



Appeal Decision

Site visit made on 30 April 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal Ref: APP/G2245/X/23/3327194

Barns east of Winkhurst Green Road, Ide Hill, Sevenoaks, Kent TN14 6LD

- 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 the decision of Sevenoaks District Council not to issue a certificate of lawful use or development ("LDC").
 - The appeal is made by K I Lingham & Son against Sevenoaks District Council.
 - The application Ref 22/03248/LDCEX is dated 23 November 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as '*Replacement fan in agricultural grain store.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. S191(1), under which the application for the LDC was made, provides that if any person wishes to ascertain whether any operational development or use of land are lawful they may make an application to the Council specifying the land and describing the use, operations or other matter.
3. Under s191(2), uses and operations are lawful at any time if: (a) no enforcement action may 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); and (b) they do not constitute a contravention of any of the requirements of an EN then in force.
4. Given that the submission made was under s191, the claim for the LDC was on the basis that the fan installation enjoyed lawfulness by reason of immunity ie. on the requisite basis that it had been in situ for at least four years prior to the date of the application ie since at least 23 November 2018. However, the appellant says that the replacement fan and associated cowls affixed to the barn's frontage were only installed in 2021.
5. On the face of it the appeal must therefore fail. However, as a possible explanation, from my reading of the appeal papers, the appellant appears to have misunderstood the relevant legislation and removed the previous fan equipment on the basis that the new installation would represent a like for like replacement. If this is the case then, irrespective of the fact that the development was already in situ, the application should have been made under s192. This would have asked the question whether, in the Council's view, the

development at issue represented a material change, thereby warranting the benefit of planning permission.

6. I will therefore assess this appeal as if the application had been made under s192.

Background

7. Section 55 of the 1990 Act (as amended), after defining development, goes on to say that 'building operations' include, amongst other things, additions to buildings. The legislation goes on to say that exemptions will occur where such works affect only the interior of the building, or do not materially affect the external appearance of the building.
8. The agricultural barn affected here was erected following consent granted by the Council in 2008 under ref SE/08/00423/AGRNOT. If used to its capacity the building can store some 500 tonnes of grain, and an internal fan was installed to perform the drying process. The fan was apparently replaced in 2021 with more effective equipment for drying the grain. This also required that two cowls be attached to the barn's front elevation, close to the adjoining barn, and positioned just below eaves height.
9. It appears that the installation was brought to the Council's attention by a neighbouring residential occupier due to a claim of noise nuisance arising from the fan's operation. As a result, the application, now at appeal, was submitted to the Council.

Main Issue

10. The main issue is whether the Council's decision not to issue a LDC was well founded.

Reasons

11. I agree with the Council's view that the erection of the cowls could be regarded as permitted development and, as such, due to the size of the farm, the relevant legislation is set out in Class A, Part 6 'Agricultural Buildings and Operations' of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). This covers, amongst other things, works for the alteration of a building which are reasonably necessary for the purposes of agriculture within that unit. However, proviso A.2(2)(i) indicates that, in order for the entitlement to be taken up, the developer shall, before commencing the development, apply to the Council for a determination as to whether its prior approval will be required. In this instance, no such submission was made.
12. From the appeal papers it is clear that no cowls existed prior to 2021 and the Council's case appears to be that the cowls have materially altered the building's external appearance. This is arguable, given the building's form and function. However, I am not of the view that the development is de minimis given the consequence of the development and the possibility of noise disturbance arising. The appellant makes the point that the fan is only operated infrequently, but merely accepting that the replacement fan and new cowls are necessary does not take into account any factors arising from the

development. This, of course, does not mean that a retrospective application for the development would not be acceptable, but it would firstly allow the Council to examine its details including specifications and expected noise output.

13. In the circumstances, it is clear to me that the appeal, as presented, has not had proper regard to the underlying legislation and I am satisfied that the Council's decision was well founded.
14. The appeal is therefore dismissed and I will exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR