Appeal Decision

by [redacted] MRICS Solicitor (Non-Practising)

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

Valuation Office Agency
Wycliffe House
Green Lane
Durham
DH1 3UW

e-mail: [redacted]@voa.gov.uk

Appeal Ref: 1829888

Planning Permission Ref: [redacted]

Proposal: Conversion of Barn to no. 1 dwelling (part retrospective)

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) Prior Approval Consent ([redacted]) granted for change of use of agricultural building to dwelling dated [redacted].

    b) Planning Decision ref [redacted] dated [redacted];

    c) Approved planning consent drawings, as referenced in planning decision notice;

    d) CIL Liability Notice [redacted] dated [redacted];

    e) Reg 113 review request dated [redacted]

    f) Reg 113 review response from CA dated [redacted]

g) CIL Appeal form dated [redacted], including appendices;

h) Representations from CA dated [redacted]; and

i) Appellant comments on CA representations, dated [redacted].

2. The development originally commenced in [redacted] after being granted Class Q prior approval consent on [redacted] for a barn conversion to a dwelling. No CIL liability arose as the CA`s Charging Schedule did not come into effect until [redacted]

3. Work on the conversion started in [redacted] but was hindered by an accident to the Appellant. As the original consent, [redacted], was to be completed within three years by [redacted] and as the country was going into COVID19 lockdowns an extension was granted for completion of the works

4. The conversion works were essentially complete and the dwelling habitable but required internal minor works and the development had not yet been signed off by Building Control.

5. The Council determined that as the works were still not completed then retrospective planning permission was required to regularise the situation and advised the Appellant that an application would have to be made.

6. The Appellant applied for planning permission, which was granted on [redacted] under application [redacted] for the conversion of barn to no. 1 dwelling (part retrospective).

7. The CA issued a CIL liability notice on [redacted] in the sum of £[redacted]. This was calculated on a chargeable area of [redacted] m² at the rate of £[redacted] m² plus indexation.

8. The Appellant submitted a request for a Regulation 113 review on the [redacted] in which they explained the history of the property and the reasons for the delay in completing the development in accordance with the prior approval consent. The Appellant outlined why they considered that the building should qualify as “in-use” and consequently they opined the net chargeable area of the development should be zero.

9. The CA issued their Regulation 113 review on the [redacted] which confirmed the CIL liability at £[redacted].

10. The Appellant made a Reg 114 (chargeable amount) appeal to the Valuation Office Agency dated [redacted] contending that the CIL liability should be Nil based on the contention that some or all of the building was lawful in use space prior to the grant of planning permission and such areas should be deducted from the chargeable area.

11. The Appellant`s grounds of appeal can be summarised as follows:

a) The conversion works were essentially complete and the building liveable, (watertight, water and electricity connected etc) internal minor works were still required and the building had not been signed off by building control yet.

b) The Council agreed to an extension which the Appellant understood to be an indefinite extension to continue and complete the building.

c) The Appellant considered that they were lawfully using the building until the email they received on the [redacted] saying "…to regularise this matter you may wish to consider submitting a planning application to retain the current structure to provide a dwellinghouse." The Appellant considers that it is unfair to now say that the permission that was given at the time is now considered unlawful.

d) The Appellant contends that the Council have also combined the woodworking and use of the workshop for the progress of the house with the agricultural use and therefore are not recognizing it as lawful use. The Appellant contends that they were using the workshop for its intended purpose and had the permission to do so.

e) The Appellant also argued that we had been using the workshop for some agricultural purposes as well as for working on the barn and that the agricultural use was lawful.

f) The Appellant found the CA`s position confusing when it was stated that "upon implementation of works permitted under the Prior Approval Consent, the building, in its entirety, could no longer be regarded to have an agricultural use" but in the same letter it stated that planning permission for the conversion of the agricultural building to 1 no. dwelling was needed. Which to the Appellant illustrated the general confusion of it being a residential or agricultural building at the point that the new full application went in.

g) The Appellant contends that the lawful use, both agricultural and the residential use of the building i.e. the workshop to fabricate various items for the barn as well as being used for agricultural purposes is considered lawful use and has been in continuous use since [redacted], therefore the CIL liability calculation should include the deduction of the new floor area from the old, making a CIL liability of £0 after deducting the new [redacted] sq.m gross internal area by the original [redacted] sq.m. This appears to be an error and looks as though the Appellant has transposed the areas of the old and new buildings. It is noted however that the gross internal area contained within the CIL calculation in the Liability Notice is [redacted] sq.m. There appears to be no dispute within the Appellant`s case contending that the area or the basis of calculation is incorrect and this issue does not appear to form the basis of this appeal.

h) The Appellant stated that they had enclosed five Statements of Truth from neighbours and farm workers who have either seen the workshop in use by the Appellant and others or have used the workshop themselves since [redacted] (and continue to do so) however, these were not included in the documentation.

i) The Appellant also stated that they had enclosed electricity bills from [redacted] from [redacted] which show that the workshop has been in continued use since [redacted]. Again, these was not included in the documentation.

j) The Appellant contends that no additional floorspace has been constructed. The [redacted] Application was a simple conversion of the existing floorspace, and this scheme is a continuation of that original consent, which should not attract a CIL charge.

k) In summary, the Appellant argues that that the building has been used lawfully and continuously for the last 3 years, therefore the CIL charge must be recalculated, allowing the existing floor space to be deducted, bringing the amount liable to £0.

12. The CA has submitted representations that can be summarised as follows:

a) In the Reg 113 review the CA understand that the review has been requested as the Appellant considered that the "workshop element of the project was in use continuously for a period of at least six months within the preceding 36 months and that "the workshop end of the building has been used for agricultural purposes during this time".

b) The CA confirmed that Prior Approval Consent was granted under [redacted] for the conversion of the agricultural building to a single dwelling. However, due to unforeseen circumstances, the applicant did not comply with Condition Q.2(3) which stated that Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date. As the conversion had commenced, another prior approval could not be sought/determined and as such planning application [redacted] was submitted. This sought retrospective planning permission for the conversion of the agricultural building to 1 no. dwelling.

c) The CA contended that as [redacted] granted permission for a new dwelling, the development is CIL liable. The existing floorspace can only offset the charge for the new development if it has been in use for its **lawful** purpose for a continuous period of at least 6 months within the preceding 36 months.

d) The Appellant had stated that the workshop element of the building had been used for agricultural purposes since [redacted] and provided five Statements of Truth, although these were not contained within the appeal submission, which identify that the workshop element of the building has been used for:

- Fabricating various things for the farm
- Maintaining tractors and JCB bucket, etc.
- Making and fixing gates, posts, cattle crushes and other things
- Maintaining equipment on the farm
- Keeping of MIG welder and grinding machines
- Woodworking

13. The CA did not consider that woodworking represented a use which falls within the definition of agriculture. However, the other activities referred to do constitute works which fall within agriculture.

14. The CA considered the key issue in this case is what constitutes the "lawful" use of the site and said that upon implementation of works permitted under the Prior Approval Consent [redacted], the building, in its entirety, could no longer be regarded to have an agricultural use.

15. Upon expiry of [redacted], the building continued to be in residential use, but an unlawful residential use; the expiry of the Class Q not meaning that the building reverted back to being in agricultural use.

16. Since the grant of the retrospective planning approval [redacted], the lawful use of the building is for residential. The building which had lawfully been in agricultural use had ceased being in that use upon commencement of the development but could not be lawfully occupied as a dwelling due to a failure to meet the strict occupancy requirements of class Q.

17. The Appellant had provided information to demonstrate that the workshop element of the building has been used for agriculture use but upon implementation of the Class Q the lawful use of the building was no longer for agricultural purposes.

18. The CA maintain that the permission granted is clear that the workshop space is approved to be altered as part of the conversion. The permission allows for alterations both in its material construction and in terms of its use – becoming a domestic use as part of the dwelling.

19. For this reason the CA do not consider that the information that has been submitted evidences that the building has been in **lawful** use for a continuous period of at least six months within the preceding 36 months and as a result that the existing floorspace cannot be deducted from the CIL liable floorspace. The building if used for anything other than residential purposes would not constitute a lawful use and therefore the Appellant's contention that it was used for agricultural purposes would not satisfy the test set down to allow lawful use.

20. The CA considered that the development is CIL liable as it is development which results in the creation of a new dwelling. In their opinion the on-site building has not been in a lawful use for six months of the last three years from the date of the grant of planning permission and as such this floor space cannot off-set the chargeable floorspace.

21. The CA also noted that the application from which the CIL charge arose was materially different to the Class Q as it included changes to the elevations and a greater area of land associated with the development. The development on the ground is as per the permission [redacted].

22. The CA contend that the appeal should fail and CIL liability be confirmed as per the CIL Liability Notice issued by the Council totalling £[redacted] dated [redacted]

Decision

23. I understand that there is no dispute about the chargeable area of [redacted] sq.m, the chargeable rate adopted, nor the indices applied in reaching the CIL liability of £[redacted]. The dispute centres around whether the building was in lawful use and whether its area can be offset from the area of the chargeable development for the purposes of CIL.

24. Schedule 1 of the CIL Regulations 2010 (as amended), sets out what can be deducted from the chargeable area:-

(i) retained parts of in-use buildings; and

(ii) 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.

"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.

25. Regulation 9(1) The "chargeable development" is the development for which permission is granted, which in this case is "Conversion of barn to no. 1 dwelling (part retrospective)".

26. The issue to consider therefore is whether the building or part of the building can be classified as lawfully in-use and so have those in-use areas deducted from the chargeable area in the CIL calculation.

27. Having fully considered the points raised by both parties in their submissions, while I do sympathise with the Appellant`s unfortunate set of circumstances which delayed the progress of this development however I do have to apply the law to the facts and circumstances in a strict, technical approach.

28. While I note that the Appellant has used the building firstly as an agricultural barn and then following the granting of Prior Consent Approval on [redacted] and subsequently with formal Planning Permission, as an ongoing residential dwelling development while also using the workshop area for a range of agricultural and general construction uses, the issue at hand is whether these uses were in fact lawful so as to qualify as offset against the chargeable area.

29. It is on this point where the CA holds the most persuasive argument. I agree that on the commencement of works authorised by the Prior Approval Consent in [redacted] the agricultural use ceased. At this point forward the building had a residential dwelling use in planning terms. As the development had not been completed within the three-year time limit as required in the Prior Approval Consent, then that residential dwelling use became unlawful and required a formal planning permission to regularise the position.

30. I understand that an informal extension was granted by the Local Planning Authority on [redacted] to give the Appellant more time to complete the development.

However, as the development remained unfinished, the Local Planning Authority wrote to the Appellant on [redacted] requiring a formal planning application to be made to regularise the planning position.

31. It appears as though the Appellant considered the informal extension an open-ended extension with no time limit however, the development remained an unlawful residential use during that period despite the extension and required formal planning permission to rectify this.

32. As it is this planning permission granted on [redacted] that has resulted in the CIL liability arising then it is from this point that the qualifying period for 6 months lawful use in the previous three years will run from, meaning that there must be a 6-month period of lawful use between [redacted] and [redacted].

33. As the conditions of the Prior Approval Consent were not adhered to, the residential use granted became unlawful on expiry of that Consent on [redacted] despite the informal extension. As there was an unlawful residential use from [redacted] up to the granting of retrospective planning permission on [redacted] then it is not possible to achieve the necessary 6 months of lawful use in that three-year period and as a result there is no lawful in use space to deduct from the chargeable area.

34. I therefore dismiss this appeal and confirm the CIL liability at £[redacted] ([redacted]).

[redacted] **MRICS Solicitor (Non-Practising)**
Valuation Office Agency

22nd December 2023