
Appeal Decision

Site visit made on 2 September 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th September 2020

Appeal Ref: APP/P3040/W/20/3254479

Land adj (north) Greystones, Station Road, Elton, Nottinghamshire NG13 9LG

- 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 B. Roberts, Elton Park Farms against the decision of Rushcliffe Borough Council.
 - The application Ref: 20/00491/AGRIC, dated 21 February 2020, was refused by notice dated 26 March 2020.
 - The development proposed is a grain store.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr B. Roberts, Elton Park Farms against Rushcliffe Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. Class A of Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits under paragraph A. 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; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.
4. Paragraph A.2. sets out the conditions which development that is permitted by Class A is subject to. These include under (2) (i) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. In the event that the local planning authority deem that prior approval is required then under (2) (iii) the development must not begin before the occurrence of (bb) the giving of such approval.

5. There is some disagreement between the main parties over the application of paragraph A.2. with paragraph A.1. The purpose of paragraph A.1. is to set out the purposes of where development is not permitted under Class A. If development does meet the limitations of paragraph A.1., it still has to be considered against the conditions which are set down in paragraph A.2. It is not the case that it can be implied from meeting the limitations of paragraph A.1. that the conditions under paragraph A.2. are met.
6. Hence, meeting the requirements of paragraph A.1. does not mean that the siting, design and external appearance of the proposed building under paragraph A.2. is deemed to be acceptable and that it is permitted development. This requires a consideration of the relevant issues to assess if this condition is met.

Background and Main Issue

7. The appellant applied to the Council as to whether prior approval was required for the proposed building. The Council considered that prior approval was required for the siting, design and external appearance and that sufficient information had been submitted to make a determination on this basis. It was then refused by the Council on the grounds that the proposal would result in significant harm to the living conditions of the occupiers of the adjacent dwellings by virtue of matters related to light, outlook, visual impact, and noise and disturbance. The adjacent dwellings to the site are White Croft and Grey Stones.
8. The Council also raised matters, whilst not contained in its decision notice, in relation to whether there was a clear justification for the proposal to be on the site. It would seem that the Council do not dispute that the building would be reasonably necessary under paragraph A. of Class A for the purposes of agriculture within that unit. The dispute is more centred over the specific location of the proposal within the agricultural unit and the effect on the living conditions. Accordingly, I have considered the appeal on this basis.
9. As a consequence, the main issue is the effect of the proposal on the living conditions of the occupiers of White Croft and Grey Stones by way of outlook, visual impact, light, noise and disturbance.

Reasons

10. The site comprises part of an expansive arable field. The boundary with the remaining part of the field to the rear is undefined. The site abuts the highway verge on Station Road and there is an informal access into the site by way of a gap in between the hedgerow along the site frontage. It is understood that approximately 49 hectares (ha) of the related agricultural holding is found to the west, and the overall size of the holding is approximately 251 ha.
11. The shared boundaries of the site with both White Croft and Grey Stones are defined by hedgerows. Both are large detached dwellings. The side of Grey Stones is located fairly close to the shared boundary. White Croft is set further back, although the rear of the side elevation does angle towards the boundary. Both properties have large enclosed rear gardens. They contain a number of openings on their side elevations that face towards the site and over their rear gardens, in particular on White Croft.

12. The proposed building would be sited so that it would be towards the rear of the site and away from the road. Its front elevation would be roughly in line with the rear elevations of the adjacent dwellings. It would be closest to the rear gardens, be only set in a short distance from the shared boundaries and would extend back for the majority of the lengths of the gardens. In relation to the design of the proposed building, the side walls would be closest to the boundaries. They would reach a height of some 7 metres, with the shallow pitch of the roof then angling further back.
13. When the close proximity to the neighbouring properties caused by the siting of the proposed building is considered with its design, it would infringe on the living conditions that the occupiers of these properties benefit from. In particular, the enjoyment of the rear gardens would be significantly diminished by its presence as a large and imposing building. The visual impact would be significant. It would create an overbearing effect and at times of the day result in an overshadowing impact, in particular on White Croft, with the direction of sunlight.
14. There would also be some loss of outlook and light to the nearest openings on the side and rear elevations of these properties, albeit the adverse effect would not be as great as with the gardens due to the siting of the proposed building. Nevertheless, this would contribute to the overall harm that would be experienced to the living conditions.
15. In relation to noise and disturbance, I am less persuaded that the effects on living conditions would be unacceptable. The building would be used for storage purposes and not for processing of the grain, as this would fall outside of Class A. As the site is in an arable agricultural use, it would already be subject to some levels of noise, in particular during harvest times. If I was minded to allow the appeal, limiting noise could also be achieved through the imposition of conditions. However, this does not address the harm that would arise by way of outlook, visual impact and light.
16. The appearance of the building is not a matter of dispute between the main parties, but there is still a need for the siting and design to be not unacceptable. The appellant has also queried whether living conditions matters are of relevance. Considering the effects of the siting, design and appearance of an agricultural building can properly include the impact on neighbouring properties. There is no exclusion of this consideration and nor is there an express legislative basis under the GPDO for living conditions to be not considered under paragraph A.2.(2)(i). It is therefore of relevance to my decision.
17. In relation to supporting the rural economy and broader economic matters, this is already inherent under Class A and so it is not for my further consideration. There is also no provision for the purposes of Class A for regard to be made to the National Planning Policy Framework.
18. A number of other matters have also been raised outside of what can be considered under Class A. These include whether or not the land would be sterilised for use, how the Council dealt with the prior approval application, a previous appeal decision¹ against a refusal of planning permission on the site for residential development and the potential allocation of land under the plan

¹ Appeal ref: APP/P3040/W/19/3233317

making process. Accordingly, they have a limited bearing on my decision and do not alter my conclusion.

19. In taking these considerations together, I conclude that whilst the proposal would not be unacceptable as regards noise and disturbance, it would have an unacceptable effect on the living conditions of the occupiers of White Croft and Grey Stones by way of outlook, visual impact and light. As a consequence, it would be unacceptable as regards siting and design under the conditions set out in paragraph A.2. Hence, it would not be permitted development.
20. The Council has referred to the policies of its development plan in its decision. There is no statutory obligation to decide a prior approval appeal on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004. Nevertheless, I have taken into account Policies 1 and 22 of the Rushcliffe Local Plan Part 2: Land and Planning Policies (2019) as far as they seek to protect living conditions. Given that I have concluded that the proposal would be unacceptable in these terms, it would conflict with these policies.

Conclusion

21. The proposal fails against the conditions set out by paragraph A.2. As a result, it would not satisfy the requirements of Class A of Schedule 2, Part 6 of the GPDO and, therefore, is not development permitted by it. For these reasons, the appeal should be dismissed.

Darren Hendley

INSPECTOR