



Appeal Decision

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/Y9507/X/23/3321162

New Elms Barn, Firle Bostal, Firle, East Sussex, BN8 6NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by the Firle Estate against the decision of South Downs National Park Authority.
 - The application ref SDNP/23/00399/LDP, dated 30 January 2023, was refused by notice dated 3 April 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is change of use from agricultural building to Class E micro-brewery.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is the use class that the micro-brewery should come within.
3. Use Class B2 is for general industrial, a use for industrial process other than one falling within class E(g) (previously class B1)(excluding incineration purposes, chemical treatment or landfill or hazardous waste). Class E relates to Commercial, Business and Service. Class E(g)(iii) identifies an industrial process that can be carried out in any residential area without detriment to amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. and is for industrial processes.
4. The Authority submit that the appeal proposal is development not permitted by the Town and Country Planning (General Permitted Development) (England) or Order 2015 (as amended), because it is in Use Class B2. The appellant's view is that it should come within Use Class E(g)(iii). It is the appellant's case that the scale of the brewing operation that might be physically capable of being established within the building, is a key determinant of the proposal's likely Use Class.
5. A significant issue is whether E(g)(iii) is considering the individual use and location. The appellant notes that *W T Lamb Properties Limited –v- Secretary of State for the Environment [1983] JPL 303* makes it clear that it is not the specific area surrounding the site that is taken into consideration. If the area was a consideration, it would need an analysis similar to a planning application. I acknowledge that aspects of the Authority's case refer to the area, which is unnecessary with an LDC, and may have led to some confusion, but nevertheless, the Authority's classification was correct.

6. The Use Classes are a 'permissive' system of classification, to enable similar uses to move between classes or be used such as by permitted development etc. It is not a planning judgement on the individual case and location. Class E(g)(iii) notes it is '**a**' use which can be carried out in '**any**' residential area without detriment to amenity (my highlight). It is not referring to '**the**' use or '**the**' residential area. If such a judgement were necessary on the individual use or location that would effectively be a planning judgement appropriate for an application.
7. To my mind a micro-brewery, even a small one, is a use that could have serious emissions of fumes from the processes involved that could have a considerable impact on the amenity of neighbours in a residential area, and its classification in Use Class B2 and not E(g)(iii) is correct.
8. It is not to say that this particular use would not be acceptable in this location, just that it requires a planning application so it can be assessed and may need planning conditions to limit any adverse effects. I also note that other Councils have not reached the same conclusions, but given that this is a use that could have an effect on the amenity of nearby residents, my conclusion remains the same.
9. I have taken account of appeal decision APP/J9497/W/20/3254262, but this relates to a planning application where the individual effects of the proposal on the surrounding area are a consideration. In other considerations raised by the appellant, some relate to applications, where the particular circumstances are considered and generally I do not know the details considered in these cases so I attach little weight to them.

Conclusion

10. For the reasons given above I conclude that the Authority's refusal to grant a certificate of lawful use or development in respect of change of use from agricultural building to Class E micro-brewery 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.

Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

INSPECTOR