



Appeal Decision

Site visit made on 8 August 2023

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2023

Appeal Ref: APP/U2235/W/22/3307145

Wanshurst Green Farm, Battle Lane, Marden, Kent, TN12 9DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (1990 Act) against a refusal to grant approval required under a development order.
 - The appeal is made by Mr G Carpenter (Wanshurst Farms) against the decision of Maidstone Borough Council.
 - The application Ref 22/501417/AGRIC, dated 17 March 2022, was refused by notice dated 14 April 2022.
 - The development proposed is prior notification for provision of agricultural access track. For its prior approval to: siting.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Class A of Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for prior notification for provision of agricultural access track. For its prior approval to: siting, at Wanshurst Green Farm, Battle Lane, Marden, Kent, TN12 9DF in accordance with the application Ref 22/501417/AGRIC, dated 17 March 2022, and the details submitted with it subject to conditions set out in the relevant part of the GPDO.
2. The submitted details include: Site Location Plan (16617/01), Existing Site Layout Plan (16617/02), Proposed Site Layout Plan (16617/03), Prior Approval Statement (MG/16603).

Preliminary Matters

3. The description of development is taken from the Appeal Form, which is acknowledged as being unchanged from the time the application was made. The same description is used on the Decision Notice. This description most accurately reflects what is proposed.
4. Approval was sought under Class A of Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Class A relates to 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. For development to be permitted it must satisfy the limitations set out at paragraph A.1. The conditions at A.2 must also be accorded with.

5. Whether the proposal is reasonably necessary for the purposes of agriculture within that unit, and therefore able to benefit from the rights in Class A as a matter of principle, is in dispute between the Council and the Appellant. That the limitations in A.1 would otherwise be fulfilled is not a matter of dispute. I do not take a different view.
6. The conditions at paragraph A2 require developers to apply to the local planning authority for a determination as to whether their prior approval will be required for various matters. In this case, the decision notice indicates that prior approval was required and refused in relation to siting. However, the question of prior approval is only relevant if the matter of principle set out above relating to reasonable necessity would be met.
7. Throughout the evidence the Council refer to the proposed private way as an 'HGV road' and the Appellant calls it a 'track'. The term used is not particularly important, however for clarity I will adopt the word 'track'.
8. The National Planning Policy Framework (the Framework) has been considered insofar as it assists with forming the necessary planning judgements required under the GPDO.
9. During the Appeal it became apparent that the condition at Paragraph A2(2)(iv)(aa) in relation to the applicant displaying a site notice had not been complied with. Considering comments from the Appellant and the Council on this matter, the failure arises as a consequence of the Council determining that prior approval was required and then refusing approval in the same decision notice. Doing so rendered the Appellant incapable of complying with the site notice condition.
10. It is not for this appeal to determine the appropriateness of the Council's approach. Nor does this issue render this Appeal invalid or otherwise affect the rights available under S78 of the 1990 Act. As such, the Appellant was given the opportunity to fulfil what the condition requires prior to my decision. I am satisfied that allowing this does not materially prejudice any party, including the Appellant. Doing so does not fully rectify the situation, as the strict wording of the condition at (aa) cannot be complied with. This issue is beyond the remit of this appeal and would remain a matter between the Appellant and the Council.

Main Issues

11. The main issues are:

- Whether, or not, the proposal is reasonably necessary for the purposes of agriculture within the unit and is therefore capable, in principle, of benefiting from the permitted development rights conferred by Class A. And if it is;
- Whether prior approval should be given, paying regard to siting and any related effects on character and appearance, the setting of nearby heritage assets, and agricultural land loss.

Reasons

Reasonably necessary

12. Reasonable necessity is demonstrated. Paying regard to the Appellant's justification, improving access to the farm on the grounds of enabling vehicles

to move safely and conveniently is within the bounds of reasonable necessity. There is sufficient and precise evidence that the necessity relates to the purposes of agriculture within the unit. Whilst the severity of the pinch point created by the farmhouse and barn is in dispute, seeking to avoid it is reasonable. There may be a spectrum of solutions capable of achieving the overall outcome, and the Council may have views about alternatives. Demonstration of the best solution would be an overextension of the requirements of the GPDO in respect of showing reasonable necessity. Regard must also be paid to the Appellant's personal preference and business needs. The decision on reasonable necessity is without prejudice to the question of whether prior approval should be given.

13. Concluding on this main issue, the proposal is reasonably necessary for the purposes of agriculture within the unit and is therefore capable, in principle, of benefiting from the permitted development rights conferred by Class A.

Prior approval

Character and appearance

14. The character of the area is rural, with the farmyard and surrounding houses and other buildings clustered informally within an open countryside setting. I have paid regard to the Landscape Character Assessment, insofar as the specific contents are drawn to my attention. The Council identify the site as falling within the Staplehurst Low Weald landscape character area. This character area covers a wide geography. The appeal site and surroundings share some of the characteristics described, including the gently undulating landscape, mix of large and small scale open fields marked by native hedgerow and trees, with historic buildings scattered through the landscape.
15. Harm to character and appearance is not demonstrated. The track would be neither detrimental to, nor out of character with, the visual amenity of the locality. The at grade track proposed would not be an incongruous feature within an open countryside setting, where such tracks are typical. Some public views would be available from roads and nearby footpaths, including from the right of way to the eastern side of the field. However, the gently undulating nature of the surroundings would not give rise to extensive visibility or give unwelcome prominence to a track that, as discussed, would be an expected feature of such a location. In reaching a view on this issue, I have paid regard to photographic evidence provided that gives an impression of how the field appears when it is not in full crop. This supplements the observations made during my site visit when the field was in full crop.
16. Access is already provided to the field via Battle Lane. There is physical evidence of some informal use by vehicles that continues through the field to the farmyard. The existing access being an established feature and some prior use by vehicles is relevant insofar as it would assist with assimilating the proposal into the surroundings. Whether vehicles have consistently used the same route across the field over time, or not, is a side issue. A surfaced track would inevitably bring greater use. I am not persuaded that an intensification of use of the likely scale involved, including diverting vehicles that would presently use the public right of way access off Battle Lane, would bring with it harmful effects to the character and appearance of the surroundings.

17. The proposal would not materially diminish the relevant key characteristics set out in the landscape assessment, nor erode the sense of place which is evident in the surroundings. For similar reasons, there is no inconsistency with paragraph 174 of the Framework.

Setting of nearby heritage assets

18. The heritage assets that have been drawn to my attention are all listed buildings. They comprise White Cottage, Wanshurst, and Wanshurst Green Farmhouse to the north of the site and Manor Farm Oast, Manor Farmhouse and the barn on the opposite side of Battle Lane. Not all of these assets are mentioned within the Council's officer report. Nevertheless, all have been considered.
19. Harm to the setting of nearby heritage assets is not demonstrated. For the reasons set out above, the proposal would not appear out of keeping in a countryside setting nor prominent in the landscape once established. The landscape would therefore remain open and undeveloped. The settings of the individual listed buildings would not therefore be harmed, including through use of the track – paying regard to the likely use and intensity.
20. In specific reference to White Cottage, the view of the building with the site in the background drawn to my attention in Fig 9 of the Council's Statement of Case would remain substantially the same and allow the building to be appreciated in its countryside setting. Views towards the rear of this building across the site would also remain substantially unaltered.
21. The settings of the listed buildings on the opposite side of Battle Lane would not be affected due to the separation provided by the lane and the intervening distance. Similarly, Wanshurst to the north is too far removed from the site for its setting to be impacted by the proposal.
22. Given the absence of harm, it is not necessary to consider the potential risks of damage to Wanshurst Green Farmhouse as a benefit of the scheme in order to offset harm identified elsewhere.
23. Paying special regard to the desirability of preserving the settings of nearby listed buildings, the proposal would not lead to harm to the significance of designated heritage assets.

Loss of agricultural land

24. The relevance of this issue to the prior approval matter under consideration is questionable. Nevertheless, for completeness and as it makes no difference to the outcome of my decision, I will address it.
25. Harmful loss of agricultural land is not demonstrated. The field would remain open and usable for agricultural purposes in much the same way as existing. The proposal would not physically separate the field in such a way as to impact on its use as an agricultural field or its status as best and most versatile land. Nor would the land-take associated with the track be significant in the overall context of the field. If anything, formalising the track would reduce the risk of deviation from the route by vehicles and therefore potentially increase the amount of land for crops, albeit marginally.

26. Concluding on this main issue, prior approval should be given, paying regard to effects on character and appearance, the setting of nearby heritage assets, and agricultural land loss.

Other Matters

27. The comments of other interested parties are noted. Those that relate to issues that are not prior approval matters or the question of permitted development are not within the express consideration of this appeal. Comments relating to the main issues have been considered as part of arriving at my conclusions on those matters. Regard has been paid to other comments, although they do not alter my conclusions on the main issues.
28. The siting of the proposal does not give rise to concerns in relation to use of Battle Lane by commercial vehicles. Whilst Battle Lane is narrow in places, there is no substantive evidence that leads me to believe that the altered access arrangements would be harmful to the living conditions of those living nearby or other users of the lane, paying regard also to the scale and nature of the intended use.
29. The siting of the proposal does not give rise to concerns in relation to increases in flood risk. The plans indicate that the track would be constructed of loose stone. As such, a permeable surface would be provided.

Conditions

30. The conditions are those set out in paragraph A.2 of Part 6, Schedule 2 GPDO.

Conclusion

31. For the reasons given above, the appeal is allowed and prior approval is granted.

D R McCreery

INSPECTOR