Appeal Decision

By ```redacted``` BA (Hons) PG Dip Surv 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```

Appeal Ref: 1877729

Planning Permission Ref. ```redacted```

Location: ```redacted```

Development: Change of use and conversion of existing brick and stone barn to form 2no. two bedroom dwellinghouses, demolition of existing metal clad agricultural building and the erection of a pair of semi-detached bungalows.

Decision

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

Reasoning

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 (LN) ```redacted``` dated ```redacted``` in the sum of £```redacted``` (```redacted```).
c. The CIL Liability Notice ```redacted``` dated ```redacted``` in the sum of £```redacted``` (```redacted```). This LN was issued following a query from the appellant about the floor area of the chargeable development and duplication of plans was discovered.

d. The CIL Liability Notice ```redacted``` dated ```redacted``` in the sum of £```redacted``` (```redacted```). This LN was issued following a query from the

appellant which led to the CA further investigating the lawful use of the existing buildings.

e. The appellant's formal request for a Regulation 113 review of the chargeable amount dated ```redacted```.
f. The Regulation 113 review of the chargeable amount issued by the CA on the ```redacted```.
g. The CIL Appeal form received ```redacted``` submitted by the appellant under Regulation 114, together with documents and photographs attached thereto.
h. The CA's representations to the Regulation 114 Appeal dated ```redacted``` and ```redacted```.
i. The appellant's response to the CA's comments dated ```redacted```.
j. Further information pertaining to Building 2 provided by the appellant on ```redacted``` following my request of the ```redacted```.
k. Comments from the CA in response to this further information received on ```redacted```.
l. The appellant's further and final comments received on ```redacted```.

Background

2. The chargeable development was granted planning permission on ```redacted``` under application reference ```redacted``` and permitted; "Change of use and conversion of existing brick and stone barn to form 2no. two bedroom dwellinghouses, demolition of existing metal clad agricultural building and the erection of a pair of semi-detached two bedroom bungalows." The buildings in question are a metal clad building dating from the 1970s which is referred to as Building 1 and a brick and stone barn dating from the 1800s which is referred to as Building 2.

3. The original LN in the sum of £```redacted``` was issued on the ```redacted```. This was based upon a net chargeable area of ```redacted``` square metres (sq. m.). This being ```redacted``` sq. m of new building work, less the existing gross internal area (GIA) of ```redacted``` sq. m. This was chargeable at a rate of £```redacted``` per sq. m and indexation was then applied based upon ```redacted``` for the year the charging schedule was implemented and ```redacted``` for 2025, the year planning permission was granted.

4. Following dialogue between the appellant and the CA, the second LN was issued on the ```redacted```. This was based upon a net chargeable area of ```redacted``` sq. m. This being ```redacted``` sq. m of new building work less ```redacted``` sq. m. of existing GIA. The charging rate and indexation remained unchanged and this reduced the chargeable amount to £```redacted```.

5. I understand the parties again engaged in dialogue about the net chargeable area, the appellant believing there to have been no increase in floor area overall, opining that once the existing buildings were offset there was actually a loss in GIA. The CA then looked further into whether the existing buildings were eligible for offset under Schedule 1 Part 1 1.(6) of The Community Infrastructure Levy Regulations 2010 (as amended) and concluded that the buildings were not in a lawful use for the requisite period and thus the GIA of the existing buildings could not be offset. This led to the issue of the third LN on the ```redacted```, in the sum of £```redacted```. This again assumes ```redacted``` sq. m. of new building work but does not allow for the offset of

any of the GIA of the existing buildings. The rates and indexation applied again remained unchanged.

6. Following the issue of the third liability notice, the appellant formally sought a Regulation 113 review on the ```redacted```. The request outlined the appellant's belief that the existing buildings had been in a lawful use (that being agricultural) for at least a six month period within the last three years. The area of the chargeable development and the charging rate and indexation applied were not challenged.

7. It is understood there was dialogue between the appellant and the CA which ceased on the ```redacted``` when the CA issued its Regulation 113 review decision. Within this decision the CA explained their position that being, "that the buildings had not been in the claimed agricultural use for the requisite period as the previous lawful agricultural use had been abandoned." The CA advised they reached this conclusion based upon the evidence they held and that provided in support of earlier planning applications ```redacted``` and ```redacted``` in which it is stated that the use of the Brick Stone Barn as an agricultural fold yard and stables "have long since ceased as the buildings are not suitable for modern agricultural practices. The buildings are therefore effectively redundant." The CA state this confirms the abandonment of the lawful agricultural use.

8. Following the outcome of this review, the appellant made the subject Regulation 114 chargeable amount appeal to the Valuation Office (VO) on the ```redacted```. The appeal raises the following issues; 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 so, what is the correct GIA of these existing buildings. There is no dispute about the GIA of the chargeable development nor the charging rate or indexation adopted.

Issue 1 – "in- use building"

9. 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 and parts to be demolished 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 (that being the land to which the planning permission relates) 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. As the subject development was granted planning permission on the ```redacted```, we are to consider the use of the subjects between ```redacted``` and ```redacted```.

10. 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 demonstrate that lawful use during the

required period given 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."

11. Both parties have submitted detailed representations in support of their respective positions and I have considered both sets of arguments and evidence in depth. It is clear both parties accept the buildings were being used, but the dispute centres around whether that use was a lawful one.

12. In summary, the CA's position is that the subject buildings can only have been in lawful use if that use was an agricultural one and they assert that the use of the subject buildings was as general storage and as such, was not lawful. In support of their view, the CA refer to legal advice they received on ```redacted``` that confirmed based upon the evidence available, the site cannot be considered to be in lawful agricultural use, nor has it been demonstrated that such lawful agricultural use has existed for at least six months during the relevant three year period. Whilst this legal advice has not been provided as part of their representations to this appeal, the CA have outlined the evidence considered and the reasoning for their conclusion.

13. The CA opine that the agricultural use of the buildings has long since been abandoned and highlight planning application ```redacted``` dating from ```redacted``` which permitted part of the farmstead being converted to residential dwellings. The CA advise this application refers to the building now known as Building 2 as having a former use as an agricultural fold yard and stables and states; "These uses have long since ceased as the buildings are not suitable for modern agricultural practices. The buildings are therefore effectively redundant." The CA state "that as the site ceased operating as a working farm in ```redacted```, the use of the buildings appears to be storage, and lawful agricultural use has been abandoned in practical terms (though not necessarily in planning law)." The CA state that the storage of feed bags without any livestock on the site, cannot be considered an agricultural use, as there is no active agricultural activity within the planning unit which those feed bags could relate to. The CA claim the holding number provided to them on the ```redacted``` by the appellant had not been active for ```redacted``` years and in addition, the CA note the appellant's photographs show many of the feed bags to be empty. Furthermore, the CA notes that the appellant's agent stated in their statement of the ```redacted```, that Building 1 had been advertised from ```redacted``` for commercial uses. The CA highlights if the building had been used for commercial purposes this would not constitute lawful agricultural use and a change of use would have occurred without planning permission.

14. The CA has also expressed concern about the condition of Building 2, noting it had deteriorated to such an extent that it was unsafe and this would have prevented it from currently being in lawful use. The CA highlights that the roof of this building was removed in ```redacted``` due to safety concerns and quotes the appellant from their email of the ```redacted``` to the CA, "the barn was in lawful use until ```redacted```." The CA also notes that CIL From 1 states the lawful use of Building 2 ceased in ```redacted```. The CA also notes that when the planning officer visited the site on ```redacted```, they were unable to enter Building 2 due to safety concerns raised by the appellant and the photographs they took that day show Building 2 to be in a dilapidated state.

15. From the representations provided, I understand the parties agree the immediately surrounding site ceased to be a working farm in ```redacted```. However, the appellant does not agree the agricultural use of the subjects was abandoned. The appellant highlights that planning permission ```redacted``` referred to by the CA, did not include two sections of Building 2 to the south of the double storey element and the blockwork and single storey elements of Building 2 lie outside the red line for the above application. Furthermore, the appellant explains that although livestock has not been housed on the site since ```redacted``` when planning permission ```redacted``` was refused for "the erection of an agricultural buildings for housing livestock", the adjacent fields immediately to the north and west of the site (Holding Number ```redacted``` which is said to be active) have and continue to be grazed with sheep and cattle. The appellant advises the feed, supplements and all other requirements for the stock have been stored in the subject buildings as well as materials to repair and maintain fencing and drainage on the neighbouring fields.

16. The appellant has provided the following evidence in support of their position that the buildings have been in agricultural use; a statutory declaration completed by ```redacted``` dated ```redacted```, outlining the history and use of the buildings with accompanying emails, documents, plans and photographs, a statutory declaration completed by ```redacted``` dated ```redacted``` alongside emails, documents, plans and photographs, a statutory declaration completed by ```redacted``` dated ```redacted``` along with accompanying emails, documents, plans and photographs, and a supporting letter from their land agent detailing his knowledge of the use of the buildings and surrounding land along with photographs has also been provided. The appellant has also provided the documents and reports submitted as part of the subject planning application which also provides details of the use of the subject buildings during the relevant period. The appellant also confirms that whilst Building 1 was advertised to let for commercial purposes, a tenant was never secured and no change of use occurred.

17. After considering the submissions of both parties, I conclude that the sub ```redacted``` buildings were "in-use" for at least a six month period during the period from ```redacted``` to ```redacted```.

18. As well as the subject site, the appellant owns and works the land to the north and west of the site for agricultural purposes. Agriculture is defined in S.336 of the Town and Country Planning Act 1990; "agriculture includes horticulture, fruit growing, seed, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of the land), the use of land as grazing, meadow land, osier land, market gardens and nursery grounds, and the use of the land for woodlands where that use is ancillary to the framing of land for other agricultural purposes and "agricultural" shall be construed accordingly."

19. From the evidence provided, I consider the neighbouring land to be grazing land which conforms with the definition of agriculture above and this point is confirmed in paragraph 8.24 of The Delegated Planning Report in respect of ```redacted```, "The application site abuts a site in use for agricultural activity, within the applicant's ownership." I therefore consider the subject buildings form part of an "agricultural unit" given that the subjects and surrounding land are occupied together by the appellants as part of the same agricultural enterprise. The Town and Country Planning Act 1990 defines an agricultural unit in S.171 (1) as, "land which is occupied

as a unit for agricultural purposes, including any dwellinghouse or other building occupied by the same purpose of farming the land." It is evident that the buildings are used in connection with the adjoining agricultural land and I do not consider their agricultural use to have been abandoned.

20. I note the current poor condition of Building 2 and that the appellant confirms its use ceased when the roof was removed for safety reasons on ```redacted```. However, the structure of the roof remains in place with the rafters still visible in the appellant's photographs of the ```redacted```. As such I am satisfied Building 2 can be considered a relevant building and that prior to the ```redacted```, the evidence provided demonstrates it was utilised for the storage of materials and equipment to be used on the neighbouring agricultural land. I understand the metal clad building (Building 1) was still in use at the date planning permission was granted. The design and access statement and accompanying reports provide consistent narrative on this point and therefore I am satisfied both buildings were in use between the ```redacted``` and ```redacted```, and that the use of Building 1 continued beyond this date.

21. Both parties accept the buildings were in use but the CA consider the use to have been general storage which was unlawful. If we were to agree with the CA that the agricultural use was abandoned in ```redacted```, then the appellants have been using the buildings for general storage for almost twenty five years unchallenged. This use would therefore have most likely become lawful in accordance with S.171B of the Town and Country Planning Act 1990 after ten years.

22. Given the above, I am satisfied the use of the buildings was lawful and that the evidence provided by the appellant is sufficient to evidence the continuous use of buildings of this nature for a period of at least six months between the ```redacted``` and ```redacted```.

Issue 2 - GIA of the existing buildings.

23. It is clear from the three liability notices that the GIA of the existing buildings has yet to be agreed. Whilst the parties agree the GIA of the chargeable development is ```redacted``` sq. m., the area of the existing buildings has not been confirmed and there remains a dispute as to whether the GIA of the first floor of Building 2 should be included within the GIA.

24. I understand the CA contend the area of the first floor should not be included given the condition of Building 2. Photographs from the planning officer's site visit on ```redacted``` are included within the CA's submission and these suggest part of the first floor to be missing at this date.

25. To clarify the matter, I sought further information from the appellant to establish whether when planning permission was granted, the first floor was still in-situ. The appellant duly provided further photographs which were taken on ```redacted``` and these show that although the first floor of Building 2 is in poor condition having been

exposed to the elements since the removal of the roof in ```redacted```, it is still largely in place.

26. The CA comment that having considered these images along with the photographs taken by the planning officer in ```redacted```, they do not consider that the first floor element of Building 2 can have been in lawful use for a period of six months in the three years prior to the grant of planning permission. The CA opines there appears to be more than three years' worth of degradation shown in the appellant's photographs and reiterates that the appellant themselves described the first floor as being fairly rotten back in ```redacted```.

27. In response, the appellant clarifies that much of the first floor is robust but there are also parts that are fairly rotten. The appellant goes on to state that they have never claimed the whole of the first floor of Building 2 to have been in use, but they did use the robust area to store feedbags and tarpaulins and these can be seen in images ```redacted```, ```redacted``` , and ```redacted``` in Exhibit ```redacted``` of ```redacted``` Statutory Declaration of ```redacted```. The appellant highlights that the ground floor was also in use and points to the definition of "in use building" within Schedule 1 Part 1 1.(10) (ii) of the Regulations. This states "in use building" means a building which - "contains **a part** that has been in lawful use for a continuous period of at least six months within the period ending on the day planning permission first permits the chargeable development." As such, the appellant contends that the area of the first floor can be offset along with the area of the ground floor of Building 2 and Building 1.

28. From the photographs provided, it is evident that the majority of the first floor remains present albeit in poor condition. As the appellant has pointed out, the regulations simply state that an "in-use building" means a building which contains **a part** that has been in lawful use, they do not require the whole to have been in lawful use. I therefore find in favour of the appellant on this point and agree the area of the first floor of Building 2 should be included within the calculation of the net chargeable area.

29. In accordance with the Regulations, as the GIA of the existing buildings is in excess of the GIA of the chargeable development, I calculate the net chargeable area to be zero, and consequently, I determine the CIL liability to be £0 (NIL) and uphold this appeal.

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RICS Registered Valuer
District Valuer
14 January 2026