
Appeal Decision

Site visit made on 4 October 2016

by H Porter BA(Hons) PGDip IHBC

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

Decision date: 15 December 2016

Appeal Ref: APP/D0121/W/16/3153111

Land adjacent to/rear of Wick St Lawrence Village Hall.

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Harvey Gibbons against the decision of North Somerset Council.
 - The application Ref 16/P/1290/PDA, dated 18 May 2016, was refused by notice dated 20 June 2016.
 - The development proposed is an agricultural building for storing feed and farm equipment.
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Decision

1. The appeal is allowed.
2. The planning permission deemed to have been granted is subject to the conditions that the development must be carried out in accordance with the details submitted with application ref 16/P/1290/PDA pursuant to paragraph A.2(2)(v)(bb) of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO); within a period of 5 years from 18 May 2016 pursuant to paragraph A.2(2)(vi)(bb); and the other relevant conditions pursuant to Schedule 2, Part 6 A.2 of the GPDO.

Preliminary Matters

3. The GPDO enables certain types of development to take place without the need for a 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. On 18 May 2016 the appellant applied to the Local Planning Authority (the LPA) for a determination as to whether the prior approval of the Authority would be necessary for the siting, design and external appearance for an agricultural building, on an agricultural unit exceeding 5 hectares, for storing feed and farm equipment, as set out in A.2(2)(i) of the GPDO.
 5. The proposal does not fall within the limitations for Permitted Development set out in A.1(a)-(k)(ii). I am therefore satisfied that the proposal constitutes Permitted Development, subject to the Prior Approval of certain matters, namely the siting, design and external appearance of the building.
 6. The Council determined that Prior Approval was required, and refused such an approval under a decision notice dated 20 June 2016. This notice also confirmed that Prior Approval of the siting, design and external appearance of the building would be required, due to the potential impact on the landscape
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and the setting of nearby Grade II and II* Listed Buildings. It is also clear that the Council considers that the external appearance of the building as proposed would be unacceptable.

Main Issues

7. The main issues in this appeal are:

- Whether or not the LPA made a determination as to the need for Prior Approval within the 28-day statutory period; and
- if not, whether or not Prior Approval should be given under section A.2(2) in respect of the siting, design and external appearance of the building, with particular regard to whether or not the development proposed would preserve the setting of nearby Grade II* and II listed buildings.

Reasons

8. Paragraph A2(2) (ii) of the GPDO outlines the minimum of formalities required to accompany an application, namely a written description of the proposed development; the materials to be used; a plan indicating the site; together with any fee required to be paid. On 18 May 2016, the appellant submitted this information to the LPA, which included a plan outlining a large area in blue, a smaller section in red, with an arrow pointing to the centre of this red-line area, with the annotation 'location of proposed building'.
9. The Council subsequently issued an Invalidation Notice on the basis that the plan submitted was inadequate. In their letter to the appellant the LPA referred to their local list of planning application requirements and requested a proposed site layout plan to a scale of 1:200 or 1:500 to clearly identify the position of the barn. In accordance with this request, a further plan was submitted without any challenge to the process or altered validation date from the appellant. The Council 'started the clock' upon receipt of this second plan, on 27 May 2016.
10. It was the decision of the Council to treat the receipt of the additional plan as the point at which a valid application was made, as well as to jointly decide upon and refuse Prior Approval in the same notice. This is not the approach that is provided for in the GPDO. Parts A.2(2)(i) – (ii) effectively set out a two stage process. Stage one involves the application being made to the LPA to determine whether to Prior Approval would be required as to the siting, design and external appearance of the development proposed; the LPA have 28 days in which to establish whether such Prior Approval would be required. Stage two gives the LPA a further period in which to decide to grant such an Approval should they decide that Prior Approval is required.
11. The application was on a 'Prior Notification' form and simply set out the very basic details required under A2(2)(ii). While the shortcomings alleged by the Council about the plan that was initially submitted are noted, in my judgement, the original plan did meet the basic requirements for a plan indicating the site because it was clear in which field the development would take place and how that related to the wider built context and there was a clear annotation by virtue of the arrow of where the building would be located within that field. The information supplied to the Council on 18 May 2016 was therefore sufficient to meet the necessary information required under the GPDO.

12. Moreover, along with the details supplied on the application form about the building's dimensions and external materials, I consider there could not have been any doubt that the development could have been carried out in accordance with the details submitted with the application. It is also appropriate to note that while the second plan submitted by the appellant did show the footprint of the proposed building, this was not in a fundamentally different position from the siting indicated by the arrow on the first plan.
13. While there is nothing to prevent Councils requesting further information, such as a scaled plan outlining the footprint of a proposed building, as in this case, case law has established that it is not mandatory to provide any further information beyond that specified in A2(2) (ii)¹. Furthermore, although the Council has referred to the judgement of the R v Caradon District Council, ex parte Lovejoy (1999) the more recent Murrell judgement makes clear at para 34 that if there is compliance with what is required to be submitted, then there is an application and the Caradon judgement makes no finding on the question of whether the time starts to run. Due to my finding on compliance with A2(2)(ii), the submission of the supplementary plan did not 'stop the clock ticking' or otherwise affect the position of the 28-day period for determination running from 18 May 2016.
14. The appeal decision referred to by the Council is noted and, in particular, the finding of that Inspector that the plan he had did not indicate the site of the proposed building. However, it seems to me from reading that decision carefully that there were more obvious ambiguities relating to the possible siting of the proposed building which even led the Inspector initially to the wrong part of the land at the Inquiry site visit. There are no such clear discrepancies in this case, and so the other decision has only limited weight. In any event, each case should be considered on its individual merits.
15. The Council's determination that Prior Approval would be required came 33 days after receipt of a valid application on 18 May 2016. The Council therefore failed to make determination within the statutory 28-day period. On expiry of the 28 days after the date of application, 15 June 2016, the development proposed was deemed to be granted permission by Class A, subject to the standard conditions within the GPDO.
16. As the statutory 28-day determination period had expired and the Council's refusal to grant prior approval came too late to have any legal effect, there is no basis upon which to assess the second main issue. I have therefore given no further consideration to whether or not approval should have been given in respect of the siting, design and external appearance of the building, or whether the setting of nearby Grade II* and II listed buildings would be preserved.

Conclusion

17. I conclude that the appeal should be allowed on the basis that the appellant has accrued permission for the proposed development.

H Porter

INSPECTOR

¹ *Murrell v SSCLG (2010)* EWCA Civ 1396 paragraph 29.