



Appeal Decision

Site visit made on 24 November 2020

by Simon Warder BSc(Hons) MA (DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 December 2020

Appeal Ref: APP/X1545/W/20/3254349

Bridgemarsh Marine, Bridgemarsh Lane, Althorne CM3 6DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr John Wilsdon against the decision of Maldon District Council.
 - The application Ref AGR/MAL/19/01229, dated 18 November 2019, was refused by notice dated 2 January 2020.
 - The development proposed is a general purpose agricultural and forestry barn for grain storage and storage for machinery, general storage and workshop.
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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, paragraph A.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) for a general purpose agricultural and forestry barn for grain storage and storage for machinery, general storage and workshop at Bridgemarsh Marine, Bridgemarsh Lane, Althorne CM3 6DQ in accordance with the application AGR/MAL/19/01229 made on 18 November 2019, and the details submitted with it including drawing references 1015/13, 1085/01A and 1085/02A, pursuant to Article 3(1) and Schedule 2, Part 2, Class A, paragraph A.2(2). The approval is subject to the conditions set out in paragraph A.2.

Background and Main Issue

2. The appeal follows the refusal of the Council to grant prior approval for the erection of a building under Part 6 of Schedule 2 of the Order. The Council considers that the site is not solely in agricultural use and that the proposed building is not reasonably necessary for the purposes of agriculture. It, therefore, considers that the proposal does not benefit from permitted development rights under the Order.
 3. The prior approval procedure to be complied with under Part 6 is set out in paragraph A.2. This paragraph differs from, for example, paragraph A.4(3) of Part 1 of the Order. It does not make provision for the decision maker to refuse an application which does not comply with, or where insufficient information has been provided to determine whether the proposal complies with, the conditions, limitations or restrictions applicable to that Class of development.
 4. As such, there is no power under the relevant prior approval provisions to determine whether or not the proposed development comes within the
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description of the relevant class, or would comply with the relevant conditions, limitations or restrictions¹. Rather, the requirement for prior approval is similar to a pre-commencement condition attached to the grant of a planning permission.

5. Therefore, any development which is constructed not in accordance with the terms or conditions of the permission would be at risk of enforcement action. It is open to the appellant to apply for a certificate of lawfulness of proposed development under section 192 of the 1990 Act to establish whether the proposal falls within Part 6 of Schedule 2 of the Order.
6. Both parties have drawn my attention to an earlier appeal decision (appeal ref: APP/X1545/W/19/3229642) for a new road at Bridgemarsh Marine. However, each appeal must be determined having regard to its circumstances and the available evidence as well as the applicable law and policy at the time of the decision.
7. The Council considers that prior approval is not required for the design or external appearance of the barn and I see no reason to disagree. On that basis, the main issue is the effect of the siting of the barn on the character and appearance of the area.

Reasons

8. The proposed barn would be located close to the northern boundary of 'marina field'. The field itself is open and exposed to views from the south, including from the vicinity of the marina itself and the sea wall. However, to the north is a field boundary hedge and an area of maturing woodland planting. The barn would be seen against the backdrop of these landscape features in views from the south and they would help to tie the building to the local landscape structure. The hedge and woodland planting would also help to screen the barn in views from the north. Other publicly accessible viewpoints are limited.
9. The Council is concerned regarding the cumulative visual impact of the proposed barn and a similar barn granted planning permission on the appellant's land adjacent Althorne House (application ref: FUL/MAL/18/00673). However, the hedge and woodland to the north of the proposed barn would effectively prevent inter-visibility between the two. Moreover, whilst there is an area of loose-knit development off Bridgemarsh Lane to the west of the proposed barn, fairly extensive areas of undeveloped open fields would separate the two barns. The appellant has stated that he does not intend to construct both barns. Any approval under Part 6 of the Order does not provide a mechanism to prevent the construction of both barns. Nevertheless, I consider that, even considered cumulatively, the two barns would not result in the sprawl of built form across the area.
10. Whilst the proposed barn would occupy a relatively isolated position, that is not unusual given its claimed purpose and the need to limit the effects of the proposed grain handling activities on residential properties. The barn's agricultural form and appearance would not be out of place in its rural setting. Overall therefore, I find that the siting of the proposed barn would not have a harmful effect on the character and appearance of the area.

¹ See, for example, case law in *R (oao Marshall) v East Dorset DC & Pitman* [2018] EWHC 226 (Admin)

Conditions

11. The approval is subject to the relevant conditions set out in Part 6, Class A, paragraph A.2 of the Order. The Council has not suggested any additional conditions and I agree that none are necessary.

Conclusion

12. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted. Nevertheless, it should also be noted that, for the reasons set out in paragraphs 2 to 5 above, this decision does not purport to determine whether the appeal proposal falls within Part 6, Class A of the Order.

Simon Warder

INSPECTOR