Appeal Decision

by ███ MRICS VR

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

Valuation Office Agency
DVS National Taxation Team

E-mail: ███ @voa.gov.uk

Appeal Ref: 1758247

Address: ███

Proposed Development: Alterations to existing buildings to create 4 dwellings with associated works to provide gardens and amenity space; erection of a 6 bay garage following demolition of storage barn (as amplified by Ecology Report received ███ and ecology comments received ███).

Planning Permission Details: Granted by ███ on ███, under reference ███ █.

Decision

I determine that no Community Infrastructure Levy (CIL) should be payable in this case.

Reasons

Background

1. I have considered all the submissions made by the appellant, ███ of Planit Consulting, Town Planning and Property Advisors (acting on behalf of ███) and the submissions made by the Collecting Authority (CA), ███ In particular, I have considered the information and opinions presented in the following documents:

   a) The Decision notice by ███, dated ███.
   b) The CIL Liability Notice (Reference: ███) for a sum of £███.
   c) The applicant's Supporting Planning Statement dated ███.
   d) Various photographs of the subject property (on a PDF document dated ███).
   e) A signed Statutory Declaration by ███, dated ███.
   f) An electricity bill, dated ███.
   g) A full drawing package, containing plans of the subject property.
   h) The applicant's request for a Regulation 113 Review.
   i) The CA's Regulation 113 Review, dated ███.

j) The CIL Appeal form submitted to the VOA, under Regulation 114, dated [redacted] and received in the VOA on [redacted], together with supporting documents [listed a) to i) as above].
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. Planning permission was granted for the development on [redacted], under reference [redacted].

3. On [redacted], the CA issued a Liability Notice (Reference: [redacted]) for a sum of £[redacted]. This was based on a net chargeable area of [redacted] m² and a Charging Schedule rate of £[redacted] per m², with indexation at 1.05.

4. On the [redacted], the appellant requested a review of this charge after the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [redacted], stating that it was of the view that its original decision was correct and should be upheld.

Grounds of Appeal

5. On [redacted], the Valuation Office Agency received a CIL Appeal made under Regulation 114 (chargeable amount) from the appellant, contending that the CA's calculation is incorrect. The appellant is of the opinion that no CIL should be payable, contending that the existing buildings have been "in-use" buildings for a mix of agricultural use and domestic storage purposes and should be included in the calculation of the chargeable amount. The appellant's contention is that the buildings are not, and have never been, 'disused'.

6. The appellant's contention can be summarised to a core point:

   From the appellant's perspective, the CIL calculation should reflect 'in-use' floorspace of the retained buildings (in other words, the existing area floor space, which the appellant considers is an eligible deduction, which can be offset against the chargeable area).

7. The CA disagrees, contending that none of the buildings have been in continuous use for at least six months, within the period of three years from [redacted] and [redacted], and that no eligible deduction can be made for retained or demolished floorspace under Regulation 40. The CA contends that the chargeable amount should be calculated on the basis of the GIA for the new dwellings, with no deductions for retained or existing parts

8. It appears that there is no dispute between the parties in respect of the applied Chargeable Rate per m² or to the indexation.

Decision

9. At the heart of the matter is the continuous use of the accommodation (the existing building floorspace) which the appellant considers is an eligible deduction, which can be offset in the CIL calculation.

10. Regulation 40(7) of the CIL Regulations 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 of buildings that are to be retained includes;

a. retained parts of 'in-use buildings', and

b. for other relevant buildings, 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.

11. Under Regulation 40(11), to qualify as an 'in-use building' the building must contain 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. Under Regulation 40(9), where the CA does not consider that it has sufficient information, or information of sufficient quality, to enable it to establish that any of the existing buildings qualify as an 'in-use buildings' it may deem the gross internal area of those buildings to be zero. Whether a building is in use, is a matter of fact and degree, based upon the evidence.

13. The CA does not dispute that the existing six buildings are relevant buildings. The CA cites that there have been no permissions granted to certify that the lawful use of the buildings is either for storage, or for ancillary residential use (either for storage or garaging). The absence of any permissions to certify the lawful use of the buildings is not evidence itself in my view; it merely indicates the absence of permissions and is a not uncommon situation.

14. The CA contends that there are some inconsistencies in the appellant's claim of continuous lawful use, citing the wording in the appellant's own documentation, which states *"conversion of a series of redundant agricultural buildings"*. However, having studied the entirety of the appellant's submitted evidence and the Design and Access Statement (DAS) dated ██████, I have concluded that this wording is descriptive in context and not in use, when considered in context with the whole DAS and wider documentation. Indeed, the appellant cites within the DAS "*The farm use of the buildings ceased over 20 years ago and since that time the space has been used for residential storage"* (para 3.1) and "*…buildings were previously in agricultural use but have been used residentially for over the past 20 years"* (para. 5.11). Furthermore, within the DAS (at para 4.2) the appellant states "*The application buildings …. have not been used for agricultural use for a number of years"*.

    Whilst I agree that the language in the appellant's documentation could be clearer, I am satisfied that there are no inconsistencies in the appellant's claim of continuous lawful use. The description of "*redundant agricultural buildings*" does not preclude it having a use of storage, despite it being redundant from its original agricultural purpose.

15. The CA cites that the submitted electricity bill by the appellant does not demonstrate that any of the buildings meet the 'in-use' test, as it does not specifically reference any of the six buildings in question, nor does it indicate the use of such buildings. I agree with CA on this point and I have attached no weight to the evidence of the electricity bill in arriving at my decision.

16. The CA questions the photographic evidence submitted by the appellant, citing that they are undated and do not help to confirm a continuous period for at least six months under the Regulations. Whilst I agree that the photographic evidence is undated, I am satisfied, on the balance of probabilities, that the photographic

evidence represents the situation in existence on the relevant date. Accordingly, on balance, I am of opinion that they do support evidence of in-use buildings.

17. The CA also questions the appellant's affidavit submitted by [redacted], on the historic use of the site. Whilst I agree that the Statutory Declaration does not specifically mention the exact qualifying period for continuous use, it is clearly dated [redacted] and clearly states that the buildings have been in use at all times for the past 27 years and have not remained vacant.

18. Having weighed up the submitted evidence in this case, I have concluded that on balance, that there is reasonable evidence to prove that the buildings have been an 'in-use building' which satisfies Regulation 40(11) as amended.

19. After considering all of the evidence, I am satisfied that the buildings were in lawful use as per Regulation 40(11) and were an 'in-use building' thereby allowing the area of the buildings to be netted off the area of the chargeable development. This results in the area of the chargeable development being a nil sum (zero m^2).

20. In conclusion, having considered all the evidence put forward to me, I consider that the CIL payable in this case is to be a nil (zero) sum.

[redacted] MRICS VR
RICS Registered Valuer
Valuation Office Agency
1st April 2021