

Appeal Decision

by ■■■ 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: ■■■@voa.gov.uk

Appeal Ref: 1852169

Planning Permission Ref: ■■■

Proposal: Erection of an Agricultural Building with ancillary staff welfare facilities and workshop

Location: ■■■

Decision

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

Reasons

1. I have considered the submissions made by ■■■, on behalf of the Appellant, ■■■ and the submissions made by the Collecting Authority (CA), ■■■.

In particular, I have considered the information and opinions presented in the following documents: -

- a) Planning decision notice ■■■ and approved plans.
- b) ■■■ Planning Application Form and ■■■ Justification Statement (■■■).
- c) Planning Officer report to Committee for ■■■ .
- d) CIL Liability Notice ref LN■■■ relating to Planning Permission ■■■ .
- e) Planit Consulting, Grounds of Appeal statement dated ■■■.

- f) CIL Regulation 113, Review of Chargeable Amount request made on [REDACTED] and the 114 Appeal Representations from the CA dated [REDACTED] upholding and defending the original Liability Notice.
 - g) Site visit notes from an Enforcement Site Visit by [REDACTED] in [REDACTED] .
 - h) Representation letter from the CA in response to the Regulation 114 Review Request.
2. Retrospective planning permission was granted under [REDACTED] for the 'Erection of an agricultural building with ancillary staff welfare facilities and workshop (retrospective) on [REDACTED] .
 3. On [REDACTED], the CA issued a Liability Notice (Reference: LN [REDACTED]) for a sum of £ [REDACTED] . This was based on a net chargeable area of [REDACTED] m² and a Charging Schedule rate (which includes indexation) of £ [REDACTED]/m².
 4. A Regulation 113 review of the charge was made to the Council on [REDACTED] . The CA responded on [REDACTED], stating that it was of the view that its original decision was correct and should be upheld.
 5. On [REDACTED] the Valuation Office Agency received a CIL appeal under Regulation 114 contending that the CIL Liability should be [REDACTED].

Grounds of Appeal

6. The appellants grounds of appeal set out in the agent's letter, accompanying the Regulation 114 Appeal are:
 - a) That the CA should not have raised a CIL liability against the development, as the facilities to which the CIL charge has been levied do not fall within the 'residential dwellings – 10 or less (Zone A)' category.
 - b) CIL should not have been charged on any part of the development, including the staff welfare facilities [REDACTED] (sqm) as Condition 2 of the granted planning permission limits the use of these facilities to ***'be used for temporary overnight accommodation, between [REDACTED] and [REDACTED] each year and shall be limited to a person solely or mainly employed in the locality in agriculture. The building shall not be used for overnight accommodation outside this period.'***
7. The Appellant, within their Regulation 113 Review request, offered to pay a CIL charge of £ [REDACTED] on the basis that the staff welfare facilities offered accommodation for 1/3rd of a year. The CA rejected this offer and reaffirmed the CIL liability charge as set out in the Liability Notice.
8. The staff welfare facilities within the agricultural building are used by agricultural staff and students. Any overnight accommodation is strictly temporary and related to the long overnight shifts that can occur during lambing and calving season. This was understood by the planning officer.

9. [REDACTED] confirm in their report that [REDACTED] Farm extends to approximately [REDACTED] hectares ([REDACTED] acres) and the farming business is based upon a traditional mixed farming model of beef and sheep production. The farm has [REDACTED] suckler cows with calves and bull, with calving undertaken in [REDACTED] and [REDACTED]. In addition to the cattle there are [REDACTED] ewes with lambs at foot and the ewes lamb in April.
10. The appellant states that lambing and calving require 24 hour per day staff cover to achieve the highest animal welfare. Staff, including students, are therefore required to be on hand during the night and shifts can start and finish at irregular hours.
11. Staff welfare facilities include a WC and shower, kitchen unit, refrigerator for veterinary products, log burning stove to provide sustainable heat and upper floors to provide sleeping areas. All elements are required for agricultural staff carrying out such work.
12. The agent opines that the provision of these facilities for agricultural staff does not constitute a residential dwelling.
13. The Planning Officer Report to the Planning Committee stated:

The proposed building includes a large, vaulted barn area which houses ewes and lambs during lambing season in hayed pens. In addition to the main livestock area, two side additions and canopies include staff area with accommodation, a workshop area and external areas for storage/machinery. The staff area includes a kitchen/WC/seating area and temporary overnight accommodation on the first-floor. Officers are mindful that with [REDACTED] ewes in lambing season, this will necessitate vets on site for 24-hour periods over the [REDACTED] period given the distance from the main farm buildings (approximately [REDACTED] minutes along the track and through two sets of gates).

The justification report and on site meeting the applicant detailed how the farm employs [REDACTED] part time staff consisting of an Apprentice and veterinary students from the nearby School of Veterinary Medicine at the University of [REDACTED] during this period. Staff, usually students, are therefore required to be on hand during the night when lambing and this will often involve a shift starting in the early evening and finishing the following morning. Given the size and scale of the farm, such temporary overnight accommodation is considered appropriate and reasonable to provide the highest welfare for the farms livestock.

Concern has been raised that the accommodation could be used for residential purposes which would be materially harmful. Officers are satisfied from their site visit and supporting information, that the accommodation is used for temporary purposes for employees related to the welfare of livestock and will condition that such accommodation is used for agricultural workers only.

14. The agent for the appellant considers this statement from the Planning Officer further supports their view that the facilities do not constitute a residential dwelling. They consider them to be essential, temporary facilities for staff employed during lambing and calving.

15. The agent further states that the facilities are ancillary to the primary, permitted agricultural use of the building with a Condition of the Planning Permission restricting the use of the accommodation to four months of the year and only by people employed locally, in agriculture.
16. Conversely the CA disagree with the appellant. They consider the staff facilities constitute a residential dwelling. Hence a CIL charge has been applied and CIL Liability Notice issued for the part of the building used for Staff Welfare Facilities.
17. The CA state the term 'residential dwelling' is not specifically defined within the adopted [REDACTED] CIL charging Schedule. It is not therefore limited to being C3 (as per the Use Classes in the Town and Country Planning (Use Classes) Order 1987 (as amended)). As such they consider the term of 'residential dwelling' for the purposes of the CA's charging schedule can be broader.
18. Case law, ***Grendon v First Secretary of State and another*** (2006) is quoted because the CA consider the accommodation is a domestic dwelling as it has all the facilities required to '*afford to those who use it the facilities required for day to day private domestic existence*'. Photographs evidencing a kitchen, sleeping areas and a bathroom, together with separate access, as taken by a Planning Enforcement Officer from their visit to the site in [REDACTED] are presented as evidence by the CA to support this view.
19. The CA do not consider Condition 2 of the planning permission (restricts occupancy to [REDACTED] months per year and only by local, agricultural workers) to prohibit the accommodation from being a 'residential dwelling'. They consider this to be akin to an agricultural workers dwelling, albeit to be occupied on a seasonal basis.
20. The CA state that the Appellant also argues that the planning permission is not 'planning permission' for the purposes of CIL on the basis that Regulation 5 of the CIL Regulations 2010 (as amended) state that "planning permission does not include planning permission granted for a limited period". This point is not however evident or relied upon within the Appellants appeal.
21. In response to this point, the CA state the CIL Regulations define that 'planning permission granted for a limited period' has the same meaning as in the TCPA 1990. The Regulation 72 of the TCPA makes the following reference:

72. Conditional grant of planning permission

1. *Without prejudice to the generality of section 70(1) conditions may be imposed on the grant of planning permission under that section-*
 - i. *For regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient of the purposes of or in connection with the development authorised by the permission.*
 - ii. *For requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of*

any works required for the reinstatement of land at the end of that period.

2. *A planning permission granted subject to such a condition as is mentioned in subsection (1(b)) is in this Act referred to as "planning permission granted for a limited period".*

22. Taking into account the above, the CA consider that Regulation 5 (2) of the CIL Regulations are not applicable to the development; that planning permission has been permanently granted and thus the relevant permission IS planning permission for the purposes of CIL.

Decision

23. Although the CA have raised the question of whether the development can be deemed "planning permission" and thus be considered for CIL Liability, I consider the key consideration in this Appeal to be whether the staff welfare facilities are a 'residential dwelling'.

24. I understand that the purpose and intended use of the facilities is to enable people to be in close proximity to the animals during lambing and calving periods, to monitor, care for and help the animals. These people would be required to be on site for long and often anti social/overnight periods. It is therefore a practical requirement to provide a WC, shower, cooking, sitting, sleeping and respite areas/facilities to cater for their functional needs. I consider there is a functional reason and purpose for the provision of the facilities which is integral, but ancillary to the primary use of the building, as a lambing/calving barn (agricultural use).

25. Condition 2 of the planning permission restricts the use of these facilities to [REDACTED] months per year. It states a specific time period ([REDACTED] to [REDACTED]) and specific type of person (solely or mainly employed, in the locality, in agriculture) who can use the approved facilities.

26. I do not agree with the CA that the facilities are akin to a dwelling with an agricultural occupancy restriction. A dwelling implies permanency and I question where the CA would expect the agricultural workers to live during the other eight months of each year, when the staff facilities can not be used.

27. With regard to whether the provision of such facilities can be considered to be a 'residential dwelling', I refer to The Collins English Dictionary which defines a 'dwelling' as '**a place where someone lives**'.

28. I consider the inclusion of Condition 2 (with planning permission [REDACTED]) evidence's the Councils clear intention to allow facilities to be provided, but NOT to create a new dwelling in the countryside.

29. Case law; *PN Bewley Ltd vs HMRC (Appeal No TC/2018/03175)* provides guidance on defining a 'residential dwelling', with two tests helping to determine the decision:

1. **Physical characteristics** - The physical characteristics of the building are determinative; there are facilities for use as private accommodation (it is self contained and there is a bathroom, bedroom and kitchen).

2. **Suitability** - It is not sufficient for the building to be merely capable of being used as a dwelling; it must also be suitable for such use. I opine that the subject building is not suitable for use as a residential dwelling; permanent occupancy is prohibited by Condition 2 (attached to the planning permission) and I do not consider temporary, seasonal accommodation to offer sufficient permanence to be defined as a dwelling (where someone lives).

30. Upon consideration of all evidence and on the basis of the above, I do not consider the staff welfare facilities constitute a residential dwelling and the development should be categorised under 'All other uses' which attracts a £0 CIL charge psqm (as per the [REDACTED] CIL Charging Schedule).

31. I therefore uphold the appeal and determine that the CIL charge should be £ [REDACTED] ([REDACTED]).

[REDACTED] MRICS FAAV
Valuation Office Agency
06 November 2024