



Appeal Decision

Site visit made on 30 August 2022

by David Jones BSC (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Appeal Ref: APP/W4325/W/22/3296334

Harrison Estate, Plot 8a, Leasowe Road, Leasowe CH45 8LW

- 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, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO').
 - The appeal is made by Mr Tony Rainford against the decision of Wirral Metropolitan Borough Council.
 - The application Ref COMX/22/00089, dated 8 January 2022, was refused by notice dated 8 March 2022.
 - The development proposed is described as 'Shed to secure storage of farm equipment, including back-hoe digger and other items of plant and machinery. Also to be used to provide shelter for cattle against extreme weather conditions in accordance with the provisions of Sections D.1-(3) of Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)'.
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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, Class A of the GPDO for the erection of a shed to secure farm equipment and to provide shelter for cattle against extreme weather at Harrison Estate, Plot 8a, Leasowe Road, Leasowe CH45 8LW, in accordance with the details submitted pursuant to Schedule 2, Part 6, Class A, paragraph A.2(2) of the GPDO via application Ref COMX/22/00089, dated 8 January 2022.

Procedural Matters

2. The Council has described the development as the "erection of a shed to secure farm equipment and to provide shelter for cattle against extreme weather". This is a more succinct description of the proposed development and I have therefore used it for this decision.
3. Part 6, Class A of the GPDO permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.
4. Paragraph A.1 of the GPDO sets out circumstances where the development is not permitted, and paragraph A.2 states that development permitted by Class A is also subject to a number of listed conditions. This includes paragraph A.2(2) which, among other things, requires the developer to 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. The Council refused the application on the basis that it considered that the proposed development was not permitted development as it was not reasonably necessary for the purposes of agriculture within that unit. In particular, it was considered that the land in question had been used for equestrian purposes, and that it has not been demonstrated that the proposed development related to an existing agricultural activity, trade or business. The appellant contests this position and considers that the land is in agricultural use and that the proposal is permitted development.
6. However, the appellant also considers that the Council issued its refusal of prior approval outside of the relevant time limit set out at paragraph A.2 (2)(iii).

Main Issues

7. In light of the matters identified above, the main issues are:
 - Whether prior approval is deemed to have been granted by reason of the timing of the Council's decision; and
 - If prior approval has not deemed to have been granted, whether the proposal complies with the conditions and limitations of Part 6, Class A of the GPDO and is permitted development.

Reasons

Timing of Council's decision

8. Paragraph A.2 (2)(iii) states that development must not begin before the occurrence of one of the following (aa) the receipt by the applicant from the local planning authority of a written notice of their determination that such 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 under sub-paragraph (2)(ii) 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.
9. The appellant submits that the application was received by the local planning authority on 14 January 2022. There is nothing within the Council's submissions which indicate that any further information was required or that the application was not valid upon receipt. Indeed, the Council's validation letter to the appellant dated 21 January 2022 confirms the receipt of the application on 14 January 2022. Therefore, the 28 days statutory period to determine whether prior approval was required commenced on the date it was received by the Council and ended on 11 February 2022.
10. The validation letter however erroneously refers to Class J of Part 3 of Schedule 2 of the GPDO, and states that the local planning authority had 56 days to make a determination on the application. As detailed above, the application was made under Class A of Part 6 of Schedule 2 of the GPDO and the relevant statutory timeframe to make a determination is 28 days.

11. The Council issued its formal decision notice on 8 March 2022 and was therefore sent after the 28 day period for determination had expired. Consequently, the application for prior approval is deemed to have been granted, subject to the relevant statutory conditions.

Whether the development proposed is permitted development

12. The Council's failure to determine the application within the statutory period means that prior approval is deemed to be granted. As a result, I cannot address any issues as to whether the proposal is permitted development, including whether or not the proposed development is reasonably necessary for the purposes of agriculture within that unit.
13. If the proposed development is carried out and it was not permitted development, including it not reasonably necessary for the purposes of agriculture within that unit, then the appellant would be at risk of enforcement proceedings by the Council. Should the appellant wish to ascertain the lawfulness of any such development, he can apply to the Council for a certificate of lawfulness under sections 191 or 192 of the Town and Country Planning Act 1990 (as amended).

Conclusion

14. As notice was not served within 28 days, prior approval is deemed to have been granted. The development can lawfully proceed if carried out in accordance with the submitted plans and if it is in fact permitted development in accordance with the conditions and limitations imposed by the GPDO.
15. For the reasons given above, the appeal is allowed and prior approval is deemed to be granted.

David Jones

INSPECTOR