



Appeal Decision

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Appeal Ref: APP/G2245/X/20/3249169

Gabriels Farm, Crown Oak Buildings, Marsh Green Road, Marsh Green, Edenbridge TN8 5PP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Hendrickson against the decision of Sevenoaks District Council.
 - The application Ref 19/03296/LDCPR, dated 25 November 2019, was refused by notice dated 30 January 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a steel frame with powder coated box profile roofing.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Firstly, I should explain that the planning merits of the development are not relevant to this appeal, which relates to an application for a lawful development certificate (LDC). Having reviewed the appeal and the submissions from the appellant and the Council, I took the view that a rational decision on the appeal could be reached without the need for a scheduled site visit. The parties are aware of this. I have therefore considered the appeal on this basis.
3. It is also necessary to clarify the nature of the proposal, as this is not set out clearly in the description. The proposed development is to form an industrial building, and this is why it is Class H of Part 7 that is relevant.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue a LDC for the application was well-founded.

Reasons

5. In a LDC appeal, the onus of proof is on the appellant to show that, on the balance of probability, the development would have been lawful, at the time of the application. Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO), grants planning permission for those classes of development described as 'permitted development' (PD) in Schedule 2. Part 7, Class H permits the erection, the extension or the alteration

- of an industrial building or warehouse. It goes on to specify the circumstances where development is not permitted.
6. It is accepted by the parties that the proposed development complies with the other conditions and limitations associated with Class H of the GDPO. The main area of dispute is therefore, whether the gross floor space of the original building would be exceeded by the proposed development, by virtue of the previously permitted extensions.
 7. Class H.1 (b) states that development is not permitted where the gross floor space of the original building would be exceeded by more than:
 - (i) in respect of an original building or a development on article 2(3) land, 10% or 500 square metres (whichever is lesser);
 - (ii) in respect of an original building or a development on a site of special scientific interest, 25% or 1,000 square metres (sqm) (whichever is the lesser);
 - (iii) in any other case, 50% or 1,000 square metres (whichever is the lesser).
 8. The GDPO sets out that "original" means:
 - (a) in relation to a building, other than a building which is Crown land, existing on 1st July 1948, as existing on that date;
 - (b) in relation to a building, other than a building which is Crown land, built on or after 1st July 1948, as so built;
 - (c) in relation to a building which is Crown land on 7th June 2006, as existing on that date; and
 - (d) in relation to a building built on or after 7th June 2006 which is Crown land on the date of its completion, as so built.
 9. From the evidence, the original floor space of the building as built, was approximately 358 sqm. It is also clear that planning permission was then granted on appeal for 'extensions to the current workshop buildings', (APP/G2245/W/19/3227417). In his decision letter the Inspector noted that the extensions were complete at the time of that decision. To my mind, the effect of the two previous extensions, was to expand the floor space of the original building by some 191 sqm. When added to the floor space of this proposal at 118 sqm, this would exceed the limitations set by Class H (b) (iii). For these reasons the proposal would not be lawful as it would not accord with Schedule 2, Part 7 Class H of the GDPO.
 10. I have had regard to the appeal decision provided by the Council (APP/H1515/X/15/3137882). However, the position in that appeal differs significantly from that under consideration here. In that appeal the LDC was sought for a new building, rather than a previously extended building as is the case here. The inspector found that the proposal gross floor space exceeded that permitted by H.1 (b) (iii). There is no reference to any previous extensions to the 'original building' and I do not therefore consider it to be directly comparable. I have also had regard to the advice on the planning portal, but consider that this decision is consistent with that advice.

Conclusion

11. For the reasons given above, I conclude, that the Council's refusal to grant a lawful development certificate, for the erection of a steel frame with powder coated box profile roofing, was well-founded and that the appeal should fail. I will exercise accordingly, the powers transferred to me in section 195(3) of the 1990 Act as amended.

Hilary Orr

INSPECTOR