



Appeal Decision

Site visit made on 21 February 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/C1435/W/21/3277091

Land at Old Claverham, Wick Street Farm, Wick Street, Berwick BN26 6TN

- 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 6, Paragraph A.2 (2) of the Town & Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr C H Ellis of C H Ellis Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/7015/AD, dated 18 March 2021, was refused by notice dated 20 April 2021.
 - The development proposed is agricultural barn for storage of straw, hay and grain.
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Schedule 2, Part 6, Paragraph A.2 (2) of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) for agricultural barn for storage of straw, hay and grain at Land at Old Claverham, Wick Street Farm, Wick Street, Berwick BN26 6TN, in accordance with the terms of the application, Ref WD/2021/7015/AD, dated 18 March 2021 and the plans submitted with it.

Preliminary Matter

2. The failure of the local planning authority to issue its decision within the statutory determination period means that I cannot address any questions of lawfulness or the prior approval matters. This is because prior approval is deemed to be granted on the expiry of the 28 day period.

Main Issue

3. The main issue is whether the decision on the need for prior approval was issued within the statutory determination period.

Reasons

4. Schedule 2, Part 6 of the Order permits development consisting of the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of works for the erection of a building, which are reasonably necessary for the purposes of agriculture within that unit. This is subject to the condition, set out within paragraph A.2 (2)(i) that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.

5. Under the provisions set out in paragraph A.2 (2)(iii), development must not begin before the occurrence of one of the following: (aa) written confirmation from the local planning authority that prior approval is not required; (bb) where the local planning authority give the applicant notice within 28 days following the date of receiving the applicant's application of their determination that such prior approval is required, the giving of such approval; or (cc) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination. The use of the word "following" within the regulations means that the date of receipt should be treated as day zero.
6. The statutory period for determination does not start unless and until all the required information has been received. This information is set out in paragraphs A.2 (2) (i) and (ii) and comprises the application itself, a written description of the proposed development and of the materials to be used and a plan indicating the site together with any fee required to be paid.
7. In this case, the application was received by the local planning authority on 18 March 2021 and the fee was paid on 19 March 2021. The Council then sent a letter requesting further details to make the application valid and these details were received by the authority on 23 March 2021. The missing details consisted of an amended site location and block plan, together with confirmation of the title and initials of the applicant. The Council concedes that the amended plan was not relevant to the matter of validity as the original site plan complied with the requirements of the Order. However, it contends that the developer name was needed in order to make the application valid.
8. The application form received by the Council on 18 March 2021 identified the applicant as C H Ellis Ltd. In my view, this was sufficient to make the application valid and to start the clock on the statutory determination period. The developer was the farm business which required the building for agricultural purposes – there is no need to identify an individual person. Since the fee was received on 19 March 2021 this date should be taken as day zero, meaning that the application needed to be determined by midnight on 16 April 2021. The decision notice was dated 20 April 2021, outside of the 28 day period. I therefore have no option but to allow the appeal. Prior approval is deemed to be granted.

Conditions

9. The regulations stipulate that development shall take place in accordance with the details submitted with the application and within a period of 5 years from the date on which the local planning authority were given the required information, in other words by 19 March 2026. The developer must also notify the local planning authority in writing within 7 days of the date on which the development is substantially completed.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed.

Robert Parker

INSPECTOR