



Appeal Decisions

Site Visit made on 2 March 2021

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Appeal A: APP/G5180/W/20/3256137

Sky Farm, Land at New Years Lane, Knockholt TN14 7PQ

- 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 Samuel Harii against the decision of London Borough of Bromley.
 - The application Ref DC/20/01279/AGRIC, dated 9 April 2020, was refused by notice dated 13 May 2020.
 - The development proposed is an agricultural barn.
-

Appeal B: APP/G5180/W/20/3259004

Sky Farm, Land at New Years Lane, Knockholt TN14 7PQ

- 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 Samuel Harii against the decision of London Borough of Bromley.
 - The application Ref DC/20/01690/AGRIC, dated 15 May 2020, was refused by notice dated 2 July 2020.
 - The development proposed is an agricultural barn.
-

Decision

1. Appeal A is allowed and prior approval is deemed to be given under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 for an agricultural barn in accordance with the application Ref: DC/20/01279/AGRIC, dated 9 April 2020, and shown on the plans submitted with it, subject to the relevant requirements set out in Part 6, Class A.
2. Appeal B is allowed and prior approval is deemed to be given under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 for an agricultural barn in accordance with the application Ref: DC/20/01690/AGRIC, dated 15 May 2020, and shown on the plans submitted with it, subject to the relevant requirements set out in Part 6, Class A.

Applications for Costs

3. Applications for costs were made by Mr Samuel Harii against the London Borough of Bromley. These applications are the subject of a separate Decision.

Preliminary Matters

4. Both applications were submitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the GPDO. Class A Part 6 of the GPDO permits the erection of a building on agricultural land comprised in an agricultural unit of 5 hectares or more which are reasonably necessary for the purposes of agriculture within that unit. Development permitted by Class A is subject to various conditions one of which is that 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: Condition A.2.(2)(i).
5. Condition A.2.(2)(iii)(cc) stipulates that the development must not begin before the occurrence of the expiry of 28 days following the date on which the application under sub-paragraph A.2.(2)(ii) was received by the local planning authority without it making any determination as to whether such approval is required or notifying the applicant of their determination.

Main Issues

6. Having regard to the above I consider the main issues are:
 - a) Whether or not the determination in relation to the prior approval was made within the statutory 28-day period:
 - b) if not, whether or not prior approval can be given having regard to the siting, design and external appearance of the building.

Reasons

The statutory 28-day period

a) Appeal A

7. The application was received by the Council on 9 April 2020. An officer report was prepared setting out various concerns about the siting of the proposed barn due to its location within a Site of Importance for Nature Conservation (SINC) and its proximity to trees protected by Tree Preservation Orders (TPOs). The report referred to an Article 4 direction but gave no explanation of any restrictions it placed on use of the land. It also provided detail of several representations made by local people, including Knockholt Parish Council. The report, dated 7 May, recommended that prior approval should be refused due to the siting, design and external appearance of the building being inappropriate for its proposed agricultural purpose and the rural location of the site.
8. However, there is no evidence before me to suggest that this outcome was communicated to the appellant on or before the 7 May. The Council's decision notice was not issued until 13 May 2020. This is beyond the 28-day statutory period. Case law¹ has made it clear that delays incurred by the local planning authority does not stop the clock running. On the expiry of the statutory period, prior approval is deemed to be granted. It follows that the same applies in this case.

¹ Murrell v SSCLG[2010] EWCA Civ 1367

b) Appeal B

9. The second application was received by the Council on 15 May 2020. Having failed to secure prior approval for the site proposed in Appeal A, the appellant proposed a different one within the larger field that forms part of the agricultural holding.
10. The officer report acknowledged that this revised siting would reduce the barn's impact on the TPO woodland. However, it continued to raise concerns about its effect on the habitats and flora within the Norsted Valley Woods SINC but without providing any specific indications of what harm would be likely to be caused. No mention was made of any conflict with the provisions of the Article 4 direction. Nevertheless, the report recommended that the prior approval should be refused for exactly the same reasons that it refused the earlier scheme.
11. However, in this case the Council's decision notice was not issued until 2 July 2020. This is well beyond the 28-day statutory period. Therefore, prior approval is also deemed to be granted in this case.

Whether or not prior approval can be given

12. As neither of the applications were determined within the 28-day statutory period and prior approval is deemed to be granted for both proposals, there is no need for me consider the issue of the siting, design and external appearance of the proposed barn.
13. However, these decisions have no bearing on whether or not the development complies with the remaining conditions, limitations and restrictions set out in Class A Part 6 of the GPDO. These could only be addressed by the appellant applying for a certificate of lawful development.

Conclusion

14. For the reasons set out above, both appeals are allowed.

Sheila Holden

INSPECTOR