The Planning Inspectorate

Appeal Decision

Site visit made on 20 February 2019

by JP Tudor Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 17 May 2019

Appeal Ref: APP/J1860/W/18/3202122
Land at Cobblers Corner, Broadwas on Teme, Worcestershire WR6 5NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 Keith Cattell against the decision of Malvern Hills District Council.
- The application Ref 18/00183/AGR, dated 4 February 2018, was refused by notice dated 12 March 2018.
- The development proposed is an agricultural building.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for an agricultural building at Land at Cobblers Corner, Broadwas on Teme, Worcestershire WR6 5NP in accordance with application Ref 18/00183/AGR, dated 4 February 2018, and subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the following approved plans: numbers 1, 3, 4, 5, 6 and 7 except in respect of the compass direction elevation view headings shown on plans numbered 4, 5 and 6.

Preliminary Matters and Background

2. The Council refused the application on the basis that it considered that the proposal did not fall within the scope of 'permitted development' under Schedule 2, Part 6, Class A of the GPDO. The Council found, amongst other things, that the proposal was not reasonably necessary for the purposes of agriculture. However, the requirement of prior approval is akin to a pre-commencement condition attached to the grant of permission by Article 3(1) of the GPDO. In recognition of the importance of agriculture and its operational needs the GPDO has already taken a position on the issue of the principle of such development. However, development constructed not in accordance with the scope, terms or conditions of such a permission would be at risk of enforcement action. The prior approval procedure itself, as set out under Schedule 2, Part 6 of the GPDO makes no provision for a determination to be made as to whether the proposal would be permitted development. As such, it

is outside the remit of this appeal to decide that question. That position has been confirmed by relevant case law.[1]

3. The above has been drawn to the attention of both parties with the opportunity given for further consideration and comment. In particular, the Council was invited to provide its comments and observations including with regard to siting, design and external appearance. The appellant was invited to, amongst other things, satisfy himself as to whether the development would be permitted development, taking professional advice, if necessary. Comments have been received from both parties. The Council has advised that it would have required prior approval and that it should not be granted in respect of siting and design. Although the Council's position has evolved the appellant has had the opportunity to comment further and has done so. Therefore, I am satisfied that no prejudice has arisen, and I have taken relevant comments from the parties into account in reaching my decision.

4. Given the above, my deliberations will be confined to whether or not to grant prior approval in respect of the siting, design and external appearance of the building, as referred to in A.2.(2)(i) of Schedule 2, Part 6, Class A of the GPDO.

5. I am aware that the appellant has also lodged an appeal in respect of another subsequent similar application for an agricultural building, which was also refused by the Council.[2] My understanding is that whilst the proposal relates to the same site address and field, the building proposed would be in a different location within the field to that proposed in the appeal before me. That appeal is being dealt with by another Inspector.

6. The appellant has previously gained prior approval for an agricultural building on land at Crabtree Orchard, about a mile or so away, which the Council considers is part of the same agricultural unit.

7. There is inconsistency in the compass direction headings relating to the labelling of elevation views on some of the submitted plans. The Location Plan (numbered '1') shows the footprint of the proposed building, with a projection from the front elevation on the east side of the building. The Floor Plan (numbered '3') and the Roof Plan (numbered '7') are consistent with that orientation of the building. I consider that they provide sufficient confirmation of the intended layout and orientation. However, the East/West Elevation Plan (numbered '4'), the North Elevation Plan (numbered '5') and the South Elevation Plan (numbered '6') are inconsistent with that orientation in indicating that the front elevation, projection and doorways would be on the west side of the building. I consider that the views on plans 4, 5 and 6 are simply mislabelled, as it would be logical to have the entrances to the building on the east side facing out towards the open field, as indicated on plans 1, 3, and 7, rather than facing towards, and in close proximity to, the western boundary hedge, which would offer limited manoeuvring space to the front. Therefore, I have considered the appeal on the basis that the front of the building with entrance doors and projection would be oriented to the east.

[1] R (oao Marshall) v East Dorset DC & Pitman [2018] EWHC 226 (Admin).
[2] Planning ref: 18/01033/AGR and Appeal Ref: AP/J1860/W/19/3223681

Main Issue

8. The main issue is, therefore, the effect of the development on the character and appearance of the area, having regard to the siting, design and external appearance of the agricultural building.

Reasons

9. The appeal site consists of a reasonably sizeable field at Cobblers Corner. A public highway lies to the south with a small wooded area to the west. Hedges bound much of the field. There are some residential dwellings scattered further to the west, alongside but set back from the road. Otherwise, the site is largely surrounded by other agricultural fields and further wooded areas, in a remote rural setting.

Siting, Design and External Appearance

10. The proposed agricultural building would be sited near the north western boundary of the field. Although the Council has suggested that the building would be visually prominent when viewed from the rural lane, it would be a good distance from the road and to the rear of a semi-circular area of mature woodland to the south, adjacent to the field entrance.

11. Given the above factors, whilst the surrounding landscape is generally fairly flat and open, the building would be effectively screened in views from the road to the south and south-west by the dense woodland and houses fronted by hedgerow. There would be passing views for motorists using the road from the south-east, but they would be relatively distant and mitigated by the field side hedge. Views from other public vantage points would be more distant and limited.

12. Whilst the building would not be next to existing agricultural buildings, there are residential dwellings further along the lane and other agricultural buildings within the wider area. Agricultural buildings are not uncommon features within a rural landscape and, as it would be positioned away from the road, to the side of the field and behind an area of woodland, the structure would not appear particularly prominent or cause significant visual harm.

13. The application form and submitted plans indicate that the building would be about 21 metres in length, 18 metres in breadth at its deepest, 3.2 metres in height to the eaves and 6.2 metres to the ridge of the roof. The Council has not expressed particular concern about the dimensions of the building, which appear appropriate and sufficient for its primary intended purpose as a secure storage area for hay, feed, produce and machinery. Given its relatively limited height, design and position within the field, it would not appear obtrusive.

14. The plans and supporting details indicate that it would be constructed of blockwork and timber with a metal sheeted roof, materials common to many agricultural buildings. The Council has suggested that the three proposed doors are not suitable for an agricultural building. However, one of the doors would be partially obscured by the open projection on the east side of the building and I do not see that the doorways would particularly draw the eye or have a significant negative effect on the external appearance of the building.

15. I conclude, therefore, that the proposed siting, design and external appearance of the agricultural building would be acceptable and would not have an adverse effect on the character and appearance of this rural area.

Other Matters

16. In addition to the issues dealt with above, I have considered the wide-ranging concerns expressed by Kenswick and Wichenford Parish Council regarding the proposal, another appeal proposal and matters relating to the sister site at Crabtree Orchard. However, as explained in the 'Preliminary Matters and Background' section above, it is not within my remit to consider whether the proposal falls within the scope of permitted development or other issues relating to, for example, drainage, services or the viability of the business. The legal position confines my deliberations to whether prior approval is necessary and, if so, whether it should be granted in respect of the siting, design and external appearance of the building, as referred to in A.2.(2)(i) of Schedule 2, Part 6, Class A of the GPDO. As already stated, development constructed not in accordance with the terms or conditions specified in the relevant part of the GPDO would be at risk of enforcement action, notwithstanding the outcome of this appeal.

Conditions

17. In respect of this approval, the appellant should note that Schedule 2, Part 6, Class A of the GPDO requires, at paragraph A.2.(2)(vi)(aa), that the development must be carried out within a period of 5 years from the date of this decision. The permission is also subject to other conditions, as detailed in the relevant part of the GPDO.

18. In addition, in the particular circumstances and given the discrepancy in the plans referred to in paragraph 7 above, it is appropriate to include a condition requiring the development to be carried out in accordance with the approved plans for certainty and to safeguard the character and appearance of the area.

Conclusion

19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed and that prior approval should be granted.

JP Tudor

INSPECTOR