Appeal Decision

by [redacted] BA Hons, PG Dip Surv, MRICS

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

Valuation Office Agency (DVS)
Wycliffe House
Green Lane
Durham
DH1 3UW

E-mail: [redacted] @voa.gov.uk

Appeal Ref: 1787213

Address: [redacted]

Proposed Development: Alterations and change of use of barn from mixed agricultural/equestrian use to mixed use of 1 dwelling with equestrian use; erection of stables following demolition of existing stables

Planning Permission Details: Granted by [redacted] on [redacted], under reference [redacted].

Decision

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

Reasons

Background

1. I have considered all the submissions made by [redacted] of [redacted] acting on behalf of the Appellants, [redacted] and [redacted] (Appellant), and the submissions made by the Collecting Authority (CA), [redacted]. In particular, I have considered the information and opinions presented in the following documents:

   a) The Decision notice by Waverley Borough Council, dated [redacted].
   b) The CIL Liability Notice (Reference: [redacted]) for a sum of £[redacted].
   c) The CA's Regulation 113 review decision dated [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 dated [redacted] together with documents and correspondence attached thereto.
   f) The appellant's comments on 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] square metres (sq. m) and a Charging Schedule rate of £[redacted] per sq. m, with indexation at [redacted].

4. The Appellant requested a review under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [redacted], stating that it had contacted the appellant on the [redacted] requesting information to support that the existing buildings had been in lawful use for a continuous period of six months during within the past three years. They advise that in the absence of a response to this request, they concluded their review and confirmed the sum stated in Liability Notice [redacted].

5. The Appellant submitted an appeal to the Valuation Office Agency (VOA) on [redacted] under Regulation 114 (chargeable amount appeal) proposing the CIL charge should be calculated on a net chargeable area of [redacted] sq. m.

Grounds of Appeal

6. This appeal centres around whether the existing buildings on site, some of which are to be retained and others to be demolished, should be netted off the gross internal area (GIA) of the chargeable development.

7. The Appellant opines that the buildings should have been netted off as they qualify as 'in use' and after considering the CA's representations they now calculate the chargeable area to be [redacted] sq. m.

8. The CA, in their Regulation 113 Review concluded they did not have sufficient information or information of sufficient quality to allow them to establish whether the existing buildings were in fact 'in use' and maintained the chargeable area to be [redacted] sq. m.

9. However, the CA have considered the representations and information the Appellant has provided to the VOA during the course of this appeal and they now accept that they have sufficient information to conclude that the [redacted], referred to as Zone 2 on the Appellant's plan, can be classified as an 'in use' building. As a result, they have revised their opinion of the area which falls to be charged at the £[redacted] per sq. m residential rate in the Charging Schedule, to [redacted] sq. m, thus altering their opinion of CIL liability to £[redacted]

10. The consideration of these issues has highlighted some differences in the proposed GIA of the chargeable development, and it has therefore been necessary to consider the application of RICS Codes of Measuring Practice 6th edition (COMP) in respect of the area of the proposed development.

11. The parties' representations also show disagreement on what constitutes a building for CIL purposes and whether two of the buildings were in fact 'in use'.

12. There does not appear to be any dispute between the parties in respect of the applied Chargeable Rate per square metre or to the indexation rates adopted.

Decision

13. The chargeable development as described above, seeks to convert an existing '[redacted] into a mixed-use dwelling with equestrian use. Existing stables will also be demolished and replaced with new stabling facilities.

14. I will first address the issue of the area of the chargeable development. The Appellant and CA both agree the ground floor of the proposed dwelling to be [redacted] sq. m. The CA calculates the GIA of the first floor to be [redacted] sq. m and the Appellant opines it to be [redacted] sq. m.

15. The Appellant advises they have had regard to RICS Residential Agency Guidelines, in particular section 24.6 which states, "in rooms with sloping ceilings measurements should be taken 1.5m above floor level." They therefore conclude that an area of [redacted] sq. m with headroom below 1.5m in bedroom 3 should be excluded. It is noted that RICS Residential Agency Guidelines does not describe GIA.

16. The CIL Regulations Schedule 1 Para 1. (6) state that the net chargeable area is based on the GIA of the chargeable development.

17. GIA is not defined in the Community Infrastructure Levy Regulations 2010. The generally accepted method of calculation of GIA is set out in the RICS Code of Measuring Practice (6th edition) (COMP) and I have applied this definition.

    GIA is the area of a building measured to the internal face of the perimeter wall at each floor level;

    Including

    - Areas occupied by internal walls and partitions
    - Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
    - Atria and entrance halls, with clear height above, measured at base level only
    - Internal open-sided balconies walkways and the like
    - Structural, raked or stepped floors are to be treated as level floor measured horizontally
    - Horizontal floors, with permanent access, below structural, raked or stepped floors
    - Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
    - Mezzanine floors areas with permanent access
    - Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
    - Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
    - Projection rooms
    - Voids over stairwells and lift shafts on upper floors
    - Loading bays
    - Areas with a headroom of less than 1.5m
    - Pavement vaults
    - Garages
    - Conservatories

    Excluding;
    - Perimeter wall thicknesses and external projections
    - External open-sided balconies, covered ways and fires
    - Canopies
    - Voids over or under structural, raked or stepped floors
    - Greenhouses, garden stores, fuel stored, and the like in residential property

18. 2.14 of the COMP clearly states areas with a headroom of less than 1.5m fall to be included. I therefore agree with the CA on this point and find the area of the proposed residential dwelling to be [redacted] sq. m.

19. The parties also disagree on the area of the proposed agricultural/equestrian development. The CA calculate this area to be [redacted] sq. m made up of [redacted] sq. m of retained buildings and [redacted] sq. m of new stabling. The Appellant calculates this area to be [redacted] sq. m made up of [redacted] sq. m of retained buildings and [redacted] sq. m of new stabling. They advise the area of the proposed external stables should include the open sided walkway as stated in 2.4 of COMP which the CA have omitted.

20. I agree with the Appellant on this point. Having seen the hardcopy plans, taken check measurements and applying 2.4 of the COMP, I calculate the area of the proposed external stables to be [redacted] sq. m and thus conclude the total GIA of the agricultural/equestrian use to be [redacted] sq. m.

21. This brings the total area of the chargeable development to [redacted] sq. m.

22. There appears to be no dispute over the areas of the existing buildings on site and having taken check measurements I confirm these to be; Zone 1, [redacted] sq. m, Zone 2, [redacted] sq. m and Zone 3, [redacted] sq. m.

23. The Appellant considers that all of the buildings qualify as 'in use' but the CA has only concluded that the '[redacted] / Zone 2 can be classified as such.

24. The CA have omitted Zone 1 stating that they do not have any photographs of this building and have taken it to be what is described in the Officer Repot as a, "lean to style structure." They have therefore assumed this area to be a canopy like structure rather than a building. Whilst the CA do have photographs of Zone 3, they have concluded this area does not constitute a building, again describing it as a canopy rather than a building.

25. There is no definition given to the word "building" within the CIL Regulations, save for Schedule 1 Part 1 1 (10) which states that "building" does not include:

    (i) a building into which people do not normally go,
    (ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
    (iii) a building for which planning permission was granted for a limited period;

    In the absence of any clear guidance from the CIL Regulations, I have had recourse to the dictionary; for a clear definition as to what constitutes a "building".

26. The definition of "building" within the Shorter Oxford English Dictionary, 6th Edition (Shorter OED) is defined as "*A thing which is built; a structure; an edifice; a permanent fixed thing built for occupation, as a house, school, factory, stable, church, etc."* This would suggest the subjects would fit the above definition.

27. Having considered the photographs provided, I find both Zone 1 and Zone 3 to fulfil the above criteria and conclude them to be buildings. It is evident from the photographs provided that Zone 1 has timber clad elevations and traditional roof covering and cannot be described as a canopy. The Appellant has clarified this building is not the link between the barn and the horse walker which the CA thought it was and confirm they have excluded this link from their calculations. I also deem Zone 3 to be a building rather than a canopy. Whilst it is open to three sides it is an independent structure. The definition of "canopy" within the Shorter Oxford English Dictionary, 6th Edition (Shorter OED) is, "a projection or shelter that resembles a roof." I am of the view the exclusion of canopies referred to in 2.20 of the COMP relates to canopies attached to buildings that provide shelter from the elements at the entrance to a building. The subject is a standalone structure used for agricultural storage and as such, I view it as a building in line with the definitions above.

28. Under Schedule 1 Part 1 1(10) of the 2019 Regulations, 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.

29. Under Schedule 1 Part 1 1(8) of the 2019 Regulations, 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.

30. The CA have not only decided Zone 1 and 3 not to be buildings, but they also consider that the Appellant has not provided any further information/evidence about their use to enable them to establish whether they were in fact 'in-use'. As part of their counter representations the Appellant has provided further photographs of these buildings.

31. I consider that there is sufficient evidence available to me to demonstrate that the existing buildings had been in use for purposes connected with the agricultural/equestrian use of the surrounding land. This evidence is in the form of photographs from the Appellant which I understand to be current and those from the CA dated [redacted]. These photographs show the buildings in question being used for storage of equine related supplies and the stabling of horses. In addition, the Appellant has provided utility bills dating [redacted] to [redacted]. This evidence is at a point in time within the requisite three-year period but considering that the buildings have been used in conjunction with the continual operation of an operational equestrian facility, I consider that this evidence is sufficient to confirm that all of the existing buildings have been 'in use' for CIL purposes for the requisite period, i.e., for a continuous period of at least six months in the three years prior to the planning permission being granted on [redacted].

32. I therefore consider that the area of the existing buildings both to be retained and demolished should be offset within the CIL calculation and the charge based on the extension floor area only.

33. Having considered the plans, I concur with both the CA and the Appellant with regards to the area of the retained buildings. The parties agree that [redacted] sq. m of the [redacted] was retained for agricultural/equine use and [redacted] sq. m for residential use.

34. For the area of the demolished buildings, having agreed with the Appellant that both Zone 1 and Zone 3 were relevant 'in-use' buildings, I find their cumulative area to be 114 sq. m. I also note that a small area of the [redacted] /Zone 2 has been demolished to provide an outdoor barbeque area. This totals [redacted] sq. m. This brings the total area of existing 'in use' buildings to be demolished to [redacted] sq. m.

35. The chargeable development comprises both residential development and agricultural /equestrian development that is classified as 'All other uses' within the CA's Charging Schedule. The residential development attracts a rate of £[redacted] per sq. m and the 'All other uses' a nil rate. Both parties agree as to the rates and indexation applied although their calculations of the CIL payable differ.

36. The Community Infrastructure Levy (CIL) (Amendment) (England) (No. 2) Regulations 2019 (the '2019 Regulations') came into force in England on [redacted]. The new Regulation 40 requires the CA to calculate the amount of CIL payable ("chargeable amount") in respect of a chargeable development in accordance with the provisions of Schedule 1 as detailed below.

Chargeable amount: standard cases
1.—(1) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(2) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(3) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_P}{I_C}$$

where—
A = the deemed net area chargeable at rate R, calculated in accordance with subparagraph (6);
IP = the index figure for the calendar year in which planning permission was granted; and
IC = the index figure for the calendar year in which the charging schedule containing rate R took effect.

(5) In this paragraph the index figure for a given calendar year is—
(a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;
(b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;
(c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;
(d) if the national All-in Tender Price Index is not so published, the figure for 1st November for the preceding calendar year in the retail prices index.

(6) The value of A must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—
G = the gross internal area of the chargeable development;
GR = the gross internal area of the part of the chargeable development chargeable at rate R;
KR = the aggregate of the gross internal areas of the following—
(i) retained parts of in-use buildings; and
(ii) 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;
E = the aggregate of the following—
(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development; and
(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under sub-paragraph (7)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

37. In this case;
G = [redacted] sq. m
GR, residential = [redacted] sq. m, other = [redacted] sq. m
KR, residential = [redacted] sq. m, other = [redacted] sq. m
E = [redacted] sq. m

Residential

[redacted] – [redacted] - { [redacted] * [redacted] } = [redacted] sq. m

[redacted] sq. m * £[redacted] * [redacted] / [redacted] = **£**[redacted]

Other uses

[redacted] – [redacted] - { [redacted] * [redacted] } = [redacted] sq. m

4[redacted] sq. m * £0 * [redacted] / [redacted] = **NIL**

38. Based on the facts of this case and the evidence before me, I determine that the CIL payable should be the sum of £[redacted] ([redacted]

[redacted] BA Hons, PG Dip Surv, MRICS
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
02 March 2022