Appeal Decision

by [redacted] MRICS FAAV

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: 1792632

Planning Permission Reference: [redacted]

Location: [redacted]

Development: The erection of an agricultural dwelling

Decision

On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that on the facts of this case the CIL charge should be £[redacted] ([redacted]) and the appeal is therefore dismissed.

Reasons

1. I have considered all the submissions made by [redacted] of [redacted] (the Appellant) and [redacted] as 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 permission [redacted] granted by the CA on [redacted] for "The erection of an agricultural dwelling."
    b. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
    c. The CIL review request dated [redacted] from the Appellant that was sent to the CA. A copy of which was reproduced in the CA CIL review document.
    d. The CIL review undertaken by the CA dated [redacted]
    e. The email from the CA dated [redacted] sent to the VOA CIL Appeals email address which had attached the CIL review from the CA dated [redacted].
    f. The Appellant's Regulation 114 Appeal dated [redacted] on form VO4000

    g. The 1:100 scale plan (Drawing no.[redacted]) produced by [redacted] for the Appellant and dated [redacted]

h. The CA's representations to the Regulation 114 Appeal in their email dated [redacted] which had attached a copy of the CA CIL Review word document.

Background

2. A planning application was submitted by the Appellant on [redacted] for "Erection of Agricultural dwelling (Revised scheme)."

3. Planning permission [redacted] granted by the CA on [redacted] for the Erection of an agricultural dwelling which noted that "[redacted] *hereby grants planning permission to carry out the development described in the application validated on* [redacted] *subject to the following conditions".*

   The planning permission listed fifteen conditions of which No.13 is the Agricultural Occupancy Condition (AOC) which states; "*The occupation of the dwelling hereby permitted shall be limited to a person, or persons, solely or mainly working, or last working, in the locality in agriculture or in forestry, to include those taking majority control of a farm business, or a widow or widower or surviving civil partner of such persons, and to any resident dependants."*

4. CIL Liability Notice reference [redacted] was issued by the CA dated [redacted] for the amount £[redacted] calculated as follows:-

   Rural [redacted]
   Chargeable area [redacted] *m2*
   @ £[redacted] */m2 indexed at* [redacted]
   = £[redacted] *CIL Liability*

5. The Appellant requested a Regulation 113 review of the chargeable amount on [redacted].

   The CIL Review was undertaken by the CA and the outcome of the Review carried out by the CA Officer and dated [redacted] was that:
   "*I have concluded that the original CIL liability notice was correct for the following reason(s):*
   - *Gross internal Area was measured correctly*
   - *There are no exemptions applicable to this chargeable development."*

Appeal Grounds

6. The Appellant's grounds for their appeal are as follows:

   "We are not developers, we are just a family farming business wishing to provide essential on farm accommodation for the herdsman to live in and fulfil his duties of management and caring for the welfare of our dairy herd. Our situation seems to be quite unique and falls between the cracks of the CIL Liability policies. The CIL Liability is for almost £[redacted] *k which adds an enormous amount to the build cost and seriously impacts the viability of it to the business.*

   We are providing employment to the area and there is the essential need to provide on-site accommodation for the herdsman and his family, and as it is he that will be living in the house, we are unable to claim under the Self Build Exemption, even though it is for

our own business use. The Social Housing Exemption makes some provisions for accommodation with agricultural occupancy to which we fulfil the criteria. Unfortunately for this exemption only a Section 106 is given any consideration, none is given to an Agricultural Occupancy Condition, to which we must adhere to. So again, we are unable to apply for this exemption.

After seeking professional advice and searching the Government website for CIL Regulations and information, it seemed that we could only apply for the Special Circumstances Exemption to explain our unique position as we fell down between the cracks of the CIL policies. However, after a telephone conversation with your office it seems that for some unknown reason [redacted] *makes no provision for applications under this exemption!*

It seems un-comprehenable that after the Government have issued the CIL policies stating all the exemptions that are available, that councils once they have opted to become CIL charging authorities, can then decide which exemptions can be applied for.

We have had many issues and delays with the planning department and were delighted when finally planning permission was granted. Finally, we thought we could start the build and the herdsman and his family wouldn't have to face another winter in the deteriating mobile home, but now we face the CIL liability which is causing further delays.

Planning permission would not have been granted on an agricultural worker dwelling of [redacted] *m2, the dwelling is only* [redacted] *m2 the additional* [redacted] *m2 is farm office, welfare area, storage and farm vehicle parking. For planning* [redacted] *m2 was the maximum limit for the domestic living area, the rest was granted as it was for farm business use. However, for the CIL calculations the whole area is taken into account, this cannot be correct, it is not part of the dwelling and is only used for business use.*

A property with an AOC in place is significantly reduced in value from that on the open market, up to 30%, yet there seems to be no consideration taken into account for this either within the CIL regulations when making the calculations, however there would be in calculating the value of the property for council tax. I hope that you will review our situation favourably and waive the CIL Liability, and recommend that the CIL Liability policies should be also reviewed to take into account the AOC."

Consideration of Appeal Grounds

7. The Appellant claims that GIA calculation should be limited to the [redacted] m2 GIA of the dwelling and should not include the [redacted] m2 GIA comprising the farm office, welfare area, storage and farm vehicle parking as that [redacted] m2 is only used for business use.

   "For planning [redacted] *m2 was the maximum limit for the domestic living area, the rest was granted as it was for farm business use. However, for the CIL calculations the whole area is taken into account, this cannot be correct, it is not part of the dwelling and is only used for business use."*

8. The Appellant claims that the CIL charge adds an enormous amount to the build cost and will seriously impact the viability of the build.

9. The Appellant states that as the dwelling will be lived in by the [redacted] for the farm, that they will be unable to claim relief under the Self Build Exemption even though the dwelling is for their own business use.

10. The Appellant states that the Social Housing Exemption makes some provisions for accommodation with agricultural occupancy to which they fulfil the criteria. However for this exemption, only a Section 106 is given any consideration, none is given to an Agricultural Occupancy Condition, so they are unable to apply for this exemption.

11. The Appellant claims that the AOC will reduce the value of the dwelling by up to 30% and asks that the CIL policies should be reviewed to take account of the effect of the AOC as this is taken into account in assessing the Council Tax banding.

Decision on the Appeal

12. I have considered the respective arguments made by the CA and the Appellant, along with the information provided by both parties.

13. CIL is calculated on the Net Additional Floor Space of the development, this being the Gross Internal Area.

14. Regulation 9(1) defines the Chargeable Development as the development for which planning permission is granted. The Planning Permission Reference for this development is: [redacted]. The planning permission approved plans show the development shall be built as shown on the [redacted] plan reference [redacted] dated [redacted]. The chargeable development is therefore considered to be as shown on that plan and will include the Garage, the Entrance Hall, Shower Room, the Office and the Boot Room. These uses were all permitted (and are ancillary uses) to the main use, that being the residential use permitted under Planning Use Class C3 – Dwellinghouses.

15. Gross Internal Area (GIA) is not defined within the Regulations and therefore the RICS Code of Measuring Practice definition is used. GIA is defined as "the area of a building measured to the internal face of the perimeter walls at each floor level." The areas to be excluded from this are perimeter wall thicknesses and external projections; external open-sided balconies, covered ways and fire escapes; canopies; voids over or under structural, raked or stepped floors; and greenhouses, garden stores, fuel stores and the like in residential property.

16. The Appellant's calculations of the GIA of the permitted development from plan [redacted] state that the development has a GIA of [redacted] m2. The CA's calculations of the GIA made in the CIL Liability Notice [redacted] issued by the CA dated [redacted] state that the GIA is [redacted] m2.

17. The CA's calculations stated in the CIL review undertaken by the CA dated [redacted] state that the GIA of the development is correct at [redacted] m2. The following is an excerpt from that CIL review:

    "*For ease of reference I have measured the ground floor area containing the farm office, entrance hall, boot room, shower and garage which totals* [redacted] *m^2. The remaining area to the right of the line in the diagram below measures* [redacted] *m^2. This area together with the first floor* [redacted] *m^2 form the area referred to as domestic living area by the applicant totalling* [redacted] *m^2."*

18. The total of the CA's calculations is [redacted] m2 stated by the CA.
    This GIA of [redacted] m2 has therefore been used to determine the CIL charge payable in this Appeal.

19. There is no scope in the CIL regulations relating to appeals to take account of the viability of the development subject to the CIL charge.

20. The Appellant states that as the dwelling will be lived in by the [redacted] for the farm, that they will be unable to claim relief under the Self Build Exemption even though the dwelling is for their own business use.

    Regulation 54A (1) of the CIL regulations concerns Self-Build Housing.
    This states that a person is eligible for exemption from liability to pay CIL in respect of a chargeable development if it comprises self-build housing or self-build communal development.

    Regulation 54A(2) states that Self-build housing is a dwelling built by a person (including where built following a commission by that person) and occupied by that person as their sole or main residence. The chargeable development will be occupied by a [redacted] employed by the Appellant, not the Appellant themselves and therefore the appellant appears to accept that this exemption will not apply to the chargeable development.

21. With regard to the Social Housing Exemption, this exemption is not applicable as one of the key requirements in Regulation 49(1) is that a Section 106 agreement must be in place that would limit both the rent that could be charged and the sale price on the first and subsequent sales of the property. The appellant appears to accept that there is no Section 106 agreement in place and therefore the Social Housing Exemption does not apply.

22. The Appellant claims that the AOC will reduce the value of the dwelling by up to 30% and asks that the CIL policies should be reviewed to take account of the effect of the AOC as this is taken into account in assessing the Council Tax banding.

    The District Valuer is completely independent from the CA and cannot change the CIL Regulations or the Charging Schedule which is decided by the CA.

    The Council Tax banding for the property is based on the Market Value of the property as it would have been at [redacted]. Factors that would have affected the Market Value at that date may be taken into account.

    The Chargeable Amount is based on the net additional GIA added by the development for which planning permission has been granted. It is not based on the Market Value of the resulting development.

23. The formula for calculating the chargeable amount of CIL is in Schedule 1 Part 1 and is:-

    The CIL Total Area Charge = Chargeable Area (A) x Rate (R) x Index (I) The Chargeable Area is the gross internal area of the total development less the floorspace of any existing buildings which are eligible deduction.

24. The Chargeable Area in this case is the GIA of [redacted] m2.

Calculation of CIL Liability

25. CIL Liability is calculated using rates and indices at [redacted] relevant at the date of planning permission [redacted]

Rural [redacted]
Chargeable area [redacted] *m2*
@ £[redacted] */m2 indexed at* [redacted]
= £[redacted] *CIL Liability*

Decision on CIL Liability

26. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I conclude that on the facts of this case the CIL charge should be £[redacted] ([redacted]) and the appeal is therefore dismissed.

[redacted]

[redacted] BSc(Hons) MRICS FAAV
RICS Registered Valuer
Valuation Office Agency
6 June 2022