

Appeal Decision

by [REDACTED] MRICS

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

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Appeal Ref: 1762114

Planning Permission Ref. [REDACTED] and [REDACTED]

Proposal: Prior Approval under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) change of use of agricultural building to a dwelling

Location: [REDACTED]

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil).

Reasons

1. I have considered all of the submissions made by [REDACTED] on behalf of [REDACTED] (the Appellant) and by [REDACTED] 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 decision ref [REDACTED] dated [REDACTED] and appeal decision ref [REDACTED] dated [REDACTED];
 - b) Approved planning consent drawings, as referenced in appeal decision notice;
 - c) CIL Liability Notice ref [REDACTED] dated [REDACTED];
 - d) CIL Appeal form dated [REDACTED], including grounds of appeal and appendices;
 - e) Representations from CA dated [REDACTED]; and
 - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission for "Prior Approval under Part 3 Class Q (a) and (b) paragraph W of the GDPO change of use of agricultural building to a dwelling was initially refused under application no [REDACTED] on [REDACTED]. Consent was subsequently granted under appeal ref [REDACTED] on [REDACTED].
3. The CA issued a CIL liability notice on [REDACTED], which I have not been provided with a copy of.
4. The Appellant requested a review under Regulation 113 on [REDACTED]. The CA responded on [REDACTED], stating that they considered the CIL liability notice to be correct.
5. The CA issued a CIL liability notice on [REDACTED], prior to their Regulation 113 response, in the sum of £[REDACTED]. This was calculated on a chargeable area of [REDACTED] m² at a rate of £[REDACTED]/m² plus indexation. A further CIL liability notice was issued on [REDACTED] in the sum of £[REDACTED] on the same basis, but with an increased sum for indexation due to an error in the original calculation.
6. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be Nil.
7. The Appellant's grounds of appeal can be summarised as follows:
 - a) The barn was in lawful use for the six months prior to grant of planning permission and therefore should be deducted from the chargeable area.
8. The CA has submitted representations that can be summarised as follows:
 - a) There is insufficient evidence that the barn was in lawful use during the relevant period and therefore it should not be deducted from the chargeable area.

9. The CIL Regulations Part 5 Chargeable Amount, Schedule 1 defines how to calculate the net chargeable area. This states that the “retained parts of in-use buildings” can be deducted from “the gross internal area of the chargeable development.”
10. “In-use building” is defined in the Regulations as a relevant building that 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.
11. “Relevant building” means a building which is situated on the “relevant land” on the day planning permission first permits the chargeable development. “Relevant land” is “the land to which the planning permission relates” or where planning permission is granted which expressly permits development to be implemented in phases, the land to which the phase relates.
12. Schedule 1 (9) states that where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish whether any area of a building falls within the definition of “in-use building” then it can deem the GIA of this part to be zero.
13. The appellant has submitted the following evidence to demonstrate that the barn was in lawful use:
 - a) VAT certificate for [REDACTED] dated [REDACTED], showing an effective date of registration of [REDACTED] and a business activity description of “Silviculture and other forestry activities.”
 - b) Letter from [REDACTED] dated [REDACTED] confirming that the barn has been in regular use since the beginning of [REDACTED] for storage of surplus tree stakes, guards and trays and then the 1500 trees required to replant. The letter also comments that the appellants have also used the barn for storage of farming equipment.
 - c) Photographs dated [REDACTED] showing trees for replanting being stored in the barn and the [REDACTED] truck parked outside the barn.
 - d) Photographs dated [REDACTED] showing the initial tree planting.
 - e) VAT invoice for tree guards and stakes from [REDACTED], dated [REDACTED].
14. The CA have accepted that there was a business operating from the site that involved the growing of trees but state that the intention of the use of the barn is uncertain and that the use only begun after the original planning permission was denied.
15. The Regulations are clear that the relevant period is “at least six months within the period of three years ending on the day planning permission first permits the chargeable development.” Planning permission was ultimately granted on [REDACTED] and therefore the latest date that any occupation could begin to meet this requirement would be [REDACTED]. I do not consider the date of the original refusal of consent to be relevant for CIL purposes. I also do not consider that any future intentions are relevant as only the occupation prior to the date of consent is considered for CIL purposes.
16. The CA further state that there is no “substantial evidence of use of the barn.” However, given that the CA have accepted that the business was in place at the site, it seems logical to accept that the barn was in use as part of this business, as confirmed by the photographs and letter provided. The Regulations require only a part was in lawful use and therefore even if only a small area of the barn was in use as storage in association with the business, this is sufficient to meet the requirements. I am therefore satisfied that this requirement has been met.

17. The planning consent allows the conversion of the barn with no additional space. There appears to be no dispute over the GIA of the barn at [REDACTED] m², which I understand to be the GIA both before and after development. The net chargeable area is therefore Nil.

18. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil)

[REDACTED] BSc (Hons) MRICS
Valuation Office Agency