



Appeal Decision

Site visit made on 22 March 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2022

Appeal Ref: APP/D3640/W/21/3277880

Lucas Green Nurseries, Lucas Green Road, West End, Woking GU24 9LY

- 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 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Alexander Stewart Clark of Challenge Fencing/Titan Garden Buildings against the decision of Surrey Heath Borough Council.
 - The application Ref 21/0309/GPD, dated 12 March 2021, was refused by notice dated 4 May 2021.
 - The development proposed is described as Prior approval application for a proposed change of use of existing agricultural barns (known as buildings A, B, C, D, E and V) to Light Industrial (Class B1) under Class R, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (As amended).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description in the banner heading above this taken from the application form. At the time of determining the application Class B1 had been replaced and integrated within Class E (commercial, business or service) of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO). For prior approval applications, the use classes in effect prior to 1 September 2020 will be the ones used until 31 July 2021 (the 'material period'). However, given the material period has now ended it is assessed under Class E.
3. The provisions of Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), permit the change of a building and any land within its curtilage from an agricultural building to a flexible use falling within Class B8 (storage or distribution), Class C1 (hotels) or Class E (commercial, business or service).
4. Development permitted by Class R of the floorspace proposed is subject to the conditions in Paragraph R.3(1). Amongst other things it requires that before beginning the development, the developer must apply for a determination as to whether prior approval is required in relation to certain matters. The Council's reason for refusing prior approval is in respect of (i) transport and highways impacts only. My determination is made on the same basis.

5. The principle of development is established through the grant of permission by the GPDO. A prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. No development plan policies are referred to in the Council's decision notice. I have only had regard to development plan policies provided in evidence insofar as they set out material which assists in assessing the impact in relation to the main issue.
6. However, paragraph W(10) of the GPDO states when determining an application regard must be had to any representations made pursuant to any consultations, and regard must be had to the National Planning Policy Framework (2021) (the Framework) so far as relevant to the subject matter of the prior approval.

Main Issue

7. The main issue is whether or not prior approval should be granted, having regard to the transportation and highway impacts of the development.

Reasons

8. The appeal site forms part of a now mostly vacant much larger agricultural site that was used for the production and processing of herbs. The appeal site and building floorspace forms a modest part of this wider complex. It is accessed from Lucas Green Road (LGR), which serves some residential properties and a number of businesses. The appeal proposal would be served by a total of 35 two-way trips of which 6 would be HGVs. Vehicles would use sections of LGR to access the A322 via either Kerrier Way or Ford Road, with a one way routeing system suggested. The section of LGR to be used is a relatively narrow single carriageway 30mph road, which the appellant informs me is approximately 5m wide for the most part. It comprises some bends and in one location it narrows significantly.
9. I am informed that proposed vehicular generation would be the same as the previous use of the appeal site, which was not restricted by conditions. The Transport Statement estimates the previous trip generation from counts of parked vehicles in 3 aerial photographs and statutory declarations. It assumes that 60 two-way vehicle trips and 10 two-way HGV trips were generated per day from the wider historic use. However, it is based upon rather limited evidence, there are no trip logs or daily counts, and it does not categorise ordinary good vehicles. Therefore, it by no means certain this provides an accurate or detailed picture of previous movements.
10. The pro-rata calculation of the appeal site as a proportion of floorspace of the previous larger use, appears to apportion a greater proportion of vehicle movements to the appeal than is reflective of it as proportion of the historic wider use upon which total movements are based. Therefore, it is likely that the proportion of historic movements attributed to the appeal site is less than that advanced. Proportionally this proposal is likely result in an increase in vehicle movements compared to that previously generated within the appeal site red line. The data provided has also not been sensitivity tested in relation to recent TRICS data for similar agricultural uses. On-balance, it is likely this development will result in a residual net increase in vehicle movements from the appeal site than would have been previously generated, including HGVs.

11. I am informed the previous use was a bespoke agricultural use and normal agricultural uses often do not generate as many HGVs or other vehicles. The 2021 statutory declarations suggest operations may have reduced significantly from 2016 onwards and the site has not been in the previous use for some time. Polytunnel and greenhouse structures of approximately 2,000 square metres have been removed. The substantive evidence does not demonstrate there is a greater than theoretical possibility of a use of a similar scale and nature re-commencing with similar numbers of vehicle movements.
12. Some use of the site for future agricultural or other uses would be likely to result in some vehicle movements. However, the evidence does not demonstrate this would be the same as would result from this proposal. Therefore, this proposal would be likely to result in more vehicle movements including HGVs, from the appeal site than would be likely to occur under any fall-back position or lawful use.
13. The Highway Authority (HA) has provided evidence in response to the proposal, and as it is before me, I am required to consider it. It objects to the proposal, stating this section LGR is unsuitable for HGVs due to its width and bends. I am informed the previous use was known to cause congestion, disruption, and road surface damage. The HA advises where vehicles are unable to pass, they have to stop or reverse around a blind bend, which is a risk to road users. At other locations vehicles can overrun footways and verges.
14. Submissions suggest and from what I saw a significant number of HGV and long wheel-base movements already take place. I cannot verify the exact location and date of many of the photographs provided in submissions by interested parties showing instances of vehicle conflicts. However, the descriptions and the buildings shown in them strongly suggest some are between the appeal site and Kerrier Way, that appeal site vehicles would use.
15. While my visit can only represent a brief snapshot in time there was a relatively frequent flow of vehicles and some small groups of walkers along this part of LGR. At bends between the appeal site and Kerrier Way smaller vehicles sometimes slowed to ensure safe passing. However, there were instances of HGVs or a tractor and trailer meeting on-coming smaller vehicles at a bend west of the appeal site. When this happened, traffic stopped and queued in both directions. Vehicles would need manoeuvre and mount the kerb and damage the verge to ensure passing could take place. Substantive evidence does not suggest what I saw is untypical.
16. I have not been provided with an assessment and measurements of the section of highway to demonstrate that all types of vehicles can safely pass. The conflicts I am informed of and observed could result in collisions and pose a risk to highway safety. Such conflicts could occur multiple times over the course of a day. Ford Road is of a similar width to LGR if not narrower in places. It had comparatively little traffic and I did not see larger vehicles using it. However, given its width and the angle of some of the bends, there are locations that have the potential to give rise to similar conflicts to those I witnessed on LGR.
17. Crashmap data for the period 2011 – 2020 shows no personal injury incidents recorded. However, that this represents a full picture capturing all types of incidents is not clear. The vehicle movements of the magnitude proposed, would be likely to intensify the use of the bend and such conflicts. Therefore,

vehicle movements generated by this proposal would result in harmful highway and transportation impacts. The nature of this is such that there would be an unacceptable impact on highway safety.

18. Even if I were satisfied of the highway and traffic impacts, the appeal site access serves the wider complex. The layout within the red line means that it would seem very difficult for vehicles using other parts of the site, to not travel through the appeal site. Therefore, it is not clear how CCTV or ATCs would not pick-up other vehicles using the wider complex, or how a scheme designed to monitor and restrict vehicle movements would be enforceable. The Car Park Management Plan in Regiate & Banstead is not before me. However, its scope does not appear directly comparable to monitoring vehicles using an access shared with a much larger area as would result from the proposal before me.
19. There are other industrial uses with vehicles using LGR. I have not been provided with any substantive evidence in respect the applications or circumstances that might have led to the approval of the other uses. Therefore, this matter attracts little weight. It does not overcome my concerns that allowing this proposal would result in harmful effects upon highway safety as a result of the vehicle movements that it would generate.
20. For the reasons set out above, based upon the evidence before me, this proposal would result in harmful highway and transportation impacts that would be prejudicial to highway safety. Therefore, it should not be approved having regard to paragraph R.3(1)(b)(i) of the GPDO and prior approval is not granted.

Conclusion

21. For the reasons given above, the appeal does not succeed.

Dan Szymanski

INSPECTOR