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: 1864411

Planning Permission Ref. [redacted] **granted by** [redacted] **on** [redacted]

Location: [redacted]

Development: Conversion of outbuildings to create two dwellings

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Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (NIL).

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 appellant's request for a Regulation 113 review of the chargeable amount dated [redacted].
d. The Regulation 113 – review of chargeable amount issued by the CA on the [redacted].
e. The revised CIL Liability Notice [redacted] dated [redacted] in the sum of £ [redacted] ([redacted]).
f. The CIL Appeal form dated [redacted] submitted by the appellant under Regulation 114, together with documents and photographs attached thereto.
g. The CA's representations to the Regulation 114 Appeal dated [redacted] .

h. 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, "Conversion of outbuildings to create two dwellings."

3. Liability Notice [redacted] was issued by the CA in the sum of £ [redacted] following the grant of planning permission. This was based upon a chargeable area of [redacted] square metres (sq. m.), charged at a rate of £ [redacted] per sq. m. (indexed).

4. I understand there was correspondence between the appellant and the CA regarding assumed liability, and the appellant confirmed their assumption of liability on the [redacted]. Shortly after on the [redacted] , the CA issued [redacted] also in the sum of £ [redacted].

5. The appellant requested that a review under CIL Regulation 113 be undertaken by the CA on the [redacted]. The appellant advised that the original architect had filled in the CIL forms incorrectly and that the barns in question had been in use as storage since the appellant purchased the house in [redacted] and as such the existing floor space should be netted off.

6. The CA issued their Regulation 113 Review decision on the [redacted]. The CA advised that following this review they would be issuing a new liability notice in the sum of £ [redacted]. The CA explained that was because they had concluded that insufficient evidence had been provided to allow them to determine that the existing buildings had been in a lawful use for a continuous period of six months within the three years prior to the grant of planning permission. Furthermore, the CA advised that during their review, they had noted an error in the calculation of the gross internal area (GIA) and that the GIA was in fact [redacted] sq. m. rather than [redacted] sq. m upon which [redacted] was based.

7. Following the outcome of this review, the appellant made this Regulation 114 chargeable amount appeal to the Valuation Office (VO) on the [redacted]. The issues before me are whether the GIA of the existing buildings can be offset in accordance with Schedule 1 Part 1 1. (6) of the CIL Regulations 2010 (as amended) and; if not, what is the correct GIA of the chargeable development. There is no dispute around the charging rate or indexation adopted.

8. Both parties agree the subject buildings are relevant buildings. However, there is disagreement around whether there was lawful use of these buildings and if the appellant has provided sufficient evidence to prove that lawful use during the required period as stipulated in the regulations.

9. After considering the appellant's representations, I understand that he acquired the [redacted] and the surrounding land and buildings in [redacted] and has used the buildings in question as domestic storage ancillary to the residence since his purchase until present day. The appellant has provided some photographs and statements from neighbours and other locals to support his case.

10. The CA advise that they deemed the appellant's photographs as insufficient evidence during their 113 review as they were all date stamped [redacted] and the

CA was unable to determine the timespan of these images. Furthermore, the CA highlight that the buildings were described as redundant in the Determination of CIL Liability Form and that it was also declared on this form that the buildings had not been in lawful use within the prior 36 months. In addition, the Design and Access Statement dated [redacted] describes the buildings as *"a redundant barn with attached single storey stables…".*

11. The CA cites the case of *R (oao Hourhope Ltd) v Shropshire Council [2015] EWHC518* which determined in-use buildings will be determined not by whether there is available a permitted used for the building but by the actual use of the building. The CA opines that the Planning Case Officer's Report makes it clear the principal use of the outbuildings in question was agricultural and equestrian. Therefore, they are of the view evidence is required showing the buildings were in an agricultural and equestrian use. The CA state that the witness statement of [redacted] further supports this point as she states; "*These structures have not been used for commercial or agricultural purposes since the* [redacted] *purchased the property in* [redacted] *, but have instead served as an ancillary space for the main dwelling."*

12. In response, the appellant has advised that the architect made an error when completing CIL Form1 and that the dates on the photographic evidence all read [redacted] as this was the date they were saved to the computer but the original photos dated back to [redacted] having been taken during the purchase of the property. The appellant has not commented on what he believes the lawful use of the buildings is but from the representations provided it is clearly evident the buildings were used by the appellant as domestic storage ancillary to [redacted].

13. 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.

14. Schedule 1 Part 1 1.(8) states, *"where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building."*

15. The CA is of the view the lawful use of the buildings is agricultural or equestrian and that the domestic storage which the appellant's representations evidence is not the lawful use of the building.

16. Whilst I have been provided with a copy of the planning permission pertaining to the chargeable development, neither party has provided me with a planning permission relating to the subject buildings prior to this date. A planning history of the wider site is included within the Planning Officer's Report but there is no specific mention of the buildings in question. The Officer's report describes the buildings as, "*an existing ancillary barn range that historically forms part of the* [redacted] *historic farmstead…. Accordingly, the conversion of the historic agricultural building to a residential use is deemed acceptable in principle."* The Design and Access

Statement describes the buildings as "*a two-storey, redundant barn with attached single storey stables probably being about* [redacted] *years old."*

17. Whilst I concur with the CA these statements suggest an agricultural use of the buildings at some time, it is quite clear this agricultural use is historic. Furthermore the report describes the buildings as ancillary to [redacted]. The age of the buildings means it is highly unlikely they have any formal planning permission and in the absence of any documents or evidence restricting the use of the subject buildings to agriculture, it is reasonable to assume any use ancillary to [redacted] would be a lawful one. In addition, I am of the view the use of the words historic and redundant in the Planning Officer's Report and Design and Access Statement are descriptive to the agricultural context only and do not mean that the buildings are not used at all.

18. Planning permission was granted on [redacted]. Therefore, the period in which six months of continuous lawful use must be demonstrated is between the [redacted] up until [redacted] . The appellant purchased the property back in [redacted]. He has provided photographs dating from [redacted] , [redacted] and [redacted] which show the buildings being used for domestic storage. In addition, the appellant has provided statements from neighbours and other locals that he was using the buildings for storage since moving in until present day.

19. The CA's comments regarding the date of the photographs has been considered. However, as the Appellant as part of this appeal has provided additional photographs and a copy of the emails from [redacted] that contained some of the photographs in question, I am satisfied their explanation accounts for the issue regarding the date stamp.

20. The CA refers to the appellant's email dated [redacted] "Sale of [redacted] between the vendors and purchaser's solicitors. They note that the solicitor states; *"planning permission was not needed for the change of use of the stables as they were already agricultural buildings."* The CA considers this again supports agriculture being the principal use of the subject buildings. However, reading the email fully, the solicitors also state, "*The stables were installed in* [redacted] *and the equestrian facilities installed in* [redacted] *."* It is clear from the Planning Officer's report and the Design and Access Statement that the subject buildings are over [redacted] years old. I am therefore not convinced the stables referred to in this email are the subject buildings.

21. I have also considered the CA's concerns regarding the completion of the CIL Form 1 which stated the buildings had not been in a lawful use within the 36 months prior. It is noted that this form was dated [redacted]. Planning permission was granted [redacted] . Regardless of whether you consider the architect mistaken or not, after submission of the form, there was a period of more than six months before planning permission was granted. Even if the form is taken at face value, the appellant still fulfils the required six months of lawful use post this date.

22. Whilst the evidence provided is limited, in my opinion the quantity and quality of the evidence provided by the appellant is commensurate with what one would assume would be available to document the use of an ancillary building to a domestic residence. It is difficult to prove use of this nature especially so where the appellant is unfamiliar with the CIL regulations. However, what the appellant has provided is reasonable and the required time period has been met. Therefore, I conclude the

buildings were in lawful use and their GIA can be netted off the area of the chargeable development.

23. I understand there is no new build as part of this chargeable development. Consequently, the offset of the existing buildings reduces the area of the chargeable development to nil. Whilst a discrepancy in areas was noted between the CA and the appellant, this now becomes inconsequential However, for completeness, I did undertake a check of the plans and concurred with the CA, the GIA of the chargeable development is [redacted] sq. m.

24. On the basis of the evidence before me and having considered all of the information submitted in respect of this matter, I confirm the chargeable amount to be £0 (NIL) and uphold this appeal.

[redacted] MRICS
RICS Registered Valuer
District Valuer
22 May 2025