Application for Certificate of Lawfulness for the installation of a biomass boiler

MANOR FARM, BERWICK BASSETT, SWINDON, SN4 9NG

Pippa Glanville MRICS FAAV
WEBBPATON, THE DAIRY, HOOK, ROYAL WOOTTON BASSETT, WILTSHIRE

Contents

1 INTRODUCTION 2

2 PLANNING LEGISLATION 2

3 SUPPORTING EVIDENCE 3

4 CONCLUSION 5

Appendix 1: Signed Statutory Declaration – Mr David White

1 INTRODUCTION

1.1 Manor Farm is owned and occupied by the D G White Partnership. Manor Farm is a large arable enterprise extending to over 1,900 acres of farmland. In early 2012, a 150kw KWB Biomass Boiler was installed in one of the agricultural buildings as shown on the location plan.

1.2 This application is for a Lawful Development Certificate relating to the installation of this biomass boiler at Manor Farm under section 191 of the Town and Country Planning Act 1990.

2 PLANNING LEGISLATION

2.1 Section 191 (2) of the Town and Country Planning Act 1990 states that if a person wishes to ascertain whether an existing use of a building is lawful, they may make an application to the LPA to determine this. It also states that, for the purposes of this act, a use of land or building is lawful at any time if no enforcement action may be taken due to the time for enforcement action having expired.

2.2 Section 171B of the above Act confirms that where there has been a breach of planning control consisting in carrying out of '*building, engineering, mining or other operations'* without planning permission, no enforcement may be taken after 4 years. In the case of '*any other breach of planning control*' no enforcement may be taken after the end of the period of 10 years, beginning with the date of the breach. Accordingly, this supporting statement and evidence attached demonstrates that the installation of the biomass boiler and change of use of an agricultural building is now lawful and immune from enforcement action.

2.3 The essential position raised by this application is of course whether the biomass boiler has been installed and the change of use of the building has occurred without planning permission, for in excess of 10 years. In that regard it is a simple question of law to be assessed and determined. There is no place within that for the assessment of use against policy or whether the use is acceptable or not. The only issue in this instance is therefore whether the time available to your Council to take enforcement action to cease breach of planning control has expired.

2.4 It is of course acknowledged that the onus of proof in this regard rests with the applicant. There is a duty though to grant the Certificate, modifying the application if necessary, based on the lawful position shown. Your Council should not resist the application unless they have contradictory information available or the available evidence is not sufficiently clear and unambiguous to support the case made.

2.5 Section 3 sets out the supporting evidence which demonstrates that the breach of planning control has occurred for in excess of 10 years, showing that the biomass boiler was installed back in 2012 and there has been no enforcement action taken in this time.

3 SUPPORTING EVIDENCE

3.1 This section sets out the supporting evidence showing the installation of the biomass boiler, and therefore subsequent change of use of the agricultural building, since 23rd March 2012. All evidence referred to below is listed and provided within the accompanying statutory declaration as attached to this document in Appendix 1.

3.2 The evidence shows that the biomass boiler was installed in March 2012, and the boiler was brought into use on 23rd March 2012. The heat sales, service invoices and wood pellet invoices show data from 2014, as D G White Partnership changed account systems and previous data has been difficult to get hold of. However, as stated within the signed statutory declaration, the biomass boiler has been in use since 23rd March 2012 and therefore for a period in excess of 10 years continuously.

3.3 The following evidence accompanies this certificate of lawfulness to prove the biomass boiler was installed and has remained in use for in excess of 10 years;

- Statutory declaration from Mr David White of D G White Partnership regarding this evidence;
- Installation invoice from 12th March 2012;
- RHI signed Commissioning Certificate;
- NFU Farm Select insurance documents from 10th Feb 2012 to date, showing the biomass boiler added to the policy in 2012;

- Ofgem periodic data from 5th April 2012 to present, showing 11 years of use;
- Heat sales from the biomass boiler from 31st March 2014 to present;
- Service invoices from 9th December 2014 to present;
- Biomass wood pellets invoices from 6th May 2014 to present;

3.4 Photographs below show the building where the boiler is located, and the boiler itself.







4 CONCLUSION

4.1 Wiltshire Council must consider the evidence put forward in the case of an application for a Lawful Development Certificate for an existing use. If Wiltshire Council have no evidence itself, nor any from others, to contradict or otherwise make the applicants' version of events less than probable, there is no good reason to refuse the application, as the evidence provided sufficiently precise and unmistakeable to justify the grant of a certificate on the balance of probability.

4.2 It has been established that there are certain tests which the Certificates must address in determination. First, the test is on the balance of probability, and the test is satisfied if the evidence presented can show that it is more likely than not to be as indicated. It is of course strongly maintained that the statutory declarations provided and the large amount of evidence provided, tips this balance and there is no evidence that contradicts the stated position.

4.3 I trust you have sufficient information to grant my client's Certificate of Lawfulness, and without delay. Please let me know if you need any further information or if you would like to meet at the properties for inspection.