
Appeal Decision

Site visit made on 6 November 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal Ref: APP/D1265/W/19/3236087

Bascombe's Barn, Land adjoining Jubilee Farm, Burts Lane, Mannington, Dorset BH21 7JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter the 'GPDO').
 - The appeal is made by Mr Philip Bascombe against the decision of Dorset Council.
 - The application Ref 3/19/0927/PNAGF, dated 1 April 2019, was granted approval by notice dated 4 June 2019 subject to a condition.
 - The development granted approval is change of use from agricultural barn to flexible commercial use.
 - The condition in dispute is No 1 which states that: No vehicles, plant or machinery shall be operated and no process carried out and no deliveries taken or dispatched from the site outside the following times: 0800 hours and 1800 hours on Mondays to Saturdays inclusive, excluding Bank and Public Holidays.
 - The reason given for the condition is: In the interests of the amenity of neighbouring residents.
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class R, paragraph R.3, and paragraph W of the GPDO, for change of use from agricultural barn to flexible commercial use at Bascombe's Barn, Land adjoining Jubilee Farm, Burts Lane, Mannington, Dorset BH21 7JX, in accordance with the application 3/19/0927/PNAGF made on 1 April 2019, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class R, paragraph R.3(1)(b) of the GPDO.

Procedural Matters

2. An application for costs was made by Mr Philip Bascombe against Dorset Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the issuing of prior approval subject to the disputed condition was procedurally correct.

Reasons

4. Schedule 2, Part 3, paragraph W(11)(c) of the GPDO states that development must not begin until the expiry of 56 days following the date on which the

application was received by the local planning authority, without the authority notifying the applicant as to whether prior approval is given or refused.

5. The Council has accepted that it issued its decision 57 days after its receipt of the application, and thus outside the statutory timeframe. The Council has further stated that its decision therefore has no legal force. I take this as meaning that the decision has no legal effect. I see no reason to disagree with the Council given the provisions of paragraph W(11)(c), outlined above.
6. Consequently, whilst Schedule 2, Part 3, paragraph W(13) of the GPDO provides the authority for a Council to impose conditions reasonably related to the subject matter of a prior approval where granting prior approval, given that the approval was issued out of time, Condition 1 has no effect.
7. Indeed, the development can lawfully proceed if carried out in accordance with the submitted plans, and the conditions and limitations imposed on the planning permission as granted by Article 3(1) and Schedule 2, Part 3, Class R of the GPDO.
8. In view of my findings above there is no need to further consider the merits of Condition 1.
9. For the reasons outlined above I conclude that the issuing of prior approval subject to the disputed condition was not procedurally correct, as it was outside the statutory timeframe. In view of Schedule 2, Part 3, paragraph W(11)(c) of the GPDO therefore, prior approval is deemed to have been granted.

Conditions

10. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class R of the GPDO is subject to conditions set out in paragraphs R.2(a), R.2(b) and R.2(c), which state that: R.2(a) a site which has changed use under Class R may, subject to paragraph R.3, subsequently change use to another use falling within one of the use classes comprising the flexible use; R.2(b) for the purposes of the Use Classes Order and this Order, after a site has changed use under Class R the site is to be treated as having a sui generis use; and R.2(c) after a site has changed use under Class R, the planning permissions granted by Class G of Part 7 of this Schedule apply to the building, subject to the following modifications— (i) “curtilage” has the meaning given in paragraph X (interpretation) of this Part; (ii) any reference to “office building” is to be read as a reference to the building which has changed use under Class R.
11. Additionally, where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, as is described in paragraph R.3(1)(b), and is applicable in this case, Schedule 2, Part 3 paragraphs R.3(2), R.3(3) and R.3(4) of the GPDO state that: R.3(2) Subject to sub-paragraph (3), development under Class R of the type described in paragraph R.3(1)(b) must begin within a period of 3 years starting with the prior approval date; R.3(3) Where, in relation to a particular development under Class R of the type described in paragraph R.3(1)(b), planning permission is granted on an application in respect of associated operational development before the end of the period referred to in sub-paragraph (2), then development under Class R must begin

within the period of 3 years starting with the date that planning permission is granted; and, R.3(4) For the purposes of sub-paragraph (3), "associated operational development" means building or other operations in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R.

12. Lastly Schedule 2, Part 3 paragraph W(12)(b) of the GPDO states that where sub-paragraph W(11)(c) applies, as in this case, the development must be carried out in accordance with the details provided in the application unless the local planning authority and the developer agree otherwise in writing.

Conclusion

13. For the reasons set out above, I conclude that the appeal should be allowed, and prior approval is deemed to be granted.

Benjamin Webb

INSPECTOR