



Appeal Decision

Site Visit made on 28 July 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2021

Appeal Ref: APP/C1625/W/20/3262568

**Land opposite The New Inn, Waterley Bottom, North Nibley,
Gloucestershire GL11 6ED**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for approval required under Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mrs Howse against Stroud District Council.
 - The application Ref S.20/0801/AGR is dated 16 April 2020.
 - The development proposed is agricultural barn.
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Decision

1. No decision is made on this appeal for the reasons set out below.

Applications for costs

2. An application for costs has been made by Mrs Howse against Stroud District Council. This is the subject of a separate Decision.

Preliminary Matters

3. On my site visit, I saw that the development subject of this appeal has been constructed.
4. The main parties have been invited to submit comments on a revised version of the National Planning Policy Framework, issued in July 2021. However, no comments have been received.

Reasons

5. Under Class A of Part 6 of Schedule 2 of the GPDO (Part 6), the erection of a building which is reasonably necessary for agriculture is defined as permitted development, subject to various conditions. Under paragraph A.2 of Part 6, an application must be submitted to allow the local planning authority to determine whether prior approval is required as to the siting, design and appearance of a proposed building. Development must not start until the applicant receives notice that prior approval is or is not required. However, it may commence if the local planning authority makes no determination or fails to notify the applicant within 28 days of the receipt of the application.
6. The application leading to this appeal was initially returned by the Council for being invalid. However, the Council accepts that this was incorrect and that a valid application was submitted.

7. Moreover, the Council states it did not notify the appellant of any determination on whether prior approval would be required within the prescribed 28 day period. The appeal submissions include an email from a Council officer dated 15 May 2020, which the appellant refers to in parts of their case as a determination on the application. However, this email states that, "following 28 days, the Local Planning Authority has not made a determination... as to whether prior approval will be required". A response from the appellant's agent dated 18 May 2020 indicates a clear understanding that the Council had not determined whether prior approval was required within 28 days.
8. The 15 May 2021 email goes on to state that "the Planning Authority does not consider that the proposal meets the conditions or limitation of permitted development" and so "planning permission would be required for the agricultural barn proposed". However, given the statement at the start of the email, I am unconvinced that these comments represent a determination on the application. Instead, I interpret them as an opinion as to whether the proposal is likely to constitute permitted development. There is no indication within the wording of the email that the Council has refused to make a determination on the prior approval application due to its view that the scheme would not represent permitted development.
9. A number of other appeal decisions are referred to by the appellant. Some of these are against a refusal to grant prior approval in contrast to this appeal against a failure to give notice of a decision within the appropriate period. In the appeals for Winter Garlands at Highampton¹, the Inspector concludes the Council's correspondence is more than just advice but represents a decision due to the particular wording that is used. However, with this appeal, I have found the Council has not made a determination and so the circumstances surrounding these previous decisions are different to the current case.
10. The appellant has the right to lodge this appeal under section 78 of the Act. However, a decision as to whether prior approval is required must be made within the original 28 day period and I am unable now to reach a finding on that matter. In any event, such a decision would have no practical purpose.
11. As such, for the above reasons, the only conclusion I can reach is that I am unable to issue any formal decision.

Jonathan Edwards

INSPECTOR

¹ Appeal reference number APP/W1145/W/18/3202150 and APP/W1145/W/18/3202153