# Appeal Decision

## by [redacted] FRICS

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

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**VOA Appeal Ref:** 1833686

**Planning Application:** [redacted]

**Proposal:** Alterations and conversion of garage outbuilding to holiday let (retrospective).

**Address:** [redacted]

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### Decision

Appeal dismissed.

### Reasons

1. I have considered all of the relevant 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 in respect of Application No: [[redacted]] dated [redacted].
    b) CIL Liability Notice [redacted] (dated [redacted]) £[redacted].
    c) CIL Appeal form dated [redacted], along with supporting documents referred to as attached.
    d) Representations from the Appellant.
    e) Representations from the CA.
2. The Appellant has declared that the conversion work was undertaken from [redacted] and was completed [redacted].
3. Retrospective Planning Permission was applied for [redacted] and granted for the Proposal as detailed [redacted].

4. The CA issued a CIL Liability Notice Liability Notice reference: [redacted] (dated [redacted]) for £[redacted] stating this was levied under the CA's CIL Charging Schedule, and S211 of the Planning Act 2008, based on a chargeable area of [redacted] sq. m.

5. On [redacted], the CA also issued a Surcharge Notice under the Planning Reference redacted] for failure to submit a commencement notice for £[redacted].

6. On [redacted] the Appellant submitted a written request to the CA requesting a Regulation 113 Review.

7. A Regulation 113 Review was undertaken and on [redacted] the CA emailed the Appellant explaining the review found that the CIL Liability Notice was correct and that the CIL payment should be as stated. The Appellant did not accept this outcome.

8. On [redacted], the Valuation Office Agency received a CIL appeal from the Appellant made under Regulation 114 (Chargeable Amount Appeal) confirming the Appellant disagrees with the CA's Regulation 113 Review decision on the basis that the chargeable amount has been calculated incorrectly, with supporting documents attached.

9. **The Appellant's grounds of appeal can be summarised as follows:**

    a) The Appellant does not agree with the CA's position that CIL is chargeable.

    b) The Appellant describes the works which are the subject of this Appeal as alterations to convert a small barn (c. [redacted] sq. m) from a games room to a 1-bed annexe in [redacted].

    c) The Appellant submits that:

        i. CIL should not be applicable as the development does not constitute a new dwelling with regard to Building Control and Planning law. Further, the Appellant states that The Building Control Partnership [corporate approved inspectors] wrote to the CA Building Control on [redacted] advising them of the plan to convert a small barn to a 1-bed annexe, they specifically stated that "the work does not concern a new dwelling". The building control officer then wrote to the CA's Building Control on [redacted] stating the work was completed and re-affirming that "the work does not concern a new dwelling".

        ii. the CA's planning officer's delegated report states that the conversion "does not result in the creation of a dwelling".

        iii. Schedule 3 of the Town & Country Planning Act 1990 says that this type of alteration does not create a "new dwelling".

        iv. no Planning Permission was sought for conversion as it was understood to be a "permitted development". Per Gov.UK website the Town & Country Planning Act 1990 - s55(2) says that interior alterations which do not materially affect the external appearance of a building do not require planning permission, and that their understanding of s196, that, because it is not excluded, this clause includes an annexe that is within the curtilage of a listed property.

        v. although the house at [redacted] is a grade [redacted] listed building, the barn, which would appear to be over [redacted] years old, is not of

itself listed but is within the curtilage of the house. Notwithstanding the Town & Country Planning Act, which had been relied on as the reason not to seek planning permission, and the fact that [redacted] Planning had been informed of the conversion in [redacted] it was not until [redacted] that the CA wrote saying that retrospective planning permission was required.

10. **The CA has submitted representations that I have summarised as follows:**

a) The development consists of an ancillary, self-contained living unit with its own entrance, living area, kitchenette, bedroom and bathroom. Permission [redacted] regularises works to the building that had already been undertaken and also allows for the building to be used as a holiday let.

b) The CA's interpretation of the CIL legislation is that the development creates a new dwelling for CIL purposes.

c) The minor development exemption for developments under 100 sqm does not apply when a development comprises of one or more dwellings (regulation 42(2)) and can therefore not be applied in this case.

d) As the development was granted permission retrospectively, the CA deemed the commencement date of the development to be the date planning permission was granted as per paragraph 7(1)(a) of the CIL regulations.

e) A surcharge of £[redacted] was added for the failure to submit a commencement notice as per CIL regulation 83. This amounts to the total outstanding sum of £[redacted].

f) The case officer's report does state that the development benefits from the minor development exemption - this is not correct and the case officer made a mistake.

g) The CA understands the appeal is made solely on the basis that the Appellant considers the development not to be CIL liable, and no comments were made on the measurements and calculation made.

h) As Appellant confirms the building was intended to be used as a "granny annex" and the current use of the building as a holiday let. The CA agrees with this statement and, as set out above, concludes this means the development creates an annex (and therefore dwelling) for CIL purposes.

i) The appellant refers to planning and building control legislation in regard to what entails a dwelling. However, as the term 'dwelling' is clearly defined in the CIL regulations, it is this definition that the Council must apply in this case.

j) The note that the conversion has enhanced the barn is not something the Council can consider when determining CIL liability.

11. **The Appellant submitted comments on the CA's representations which I summarise as follows:**

    a) The Appellant disputes the date the property was last lawfully used [[redacted] as stated on CIL Form 1] stating it has always been in lawful use from when Appellant purchased to date.

    b) The Appellant submits that the fact that they had changed the use without getting Planning Permission does not make its use unlawful - it would only have been unlawful use if the CA had issued a prohibition and they had broken that prohibition.

    c) Appellant submits property has been in continuous lawful use and that there is no liability to CIL.

    d) Lastly, the Appellant submits that if [redacted] were not listed the barn would not have needed any form of consent for these internal alterations and it is only because such permission was retrospectively sought, and granted, that the CIL problem has arisen – the CA's whole claim is based on technicalities and the fact that they "innocently accepted advice from [their] builder and did not think to cross check with [redacted] at the time".

12. **Having fully considered the representations made by the Appellant and the CA, I make the following observations regarding the grounds of the appeal:**

    a) In this case, the Appellant does not agree with the CA's imposition of its CIL Charging Schedule and has submitted their views in support of why CIL should not be applicable as summarised above.

    b) The CA has acknowledged the Appellant's references to the Planning and Building regulations, clarifying that in this connection, it is the CIL Regulations which is the relevant legislation for the levying and appealing of CIL charges.

    c) The CIL Liability was levied under the CA's CIL Charging Schedule, and S211 of the Planning Act 2008, based on a chargeable area of [redacted] sq. m.

    d) I confirm that this matter must be considered in the light of the CIL Regulations and in particular Regulation 42 of the CIL Regulations 2010 (as amended) which provides as follows: -

        *(i) Exemption for minor development*

        1. *42.—(1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.*

        *(ii) (2) But paragraph (1) does not apply where the development will comprise one or more dwellings.*

        *(iii) (3) In paragraph (1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.*

    e) Regulation 2 provides that for CIL purposes a 'dwelling' means "a building or part of a building occupied or intended to be occupied as a separate dwelling".

In this case, the development adds less than 100 sq m of floor space so the issue is whether it is excluded from exemption by virtue of regulation 42(2) because it is occupied or intended to be occupied as a 'separate dwelling'.

f) In considering whether the development is or will be occupied as a separate dwelling I have had regard to the property's configuration and situation. I have had regard to the planning permission and conditions/limitations on use and the appellant's statement of how the property has been used. I do not consider the fact that use of the property is restricted to a 'holiday let' means that it does not constitute a 'dwelling'. The building provides all the facilities required for day-to-day private domestic existence. In addition, there is no restriction in this case limiting the use of the accommodation to use in connection with the rest of the building and the appellant has stated that the barn has been used variously as a short-term holiday let and as accommodation for friends and relatives. On the facts of this case I am therefore content that the development comprises a 'separate dwelling' for CIL purposes.

13. The appellant has also raised the matter of the building having been 'in-use' in their comments on the CA's representations. "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 and there is provision for offsetting certain 'in use' buildings within the CIL calculation in certain circumstances. The Appellant has stated that the building has always been in lawful use however I note it has been declared that the building was last occupied for its lawful use [redacted] [on CIL Form 1] – which is more than three years before Planning Permission was granted, therefore no deduction was made for retained floorspace because this date was in excess of three years prior to the grant of planning permission [redacted]. The changes to the property that required the latest retrospective planning permission meant that the building could not have been in lawful use until this permission was granted and there should be no offset of an in-use building.

14. There appears to be no dispute in relation to the rates adopted or indexation and I therefore dismiss this appeal.

[redacted] FRICS
Valuation Office Agency
9 February 2024