



Appeal Decision

Site visit made on 8 December 2021

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/L3815/W/20/3263528

Hundredsteddle Farm, Hundredsteddle Lane, Birdham, PO20 7BL

- 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) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).
 - The appeal is made by Somerley Agricultural Contractors against the decision of Chichester District Council.
 - The application EWB/19/00431/AGR, dated 14 January 2020, was refused by notice dated 7 October 2020.
 - The development proposed is a grain store and machinery store.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a grain store and machinery store at Hundredsteddle Farm, Hundredsteddle Lane, Birdham, PO20 7BL in accordance with application EWB/19/00431/AGR, dated 14 January 2020 and the drawings submitted with it.

Applications for costs

2. The appellants' application for costs has been withdrawn.

Preliminary Matters

3. This decision supersedes that issued on 25 May 2021. That decision was quashed by consent order dated 2 August 2021.
4. The statement of reasons accompanying the consent order indicates that the previous Inspector did not have regard to the judgment in *Westminster City Council v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 2250. This holds that when determining an application for prior approval under Part 6, Class A of the General Permitted Development Order, the decision maker is entitled to consider whether the development proposed falls within the scope of the class of permitted development relied upon.
5. The original decision is of no effect although any relevant findings of the Inspector are a material consideration.

Main Issues

6. Class A of Part 6 of the Order establishes that agricultural development on units of 5 hectares or more is permitted development subject to certain

restrictions, limitations and conditions. The *Westminster* judgment and the consent order establish that the question of whether the proposed grain and machinery store is permitted development should be considered as part of this appeal.

7. Paragraph A.2(2)(i) of Part 6 of the Order requires an application to be made as to the siting, design and external appearance of the building. These are therefore the only matters for consideration.
8. Consequently the main issues are:
 - Whether the proposed development is permitted development having regard to the provisions of the Order; and
 - The effect of the proposed siting on highway safety.

Reasons

Whether permitted development

9. The proposed building measures 36.4m by 18.2m and would be located along Tile Barn Lane. Agricultural development under Class A is not permitted if any part of the development would be within 25m of the metalled part of a classified road according to paragraph A.1(h) of Part 6.
10. The proposal includes a new access road to serve the proposed building. It would link with an existing private track which then joins Tile Barn Lane close to its junction with Bracklesham Lane (B2198). These works and the building itself would be more than 25m from the classified road. If the existing track were upgraded this would be within 25m of the road. However, re-surfacing of the track is not included within the application. It is therefore not part of the development proposed and so this limitation does not apply.
11. Article 3(6) of the Order establishes that the permission granted by Schedule 2 does not authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a classified road so as to be likely to cause danger to any persons using any highway used by vehicular traffic. No such works are included in the application but the contention is that improvements would inevitably be required to facilitate access to the site by HGVs.
12. The appellants maintain that there is no intention or need to upgrade the track. Their swept path diagrams indicate that there would only be a small over-run. On the other hand, it is asserted that this evidence is inclusive and that larger vehicles visiting the site would sink into the mud. This would be bound to require the track to be improved so that the store could operate effectively. In considering this question the proposal should be dealt with as submitted rather than on the basis of the 2018 application. The reference in one document to re-structuring is not conclusive.
13. In any event, the limitation in Article 3(6) of the Order relates to any works onto a classified road. The track exits onto Tile Barn Lane which then joins Bracklesham Lane. There would be no direct access from the track onto the B2198. Furthermore, there is no evidence that the existing bellmouth at the end of Tile Barn Lane would need to be widened to accommodate vehicles entering and leaving the appeal site. Therefore no works are required to

- improve the access onto a classified road and this provision does not disapply permitted development rights for the proposal.
14. There is some concern that the development would not proceed as proposed. However, paragraph A.2.(2)(v) specifies that the development must be carried out in accordance with the approved details submitted with the application. If that did not occur then the development would not benefit from any approval. Furthermore if works to the track were undertaken within 25m of Bracklesham Lane then it would not be permitted development. Any subsequent planning application for engineering works to improve the track would have to be decided on the basis of the circumstances at the time.
 15. Similarly the proposed development is agricultural. There is no clear evidence of a mixed use of agriculture and some other primary use of the land. If the building were to be used for commercial purposes in connection with the appellants' plant and contracting businesses then it would not be permitted development. A material change of use of the building in the future would require planning permission but constructing a new agricultural store in the corner of a field does not amount to such a change.
 16. To be permitted development the erection of the proposed building needs to be reasonably necessary for the purposes of agriculture within that unit. The Council is satisfied on these counts. There is a suggestion that the need for the building has been over-stated and that it is four times greater in size than what is required to store crops. However, the evidence clearly explains the rationale for a store which includes areas for keeping machinery and hay and straw and not just crops.
 17. There is reference to a tenancy on land away from Hundredsteddle Farm. In any event, the need for the building stems from the existing agricultural unit and not because of the potential to expand the area under production. It would nevertheless not be unreasonable for the building to include some spare capacity to assist with future viability. Whilst some would prefer that the main farm buildings to the north were utilised, there is ample evidence that these are unsuitable. In theory a new building could be constructed adjoining them but Hundredsteddle Lane is inadequate for large vehicles in terms of its width and the ability to turn.
 18. The test is not whether the development is essential but rather whether it falls within reasonable bounds. A building to store grain and machinery on a holding of some 32 hectares to facilitate a more efficient and profitable running of an established arable farm falls into that category.
 19. In conclusion the proposal is permitted development having regard to the provisions of the Order. Based on its assessment of a repeat prior notification for an identical grain and machinery store (21/03365/PNO), the Council also considers that the proposed building accords with the criteria of Class A, Part 6.

Siting

20. As the appeal relates to an application for prior approval there is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, policies of the Chichester Local Plan: Key Policies as well as the National Planning Policy Framework are material.

21. The extent of the considerations arising from the term “siting” is not defined in legislation in this context and has not been definitively settled by caselaw. However, there is nothing to indicate that its scope should be limited and therefore it is reasonable to take a broad view when assessing this proposal. Use of the track onto Tile Barn Lane and then access onto Bracklesham Lane would be a direct result of siting the development as proposed. It is therefore reasonable and prudent to consider any effect on highway safety that would occur as a result.
22. The primary issue is that because of the geometry of the junction, large vehicles turning north when exiting Tile Barn Lane would be compelled to cross the double white centre line of the B2198. The bend in the road prevents emerging traffic being seen over a long distance by on-coming southbound drivers. The speed limit here is 40mph although the configuration of the road makes it likely that vehicles would travel more slowly. Bracklesham Lane is said to be busy, especially in the summer months, when it is used by holiday-makers and day-trippers travelling to the coast.
23. The proposal would enable grain to be stored on site rather than having to be transported to a facility elsewhere. The consequences of this for vehicular activity is that movements onto Bracklesham Lane by tractor and trailer in late summer immediately after the harvest would be replaced by HGV movements over a longer time span. It is estimated that there would be less than 20 HGV movements across the year compared to over 100 by tractor and trailer. Given that farming practices may change over time these figures should be treated with a degree of caution. Nevertheless, the evidence is that the number of vehicles using the junction to turn north would be likely to be reduced.
24. Furthermore, it has been demonstrated that tractors and trailers also need to cross the centre line when making the ‘hairpin’ turn from the track onto Bracklesham Lane via Tile Barn Lane. Whilst HGVs are larger it is nonetheless apparent that the requirement to enter the opposite carriageway on departure is not a new one. There is also evidence that HGVs already make this turn to service Hundredsteddle Farm to the north. This is said to be “regular” but it is unclear how frequently this takes place or how vehicles travel beyond Hundredsteddle Cottage. However, the proposed development would not result in HGVs having to negotiate this junction for the first time.
25. Having regard to the above, it is telling that there is no accident record at the Tile Barn Lane/Bracklesham Lane junction. This contrasts with other sections of the B2198. Clearly this is not the whole story in that near misses are not recorded and some incidents may be unreported. However, it does show that agricultural traffic associated with the farm in the past has not caused serious accidents and that the associated turning movements are not inherently dangerous. The proposed development would be likely to lead to less of them in any event.
26. That said, the need to turn a large vehicle out onto Bracklesham Lane is not ideal given the potential for conflict with approaching traffic. However, given that would be somewhat awkward, it is reasonable to assume that considerable care would be taken. Moreover, the evidence is that the number of times this would occur in connection with the proposed building would be few.
27. It cannot, of course, be certain that the journeys estimated for the appellants’ current farming operations would remain the same in future. This would be

likely to increase if the building were used to store and distribute crops grown off-site. However, if the building became primarily a storage facility, then that may amount to a material change of use. What is under consideration here is an agricultural building required in connection with the farm. Its use as such is unlikely to lead to a dramatic increase in HGV movements over time. The likely low number of turning movements onto the B2198 is a significant factor in assessing the risk to safety.

28. Taking all of the above into account, the proposed siting of the building would not lead to an unacceptable impact on highway safety. There would therefore be no conflict with paragraph 111 of the Framework. These findings reflect those of the previous Inspector although I have reached my own view in the light of the evidence presented.

Other Matters

29. The proposal would be functional in design but its external appearance would be typical of modern agricultural buildings. It would be bound to have some visual impact but this should be assessed on the basis that structures of this type and size are accepted in principle by the Order. To that end it is logically located in the corner of a field and would be screened by the substantial hedgerows along Tile Barn Lane and Bracklesham Lane. Carrying out tree planting as indicated would assist in assimilating the development.
30. Whilst the building would be visible from along public rights of way and from within the Somerley Conservation Area it would not appear as an unduly stark or isolated feature in the flat landscape. Its siting would not detract from the significance of the designated heritage asset which is focussed on the linear form of the historic village. The effect on the character and appearance of the area would therefore be acceptable.

Conditions

31. The Order does not provide any specific authority for imposing additional conditions beyond the deemed conditions for agricultural development on units of 5 hectares or more in paragraphs A.2.(2)(v) and (vi). These specify that the development must be carried out in accordance with the approved details submitted with the application and within 5 years of the date of this approval.

Conclusion

32. The proposal is permitted development and there would not be an unacceptable impact on highway safety due to the proposed siting. Therefore, for the reasons given, prior approval should be granted. The appeal succeeds.

David Smith

INSPECTOR