



Appeal Decision

Site visit made on 17 August 2021

by Samuel Watson BA(Hons) MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 8th September 2021

Appeal Ref: APP/C3430/W/21/3272868

Former Munitions Depot, Lawn Lane, Coven WV9 5BA

- 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 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Telford Six Limited against the decision of South Staffordshire Council.
 - The application Ref 20/01127/AGRFLX, dated 18 December 2020, was refused by notice dated 5 February 2021.
 - The development proposed is "Class R – Development consisting of a change of use of buildings to a flexible use falling within Class B8 (storage and distribution) of the Schedule to the Use Classes Order".
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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 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (The GPDO) for the "change of use of buildings to a flexible use falling within Class B8 (storage and distribution) of the Schedule to the Use Classes Order" at Former Munitions Depot, Lawn Lane, Coven WV9 5BA.
2. The approval is granted in accordance with the details submitted pursuant to Article 3(1) and Schedule 2, Part 3 of the GPDO, the limitations and provisions of the GPDO, and subject to the condition that the development must be completed within a period of 3 years from the date of this decision and the following additional conditions:
 - 1) The development hereby approved shall be carried out in accordance with the approved plan: Site Location Plan dated 18/12/2020
 - 2) No work shall be carried out at, and no materials shall be delivered to, or dispatched from, the appeal site, outside of the hours of 08:00 to 18:30 Monday to Friday, and 10:00 to 14:00 on Saturdays. No such operations shall take place at any time on Sundays or on Bank Holidays.

Background and Main Issues

3. Article 3(1) and Schedule 2, Part 3, Class R of the GPDO permit, subject to limitations and conditions, the change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within either Class B8, C1 or E of the Use Classes Order.

4. The Council do not consider the three concrete pads which form part of the appeal site to be buildings for the purposes of Class R. As such there is a dispute between the parties as to whether they benefit from the permitted development rights provided by the Class. It is not disputed between the parties that the land complies with R.1(a)(i-iii) with regard to it being, or having last been solely used for an agricultural use as part of an established agricultural unit.
5. Therefore, the main issues in this case are; whether the pads are buildings for the purposes of Class R; and if so, whether or not the proposed development would require prior approval for the matters raised in R.3(1)(b)(i)-(iv), namely the:
 - transport and highways impacts of the development;
 - noise impacts of the development;
 - contamination risks of the site; and
 - flooding risks of the site.

Reasons

Whether the raised pads constitute 'buildings'

6. The appeal site contains three large concrete pads. They are raised above the ground level and I noted that at least one had steps up to it. Each concrete pad was also surrounded by brickwork. In these ways they are not similar to the concrete roadways within the site. The pads were also clearly permanent features and were likely constructed on site.
7. Furthermore, the evidence before me, and my observations on site, suggest that the concrete pads were once part of complete buildings which formed a TA centre. Notably, while on site, I saw scarring from where walls had been, and remnants of internal flooring materials and plumbing.
8. Article 2(1) of the GPDO sets out its interpretation of a 'building': A building is any structure or erection and any part of a building other than; plant, machinery, gates, fences, walls or other means of enclosure. Class R does not provide any further interpretation of the word for the purposes of the Class.
9. Given that the pads once formed the bases of buildings, each were part of a building. While the rest of the structures have been removed, I find no reason to consider that the pads are no longer part of a building. In particular, both Article 2(1) and Class R of the GPDO are silent as to any requirement for the whole building to still be present.
10. Therefore, the pads, by way of being permanent structures and a part of a building, are, for the purposes of Article 2(1)(a) and Class R, buildings in their own right. Given their presence within an agricultural unit, and with no evidence to demonstrate that they have been used for any other purpose since 3rd July 2012, I find these buildings to be agricultural for the purposes of Class R. As such, they benefit from the permitted development rights set out within the Class and I must consider the relevant prior approval matters.

Prior Approval Matters

11. The appeal site is served by a large existing access which, from my observations on site, afforded a good level of intervisibility between those leaving the site and those using the highway. Given the scale of the development, I find it would likely result in only a limited increase in vehicular movements over and above the existing B8 and agricultural uses. Such an increase would not unacceptably harm highway safety around the junction. Moreover, I note that the Council's Highway Officers did not object to the proposal. Although they have suggested a condition limiting the direction vehicles may access or egress the site, the level of associated trips would not unacceptably affect the village of Coven to the north.
12. It is likely that the proposed use would result in noise by way of vehicles accessing the site, manoeuvring within it, and loading or unloading. From the information before me and my observations on site I note that there are dwellings nearby. However, were the appeal to be allowed the living conditions of neighbouring occupiers could be protected by way of a suitably worded condition.
13. Although the appellant has referred to a contamination report having found a low risk of contamination, this report is not before me. However, I note that the Council have been silent on the matter and that the Environmental Health Officer did not comment during the application process. Given the above, and lacking any evidence to the contrary, I find that it is unlikely the appeal site is affected by an unacceptable level of contamination.
14. The appellant has stated, with reference to the Environment Agency Flood Risk Map, that the appeal site is within flood zone 1. However, I have also not been provided with a copy of this map. Nevertheless, this matter has not been disputed by the other parties and I have no reason to conclude other than that the site is not at risk of flooding.

Other Matters

15. A number of concerns have been raised regarding smells and pollution from the site, and damage to the road network from HGVs. However, it has not been demonstrated that the proposal is any more likely to cause these impacts than the current use. Moreover, whilst concerns have been raised that the use has already started at the site, no substantive evidence has been submitted and I did not note any storage being carried out within the appeal site during my visit.
16. It has also been suggested that the use would be more appropriately sited within a commercial area and that the proposal would not bring any benefits. However, these matters are not within the remit of my considerations under Class R.

Conditions

17. Paragraph R.3 of the GPDO specifies that development under Class R must be completed within a period of 3 years starting with the prior approval date. Paragraphs R.2(a), R.2(b) and R.2(c), require that: (a) a site which has changed use under Class R may, subject to paragraph R.3, subsequently change use to another use falling within one of the use classes comprising the flexible use; (b) for the purposes of the Use Classes Order and this Order, after

a site has changed use under Class R the site is to be treated as having a sui generis use; and (c) after a site has changed use under Class R, the planning permissions granted by Class G of Part 7 of this Schedule apply to the building, subject to some modification.

18. Schedule 2, Part 3, Paragraph W(13) allows for the imposition of conditions which are reasonably related to the subject matter of the prior approval. In this instance, it is necessary to impose a condition setting out the approved plans to ensure certainty and for enforcement purposes going forward.
19. The Council have also suggested a condition restricting the hours through which work on site and deliveries to and from the site can be made, in the interests of protecting the living conditions of neighbouring residents. I find such a condition would be necessary given the relationship between nearby residential dwellings, the appeal site, and the highway.
20. The Council have also suggested a condition restricting the further change of use at the site. However, as Class R permits further limited changes of use, as covered above, such a condition would conflict with the standard conditions for Class R. Moreover, as raised above I find it would be unnecessary to restrict the site access on highway safety grounds. It would also be unnecessary to impose a condition requiring details of a lighting scheme given that the development does not include operational development, and such lighting could already be carried out.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed, and prior approval granted.

Samuel Watson

INSPECTOR