



Appeal Decision

Site visit made on 15 March 2021

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Appeal Ref: APP/C1570/W/20/3262238

Pauls Farm, Little Bardfield Road, Little Bardfield CM7 4TN

- 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 Order (1995) (as amended).
 - The appeal is made by Mr Patrick Gardiner against the decision of Uttlesford District Council.
 - The application Ref UTT/20/2511/AG, dated 28 September 2020, was refused by notice dated 27 October 2020.
 - The development proposed is described as 3 agricultural buildings for the storage of grain, machinery and equipment.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal relates to the refusal of prior approval for the erection of 3 agricultural buildings under Schedule 2, Part 6, Class A of the Town and Country Planning General Permitted Development Order (1995) (as amended) (the GPDO). The submitted plans show a private way and hardstanding to serve the proposed buildings. Nonetheless the description of development cited on application form and decision notice relates to the buildings only. The appeal is determined on that basis, being the development expressly sought by the appellant and determined by the Council.
3. The Council has advised that the reason for refusal contained in their decision notice was incorrect as they had misunderstood the size of the appeal site and agricultural holding. Nonetheless, they maintain that their decision to refuse this particular prior approval application is justified, albeit for different reasons which have been presented through their appeal submission.
4. Firstly, it is advanced that the appeal proposal does not constitute permitted development. In this regard, the determination of whether or not the appeal proposal constitutes permitted development falls within the scope of this appeal in view of the most recent judgement on this matter *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250. This is assessed later in this Decision.
5. Secondly, the Council has advanced that the siting of the appeal proposal could be harmful to a non-designated heritage asset of archaeological interest. As

this has been drawn to my attention through the Council's appeal statement and it directly relates to the consideration of siting, then it must fall within the scope of this appeal. The submitted evidence demonstrates that the appellant was aware of this constraint in view of the planning history of the site. Through the course of this appeal, the appellant has had the opportunity to respond to this matter. Therefore, I am satisfied that no parties' interests are prejudiced through my determination.

Main Issues

6. The main issues are:

- whether or not the appeal proposal constitutes permitted development by virtue of Schedule 2, Part 6, Class A (a) of the GPDO (1995) (as amended); and
- the acceptability of the siting of the appeal proposal, with particular regard to the effect on local archaeological interests.

Reasons

Permitted development

7. The Council has advanced through this appeal that as the appeal proposal relates to more than the one building it is not permitted development by virtue of Schedule 2, Part 6, Class A (a) of the GPDO (1995) (as amended).
8. Indeed, Part 6, Class A refers to a "building" and the term is not defined within the GPDO. In the absence of this, Section 6 (c) of the Interpretation Act (1978) confirms the singular in law includes the plural. Furthermore, the floorspace calculation for the purposes of D.1(2)(a) is limited by area, not the number of buildings. These both indicate to me that the term here and therefore Part 6, Class A could extend to more than one building.
9. The appellant has stated that the cumulative total floor area of the proposed buildings would not exceed the floor area threshold prescribed by Schedule 2, Part 6, Class A, A1(d)(ii), the GPDO (as amended). However, the wording of the GPDO is not explicit as to whether the private way and hardstanding to be provided to serve the proposed buildings should be included within the floor area calculation set out in D.1(2)(a).
10. The term "work" is not defined in either the GPDO or the Town and Country Planning Act (1990). In *Taylor & Sons (Farms) v Secretary of State for the Environment, Transport & Regions* 2001 WL 825205 it was confirmed that the creation of hardstanding could be a "work" for the purposes of D.1(2)(a), and so could be included in the area calculation. Indeed, the creation of a hardstanding could be reasonably regarded as being very similar to the creation of a private way, depending on the construction method used.
11. Nonetheless, in regard to the appeal before me these works, in so far as they would serve the proposed buildings, are not intended for the accommodation of livestock. Accordingly, that being the case it is not appropriate to include the resulting floor area of the private way or hardstanding shown on the submitted plans within the floor area calculation for the purposes of D.1(2)(a). Therefore, the submitted details confirm that the cumulative floor area of the proposed buildings would be less than the permitted 1,000 square metres.

12. Furthermore, the appeal proposal would meet all other relevant provisions of the GPDO.
13. Consequently, it is concluded that the appeal proposal would constitute permitted development by virtue of Schedule 2, Part 6, Class A (a) of the GPDO (1995) (as amended).

Archaeology

14. Paragraph 187 of the Framework states that Local Planning Authorities should maintain or have access to a historic environment record to assess the significance of heritage assets and their contribution to their environment, as well as to predict the likelihood of currently unidentified heritage assets, including archaeological interest, being discovered in the future.
15. Through this appeal the Council has stated that the Essex Historic Environment Record (EHER) and associated aerial photography indicates that a non-designated archaeological asset is located just beyond the appeal site in the form of a linear, ring ditch and enclosure cropmarks. These features are indicative of a Late Prehistoric burial mound.
16. The significance of this non-designated heritage asset is both in its historic and cultural value. The submitted record also shows that the appeal site falls within a buffer area of wider potential archaeological interest relating to this non-designated heritage asset. Any such interests could be directly related to this asset's significance.
17. Paragraph 197 of the Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining an application. In terms of applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
18. The Council has not provided the relevant aerial photography to support the identification of potential archaeological interest within and beyond the appeal site. However, that does not in itself mean there are no archaeological interests within the appeal site. A sufficient level of evidence has been submitted to indicate the potential for this.
19. There is an absence of any detailed drawings or other evidence which would confirm the nature and degree of earthworks that would be required to facilitate the appeal proposal. Nonetheless, given the topography of the site and the scale of the appeal proposal, ground disturbance would be required to facilitate the siting of the appeal proposal. Coupled with the previously undeveloped nature of the appeal site, there is a realistic prospect that the appeal proposal could harm any archaeological interest which, based upon the available evidence, has potential to extend into the area to be developed.
20. Paragraph 189 of the Framework states that as a minimum, the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, developers should be required to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

21. In this instance, the appellant has not substantiated through their evidence to a reasonable level of certainty that such archaeological interests do not exist or that they would not be harmed. Therefore, the appeal proposal does not accord with paragraph 189 of the Framework.
22. Paragraph 198 of the Framework states that local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred. Furthermore, paragraph 199 of the Framework states that local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost, either wholly or in part, in a manner proportionate to their importance and the impact. This evidence and any archive generated should be made publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.
23. It is evident that the prior approval provisions do not enable the decision-taker to impose conditions that would be necessary to manage and mitigate any impacts upon archaeology arising as a consequence of the appeal proposal in line with the framework's approach to non-designated heritage assets. That could only be secured through the planning application process.
24. On balance, the available evidence before me indicates that there is a reasonable prospect that heritage assets of archaeological interest exist within the appeal site which could contribute to further understanding the significance of the known asset on neighbouring land. Any such interests could be irreversibly harmed in the absence of appropriate mitigation. At the very least, this would be of a nature and level that would represent less than substantial harm.
25. For these reasons, in the absence of evidence to the contrary, I can only conclude that the siting of the appeal proposal would be unacceptable with particular regard to the potential for harm to local archaeological interests.

Conclusion

26. For the reasons given, the appeal should be dismissed.

C Dillon

INSPECTOR