
Appeal Decision

Site visit made on 19 June 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2019

Appeal Ref: APP/C3620/W/19/3223216

Barn Field, Rusper Road, Capel

- 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.
 - The appeal is made by Mr Ben Turner against the decision of Mole Valley District Council.
 - The application Ref MO/2018/1255/DEA, dated 17 July 2018, was refused by notice dated 23 August 2018.
 - The development proposed is the erection of agricultural barn.
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Decision

1. No decision is made on this appeal, for the reasons set out below.

Reasons

2. The appeal relates to an application made for a determination as to whether the Council's prior approval is required as to the siting, design and external appearance of a development proposed to be erected in accordance with the permission granted by Class A of Part 6 to the second schedule of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
3. The requirement to apply for such a determination arises from condition (2)(i) of that part. The options open to the Council under this procedure are:
 - i) To give notice that its prior approval as to the siting, design and external appearance is not required;
 - ii) To give notice that its prior approval as to the siting, design and external appearance is required; or
 - iii) To make no determination as to whether its prior approval as to the siting, design and external appearance is required.
4. The Council did not follow any of these options. Instead, its decision notice purports to refuse prior approval, on the basis that it considered that the appellant was not able to make use of the permission granted by the GPDO because the Council considered that development under Class Q of Part 3 of the second schedule had been carried out on the agricultural holding within the previous 10 years.

5. The determination as to whether the proposal would benefit from the permission granted by the GPDO is not a matter that falls within the scope of this particular procedure. When deciding prior approval applications under the terms of Part 6 of the GPDO, the Council is not empowered to decide whether the proposal is permitted development or not. This is a matter that should properly be considered by way of a different procedure i.e. s192 of the Act.
6. The Council should have made a decision on the application that was before it and following one of the options contained within the GPDO. This would likely have entailed issuing a determination that its prior approval of the siting, design and external appearance of the building was required. Following this course, it would then have been possible to also include a covering letter outlining that it did not believe that the GPDO permission could be relied upon, due to its concerns in respect of development undertaken previously under Class Q. For this reason, it would appear that the Council did not make a determination as outlined in condition (2)(i), within the relevant 28-day period. It is also not open to the Council to refuse prior approval, without first making a determination as to whether or not its prior approval was required. The decision that the Council did issue would not appear to be a lawful decision; as such there can be no appeal against it.
7. Whilst I have outlined above, that whether or not the proposal is permitted development is not a matter to consider within the prior approval procedure, the failure to provide notice within the relevant period would not result in the grant of permission by the GPDO for development that is not permitted development.
8. The appellant is aware of the concerns of the Council i.e. that the proposal would not be permitted development due to the previous development undertaken under Class Q. In the context of this appeal and the provisions of condition (2)(i), this is not a matter that is before me or on which I am able to reach a conclusion. If the appellant proceeds with erecting the building, he would be at risk of enforcement proceedings by the Council. It would therefore be advisable for the appellant to make an application under s192 to determine whether the proposed development would be lawful. Alternatively, an application for full planning permission could be made. Taking either route, should the appellant then disagree with the determination of the Council, it would be possible to pursue an appeal under the relevant provisions of the Act.
9. For the reasons set out above, I am unable to make a decision on this appeal.

Martin Allen

INSPECTOR