
Appeal Decision

Site visit made on 20 September 2016

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5th October 2016

Appeal Ref: APP/X1118/W/16/3149167

Valle Vue, Road From Forches Cross to Abbotsmarsh Wood, Burrington, Devon EX37 9NF.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Kevin Watts against the decision of North Devon District Council.
 - The application Ref 60914, dated 22 March 2016, was refused by notice dated 18 April 2016.
 - The development proposed is an open fronted agricultural shed.
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Decision

1. The appeal is dismissed.

Application for costs

2. Applications for costs were made by both parties. These applications are the subject of separate Decisions.

Procedural Matters

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) enables certain types of development to take place without the need for specific planning permission, provided certain criteria are met. Provisions exist under Schedule 2, Part 6, Class A for the erection of agricultural buildings, subject to certain limitations.
4. The Council determined the prior approval application on the basis that the proposal could not be permitted development as it considered that the site did not benefit from the above provisions of the GPDO. In refusing the application, the Council had regard to a planning appeal decision ¹ relating to the site in which one of the main issues was whether the building was reasonably necessary for the purposes of agriculture on the holding.
5. The appellant argues that the course of action taken by the Council was unlawful as no such provision exists by condition A.2.(2)(iii) of the GPDO. However, the requirement for prior approval is worded as a condition attached to the grant of planning permission by the GPDO, and so prior approval only

¹ APP/X1118/A/14/2218358 dated 16 February 2016

becomes relevant if the proposed development falls within the permitted development rights. There is no specified method in the legislation for communicating to the appellant if the local planning authority does not consider that the development benefits from permitted development. The Council chose to determine the application and a decision notice was issued. There is no dispute that this was issued within the required 28 days following the date of receiving the application. Taking account of the notice as a whole, including the reason as set out, it is reasonable to read the notice as a refusal of prior approval.

6. In reaching this conclusion, I have had regard to the other appeal decisions cited by the appellant and I appreciate that there are some differences in the approach taken. Nevertheless, for the reasons given above, I am satisfied that the course of action taken by the Council was appropriate in this case and consequently I have determined the appeal on this basis.
7. I note that the decision notice contained an error in that it referred to the 1995 GPDO. However, it is clear to which provisions the decision related and I do not consider that the appellant has been prejudiced by this error.
8. During my site visit, I saw that development had commenced and timber posts had been erected on the site of the prior approval application. Development is not permitted by Class A if the development had begun before an appropriate application had been made to the Council. However, there is no evidence that development commenced prior the application being made. The commencement of development has not, therefore, affected my consideration of the appeal.

Main Issues

9. The main issue is whether the proposal satisfies the requirements of the GPDO with regard to being permitted development under Schedule 2, Part 6, Class A.

Reasons

Permitted Development

10. Permitted development under Class A is the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (a) works for the erection, extension or alteration of a building which are reasonably necessary for the purposes of agriculture within that unit.
11. The appellant's case is that the building is for agricultural purposes, primarily for the storage of feed, bedding, logs for sale, machinery and poultry equipment. The total area of the agricultural unit is given on the application form as 0.1 hectare. However, the appellant has subsequently advised that this was an error and that the holding extends to approximately 9.3 hectares in total. The Council does not dispute the extent of the holding.
12. The Council's case is based upon the findings of the Inspector in the February 2016 appeal, as referenced above. The appellant argues that this decision is not relevant as it relates to a different proposal. Although the full balance of considerations that informed the Inspector's decision are not before me, there are similarities between that decision and the current appeal proposal. The proposals relate to a similar type of building, on the same agricultural holding, and the use of the building in both cases was for the storage of bedding,

equipment and feed or hay/straw. Furthermore, the decision is relatively recent. I therefore consider the Inspector's decision to be relevant.

13. A fundamental element of this decision was "whether the building is reasonably necessary for the purposes of agriculture on the holding". The Inspector considered that "having regard to the available evidence, I consider that it has not been demonstrated that the building is reasonably necessary for the purposes of agriculture on the holding".
14. The appellant states that that the Inspector was not making a finding on the permitted rights, which is correct. Nevertheless, the test of necessity as considered by the Inspector is the same as the provision set out in Class A of the GPDO. Therefore, I attach considerable weight to the Inspector's conclusions.
15. The appellant argues that the appeal proposal is reasonably necessary for the purposes of agriculture, however, there is very limited evidence to demonstrate what may be different since the Inspector's decision in February 2016. Therefore, in the absence of evidence to the contrary, I find that it has not been demonstrated the proposed building would satisfy the requirements of the GPDO with regard to being permitted development under Schedule 2, Part 6, Class A.
16. In view of this finding, it is not necessary for me to consider whether or not approval should be given in respect of the siting, design and external appearance of the building. As explained above, prior approval only becomes relevant if the proposed development falls within the permitted development rights.
17. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Debbie Moore

Inspector