



Appeal Decision

Site visit made on 19 June 2021

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 July 2021

Appeal Ref: APP/E2205/W/21/3267998

Chart Court Farm, Pluckley Road, Little Chart, Kent TN27 0QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr W Puxley against the decision of Ashford Borough Council.
 - The application Ref 20/01736/AS, dated 11 December 2020, was refused by notice dated 13 January 2021.
 - The development proposed is a new road.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) for the siting and means of construction of a new road (a private way) at land at Chart Court Farm, Pluckley Road, Little Chart, Kent TN27 0QH in accordance with the terms of the application Ref 20/01736/AS, dated 11 December 2020, and the plans submitted with it.

Background

2. Chart Court Farm comprises a working farm and a livery which has been operating alongside the farm since permissions granted in 2005. According to the appellant, the site comprises 24 hectares let for arable production, 16 hectares forming ancillary woodland, lake, ponds and stream and 16 hectares of grassland used for cropping as hay and in rotation as paddocks for grazing horses by the livery business, which otherwise occupies just 1 hectare of the site. The Farm is in single ownership, but the agricultural land and the area set aside for equestrian use are let and occupied independently.
3. The vehicular access from Pluckley Road serves the farm, the livery and converted dwellings. It has a series of bends that are not ideally suited to use by large modern agricultural vehicles. The proposal is to provide a new road from the first bend across two fields used for grazing to reconnect with the existing access road beyond the complex of existing buildings.

Procedural Matters

4. The Council refused the application on the basis it considers the proposal not to benefit from the provisions of 'permitted development' under Schedule 2, Part 6, Class A of the GPDO. This is because the planning unit is not considered to be solely an agricultural unit and that the use of the unit falls within a mixed agricultural/equestrian use.

5. However, whilst the Council may hold this view, it is not entitled to determine the proposal, which is an application for prior approval, on this basis. Planning Practice Guidance (PPG) establishes the matters for and not for consideration on prior approval applications¹:

"Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant Parts in Schedule 2 to the General Permitted Development Order. A local planning authority cannot consider any other matters when determining a prior approval application."

6. The prior approval procedure set out under Part 6 Class A makes no provision for any determination to be made, as part of this appeal, as to whether the development would be permitted development. Therefore, I cannot decide that question. This position has been confirmed by relevant case law². The appellant has also referred to recent appeal decisions that have supported this view³. Instead, I am determining whether, should the scheme come within the status of permitted development, prior approval should be granted. If the development were to proceed and the Council remain of the view that it is not permitted development, granted by Article 3(1) of the GPDO, then it would be open to them to consider the expediency of enforcement action.

Main Issues

7. On the basis of the above, the main issues are would the development comply with Part 6A of the GPDO and whether prior approval will be required as to the siting and means of construction of the private way.

Reasons

8. Part 6 relates to agriculture and forestry and Class A to agricultural development on units of 5 hectares or more. Class A Permitted Development includes, "(b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit".
9. Paragraph A.1. lists exceptions by which development would not be permitted by Class A. These include (d) *it would involve the provision of a building, structure or works not designed for agricultural purposes* and (h) *any part of the development would be within 25 metres of a metalled part of a trunk road or classified road*. The works, in this case a new road, would be designed for agricultural purposes albeit that the livery business may also benefit from the road's provision. The start of the new road by the first bend would be more than 25m from the junction with Pluckley Road. I am satisfied that the proposal would not be contrary to other limitations cited at Paragraph A.1.
10. Paragraph A.2. lists conditions to which development permitted by Class A is subject. At Paragraph A.2.(2) (b) development consisting of the formation or alteration of a private way is permitted subject to conditions including that the developer must, before beginning the development, apply for a determination

¹ PPG Paragraph: 026 Reference ID: 13-026-20140306

² R (oao Marshall) v East Dorset DC & Pitman [2018] EWHC 226 (Admin)

³ APP/J1860/W/18/3202122 (Land at Cobblers Corner, Broadwas on Teme, Worcestershire WR6 5NP) and APP/D2320/W/19/3222949 (Holmes Farm, Sandy Lane, Brindle, PR6 8LZ)

as to whether prior approval will be required as to the siting and means of construction of the private way.

11. The road would be about 360m long and 4.5m wide. It would follow field edge boundaries with hedgerows and trees nearby that would help to screen it from some viewpoints. The alignment of the road would not be obtrusive and would enable larger agricultural vehicles and machinery to be directed away from adjacent dwellings and the livery resulting in amenity benefits. The road would be constructed from porous recycled materials comprising a crushed concrete base and finished with crushed roadstone. This should ensure a robust construction and that no surface water run-off arises.
12. The Council have not raised any concerns regarding the siting or means of construction of the road. In the absence of evidence to indicate otherwise, I find its siting and means of construction to be acceptable in the site's context.
13. Whilst the Council consider that an application for full planning permission is required as the road would be used by the livery as well as for agricultural purposes, this is not a matter that I can take into account in my decision. The Council has referred to an appeal decision⁴ in support of its stance, but this relates to a site essentially in equestrian use, whereas the appeal site is clearly predominantly in agricultural use. This does not change my findings.

Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.
15. Any planning permission granted under Article 3(1) and Schedule 2, Part 6, Class A is subject to the condition that it must be carried out in accordance with the details approved and within a period of 5 years starting with the date on which the application was submitted to the local planning authority.

Rory MacLeod

INSPECTOR

⁴ Reference supplied by the appellant: 3133205