



Appeal Decisions

Site visit made on 21 August 2023

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Ref: APP/R0660/W/23/3318378

Lightwood Farm, Holmes Chapel Road, Davenport, Congleton, CW12 4SW

- 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) Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Simon King against the decision of Cheshire East Council.
 - The application Ref 23/0099C, dated 5 January 2023, was refused by notice dated 3 February 2023.
 - The development proposed is a standard agricultural building.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Lightwood Farm is subject to a further separate appeal reference APP/R0660/W/23/3318377. This is for the refusal of planning permission under the Town and Country Planning Act 1990 (as amended) for the same development proposal. This appeal is also before me to determine and whilst there are similarities between it and this appeal, I have dealt with them separately.
3. The appeal site is located at the southern end of the Lightwood Farm agricultural unit. The agricultural unit consists of an approximate central farmstead surrounded by open farmland which is interspersed with a mix of trees and hedgerows.
4. The proposed development would consist of a 12 metre (m) by 36m single-storey agricultural shed with yard area.
5. Schedule 2, Part 6, Class A of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended) (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. The permitted development right exists subject to a number of restrictions and conditions which must be met.
6. The Council, in its Officer Report, sets out that the proposed development would pass the listed 'development not permitted' criteria detailed in paragraph A.1(a)-(k). It confirms the proposed development would be permitted by Class A subject to compliance with the other relevant limitations and conditions. On the evidence before me, I see no reason to disagree with this.

7. With respect to the proposed building, paragraph A.2-(2)(i) states that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority would be required as to the siting, design and external appearance of it. In conjunction with this, paragraph A.2-(2)(iii) sets out that the Council has up to 28 days from receipt of the prior approval application to determine it. It also states that the development must not begin until after this period subject to further requirements.
8. The Council states that during determination of the application it observed the proposed building's area being cleared and excavated. It provides photographic evidence to support this assertion. It further notes that the appellant advised that these works were related to sand excavation and that the area had been reinstated which the appellant considered was permitted work under GPDO. Nevertheless, the Council considered the information provided was insufficient to convince it that the proposed development had not begun prior to determination and contrary to paragraph A.2-(2)(iii).
9. Further to the above the Council also confirmed that even if it had found the development had not commenced, it considered the siting of the proposed building would be relatively isolated location in comparison to the existing nearby farmhouse buildings and other buildings within the area. It also considered that the proposed building would be prominent and have an adverse impact on the landscaping and open character of the area. It concluded that prior approval was required and considered that this should be refused.
10. To address the Council's concern regarding commencement, the appellant submitted revised site and location plans relocating the proposed building further south and outside the excavation and backfill. These revised plans were issued, noted as 1 February 2023, late in the determination of the application and the Council did not accept them. The appellant has requested that these plans be considered in the appeal.
11. In general, the appeal process is not the appropriate place to evolve the scheme; and the scheme that is considered at appeal ought to be the same one that was considered by the Council. The GDPO sets strict prior approval timescales for determination and notification. In this case, as the new plans were submitted very close to the end of the determination period, the Council had little time left to allow it to consider or consult on them. Accepting the information at the appeal would evolve the scheme beyond that which the Council was able to consider. In accordance with the *Wheatcroft* Principles, I consider it would prejudice the Council and interested parties as the changes have not been through a public consultation period. As such, my decision will be based solely on the plans that the Council assessed during the original planning determination.

Main Issues

12. The main issues are:

- whether the development began prior to the requirements of paragraph A.2 (2)(iii) occurring; and
- if so, whether the proposal would satisfy the detailed prior approval matters including the effect of its siting, design and external appearance upon the character and appearance of the area.

Reasons

Whether the development began prior to the requirements of paragraph A.2 (2)(iii) occurring

13. The main parties do not dispute that clearing, excavation and backfilling occurred on the appeal site and in the proposed area of the building during the determination of the prior approval application.
14. As noted above, the appellant contends that these works were for a separate unrelated operation, sand removal, and not related to the proposed development. The appellant also considers that this work was permitted development. However, while this type of work may be permitted development, little evidence is provided to substantiate that sand was removed and placed elsewhere on the holding and that it was a separate unrelated operation.
15. Furthermore, in all likelihood, the excavation completed would have included the area which would have contained all of or part of the foundations of the proposed building. This could therefore be construed as part of the construction of the building. While I appreciate that the area was backfilled, this was completed after the Council had advised that the excavation was considered to constitute commencement. Other than the reference to the sand removal operation which has not been substantiated, the appellant has provided no details to justify that the excavation could not have been part of the proposed building's foundations. Similarly, no substantive evidence has been provided to prove that the backfilling was not instigated in response to the Council's commencement comments rather than as part of a separate unrelated operation.
16. As a result of the above, I find that there is insufficient evidence to demonstrate that the excavation was part of a separate sand removal operation and that it did not constitute the commencement of the proposed building. On this basis, I conclude that the proposed building was begun prior to the determination and notification of the prior approval application and contrary to paragraph A.2-(2)(iii). Therefore, it has not been demonstrated, that the proposed development would qualify as permitted development.
17. As the development would not qualify as permitted development, it is not necessary for me to make any determination on the prior approval matters.

Other Matters

18. I note that the appellant refers to the reason for refusal of a previously refused prior approval application, LPA Ref 22/4642C, which was for an identical proposed building. While I note the comments, this previous application is not before me and I have considered the appeal on the information and details provided.

19. The appellant advises that the Council did not set out what information or details of works required satisfying. However, as I have found above, it is reasonably clear from the Council's details and comments that further more definitive proof that the excavation was not related to the proposed building was required.
20. Although there is currently no evidence of building works on the site, this is because the area has been reinstated. This does not change the fact that the Council observed excavation during the prior approval determination and that insufficient details to demonstrate that this was not related to the proposed building have been provided.
21. While I appreciate examples of similar buildings being completed in the area are provided, as noted above I have found the development would not qualify as permitted development and therefore they are not relevant to my decision.

Conclusion

22. For the reasons set out above, and having regard to all the matters raised, I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR