



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/Z4718/X/23/3320994

Fairleigh Farm, Penistone Road, Birds Edge, Huddersfield HD8 8XW

- 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 G Ellis against the decision of Kirklees Metropolitan Council.
 - The application ref 2023/CL/90365/E, dated 2 February 2023, was refused by notice dated 4 April 2023.
 - The application was made under section 191(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 use of farmyard for the additional storage, sale and distribution of aggregates and storage of HGVs.
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, *they do not constitute a contravention of any of the requirements of any enforcement notice then in force* [my emphasis].
4. On an application made under section 191 of the Act, the time to consider whether a use is lawful is at the time of the application (section 191(4)).
5. The application is dated 2 February 2023. At that time, there was an enforcement notice in force (issued 27 August 2020) requiring, amongst other things, the cessation of the use of the land for the storage, sale and distribution of aggregates/materials, and the storage of containers, skips, HGVs, and lorry/wagon backs.
6. The use of the farmyard for the additional storage, sale and distribution of aggregates and storage of HGVs, for which the LDC was sought, does not meet the requirements of section 191(2)(b) since it is in contravention of the requirements of an enforcement notice that is in force. Therefore, the appeal cannot succeed.

7. I appreciate that the appellant contacted the Council after the enforcement notice was issued in an attempt to resolve matters and acknowledge their misgivings about the Council's handling of matters.
8. However, whether the use for which the LDC is sought achieved lawfulness prior to the issue of the enforcement notice, is a matter that should have been brought by way of an appeal against the enforcement notice on ground (d).
9. Whether, but for the enforcement notice, a LDC could have been issued, is not a matter for me to consider as an enforcement notice is in force. On this basis, I have not considered the appellant's evidence since I am limited to considering only whether the decision of the Council was well-founded and that turns on whether the use was lawful at the time of the application.
10. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the farmyard for the additional storage, sale and distribution of aggregates and the storage of HGVs was well-founded, since such a use is in contravention of the requirements of an enforcement notice in force at the time of the application.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the use of the farmyard for the additional storage, sale and distribution of aggregates and the storage of HGVs 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).

Felicity Thompson

INSPECTOR