



Appeal Decision

Site visit made on 11 August 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/H2835/W/20/3248384

**Farm Building, Vicarage Farm, Wellingborough Road, Wollaston,
Wellingborough NN29 7PY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on a prior approval application required under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Adrian Lewis against the decision of Borough Council of Wellingborough.
 - The application Ref WP/20/00014/PAR, dated 19 December 2019, was refused by notice dated 25 February 2020.
 - The development proposed is a proposed change of use of agricultural building to a flexible use within shops, financial and professional services, restaurants and cafes, business, storage or distribution, hotels, or assembly or leisure.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the proposed change of use of agricultural building to a Class B1 (c) light industry use at Farm Building, Vicarage Farm, Wellingborough Road, Wollaston, Wellingborough NN29 7PY in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph R.3 (1) of the GPDO through application Ref WP/20/00014/PAR, dated 19 December 2019. The approval is subject to the condition that the development must begin within a period of 3 years starting with the prior approval date.

Application for costs

2. An application for costs was made by SRJ Vicarage Limited against Borough Council of Wellingborough. This application is the subject of a separate Decision.

Background and Main Issues

3. The provisions of Schedule 2, Part 3, Class R of the (GPDO) permit the change of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within certain classes of use as defined in the Schedule to the 'Use Classes Order' (UCO).

4. The appellant's 'supporting statement' states that the first use intended is Class B1 (c)¹ light industry use. The Council's Officer report also indicates that the Local Planning Authority (LPA) assessed the proposal on that basis. I have also considered the appeal on that basis and this is also reflected in my Decision.
5. Development permitted by Class R is subject to the conditions in Paragraph R.3(1). One of these conditions requires that, before beginning the development, the developer must apply to the LPA for a determination as to whether prior approval is required as to certain specified impacts. The LPA has identified transport and highway, and noise impacts as matters requiring prior approval, and has refused to grant such approval.
6. Paragraph W of Part 3 of the GPDO sets out the procedure for applications for prior approval under Schedule 2, Part 3. Paragraph W.(11)(c) says that development must not begin before the expiry of 56 days following the date on which the application was received by the LPA without the authority notifying the applicant as to whether prior approval is given or refused. The appellant claims that the 56 days had expired before the notification or refusal was issued.
7. Therefore, the main issues are: a) Whether planning permission is deemed to have been granted by reason of the timing of the LPAs decision; and, b) If planning permission is not deemed to have been granted, whether prior approval as to the transport and highway, and noise impacts of the development are required.

Reasons

Timing of the LPAs decision

8. There appears to be no dispute between the main parties that the appellant's application, as submitted, was a valid application having regard to Paragraph W.(2) of the GPDO which sets out the requirements for applications for prior approval. Rather, the disagreement between the parties rests on when the application was 'received' by the LPA.
9. On the basis of the appellant's evidence which includes a statutory declaration from his agent and in the absence of any clear evidence to the contrary, I accept that the application was posted in a post box at the Council offices (Swanspool House) on the morning of 24 December 2019 before they had closed for Christmas. Consequently, according to the appellant, that should be the date the application was received. As a result, he contends that the application was not determined within 56 days of receipt.
10. On the other hand, the LPA argue that Swanspool House is only accessible to the public by appointment, adding that if customers wish to drop off planning application forms, documents or samples, they are requested to call the planning department on the relevant phone number.
11. Furthermore, the LPA advises that its opening hours for the Christmas period were restricted and its offices were closed from 4pm on Christmas Eve to 1 January 2020. Further that its Christmas opening hours were displayed on the post box and also advertised on the Council's website throughout December. Consequently, after Christmas Eve morning, the post box was not

¹ As defined in The Town and Country Planning (Use Classes) Order 1987 (as amended)

opened until 2 January 2020. The LPA therefore contends that appellant's application was received on 2 January 2020, as confirmed in its acknowledgement letter to the appellant dated 8 January 2020. On this basis the LPA asserts that the determination of the application was within statutory timescales.

12. In light of the above and whilst I do not doubt that the majority of applications to the LPA including those from the appellant's agent are submitted via the planning portal or by email directly to them, this does not expressly exclude the appellant's agent from hand posting an application at a letter box for Swanspool House on Christmas Eve. Therefore, despite the LPA processing the appellant's application on the 2 January 2020, I am satisfied that it is reasonable to consider the application was received by the LPA on 24 December 2019.
13. Furthermore, the responsibility rests with the Council to ensure that applications it receives including those received immediately prior to a holiday period, which in this case included a number of days between Christmas Eve and 2 January 2020 when the Council had chosen not to open but which, nonetheless, were not weekends, public holidays or bank holidays. Moreover, the time between the application being posted at the Council offices and the LPA processing it did not 'stop the clock' on the 56-day statutory period.
14. Consequently, the LPA failed to notify the appellant as to whether prior approval was given or refused within 56 days of it receiving the application. Such failure means that it is not now able to require prior approval for the matters listed in paragraph R.3(1)(b) of the GPDO.
15. Under the circumstances and having regard to Paragraph W.(11) of the GPDO, the Council's failure to determine the application within 56 days following the date on which the application was received by the Council means that prior approval is deemed to be granted. However, notwithstanding this the development could only lawfully proceed if it is in accordance with the submitted details and is in fact permitted development having regard to the relevant conditions and limitations imposed on the planning permission granted by the GPDO.

Transport and highways, and noise impacts

16. Given my findings above, it is not necessary for me to consider whether prior approval as to the transport and highways, and noise impacts of the development are required.

Conditions

17. Paragraph R.3.(2) of the GPDO attaches a condition to that development under Class R of the GPDO must begin within a period of 3 years, starting from the prior approval date, which in this case was 56 days from the 24 December 2019. Paragraph W.(12) also requires that the development must be carried out in accordance with the details provided in the application. Therefore, as suggested by the LPA, conditions stipulating the time scale for the implementation of the approval and requiring it to be undertaken in accordance with the submitted details are not necessary.

Conclusion

18. For the above reasons, I conclude that the failure of the LPA to make a determination on the application within the prescribed period means that prior approval is deemed to be granted.

M Aqbal
INSPECTOR