



Appeal Decision

Site Visit made on 28 September 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/C1435/W/21/3266366

Part of Great Barn, Briar House Farm, Dewlands Hill, Rotherfield, Crowborough TN6 3RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on a prior approval application required under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr David Proudfoot against the decision of Wealden District Council.
 - The application Ref WD/2020/1778/PO2, dated 6 September 2020, was refused by notice dated 23 November 2020.
 - The development proposed is "Conversion of part of the barn not exceeding 302.3 sqm to a D2 use. Works to include new partitions to interior to divide the space."
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Decision

1. The appeal is allowed and prior approval is deemed to have been granted under the provisions of Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the proposed conversion of part of the barn not exceeding 302.3 sqm to a D2 use and works to include new partitions to interior to divide the space at The Great Barn, Briar House Farm, Dewlands Hill, Rotherfield, Crowborough TN6 3RU in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph R.3 (1) of the GPDO through application Ref WD/2020/1778/PO2, dated 6 September 2020, and subject to the conditions set out at Schedule 2, Part 3, Paragraphs R.2 and R.3 of the GPDO.

Applications for costs

2. An application for costs was made by Mr David Proudfoot against Wealden District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the submission of the appeal an amendment¹ has been made to the GPDO with regard to Schedule 2, Part 3, Class R, which came into effect on 1 August 2021. Separate amendments² were also made to The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) to revoke Part D, which had the effect of deleting the D2 use class subject to transitional and

¹ The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 and The Town and Country Planning (Use Classes) (Amendment) (England) (No. 2) Regulations 2020

saving provisions. It would therefore be necessary for me to determine this appeal in accordance with the amended provisions rather than those which were in effect at the time of the application, unless if the Council failed to notify the appellant whether its prior approval was given or refused within the relevant timeframe, in which case I would need to consider whether prior approval is deemed to have been granted.

4. I have taken the description of the development proposed from the appellant's application form dated 6 September 2020, which matches that provided in another application form dated 18 September 2020 which followed the Council's request for further information. The Council's decision notice refers to a proposed 'D2/B8' use and the appellant's submissions advise it was the Council who changed the description of the proposed development. I have therefore assessed the appeal based on the original application form as I have no evidence before me to demonstrate the appellant agreed to the different description of development proposed.

Background and Main Issues

5. At the time the appellant submitted the application and the Council issued its decision notice, the provisions of Schedule 2, Part 3, Class R of the GPDO permitted 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 use classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes), B1 (business), B8 (storage or distribution), C1 (hotels) or D2 (assembly and leisure) as defined in the UCO.
6. Development permitted by Class R is subject to the conditions in Paragraph R.3. As the part of the building proposed to change use would exceed 150 square metres, Condition (1)(b) of Paragraph R.3 required the appellant to apply to the Council for its determination as to whether its prior approval would be required in respect of the transport and highway impacts of the proposal and the noise impacts of the development, amongst other things.
7. Paragraph W of Part 3 of the GPDO sets out the procedure for such applications. Paragraph W(11)(c) states that the development could not have begun before the expiry of 56 days following the date on which the application was received by the Council without it notifying the appellant as to whether prior approval was given or refused. The appellant claims that the 56 days referred to by Paragraph W(11)(c) had expired before the Council notified them that prior approval was required and refused. The Council disputes this and suggests the proposed development may not be permitted development as the Great Barn may not have been used for agricultural purposes and may have been extended unlawfully.

Main Issues

8. Taking the above into account, the main issues are: (i) whether prior approval is deemed to have been granted by reason of the timing of the Council's decision; (ii) if prior approval is not deemed to have been granted, whether the proposal can be considered to comply with the description of permitted development; and (iii) if the proposal does comply with the description of permitted development, whether prior approval as to the transport and highways, and noise impacts of the proposal are required.

Reasons

9. The appellant submitted their application to the Council by email dated 6 September 2020. Attached to the email was the application form and 10 plans comprising existing and proposed 'OS maps', block plans, elevation plans and floor plans. The application form contained a written description of the proposed development and the appellant's contact address. The OS maps and block plans were drawn to a specified scale, included a north arrow and scale bar, and indicated the appeal site showing the proposed development. The appellant paid the requisite fee on 7 September 2020 and received a receipt from the Council on the same day.
10. The Council wrote to the appellant by letter dated 10 September 2020 requesting that they attend to six matters. Amongst those matters, the Council requested that the OS maps be amended to show the road name and the name of the adjoining property to the north of the appeal site's access, that the scale bar on the block plan be amended to the correct scale, that the paper size of all plans be amended or agreed to be amended, and that a Community Infrastructure Levy application form be completed and returned.
11. In this instance, Paragraph W(2) of Part 3 required the application to be accompanied by a written description of the proposed development, a plan indicating the site and showing the proposed development, the appellant's contact address, and the requisite fee. The Council claims that the appellant did not provide a plan appropriately identifying the site until 28 September 2020 because the plans submitted prior to that date did not include road names, nearby properties or a grid reference. The Council refers to the Planning Practice Guidance³ (PPG) which provides advice as to the question "What information should be included on a location plan?". The advice in the PPG is that a location plan should include various details to ensure the exact location of the site is clear, but that advice goes beyond what Paragraph W(2) requires to be submitted as part of an application for prior approval.
12. The Council has also raised concerns in respect of the description of the proposed development provided by the appellant which merely referred to the D2 use class rather than any specific use. The appellant's written description of the proposed development was brief and the D2 use class incorporated a broad range of assembly and leisure uses. However, the appellant's written description accorded with the description of development permitted by Class R and therefore satisfied the requirements of Paragraph W(2). The Council was able to request further information as to the specific use proposed, but any such request and the submission of any further information did not stop or restart the 56-day period within which the Council had to notify the appellant prior approval was required.
13. Both main parties have referred to *Murrell v SSCLG* [2010] EWCA Civ 1367 where it was held that the prior approval procedure is attended by the minimum of formalities and that where a valid application is submitted the statutory period for the consideration of the application is not paused or restarted if the Council seek further information or if the applicant submits a new application form or further plans. I am satisfied that the plans submitted on 6 September 2020 indicated the site and showed the proposed

³ Paragraph 024 reference ID: 14-024-20140306

development. The exact location of the site was clear from the plans submitted on that date.

14. The appellant submitted the necessary details required by Paragraph W(2) on 6 September 2020 and the requisite fee was paid on 7 September 2020 within the Council's normal working hours, which completed the application process. The 56-day period that the Council had to notify the appellant that prior approval was required therefore commenced on 8 September 2020 and prior approval was deemed to be granted on 3 November 2020. The additional application form and additional plans submitted by the appellant between 7 and 28 September 2020 did not affect this, and neither did the Council's letter dated 10 September 2020, nor its decision notice dated 23 November 2020.
15. As the proposed development benefits from deemed prior approval, there is no need for me to assess whether it can benefit from complying with the description of permitted development, or whether prior approval as to the transport and highways, and noise impacts of the development are required.

Other Matters

16. The Council has referred to *Keenan v SSCLG & Woking BC* [2017] EWCA Civ 438, claiming the principles raised in that case confirmed that if a development would not come within the description for a permitted development stated in the GPDO, then permission for the development cannot be deemed to have been granted. That is correct insofar as unlawful development cannot become lawful merely by way of benefitting from prior approval being deemed to be granted; however, as I have found the proposal already benefits from prior approval deemed to have been granted, there is no need for me to consider whether the proposed development would be lawful. That would be a matter for the Council to consider if it believes any unauthorised development takes place, or for the appellant to consider if they seek confirmation of the lawfulness of the proposed development by applying for a certificate of lawfulness.

Conclusion

17. For the above reasons, I conclude that the failure of the Council to make a determination on the application within the prescribed period means that prior approval under Class R of the GPDO is deemed to have been granted.

L Douglas

INSPECTOR