

Appeal Decision

By [REDACTED] MRICS VR

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: [REDACTED]@voa.gov.uk

Appeal Ref: 1864814

Address: [REDACTED]

Proposed Development: Change of Use from agricultural barn to holiday accommodation including the stabling of guests horses and alterations to elevations.

Planning Permission details: Granted by [REDACTED], on [REDACTED], under reference [REDACTED].

Decision

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

Reasons

Background

1. I have considered all the submissions made by the appellant's agent, [REDACTED], (acting on behalf of the Appellants, [REDACTED] and [REDACTED]), and the submissions made by the Collecting Authority (CA), [REDACTED].

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

- a) CIL Appeal form dated [REDACTED].
- b) Grant of Planning Permission [REDACTED], dated [REDACTED].
- c) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED] – the superseded Liability Notice.
- d) The CIL Liability Notice (ref: [REDACTED]) dated [REDACTED] – the current Liability Notice.
- e) The Appellant's legal opinion dated [REDACTED], prepared by [REDACTED].

- f) The CA's Regulation 113 Review, dated [REDACTED].
- g) Various plans and photographs of the subject development.
- h) A copy of the CA's Charging Schedule, which was approved by the CA on [REDACTED].
- i) The Appellant's Statement of Case document dated [REDACTED].
- j) The CA's Statement of Case document dated [REDACTED].
- k) The Appellant's comments on the CA's Statement of Case document, which is dated [REDACTED].

Grounds of Appeal

2. Planning permission was granted for the development on [REDACTED], under [REDACTED]. The approved planning permission was:-

Change of Use from agricultural barn to holiday accommodation including the stabling of guests horses and alterations to elevations.

3. On [REDACTED], the CA issued a Liability Notice (Reference [REDACTED]) for a sum of £[REDACTED]. This was based on a net chargeable area of [REDACTED] m² and a Charging Schedule rate of £[REDACTED] per m² (Residential dwellings - 10 or less (Zone A)), with indexation at [REDACTED].
4. The Appellant requested a review of this charge within the 28 day review period, under Regulation 113 of the CIL Regulations 2010 (as amended). The CA responded on [REDACTED], stating that it was of the view that its original decision was incorrect. The CA issued a new Liability Notice (Reference [REDACTED]) for a sum of £[REDACTED]. This was based on a net chargeable area of [REDACTED] m² and a Charging Schedule rate of £[REDACTED] per m² (Residential dwellings - 10 or less (Zone A)), with indexation at [REDACTED]. The CA has calculated a net chargeable area of [REDACTED] m² from its opinion of the GIA of the development proposal ([REDACTED] m²) and GIA of the existing building ([REDACTED] m²).
5. On [REDACTED], the Valuation Office Agency received a CIL Appeal from the Appellant, contending that the CA has continued to calculate the CIL charge incorrectly and opines that no CIL is payable. The CA is of the opposite view and stands by its revised decision in its Regulation 113 Review. The Appellant opines that no CIL is payable and has advanced four separate (alternative) grounds to support his argument; the four Grounds are listed in the Appellant's Statement of Case document in the following order :-
 - Ground 1 – That the development proposal is not 'development'.
 - Ground 2 – That the CA has adopted an incorrect Indexation Factor in its CIL calculation.
 - Ground 3 – That the development is not a dwelling and constitutes Minor Development under Regulation 42A.
 - Ground 4 – That the Chargeable Area is incorrect and that the CA has erred in its GIA measurement calculation.

In addition, the Appellant is of opinion that an award of costs be made against the CA, under the provisions of Regulation 121.

Approved Development in Dispute

6. The building subject to this Appeal comprises an unlisted, early 19th century timber framed barn. The barn forms part of [REDACTED], which is understood to comprise a [REDACTED] acre family run farm. The disputed building of [REDACTED] has a queen post roof construction, curved wind braces, staggered butt purlins and gable ends with an aisle running between the two porches, which suggests a date of construction in the range of between 1850-1870.

Decision

7. Planning permission was granted for the development on [REDACTED], under [REDACTED]. The approved planning permission was:-

Change of Use from agricultural barn to holiday accommodation including the stabling of guests horses and alterations to elevations.

8. The Appellant has advanced four separate grounds to his Appeal. For ease of reading and the fact that Grounds 1 and 3 are somewhat interrelated, I will respond to the Appellant's grounds in a different order to that structured in the Appellant's Statement of Case document dated [REDACTED]; accordingly my order is :-

Ground 1
Ground 3
Ground 4
Ground 2

Ground 1 of Appeal

9. Ground 1 – That the development proposal is not 'development'.

The Appellant opines that the permission constitutes a change of use from a single dwelling house to a use of two or more separate dwelling houses and thus does not come under the meaning of development under Regulation 6. In essence, the Appellant opines that the disputed barn forms a part of the domestic use of the farmhouse at [REDACTED] and is ancillary to [REDACTED]; as such, it should be considered as being within the Class C3 use of the farm dwelling house.

Furthermore, the Appellant's opines that the development constitutes the change of use of a dwellinghouse to a use as two or more separate dwellinghouses under the provisions of Regulation 6(1)(d) and is thus exempt from CIL liability.

10. For clarity, the following are the provisions of Regulation 6(1) d):-

The following works are not to be treated as development for the purposes of section 208 of PA 2008 (liability)—

- a) *anything done by way of, or for the purpose of, the creation of a building of a kind mentioned in paragraph (2);*
- b) *the carrying out of any work to, or in respect of, an existing building if, after the carrying out of that work, it is still a building of a kind mentioned in paragraph (2);*
- c) *the carrying out of any work to, or in respect of, an existing building for which planning permission is required only because of provision made under section 55(2A) of TCPA 1990(b); and*
- d) *the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses.*

The Appellant has also provided the advice of a solicitor ([REDACTED]) to support their view.

11. The CA disagrees and contends that the subject planning permission defines that the existing building is an agricultural barn and does not reference any linkage or ancillary nature between the disputed building and existing dwellings on the wider site of [REDACTED] (which the CA notes, is not limited to being residential usage). The CA is of the view that the permitted development does not create a use which is ancillary to existing dwellings on the site and results in the creation of a separate dwelling.
12. Furthermore, the CA disagrees with the Appellant's interpretation of the exclusion prescribed under Regulation 6(1)(d), which states that "*the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses*" should not be treated as development (the underline is the CA emphasis). The CA points that the existing building (of the agricultural barn) has not previously been used as a single dwelling house; nor will this development change the use of this building to create two or more dwellinghouses (only a singular dwellinghouse will be created). As such, the CA argues that the provisions of Regulation 6(1)(d) do not apply, and the permitted development does qualify as 'development' for the purposes of CIL.
13. In making my determination on Ground 1, I am guided by the basic principle of Regulation 9(1) :-

Regulation 9(1) of the CIL Regulations 2010 states that chargeable development means "*the development for which planning permission is granted*".

Given the above, it is clear to me that the description of the approved planning permission *Change of Use from agricultural barn to holiday accommodation...* defines the subject planning permission that the existing building is an agricultural barn and does not reference any linkage or ancillary nature. Accordingly, I agree with the CA that the permission constitutes 'development' and the Appellant's interpretation that it falls under Regulation 6(1)(d) is flawed.

Ground 3 of Appeal

14. Ground 3 – That the development is not a dwelling and constitutes Minor Development under Regulation 42A.
15. The Appellant agrees with the CA that within the adopted [REDACTED] CIL Charging Schedule, the term 'residential dwelling' is not specifically defined as being Class C3 Use (as per the Use Classes The Town and Country Planning (Use Classes) Order 1987 (as amended)). Both parties are also in agreement that the CIL Regulations 2010 (as amended) define a 'dwelling' to be a building or part of a building occupied or intended to be occupied as a separate dwelling. However, the Appellant considers that a dictionary definition of the term 'dwelling' excludes the subject development from comprising a dwelling; and consider the definition of a dwelling requires permanent or long-term use by the occupants.
16. The Appellant points to Conditions 4 and 5 of the granted planning permission, which stipulate:-

Condition 4:

The holiday let units hereby approved shall be occupied for the purposes of short-term holiday let accommodation only, and shall not at any time be occupied as a person's sole or main place of residence.

Condition 5:

At the commencement of the use hereby approved, a short-term rental property management logbook shall be provided and made available for inspection by the Local Planning Authority at requested times."

17. Given the above conditions, the Appellant argues that they prohibit any medium/long term residency, meaning that it would be unlawful for the outbuilding to be used (or intended to be used) as a 'separate dwelling'. The CA disagrees with this assertion, and contends that the permission granted does not restrict the holiday unit being used as a dwellinghouse all year round; the condition merely requires that it is not occupied permanently by the same household. The CA cites the case of *Moore v Secretary of State for the Environment, Transport and the Regions* [1998] where it was held that there is no requirement (before a building can be a "dwelling-house") for it to be occupied as a permanent dwelling.

I agree with the CA that the permission granted does not restrict the holiday unit being used as a dwellinghouse all year round; the condition merely requires that it is not occupied permanently by the same household. Given the purpose of the development – patently for *holiday accommodation*, it is clear to me that the cited planning conditions are to prohibit permanent occupation by the same household.

Furthermore, I am of the view that the Appellant's argument that the development is not a 'dwelling' is undermined by the physicality of the property - the CA points that the approved plans show that the holiday let includes all the facilities to be expected with a dwellinghouse: a living area, a kitchen, sleeping areas (three bedrooms) and multiple bathrooms. The CA states that it will have all facilities required to "*afford to those who use it the facilities required for day-to-day private domestic existence*", as per *Grendon v First Secretary of State and another* [2006]. I find the CA's argument on this aspect very persuasive and leads me to conclude that the building is indeed a dwelling.

18. The CA also points that the permitted development is a holiday let. In consideration of its purpose as a holiday let, the CA cites the definition of a Holiday Letting (in Schedule 1, paragraph 9 of the Housing Act 1988) as '*A tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling house for a holiday*'. I find that this cited definition is a strong and persuasive argument that the building is indeed a dwelling.

In conclusion, it is clear to me that the development proposal results in the creation of a separate dwelling, which is liable for CIL.

19. The Appellant also contends that the development falls under the provisions of Regulation 42 – Exemption for minor development, which cites:-

(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.

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

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

Given that I have determined that the development proposal results in the creation of a separate dwelling, the provisions of Regulation 42 (2) cannot apply and the Appellant's Regulation 42 argument fails.

Ground 4 of Appeal

20. Ground 4 – That the Chargeable Area is incorrect and that the CA has erred in its GIA measurement calculation.

21. The Appellant contends that the CA has also erred in its calculated measurements of the GIA, resulting in an unduly increased area, more than is properly required. Specifically, the Appellant opines that the CA has incorrectly measured the gross internal area (GIA) of the development by including the GIA of window and door recesses. The Appellant considers that the GIA of the existing building is [REDACTED] m², whilst the CA considers the GIA is [REDACTED] m². The Appellant is of the opinion that the net chargeable area is [REDACTED] m²; this is calculated from his opinion of the GIA of the development proposal ([REDACTED] m²) and GIA of the existing building ([REDACTED] m²).

22. The CIL Regulations do not define Gross Internal Area (GIA), so it is necessary to adopt a definition. The definition of GIA provided in the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice (6th Edition) is the generally accepted method of calculation.

GIA is defined as the area of a building measured to the internal face of the perimeter walls at each floor level.

Including:-

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies walkways and the like
- Structural, raked or stepped floors are to be treated as level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floors areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

Excluding:-

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fire escapes

- Canopies
 - Voids over or under structural, raked or stepped floors
 - Greenhouses, garden stores, fuel stores, and the like in residential property
23. The parties appear to be in agreement in accepting the Royal Institution of Chartered Surveyors (RICS) definition of Gross Internal Area (GIA) as per the definition of GIA provided in the RICS Code of Measuring Practice (6th Edition) (RICS COMP).
24. In response to the Appellant's contention, the CA states that the RICS COMP specifies that GIA *"is the area of a building measured to the internal face of the perimeter walls at each floor level"*. The CA further opines that where there are doors or floor-to-ceiling windows, these features represent the internal face of the perimeter wall in this area of a building and as such, the CA include up to such in the measurements of GIA. The CA points that such areas are useable floorspace, which can be physically stood upon; furthermore, for a window with a sill and a wall below, the CA measure GIA to the internal face of the wall.
25. The CA is of opinion that the GIA of recessed doorways should be included in accordance with the RICS Code of Measuring Practice. The CA points to paragraph 73 of the VOA CIL Appeal decision cited by the Appellant (Reference 1852181, dated 27 February 2025, cited by the Appellant in relation to indexation (Ground 2 of this Appeal)), which states:-
- "Reveals for door-openings like those to the ground, first and second floors identified by the Appellant are not specifically mentioned as being either included or excluded from GIA in the RICS COMP, but it would nevertheless seem sensible that as these areas represent floorspace that must be walked upon to gain access..."*
26. The CA opines it has adopted the same methodology of measurement of the GIA for the existing floorspace and is of opinion that the GIA of the existing and proposed development has been correctly calculated.
27. As a rebuttal, the Appellant contends that the VOA Appointed Person in Appeal decision (VOA Reference 1852181) had erred in their application of GIA with reference to the RICS COMP and the associated example diagrams. Particularly diagrams C and D, which clearly show the measurement arrows finishing at the external walls and not straying into the doorways. Door openings are openings within a wall, as such the external wall surrounding the doorway can be measured to, as required by the RICS COMP
- The Appellant further opines that the only way to challenge the VOA decision, would be via a judicial review, which would have limited cost/benefit for the impact; however, the Appellant remains of the view that the Appointed Person in Appeal decision 1852181 had erred.
28. In respect of the Ground 4 dispute, I do not agree that the CA has erred in its application of GIA measurement and the disputed area is useable floorspace, which falls into the definition of GIA. I am of opinion that the Appointed Person in Appeal decision Reference 1852181 did not err. The Appellant points to the arrows in diagrams C and D of the RICS COMP; of note, the subject diagrams are clearly noted as examples and are for illustration purposes. Indeed, diagrams C and D are examples of industrial/warehouse units, whilst the subject is an agricultural barn. I determine that it is appropriate to include the GIA of the window and door recesses of the subject accommodation.

In conclusion, I agree that the CA's calculated net chargeable area of [REDACTED] m² is correct.

Ground 2 of Appeal

29. Ground 2 – That the CA has adopted an incorrect Indexation Factor in its CIL calculation.
30. Before I state my decision on Ground 2, I believe it is of benefit to all concerned to first explain the legislation, which underpins this element of the Appeal decision:-
31. The calculation of the chargeable amount is contained in the provisions of Schedule 1 of the 2019 Regulations. In this case (which is a ‘Standard Case’ under Schedule 1) the provisions of paragraphs (3), (4) and (5) of Part 1, Schedule 1 are key; they state:-

(3) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_p}{I_c}$$

where—

A = the deemed net area chargeable at rate R, calculated in accordance with sub-paragraph (6);

I_p = the index figure for the calendar year in which planning permission was granted; and

I_c = the index figure for the calendar year in which the charging schedule containing rate R took effect.

(5) In this paragraph the index figure for a given calendar year is—

- (a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;*
- (b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;*
- (c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;*
- (d) if the national All-in Tender Price Index is not so published, the figure for 1st November for the preceding calendar year in the retail prices index.*

32. The purpose of indexation is to allow the CIL charging schedule to increase in line with “inflation”, so it would seem sensible that if the index has been revised any subsequent calculations should also be based upon that revised indexation figure.

33. I note that the parties are in agreement that the *I_p* figure should be [REDACTED].

34. The Appellant argues that the CA has applied incorrect indexation within the calculation of the chargeable amount. Specifically, this argument is made in relation

to the determination of I_c ; and the Appellant suggests that the I_c figure should be [REDACTED] rather than the [REDACTED] used within the issued Liability Notice. In accordance with the above formula, the CA has calculated the chargeable amount within the Liability Notice dated [REDACTED], as follows:-

$$\begin{aligned}
 A &= [REDACTED] \text{ m}^2 \\
 R &= \text{£} [REDACTED] \text{ (Residential dwellings - 10 or less (Zone A))} \\
 I_p &= [REDACTED] \\
 I_c &= [REDACTED]
 \end{aligned}$$

$$\begin{aligned}
 & [REDACTED] \times \text{£} [REDACTED] \times [REDACTED] \\
 &= \text{£} [REDACTED] \\
 &= \text{£} [REDACTED]
 \end{aligned}$$

35. In arguing that the CA has applied incorrect indexation, the Appellant presents a singular VOA Appeal Decision (VOA Reference 1852181, dated 27 February 2025) issued to the CA, which determined that I_c should be 330; the Appellant opines that this is precedent in law.

The CA disagrees, it contends that it has correctly applied the indexation figure for I_c at 318, as this was the index figure on the date of which the [REDACTED] CIL Charging Schedule took effect.

36. In referring to the formula definition of I_c , the CA points that the index 'figure' is singular in regard, rather than a pluralised 'figures'; this acknowledges that the index should be considered as a single factual figure at a fixed point in time, rather than as a variable figure. For the CA, that fixed point in time was the date of effect of the CIL Charging Schedule, on 1 March 2019. The CA acknowledges that the All-in Tender Price Index presents forecast figures, which are updated periodically.
37. As part of its submissions to me, the CA evidences that the All-in Tender Price Index figure for November 2018 (the preceding year in which the CIL took effect in [REDACTED]) as at the 1 March 2019 (the date CIL took effect in [REDACTED]) was 318. The CA has evidenced this 318 figure as correct, by providing a screenshot of the (then) BCIS data. The CA emphasises that the 318 figure was the most recent finalised figure published before the previous 1 November on the date the Charging Schedule was adopted.
38. In my view, the indexation dispute between the parties, clearly relates to the evolving/forecasting nature of BCIS data over time. BCIS Tender Price Indices (TPIs) measure the trend of contractors' pricing levels in accepted tenders, i.e. cost to client, for schemes let on a lump sum basis built up from rates and quantities, usually a Bill of Materials, at commit to build. It is calculated by comparing prices in accepted tenders against a base schedule. The data is updated and revised to reflect real-world shifts in construction costs, market conditions, and construction industry practices. Of note, the BCIS own website states that users of the BCIS All-in TPI should be aware of its revisions policy and that figures may be revised a long while after the applicable quarter.
39. The CA's policy is a fixed figure of I_c at adoption of the Charging Schedule. The Appellant does not accept the CA's approach of 'locking in' the 'forecast/provisional'

TPI data in perpetuity, once the true published data is available by BCIS. However, the CA opines that its approach is not unusual or out of step with other Charging Authorities. Furthermore, the CA points to CIL NPPG Guidance (Paragraph: 049 Reference ID: 25-049-20140612), which acknowledges that it is an acceptable approach to 'fix' a figure using *"the most recent finalised figure published before the previous 1 November"*.

40. The BCIS All-in Tender Price Index data has clearly evolved and has been updated, between the years of 2018, when the CA prepared its 2019 CIL Charging Schedule and 2024, when the figure of 330 (based upon a sample of 85 schemes) was output by the Appellant from BCIS. The Appellant raises an interesting argument and contends that the fixed point in time should always be the date at which planning permission was granted and not when the CIL charging Schedule came into effect. Given the Regulations, I agree with this statement. At the heart of the indexation dispute of this Appeal is the CA's continued adoption of a 'forecast' or 'provisional' All-in Tender Price Index for *I_c*, when in this instance, the confirmed, finalised figure for Quarter 4 2018 has been published by BCIS. Whilst I recognise the underlying reasons for CA's using forecasting or provisional BCIS data (as that is the best available data at the time), I determine that it is not appropriate to use forecast or provisional BCIS data, when the true, finalised BCIS data is available. Where available, the corrected figure should be used to ensure that the right level of inflation is charged. In conclusion, I agree with the Appellant that the confirmed BCIS *I_c* figure of 330 should be incorporated into the required formula.
41. Given the somewhat fluidity of BCIS data (where even the BCIS own website states that the figures may be revised a long while after the applicable quarter) I recognise the practical issues which CA's may have in adopting indexation. Nevertheless, it is not appropriate to use forecast or provisional BCIS data, when the confirmed, finalised BCIS data is available. In respect of the Appellant's citation of VOA Appeal Decision 1852181, I do not dispute the content of that decision; however, I would point out that the decision therein relates to the facts of that particular case and I do not go so far to agree with the Appellant that the determination on indexation in that decision is a precedent in law. Nevertheless, as in decision 1852181 and in this case, the CA should use correct indexation, which is now available.
42. In accordance with the above formula, and incorporating my determined *I_c* figure of [REDACTED], I calculate the CIL charge as follows:-

$$A = [REDACTED] m^2$$

$$R = £ [REDACTED] \text{ (Residential dwellings - 10 or less (Zone A))}$$

$$I_p = [REDACTED]$$

$$I_c = [REDACTED]$$

$$[REDACTED] \times £ [REDACTED] \times [REDACTED]$$

$$= £ [REDACTED] \text{ - figure rounded to:-}$$

$$= £ [REDACTED]$$

Final Appeal Decision

43. In conclusion, having considered all the evidence put forward to me, I determine that the CIL payable should be the sum of £ [REDACTED] ([REDACTED]).

Award of Costs

44. The Appellant has requested an award of costs under the provisions of Regulation 121, on the grounds that the CA have acted unreasonably. Having reviewed the submitted documentation and Statements of Case, I am of opinion that the CA has not behaved unreasonably; accordingly no award of costs is to be made.

[REDACTED]

[REDACTED] MRICS VR
Principal Surveyor
RICS Registered Valuer
Valuation Office Agency
17th June 2025