

# Appeal Decision

by [REDACTED] MRICS VR

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

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**Appeal Ref: 1787285**

**Address:** [REDACTED]

**Proposed Development:** Conversion of curtilage listed barn to form 2 no. dwellinghouses and associated works.

**Planning Permission details:** Granted by [REDACTED] on [REDACTED], under reference [REDACTED].

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## 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 [REDACTED] of [REDACTED], [REDACTED] (acting on behalf of the appellant, [REDACTED]), 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) CIL Appeal form dated [REDACTED].
- b) Grant of Conditional Planning Permission [REDACTED] dated [REDACTED].
- c) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED].
- d) Appellant request to the CA for a CIL Review under Regulation 113.
- e) The CA's Regulation 113 Review, dated [REDACTED].
- f) Appeal Statement of Case document by Appellant under Regulation 114 (undated document).
- g) Approved Proposed Site Layout plan for [REDACTED] and a full suite of plans and drawings of the development.

- h) E-mail of CA's representations received on [REDACTED].
- i) Appellant's comments on the CA's representations, received on [REDACTED], which contains a number of additional affidavits, statutory declarations and a witness statement.

### Grounds of Appeal

1. Planning permission was granted for the development on [REDACTED], under reference [REDACTED].
2. 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] m<sup>2</sup> and a Charging Schedule rate of £[REDACTED] per m<sup>2</sup>, including indexation.
3. On the [REDACTED], the Appellant requested a review of this charge within 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.
4. 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 building, which is known as [REDACTED], has been an "in-use" building and should be offset in arriving at the chargeable amount.
5. The Appellant's appeal can be summarised to a single core point:  
  
The Appellant's primary contention is that the CIL calculation should reflect 'in-use' floorspace of the retained building, which is known as [REDACTED]; in other words, the existing area floor space, which the appellant considers is an eligible deduction, which can be offset against the chargeable area.
6. The CA disagrees, contending from the evidence available, that it does not consider the evidence and information is sufficient to prove that an active and sustained agricultural use is made of the building within the meaning of 'in-use building' under the provisions of the CIL Regulations.
7. It appears that there is no dispute between the parties in respect of the applied Chargeable Rate of £[REDACTED] per m<sup>2</sup> or to the indexation.

### Decision

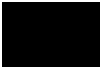
8. The dispute between the parties relates to a farm outbuilding, which is known as [REDACTED] and is a Grade II listed building. It is agreed by both parties that the barn was built for agricultural purposes and that the lawful use in planning terms is agricultural use.
9. The CIL Regulations Part 5 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. Furthermore, Schedule 1 of the 2019 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 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.
  12. 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.
  13. 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. The planning application was approved on the [REDACTED]; accordingly, I agree with the CA that the three year lawful in-use period runs from the [REDACTED] to the [REDACTED]. Furthermore, I agree with the CA that within this period, the Appellant is required to provide sufficient evidence that the lawful use has been carried on within the subject building, for at least a continuous period of six months.
  14. The Appellant contends that the CA has misrepresented the Appellant's use of the building 'possibly as it is in a poor state or repair'. Whilst it is accepted by all parties that [REDACTED] is in a poor state of repair, and perhaps, as argued by the Appellant, is in a poor state of repair, due to its Grade II listing status, the overriding question which I must consider, is what evidence of actual use rather than a theoretical use has been made of the building during the requisite period? In support of actual use the Appellant has submitted:-
    - Various annotated photographs.
    - Income and expenditure account for the year ending [REDACTED].
    - An e-mail dated [REDACTED] from [REDACTED] (a Senior Veterinary Inspector of the APHA (Animal and Plant Health Agency)) referring to a welfare visit (on [REDACTED]) in respect of two pigs.
    - A letter from [REDACTED], which supports activities in respect of the subject [REDACTED]; an additional letter dated [REDACTED], was provided by [REDACTED], expanding on his earlier statement. In addition, a separate statement was provided by his partner, [REDACTED].
    - Affidavit signed and dated [REDACTED] by [REDACTED], which supports activities in the barn and evidencing the installation of electrics in the barn sometime in [REDACTED].
    - Affidavit signed and dated [REDACTED] by [REDACTED], which supports activities in the barn and evidencing the installation of electrics and external CCTV in [REDACTED].
    - A statement signed and [REDACTED] by [REDACTED], which supports agricultural activities in the barn.
    - Affidavit signed and dated [REDACTED] by [REDACTED] (electrician), which supports the installation of electrics and consumer units in [REDACTED].
    - Statutory Declaration signed and dated [REDACTED] by [REDACTED] (Appellant).

15. I note that on the CIL Additional Information questionnaire form, which the Appellant signed and dated on [REDACTED] (and which is required to be submitted to the CA as part of the planning application process) in answer to the question *When was the building last occupied for its lawful use?* The Appellant had ticked that the [REDACTED] was *Still in use*.
16. The Appellant has cited the case of *R (oao Hourhope Ltd) v Shropshire Council* [2015] EWHC518. The Hourhope case related to a disputed CIL liability due on a planning permission to demolish a public house, erect residential units and the resultant application of the demolition deductions that are set out in the CIL Regulations 2010 (as amended). This case provided guidance on 'in-use buildings' in that 'in-use buildings' demolished during the development or retained on completion will be determined not by whether there is available a permitted use for the building, but by the actual use of the building.
17. As held by Hourhope - "*Whether a property is 'in use' at any time requires an assessment of all the circumstances and evidence as to what activities take place on it and what are the intentions of the persons who may be said to be using the building.*" It follows therefore, to consider not only the actual use, but the degree of activity of the actual use. In the following paragraphs, I will consider the degree of actual use from the evidence submitted to me.
18. I agree with the CA that the submitted Income and Expenditure Account is not specific to actual turnover, costs and expenditure related to agricultural activities in respect of the actual building.
19. The CA states that the Appellant's photographic evidence of table and chairs 'do not show evidence of an agricultural use'. However, the Appellant counters that the CA has misunderstood the importance of the cited area, which is in part of the Heritage Barn. The Appellant cites her lawful obligations under the Health and Safety at Work Act, which states 'If you employ anyone (however short the period) you must 'so far as is reasonably practicable', provide adequate and appropriate welfare facilities for them while they are at work. To some degree, I accept that a basic table and chairs constitutes 'welfare facilities' as argued by the Appellant, but in the context of the supplied photograph, I do not accept that they are evidence for actual agricultural use within the subject barn.
20. In respect of the APHA e-mail, the CA opines that the two pigs would not amount to a reasonable level of agricultural use. As an activity in isolation, I would perhaps agree with this statement; however, when coupled with a wider body of evidence, I am of opinion that it does support agricultural use.
21. The CA points to the Structural Appraisal report ([REDACTED]) dated [REDACTED], which indicates that the building is in a state of disrepair with partially collapsed roofs. The CA contends that all of the photographs show that no agricultural use was evident, the buildings were in a poor state and appear largely abandoned. The poor state of repair of the building is accepted, but given the wider evidence submitted by the Appellant, I disagree with the CA's assertion that the barn appears largely abandoned. The photographs within the report are a snapshot at a particular time and for a particular purpose (i.e. a structural report). I accept the Appellant's contention that the report was not produced for the purpose of demonstrating that an agricultural use was ongoing and only illustrates one half of the barn - those parts that housed poultry together with the tool room are not illustrated. In conclusion, I am of opinion that photographic evidence within the Structural Appraisal report is inconclusive to determine actual agricultural use of the building.

22. In respect of the wider submitted photographic evidence, the CA opines that none of these actually prove an agricultural use in the building, as many lack context, do not relate to the actual building or cannot reasonably be described as agricultural activities. I agree with the CA that the majority do not prove an agricultural use in the building; however, I am persuaded by certain labelled photographs that they support an agricultural use in the building e.g. *setting up poultry watering system; winter poultry feed; tractor stored in the heritage barn area and tool room for farm repairs and agricultural storage*. In respect of the photographic evidence as a whole, I agree that the majority of the photographs do not support an agricultural use; however; I have concluded that a minority of photos (which I have cited) do indeed support agricultural use.
23. I agree with the CA that receipts for pebbles, plastic guttering, water/gas works, brewing equipment, do not relate to agricultural activities in the barn. However, when countered by the weight of evidence provided by the Appellant (a number of affidavits, statutory declarations and a witness statement) I disagree with the CA's contention in respect of those receipts in respect of electrical installations and CCTV. I have concluded that activity is supported in the barn from the electrical installations and the CCTV receipts.
24. The Appellant has submitted various affidavits in support of her case, which I have cited in paragraph 14 of this Appeal Decision. In arriving at my decision, I have attached a reasonable amount of evidential weight for those affidavits which support the work of electrical/CCTV installations and a hatchery in the barn.
25. Given the weight of evidence, which comprises some of the submitted photographic evidence, the APHA e-mail, electrical/CCTV installations and various affidavits, I am satisfied that the evidence as a whole, demonstrates lawful agricultural use for at least a continuous period of six months within the requisite period. Accordingly, on balance, I am of opinion that the weight of evidence supports in-use buildings.
26. Following consideration of all of the evidence, I am satisfied that the building was in lawful use as per Schedule 1 Part 1 1(10) and were an 'in-use building' thereby allowing the area of the building 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<sup>2</sup>).
27. 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.

 MRICS VR  
Principal Surveyor  
RICS Registered Valuer  
Valuation Office Agency  
23<sup>rd</sup> March 2022