

Appeal Decision

by [REDACTED] MRICS

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

Email: [REDACTED]@voa.gov.uk

Appeal Ref: 1853051

Planning Permission [REDACTED]

Location: [REDACTED]

Development: Change of use of land and erection of two detached dwellings with vehicular accesses and associated works following demolition of agricultural storage units.

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 [REDACTED], the Collecting Authority (CA), in respect of this matter. In particular I have considered the information and opinions presented in the following submitted documents:-

- a. The Decision Notice issued by [REDACTED] on [REDACTED] in respect of [REDACTED].
- b. The CIL Liability Notice [REDACTED] dated [REDACTED] in the sum of £ [REDACTED] ([REDACTED]).
- c. The Regulation 113 – Review of Chargeable Amount issued by the CA on the [REDACTED].
- d. The CIL Appeal form dated [REDACTED] submitted by the appellant under Regulation 114, together with documents and photographs attached thereto.
- e. Further documents provided by the appellant on the [REDACTED]; including additional photographs, a copy of the Liability Notice, and the appellant's email request to the CA for a Regulation 113 review dated [REDACTED].
- f. The CA's representations to the Regulation 114 Appeal dated [REDACTED].
- g. The appellant's response to the CA's comments dated [REDACTED].

2. The chargeable development was granted planning permission on the [REDACTED] under application reference [REDACTED]. The permission allowed for a “Change of use of land and erection of two detached dwellings with vehicular accesses and associated works following demolition of agricultural storage units.”

3. Liability Notice [REDACTED] was issued by the CA in the sum of £[REDACTED] based upon a chargeable area of [REDACTED] square metres (sq.m), charged at a rate of £[REDACTED] per sq.m (indexed), on the [REDACTED]. The chargeable area has been calculated as being the gross internal area (GIA) of the chargeable development ([REDACTED] sq. m.) less [REDACTED] sq. m. of eligible floorspace which is planned to be demolished.

4. The appellant requested that a review under CIL Regulation 113 be undertaken by the CA on the [REDACTED]. The appellant requested the CA also offset the GIA of Building C and provided a sworn affidavit, a statement from their letting agent as well as additional photographs in support of their proposal.

5. The CA issued their Regulation 113 Review decision on the [REDACTED] in which they confirmed their opinion of CIL liability at £[REDACTED]. The CA advised that they do not consider the evidence provided to be sufficient to demonstrate that Building C had been in continuous use for a period of six months within the required period. The CA noted that statutory declaration did not specifically mention Building C nor the frequency of its use. The CA opines that the photographs provided show singular moments of use rather than six continuous months and show detailed usage rather than being linked to a specific building.

6. Following the outcome of this review, the appellant made a Regulation 114 appeal to the Valuation Office (VO) on the [REDACTED] and as part of this appeal they have submitted further photographs as requested by the CA within their review.

7. During the representations process of this appeal, on [REDACTED], the CA submitted comments in response to the appellant’s evidence. In which the CA note that the additional photographs provided by the appellant do clearly show Building C. However, the CA maintains that the photographs provided show only singular moments and they also note that they only span a period of just under [REDACTED] months, not the six required within the legislation. The CA also consider the photographs to show Building C as relatively empty and unused (with the exception of log cutting which is taking place in some photographs). Given this, the CA conclude that the photographs do not provide sufficient information or information of sufficient quality to allow them to offset the GIA of Building C. In addition the CA highlights that the affidavit does not specifically mention Building C or the frequency of its usage and as such, the CA do not consider the affidavit to provide sufficient evidence of the continuous use of Building C for a period of six months during the relevant period.

8. In response to the CA’s comments, the appellant has made further representations that include two additional photographs dated [REDACTED] and [REDACTED] and a further affidavit which states Buildings A, B and C have been in a continuous use as agricultural storage since the site was acquired in [REDACTED] until the date of planning permission.

9. Schedule 1, Part 1 of the CIL Regulations 2010 (as amended) provides that the net chargeable area of the proposed development should be calculated based upon a formula which is essentially the GIA of the proposed development **less** retained parts of lawfully in-use buildings. An ‘in-use building’ is defined in paragraph 10 as a

building which is a relevant building (a building which is situated on the relevant land on the day planning permission first permits development) and 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.

10. Both parties agree that Building C was a relevant building and its lawful use was as an agricultural store. The dispute centres around whether the appellant has provided sufficient evidence and evidence of sufficient quality to enable the CA to establish whether the building was “in-use”.

11. After considering the appellant’s representations, I understand that he acquired the site in [REDACTED]. From his updated affidavit (dated [REDACTED]), I note that the Building in question along with others on the site have been used continuously for a variety of purposes including storage of garden and maintenance machinery, other agricultural tools and wood for the [REDACTED] month period from the date of acquisition up until planning permission was granted.

12. It is noted that not all of this evidence and information was available to the CA neither when they calculated the CIL liability nor when they undertook their 113 review.

13. I have considered the CA’s points and concur that the photographs originally provided as part of this appeal only covered the period [REDACTED] to [REDACTED] and as such only evidenced [REDACTED] months of use. However the appellant has now provided additional photographs from both [REDACTED] and [REDACTED] and he has also provided an updated affidavit detailing his use of the subject Building over this period.

14. I note the CA do not consider photographs to demonstrate continuous use as they only represent singular moments. This is of course what any photograph does, it captures a precise moment in time. However, the evidence must be considered in the whole. The appellant has provided a number of photographs spanning the relevant period and also a sworn declaration as to the use of Building C during the relevant period. I agree the evidence is brief but regard must be had to the nature and use of the building when determining the appropriate quality and quantity of evidence required.

15. The subject is an agricultural store. It is described in the planning documents as an agricultural storage unit, it is not described as former or disused. In my opinion the quantity and quality of evidence provided by the appellant is commensurate with what one would assume would be available to evidence the use of an agricultural store. An agricultural store may have limited comings and goings, no utility bills etc and is unlikely to have video evidence of its use. In comparison, it would be expected a building in office use would be able to provide much more evidence which could include utility bills, general post, a lease and possibly CCTV footage of staff entering and leaving. It is perfectly reasonable for someone to use an agricultural store occasionally whereas one would expect a more regular use of an office.

16. Having considered the nature and permitted use of Building C as well as all of the evidence provided by the appellant as part of this appeal, I am of the view the appellant has demonstrated that the Building was an “in-use” building and as such its GIA can be offset from the GIA of the chargeable development. It is acknowledged

that not all of this information was available to the CA at the time of their review decision.

17. Neither the appellant nor the CA have commented upon the GIA of Building C. I have therefore scaled the area of this Building from approved plan [REDACTED] and calculate the GIA of Building C at [REDACTED] sq. m. I understand the GIA of the chargeable development, the charging rate and level of indexation used are not in dispute. I therefore calculate the net chargeable area to be:

Proposed GIA (Total)	[REDACTED] sq. m.
Less Existing GIA	[REDACTED] sq. m. ([REDACTED] sq. m. already allowed plus [REDACTED] sq. m Building C)
Net CIL Chargeable area	[REDACTED] sq. m.

CIL charge: [REDACTED] sq. m. x £ [REDACTED] x [REDACTED] indexation = £ [REDACTED]

18. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I confirm a reduced CIL charge of £ [REDACTED] ([REDACTED]).

[REDACTED] MRICS
RICS Registered Valuer
District Valuer
28 November 2024