



Appeal Decision

Site visit made on 17 January 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th March 2023

Appeal Ref: APP/Z3825/W/22/3298298

Frithknowle Farm, Picts Lane, Cowfold RH13 8AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr V.A.G Tregear against the decision of Horsham District Council.
 - The application Ref DC/21/2648, dated 23 November 2021, was refused by notice dated 17 February 2022.
 - The development proposed is described as 'Converting two agricultural buildings to three small residential dwellings. The buildings are no longer suitable for agriculture but lend themselves to residential use.'
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issue

2. In the banner heading above, I have used the description of proposed development as it appears on the application form. The wording differs from that used on the Council's decision notice, although both clearly refer to the proposed conversion of two agricultural buildings to three residential dwellings.
3. Although the appeal is made against the refusal by the Council to grant approval required under a development order, its determination rests on a procedural matter, namely the validity of the application when it was considered by the Council.
4. The application was made under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). Schedule 2, Part 3, Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order¹, together with building operations reasonably necessary to convert the building.
5. Development under Class Q is permitted subject to the requirements of paragraph Q.2. This requires the developer to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a range of specified issues. The application sought such a determination and the Council's decision was that prior approval was both required and refused.

¹ The Town and Country Planning (Use Classes) Order 1987, as amended

6. Elsewhere in Schedule 2, Part 3 of the GPDO, Paragraph W(2) sets out the information which must be included with an application for prior approval under Class Q. The required information includes 'a floor plan indicating the total floor space in square metres of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses' (Paragraph W(2)(bc)). Although this requirement was introduced through a series of relatively recent amendments to the GPDO, it was applicable when the application was submitted to the Council.
7. The Council's second reason for refusal refers to a lack of sufficient information within the application documents. The Council's evidence further explains that no proposed floor plan was submitted. In view of the requirements of Paragraph W(2)(bc), both the main parties to the appeal were invited to comment further on the contents of the application when it was submitted to and considered by the Council, and on the implications of this alleged omission for the validity of the application. I have had regard to their comments in reaching my decision.
8. Based on the above, the main issue is whether the application for prior approval was validly made, with regard to the contents of the plans submitted with it.

Reasons

9. The application was submitted to the Council on 23 November 2021 via the Planning Portal online application submission system. The appellant has provided a copy of the dated receipt for payment of the application fee, together with a screenshot listing 13 supporting documents submitted with the application. This list includes the electronic file name of each document.
10. The Council's evidence states that no proposed floor plans were submitted, and that the Council's Validation Team have further confirmed that no proposed floor plans were uploaded to the Planning Portal. Nevertheless, the application was registered by the Council as valid on 3 December 2021.
11. The Council has indicated that omission of the required floor plan was identified following validation of the application and that the appellant was requested to submit it at that stage. However, no further plan was submitted in response to this request and the application was subsequently determined without the omission being rectified.
12. When the appeal was submitted, the supporting documents included a drawing titled Proposed Ground & First Floor Plans, with drawing no. 2021/10/2 Rev A, dated 06.09.21. This drawing was submitted with the appeal form, in electronic format, with the file name 'Frithknowle-Proposed.pdf'.
13. On the Planning Portal screenshot provided by the appellant, four documents appear under the heading Floor Plan Proposed. Their file names do not include 'Frithknowle-Proposed.pdf'. Neither does that file name appear anywhere else in the list of 13 documents submitted with the application. However, the file names of all the other plans subsequently submitted with the appeal form do appear.
14. Drawing no. 2021/10/2 Rev A provides information on the internal layout of the proposed dwellings, including the dimensions and proposed use of each room

and the position and dimensions of windows, doors and walls, in line with the requirements of Paragraph W(2)(bc). However, no convincing evidence has been provided that this drawing was submitted to the Council at the time of the application.

15. None of the other drawings listed on the Planning Portal submission provide the information required by Paragraph W(2)(bc). Although they include proposed elevations, together with plans showing the existing layout of the buildings at a variety of scales, they do not include the required information on the proposed internal layout.
16. The date given on drawing no. 2021/10/2 Rev A suggests that it had been prepared in advance of submission of the application and there is no indication that its omission from the Planning Portal submission was intentional. Nevertheless, the Planning Portal evidence corroborates the Council's statement that this drawing was not submitted with the application.
17. Although the application was registered as valid by the Council, and subsequently determined, it did not, as a matter of fact, comply with the information requirements in Paragraph W(2)(bc). On that basis, I find that no valid application was made for prior approval as is required by Class Q.2.
18. Section 79(1) of the Town and Country Planning Act 1990 (the Act) empowers the Secretary of State, or an Inspector appointed by the Secretary of State, to deal with an application as if it had been made to him in the first instance. This includes determining the validity of the application in question. Furthermore, the High Court has held² that an invalid application cannot be the foundation for any jurisdiction in an appeal.
19. Having concluded that no valid application for prior approval was made, there is no lawful basis upon which the application can be determined. It therefore follows that the appeal should fail. Having reached that conclusion, it is neither necessary nor appropriate for me to consider the planning merits of the case or any other matters raised in the grounds of appeal.

Conclusion

20. I have found that the application for prior approval under Class Q.2 of the GPDO was not validly made, as it did not comply with the information requirements in Paragraph W(2)(bc) of the GPDO. This is not a matter that can be overcome through an appeal made under section 78 of the Act, since there is no valid application upon which a determination can be made.
21. For the above reasons, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR

² *M J Geall v SSE and Lewes DC (1997)*