



Appeal Decision

Site visit made on 14 September 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th September 2023

Appeal Ref: APP/C1625/W/23/3319977

Land at Millend, Brookside Farm, North Nibley

- 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) Order 2015.
 - The appeal is made by Mr R Hale against the decision of Stroud District Council.
 - The application Ref S.23/0289/AFPA, dated 12 January 2023, was refused by notice dated 13 March 2023.
 - The development proposed is Agricultural Storage Building.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. There is some confusion over the plans that were submitted by the appellant as part of the submission of the prior approval. The Council confirmed that it received the location plan but state that it never received the elevation and plan drawing¹, which were submitted by post. Nevertheless, the elevation and plan drawing have been submitted as part of the appeal. Therefore, the Council and any interested parties have had the opportunity to comment. I do not consider that any parties would be prejudiced if I take these drawings in to account in my decision.

Background and Main Issues

3. The application for determination as to whether prior approval was required for the construction of the proposed agricultural barn was made under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). Paragraph A.2(2) of the GPDO requires, amongst other things, that a determination be made as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. The Council has required that prior approval is obtained and refused to give that approval because of insufficient details in regard to the proposed design and external appearance, the effect on the Cotswold Area of Outstanding Natural Beauty (AONB) and insufficient details regarding the effect of its siting on biodiversity.
4. However, there is also a dispute between the parties as to whether the development benefits from the provisions of the GPDO, as the second reason for refusal states that the appellant has 'not sufficiently demonstrated that the

¹ Drawing titled Agricultural Prior Notification: Details of Proposed Barn

proposed building would be reasonably necessary for the purposes of an agricultural trade or business within an agricultural unit’.

5. Therefore, having regard to the above, there is a two-step process, the first being to consider whether the proposed development would constitute permitted development under the terms of Paragraph A, (a) of Class A of Part 6 of the Order. Should I conclude that the proposals fall within the scope of this particular part of the Order, consideration must then be given to matters relating to the siting, design and external appearance of the building, and the effect of such on the Cotswold AONB and biodiversity.

Reasons

Class A of Part 6

6. In order to benefit for a new agricultural building under Part 6 Class A Paragraph A.(a), it has to be carried out on agricultural land comprised in an agricultural unit exceeding 5 hectares in size and for the building to be reasonably necessary for the purposes of agriculture within that unit. Paragraph D.1 of Part 6 of the GPDO defines ‘agricultural land’ for the purposes of Class A as ‘land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business and excludes any dwellinghouse or garden’.
7. The appellant’s holding is described as ‘an established agricultural use, as part of a trade or business, involving the raising and sale of livestock, the growing, use and sale of forage, as well as other agricultural enterprises’. I observed sheep, cattle and chickens on my site visit. I acknowledge the profit and loss account details provided by the appellant, as well as the registration details for the Rural Payments Agency and DEFRA. Based on the evidence before me and my site observations, I have no reason to disagree that the unit is used for the purposes of an agricultural trade or business.
8. I note that the proposed building would be used for the ‘dry storage and shelter for fodder, bedding, machinery and equipment, as well as other agricultural ancillaries’. My site visit confirmed that the other 2 agricultural buildings on the site were nearly full and that there is currently insufficient dry storage available on site. Machinery and equipment were also parked outside. Therefore, on the balance of probabilities, I am satisfied that it has been demonstrated that the proposed building would be reasonably necessary for the purposes of an agricultural trade or business within an agricultural unit.
9. Whilst I did observe the logging business mentioned by the Parish Council by the way of piles of cut logs, it appeared that this is an ancillary use to the other agricultural enterprises on the site.
10. Given the uses set out in the application for the proposed building, and taking the above into consideration, I am satisfied that the proposal would be reasonably necessary for the purposes of an agricultural trade or business within the agricultural unit.

Siting, Design and External Appearance

11. The appeal site consists of an agricultural holding to the south-west of Millend Lane, along which lies established vegetation. The location of the building would be on the valley floor, as land falls steeply down from Millend Lane down

- to Dovere Brook, which lies to the rear of the site, and then rises back up to the south. The proposed building would be situated to the west of the 2 other agricultural buildings on site.
12. The site is located within the Cotswolds AONB. As such careful consideration needs to be made as to whether the proposed building would conserve or enhance the landscape and scenic beauty of the area.
 13. The design and external appearance of the proposal would be appropriate for its agricultural use, with timber vertical cladding and a green fibre cement profile sheeting roof. Whilst it is another building on the agricultural holding, it would be sympathetically sited adjacent to the other 2 buildings and would be positioned on the valley floor. Even when seen cumulatively alongside the other buildings, given that these are of a similar appearance, the design and external appearance of the proposal, both on its own and cumulatively, would conserve the landscape and scenic beauty of the wider setting within the AONB.
 14. However, Regulation 9 of the Conservation of Habitats and Species Regulations 2017 (the habitat regulations) imposes a duty on decision makers to consider relevant Directives and whether there is a reasonable likelihood of European Protected Species being present and affected by development. Dovere Brook has been recognised by the Environment Agency (EA) as having moderate ecological status. Furthermore, I note that the response from the Council's Biodiversity Team states that 'the site is also surrounded by habitats which may be used by foraging and commuting badgers and other mammals'. Badgers and their setts are protected under the Protection of Badgers Act 1992 (as amended).
 15. However, no evidence has been submitted regarding whether the site or its surrounds are used by badgers and other mammals. In addition, no information has been submitted regarding the measures to be taken to protect the ecological status of Dovere Brook. I note that the appellant states that the appeal site consists of 'a plain and clear piece of land, all aspects of which are entirely visible and clear from woodland, undergrowth or other topographical features of any kind'. They also confirm that there would be no footings to the building so no piles of spoil would be removed. However, this is not sufficient for me to be able to conclude that the siting of the proposal would be acceptable. Therefore, given the ecological status of the brook, and in the absence of any evidence demonstrating otherwise, I cannot be satisfied that the siting of the proposal would leave the biodiversity of the site unharmed.
 16. Furthermore, the advice of an ecological appraisal may change the siting of the proposal, and this must be considered before prior approval is granted. An ecological appraisal cannot be dealt with by a planning condition under this part of the GPDO. Furthermore, a condition requiring a Construction Ecological Management Plan, as suggested by the Council, would not be sufficient to protect biodiversity in these circumstances.
 17. The appellant notes that there were no concerns expressed regarding biodiversity impact in relation to the 2 other buildings adjacent recently granted prior approval. Whilst the same comments may not have been received in relation to these other buildings, these are not the proposals before me. The Council's biodiversity team have now drawn to my attention that the site may be used by badgers. It also appears that the ecological status of the adjacent brook has changed since these earlier decisions as the response from

the Biodiversity Team mentions the date of August 2022 when it comes to the 'moderate ecological status' of the EA. The proposal could result in the loss or degradation of a habitat used by badgers and so, without evidence to the contrary, I conclude that the proposal would have a potentially harmful effect on biodiversity.

18. I note the potential 'fallback' position that the appellant could level the entire development site and dress it with a stone surface, under existing permitted development rights. However, it is unlikely that such development would have the potential to cause as much harm as the current proposal. I therefore attach this potential fallback position minimal weight in my decision.
19. The GPDO is designed to be a 'light touch' process which does not impose undue or unnecessary burdens on applicants.' However, given the protected nature of badgers and their setts, and the requirement of the habitat regulations, the siting of the building and its potential impact on protected species, as well as the brook, are still matters that I can consider.
20. Therefore, I conclude that whilst the design and external appearance of the proposal would conserve the landscape and scenic beauty of the AONB, the effect of the siting of the proposal on biodiversity would be potentially harmful.

Other Matters

21. The appellant has expressed concerns regarding the way the Council have determined the case and their misunderstanding of the procedural requirements when dealing with a prior approval under Schedule 2, Part 6, Class A. Whilst this may have caused some regrettable frustration to the appellant, this does not materially affect my consideration of the planning merits of the appeal proposal.

Conclusion

22. For the reasons given above and taking into account all other matters raised, the appeal is dismissed.

Laura Cuthbert

INSPECTOR