

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency
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e-mail: [REDACTED]@voa.gov.uk

Appeal Ref: 1838604

Planning Permission Ref. [REDACTED]

Proposal: Prior notification for the conversion of agricultural buildings to three dwellinghouses

Location [REDACTED]

Decision

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

Reasons

1. I have considered all of the submissions made by [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];
 - b) Approved planning consent drawings, as referenced in planning decision notice;
 - c) CIL Liability Notices LN [REDACTED] dated [REDACTED] and LN [REDACTED] dated [REDACTED];
 - d) CIL Appeal form dated [REDACTED], including appendices;
 - e) Representations from CA dated [REDACTED]; and
 - f) Appellant comments on CA representations, dated [REDACTED].
2. Planning permission was granted under application no [REDACTED] on [REDACTED] for 'Prior notification for the conversion of agricultural buildings to three dwellinghouses.'
3. The CA issued a CIL liability notice ref LN [REDACTED] on [REDACTED] in the sum of £ [REDACTED]. This was calculated on a chargeable area of [REDACTED] m² at the 'Residential High' rate of £ [REDACTED] /m².
4. The Appellant supplied information to the CA on [REDACTED] and [REDACTED]. The CA identified the second of these emails as a review under Regulation 113. The CA responded on [REDACTED] with a revised Liability Notice LN [REDACTED] in the sum of £ [REDACTED]. This had been calculated on a reduced chargeable area of [REDACTED] m². However, the CA stated there was insufficient evidence to satisfy the lawful use criteria.
5. On [REDACTED], the Valuation Office Agency received a CIL appeal made under Regulation 114 (chargeable amount) contending that the CIL liability should be [REDACTED].
6. The Appellant's grounds of appeal can be summarised as follows:
 - a) CIL should not be chargeable on prior approval applications;
 - b) The buildings have been in continuous use for more than six months to house rescue animals and associated animal feed; and
 - c) The development is a self-build and should therefore be exempt.
7. The CA has submitted representations that can be summarised as follows:
 - a) The application was granted under Permitted Development rights. This does fall within the definition of "development" and therefore CIL is chargeable.
 - b) There is insufficient evidence to satisfy the in-use criteria; and
 - c) The appellant has not submitted a self-build claim to the CA and therefore this has not yet been considered. The granting of relief cannot form part of this appeal.

Chargeable Development

8. The appellants claim that CIL should not be chargeable on prior approval applications.
9. Regulation 9(1) of the CIL Regulations defines the chargeable development as the development for which planning permission is granted. Regulation 5 gives a full definition of planning permission, which includes g) a general consent.
10. General consent is then defined at 5(3) to include planning permission granted by a development order made under section 59 of TCPA 1990.
11. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) is a development order made pursuant to Section 59 of the Town and Country Planning Act 1990.
12. In this case, planning permission was granted under GPDO and therefore the development is chargeable under the CIL Regulations.

Lawful use

13. 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.”
14. “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.
15. “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.
16. 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.
17. The appellant and the CA have both provided evidence to demonstrate whether the barns have been in lawful use for the relevant period. I have addressed this evidence in turn.
18. The appellant has provided photographs of animals such as ducks, chickens and rabbits around the farm. The appellant states that these are rescue animals that have been housed within the subject barns. The photos were dated between [REDACTED] and [REDACTED] but the appellant states that the use has been continuous since they purchased the property in [REDACTED]. In addition, invoices for animal feed dated [REDACTED] to [REDACTED] have been supplied.

19. The CA comment that the photographs are mostly of animals outside, rather than within the buildings. They also state that the invoices do not evidence the use of the buildings in question. They consider the evidence suggests that animals and supplies are kept outdoors at the site, without using the buildings at all. The appellants dispute that it would be possible to care for the animals without providing shelter and state that the barns are the only available shelter on the farm.

20. The appellants and CA have both referred to the Ecology report dated [REDACTED] (inspected [REDACTED]). The photographs within the Ecology report show that the buildings are largely dilapidated and vacant or used for general storage. However, Photograph 7 referred to as “the egg sorting room” shows stacks of egg boxes in one corner. Photograph 10 referred to as “the chicken house” appears to show hay and feed being stored. Photograph 12 shows a duck within an indoor pen in “the chicken shed.”

21. The Ecologist report includes the following comments:

Two storey brick building

- *“...largely used for storage.” And “This area is used for storage...” “The upper floor...is largely clear.”*
- *“The Egg sorting room...has an internal brick wall and has a smaller retainer wall as a livestock bay. The room...used [for] storage.”*
- *“The storage shed...is used for storing materials.”*
- *“The chicken shed is used to house ducks and chickens and is a mix of brick and wooden walls... and a framework of Harris fencing used as pens for livestock.”*
- *“On the end of the chicken shed is a wooden framed lean to with a plastic sheet roof, used to store bedding materials...”*
- *“On the south western corner of the building is a small outbuilding used as an external toilet.”*

Barn 3

- *“These elevations are surrounded [by] chicken pens made from Harris fencing panels, with the rear brick structure being part of these areas.”*
- *“Internally...the room is clean and used for storage...”*

22. The CA supplied a copy of the “prior notification statement” produced by [REDACTED]. The photographs within this statement show dilapidated buildings. The statement includes the following comments:

- *“The site has not been used since the applicant purchased the farm, aside from keeping a small number of poultry in the yard area and adjoining field as a hobby farm.”*
- *“When last in use, the buildings were solely for agricultural use as part of an established unit.”*
- *“Both barns have been used for agriculture and storage in association with the former pig farm and smallholding. These uses ceased prior to the applicant’s purchase of the site in [REDACTED] ...”*

23. The appellant has further provided correspondence from [REDACTED] that states “Our photographs taken on [REDACTED] show geese and hens on the site with evidence that the animals were housed in the barns along with feedstuffs, hay and bales of shavings and sawdust for bedding. Egg storage and sorting was observed in one of the buildings, which all support an ongoing farming activity in the buildings.”

24. The CA suggest that this statement contradicts the statements within the Planning statement itself. They further point out that the only site visit made by the planning consultants appears to be on [REDACTED] and therefore the situation on this date does not prove continuous use. The ambiguity in the statements leads the CA to conclude that continuous lawful use has not been proven.
25. The CA's planning officer visited on [REDACTED]. The photos from this visit show that the buildings were in a state of disrepair and internal photos show no evidence of animals being kept inside or of storage of agricultural equipment. They suggest that the evidence from the site visit supported that the buildings were being used for domestic storage. The CA state that the lawful use of the buildings was as an agricultural use and not as a storage use.
26. As part of the comments on the CA representations, the appellant provided a statement from [REDACTED]. He stated that he has helped to care of the animals at [REDACTED] since [REDACTED]. His statement includes the following comments:
- *"The animals kept at the farm include Hens, Ducks, Geese, Rabbits, Dogs and Cats who all live in the Barns located in the Farmyard. There are 2 detached buildings which have several entrances and are divided internally to provide various areas for Housing the Animals aswell as storage areas for their food and bedding, Egg sorting aswell as equipment and tools used on the farm, wood etc for repair of the buildings to maintain security of the animals housed in them."*
 - *"During the Birds Flu Housing restrictions the birds had to be kept inside the barns as they were not allowed outside incase they came in contact with wild birds. The Housing order was lifted in [REDACTED] and since then I have visited the farm every morning to let the birds out of the barns and returned before dark each day to lock the birds back in the barns as there are foxes living nearby. During the day the animals free range the yard and farmland unless the weather is bad when they stay inside the barns for shelter. Their food and water is inside the barns 24/7 to maintain biosecurity and prevent exposure to contamination from wild birds. The birds are free to go back inside the barns if they require food, water or shelter during the day then are locked in the barns over-night to keep them safe from predators."*
27. In my opinion, the evidence provided suggests that a large proportion of the barns were primarily used for storage. However, there is clear evidence that at least some of the barns were used for the housing of animals such as ducks, geese and chickens. The CIL Regulations define an in-use building as containing "a part" that has been in lawful use. I am satisfied that "a part" of both buildings has been used for housing animals and associated feed and equipment.
28. The planning application shows that the barns are being converted without any demolition, rebuild or extension to the existing buildings. I therefore conclude that the net chargeable area is [REDACTED].

Reliefs

29. The appellant has referred to self-build exemption within their appeal. The CA state that this relief has not yet been applied for.
30. Regulation 54A allows for self-build exemption, subject to certain conditions. In order for self-build exemption to apply, an application must be made to the CA under the procedure contained in Regulation 54B.
31. The right of the appellants to make a claim for self-build exemption is not affected by the decision of this appeal and I am not able to consider these matters within my decision.

32. On the basis of the evidence before me, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £ [REDACTED] ([REDACTED])

[REDACTED]

[REDACTED] MRICS
Valuation Office Agency
14 March 2024