deduction in respect of 'in-use' buildings and notes in its representations that the existing buildings were not built in accordance with approved plans and are therefore not considered to have been in lawful use. The CA is of the opinion that the existing buildings cannot be used as 'set off', therefore the net chargeable area remains as [redacted] sq m resulting in a CIL liability of £[redacted]. The CA has made reference to a previous CIL appeal decision in support of this view.

10. In deciding this appeal I have considered all of the submitted documentation and representations of both parties. This appeal concerns the calculation of the net chargeable area, and in particular if any floorspace should be deducted from the total GIA of the proposed development. Schedule 1 Part 1 to Regulation 40 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 in paragraph 1(10) of

the Schedule 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 containing 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.

11. The issue in this case is not whether the existing buildings had actually been in use for the required period for the buildings to qualify as 'in-use buildings', but whether that use was lawful bearing in mind that the buildings were not constructed entirely in accordance with an earlier planning permission.

12. Regulation 9(1) of the CIL Regulations 2010 (as amended) states that chargeable development means *"the development for which planning permission is granted"*. The CIL liability under appeal, therefore relates to the proposed development allowed by planning permission [redacted], which is for *"Retention of storage barn and stables, and conversion to holiday accommodation"*. The first part is retrospective and appears to have been required since an earlier planning application originally intended to allow the construction of the barn and stable was not implemented in accordance with the conditions attached to that permission. The departures from the approved plans appear to be design related but were sufficient enough to require the part retrospective application for the retention of the buildings. Whilst the non-retrospective element of the current permission is the change of use to holiday accommodation, the development permitted by the consent nevertheless includes the retention of the stable and barn buildings.

13. In my opinion, until planning permission [redacted] was approved on [redacted], the barn and stable did not have a use that could be carried on lawfully since they had not been built in accordance with a prior permission; hence the requirement for the part retrospective consent to formalise planning matters in relation to the buildings. Therefore, the accommodation does not qualify as deductible floor space as the buildings were not in lawful use during the requisite period.

14. In relation to the appellant's points in relation to the impact of a charge of this magnitude on the deliverability and viability of the scheme, this is not something that the CIL Regulations permit me to consider.

15. The CIL charge has been calculated at a rate of £[redacted] per m², with indexation at [redacted]; neither these figures nor the floorspace of [redacted] m² appear to be in dispute. Accordingly, based upon the information submitted by the parties, I have determined that the CA's calculation of the CIL charge is correct.

16. In conclusion, having considered all the evidence put forward to me, I therefore confirm the CIL charge of £[redacted] as stated in the Liability Notice dated [redacted] and hereby dismiss this appeal.

[redacted]

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