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## Appeal Decision

Site visit made on 12 September 2019

**by Elaine Gray MA(Hons) MSc IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 October 2019**

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**Appeal Ref: APP/N2535/C/18/3216645**

**Farmers Arms, Market Rasen Road, Welton Hill, Lincoln LN2 3RD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mohammed Ullah against an enforcement notice issued by West Lindsey District Council.
  - The enforcement notice was issued on 23 October 2018.
  - The breach of planning control as alleged in the notice is without planning permission the installation of a silver metal extraction unit on the western elevation.
  - The requirements of the notice are 1. Remove the extraction unit from the building and remove from the site the resultant materials. 2. Repair the brick wall using matching materials.
  - The period for compliance with the requirements is 1 month.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is dismissed and the enforcement notice is upheld.

### The appeal on ground (c)

2. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. Under this appeal, the onus of proof is upon the appellant. The gist of the main argument is that planning permission should not be required for the metal extraction flue. The key question therefore is whether 'development' has taken place which requires planning permission.
3. The previous flue is described by the Council as a relatively small square black extraction vent which did not protrude much further than the nearby down drainpipe. A photograph of this vent has been provided. On my site visit, I saw that the upper section of the new flue has been removed, and the remainder capped off. However, I have also been provided with photographic evidence of the replacement flue as constructed, which was considerably larger and more prominent than the previous vent.
4. Section 55 of the Town and Country Planning Act 1990 defines development as the carrying out of building, engineering, mining or other operations on, over or under land. From the evidence before me, I am satisfied that the replacement flue in its entirety constituted an operational development. I agree with the Council that there is no provision for the installation of such equipment on buildings in Class A3 or Class A4 use under the Town and

Country Planning (General Permitted Development) (England) Order 2015. The appellant does not dispute this matter.

5. In support of his case, the appellant argues that the new extraction flue was simply a replacement for the old unit, which he states was noisy, inefficient, environmentally unsuitable, and directly facing a neighbouring property. He asserts that the replacement flue was manufactured to the current standard to minimise pollution and reduce noise with the aid of a silencer. Whilst I have no reason to doubt these statements, these circumstances do not negate the need for planning permission for the development.
6. I appreciate that the new extraction flue has cost a significant amount of money, and I acknowledge the appellant's stance that it would be a retrograde step to remove and replace it with the old inefficient unit. However, the enforcement notice does not require the reinstatement of the previous unit, and it is for the appellant to explore alternative arrangements.

### **Conclusion**

7. I conclude that the appellant has not shown that the construction of the new extraction flue is permitted development. The matters alleged in the notice constitute a breach of planning control and the appeal on ground (c) fails.

*Elaine Gray*

INSPECTOR

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