



Appeal Decision

Site visit made on 2 February 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal Ref: APP/A1530/W/23/3327471

Land north of Shatters Road, Layer Breton, Colchester CO2 0PY

- 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) (England) Order 2015 (as amended).
 - The appeal is made by Miss Sara Carew against the decision of Colchester Borough Council.
 - The application Ref 230137, dated 20 January 2023, was refused by notice dated 22 February 2023.
 - The development proposed is an agricultural barn for hay storage and machinery.
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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 Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") for the erection of an agricultural barn for hay storage and machinery at Land north of Shatters Road, Layer Breton, Colchester CO2 0PY in accordance with the details submitted pursuant to Article 3(1) and Schedule 2, Part 6, Class A, paragraph A.2(2) of the GPDO via application Ref 230137, dated 20 January 2023.

Background and Main Issues

2. 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 works for the erection of a building, which is reasonably necessary for the purposes of agriculture within that unit.
3. Paragraph A.2 (2)(i) of the GPDO 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 will be required as to the siting, design and external appearance of the building.
4. Paragraph A.2 (2)(ii) of the GPDO states that the application must be accompanied by a written description of the proposed development and of the materials to be used and a plan indicating the site together with any fee required to be paid.
5. Paragraph A.2 (2)(iii) of the GPDO 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

6. Provided the appellant's application for prior approval included the information as set out in Paragraph A.2 (2)(ii) of the GPDO, together with the requisite fee, the 28 day statutory time period in paragraph A.2 (2)(iii) began the day following receipt of the application by the Council.
7. The main issues in the appeal are:
 - Whether a determination on the prior approval application was made by the Council within the statutory 28 day notification period, and if so,
 - Whether or not the appeal proposal complies with Schedule 2, Part 6, Class A of the GPDO, including whether prior approval should be granted to the siting, design and external appearance of the building.

Reasons

The statutory period for determination

8. There is no dispute between the main parties that the appellant's application for prior approval application was received by the Council on 20 January 2023, and was accompanied by a written description of the proposed development and of the materials to be used, together with the requisite fee. However, the Council refused to treat the application as a valid one because it found that the plan accompanying the application ("the original plan") was sufficiently unclear to constitute a "plan indicating the site" under the terms of the GPDO. It notified the appellant of this by email dated 24 January 2023 and the appellant willingly submitted a second site plan ("the subsequent plan"), which was received by the Council on 26 January 2023.
9. The dispute in this appeal is whether or not the original plan submitted with the application was sufficient to qualify as a plan indicating the site under the terms of Paragraph A.2 (2)(ii) of the GPDO. If the original plan complied with the GPDO, then a valid application had been received by the Council on 20 January 2023 and the clock started ticking on the statutory 28 day period until it expired after day 28 (17 February 2023). If so, notification of the Council's decision to refuse prior approval dated 22 February 2023, occurred after the 28 day period for determination had expired, and therefore prior approval would have been deemed to be granted.
10. The original plan shows most of the land on the plan as edged by a relatively thin red coloured line. Set within that red line is a much smaller rectangle also edged by a thin red coloured line, which is annotated "Agricultural Building". A blue coloured line appears to be drawn around a narrow existing track and entrance to the site. As a matter of objective analysis, this plan therefore indicates the site for the proposed agricultural building in relation to its surroundings, including Shatters Road. Together with the written description of the proposed development, the materials to be used and payment of the fee, the appellant's application met the requirements of Paragraph A.2 (2)(ii) of the GPDO, and was a valid one on 20 January 2023. It follows therefore that the

Council's request for a different site plan, which led to the appellant submitting the subsequent plan, did not stop the clock running on the 28 day statutory period, nor did it re-start the clock from the date of its submission.

11. The only apparent difference between the appellant's original plan and subsequent plan concerns the colour of the line that is edged around most of the land on the plan. The small rectangular shape edged by a thin red coloured line and annotated with the words "Agricultural Building", appears to be the same in terms of position, size and shape on both plans, and clearly indicates the site of the proposed agricultural building.
12. The Council treated the appellant's subsequent plan as being valid under the GPDO because it showed "*...the Application Site edged red, and the wider site edged blue, making it clear what was the "site" and what was the agricultural unit for the purposes of the GPDO*". The inference I draw from this is that because the appellant's original plan did not show these details, it was treated as not constituting a plan indicating the site.
13. The Council has also put it to me through its submissions that "*the originally submitted plan includes two red line boundaries, one internal and one external. As is commonly accepted, if red edging is used in this way, it indicates that the internally edged red area is to be "cut out" from the application site, i.e. not to be included within the red line for the purposes of the application, with everything else to be included.*" However, I have no substantive evidence that treating applications for prior approval under Part 6, Class A of the GPDO in this way is a commonly accepted practice to which I should also accept. There is nothing in the GPDO, to which I have been referred, that requires such an application to include a plan indicating the site in any particular way or showing the land comprising the agricultural unit in question. The size of the unit is stated on the appellant's application form.
14. In respect of a plan, the only requirement in Paragraph A.2 (2)(ii) of the GPDO, is for "a plan indicating the site". As a matter of objective analysis, I have found that the appellant's original plan was sufficient to constitute a plan indicating the site of the proposed agricultural building.
15. In the case of *Murrell*¹ a valid prior approval application under Part 6, Class A of the GPDO was received by a Council and the submission of further information did not stop the clock from running on the 28 day statutory notification period. Furthermore, the running of time on the statutory notification period is not dependent on a decision by the local planning authority to accept an application as valid. Therefore, in the case before me, the Council was not entitled to refuse to treat the appellant's application as a valid one until the subsequent plan was received. The submission of that plan by the appellant did not stop the clock running on the statutory period, nor did it re-start the clock from the date of its submission as the Council suggests.
16. Taking all the above into account, I conclude on this issue that the appellant's prior approval application was not determined within the statutory 28 day period. Consequently, prior approval as to the siting, design and external appearance of the proposed agricultural building is deemed to be granted.

¹ *Murrell v SSCLG* [2010] EWCA Civ 1367

Schedule 2, Part 6, Class A of the GPDO, and prior approval

17. As prior approval to the siting, design and external appearance of the building is deemed to be granted under the terms of the GPDO, it is not necessary for me to consider these matters as they would not alter the outcome of the appeal. An interested party refers to a Grade I listed building, however I have no details of this building from any other party, including from the Council.
18. Interested parties have raised concerns over whether the proposal is reasonably necessary for agriculture, whether the agricultural unit is of a sufficient size and whether the enterprise is viable. However, as prior approval is deemed to be granted, I am unable to consider those issues. If the proposed development is carried out and subsequently found not to benefit from the planning permission granted by the GPDO, then it could be at risk of enforcement proceedings by the Council.

Conclusion

19. For the reasons given above, the appeal is allowed and prior approval is deemed to be granted. The development can lawfully proceed if carried out in accordance with the submitted plans, and with the conditions and limitations imposed on the planning permission granted by the GPDO.

G Sylvester

INSPECTOR