



Appeal Decision

Site visit made on 16 January 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2024

Appeal Ref: APP/B1930/W/23/3325019

Lower Stud, Drop Lane, Bricket Wood, St Albans AL2 3TX

- 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 Planit Consulting against the decision of St Albans City and District Council.
 - The application Ref is 5/2023/0849.
 - The development proposed is a new building described as an agricultural barn.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In a section 78 appeal, the right of appeal only applies to the person(s) who applied for permission. The application was completed in the name of Mr J Long, Planit Consulting, but the appeal form is completed in the name of Mr Nicholas Chopping with Mrs Janet Long, Planit Consulting acting on their behalf. I have therefore considered Planit Consulting to be the appellant in this case.
3. Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ("Class A" of "the GPDO") permit 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.
4. This is subject to several limitations where such development is not permitted, listed under paragraph A.1, and subject to compliance with conditions, as set out under paragraph A.2.

Timing of the Council's decision

5. The appellant's statement of case refers to the Council's failure to give notice of its decision within the appropriate period. As shown on the application form, the application was made on 19 April 2023. This is also the date the application was received and is listed on the Council's decision notice. The Council provided written notice to the appellant on 12 May 2023 confirming that prior approval was required. This was therefore within the 28 day time limit for Part 6, Class A under conditions at paragraph A.2.(2)(iii). At this first stage, the Council is only required to confirm whether prior approval is required.

6. As the Council notified the appellant that prior approval was required, the Council gained another period during which it could determine whether to grant prior approval and arrange for the publication of the application. The Council therefore had a period of 56 days to determine whether to grant or refuse prior approval. This is because Schedule 2 does not specify a time limit for the second stage of the prior approval process and the default time limit of 56 days is therefore set by Article 7(b) of the GPDO.
7. The Council's decision notice confirming that prior approval was refused, and the reasons why, is dated 9 June 2023 and was therefore issued within the 56 day period. As such, prior approval is not deemed to be granted by reason of the timing of the receipt of written notice of the Council's decision, as it was within the time limits under the conditions at paragraph A.2.(2)(iii) and Article 7(b) of the GPDO.

Main Issues

8. The main issues are:

- whether the proposed development would constitute permitted development with regards to whether it would be carried out on land that comprises an agricultural unit of 5 hectares or more within the meaning given at paragraph D.1.(1) of the GPDO; and,
- if the proposal is permitted development, whether or not prior approval is required.

Reasons

Permitted development

9. For the proposal to be permitted development under Part 6, Class A of the GPDO, the proposed building must be erected on agricultural land comprised in an agricultural unit. For the purposes of Part 6 of the GPDO, at paragraph D.1.(1) "agricultural land" means land which, before development permitted by this Part is carried out, is in use for agriculture and which is so used for the purposes of a trade or business. "Agricultural unit" means agricultural land which is occupied as a unit for the purposes of agriculture.
10. The proposed building would be erected on a parcel of land within a walled structure. It is surrounded by open fields, with barns, stables and an equestrian centre, which all appear to be within the same land ownership.
11. The application form specifies that the total area of the entire agricultural unit is 9.0 hectares. In its statement of case, the appellant has indicated that the surrounding fields are paddocks used for the grazing of animals, and whilst portions of the land can be attributed to equestrian use, most of the land is used for agricultural purposes, including the land in which the building would be erected. However, there is no accompanying plan before me to indicate the location, number or size of the parcels of land that are used for agricultural purposes and form the agricultural unit.
12. The appellant's statement of case refers to several documents which outline the existing use of the land. Notwithstanding that these documents have not been submitted to support the appeal, the statements from these documents refer to partial agricultural use and reference buildings on the site as

agricultural. It is not clear if these statements were made about the appeal site specifically or related to the other parcels of land. This alone does therefore not demonstrate in an unambiguous manner that the appeal site is agricultural land comprised in an agricultural unit.

13. The appeal is supported by a letter from a farmer operating in the local area and refers to their use of the land for making hay, haylage and silage on an annual basis. Reference is also made to the grazing of sheep from March – May with the landowner overseeing the wellbeing of the sheep during this time. This supporting evidence is lacking in detail as it is not clear whether the ties between the appellant and this third party can be regarded as a business tenancy.
14. I have not been provided with any detailed evidence, for example showing details of the business information or accounts, profits, revenues or tax payments, or any other business or financial records to establish the existence of a trade or business. As such, based on the presented evidence, I cannot be certain that the proposed building would be erected on “agricultural land” within the meaning given at paragraph D.1.(1) of the GPDO.
15. As it has not been adequately demonstrated that the appeal site would comprise agricultural land or that the size of the agricultural unit would be 5 hectares or more, I cannot then conclude that the proposal would be carried out on land that comprises an agricultural unit of 5 hectares or more.
16. For the reasons set out above and having regard to the available evidence, the proposal fails to meet the requirements of Schedule 2, Part 6, Class A of the GPDO and so the proposal would not constitute permitted development.

Prior approval

17. As considerations in relation to prior approval are a follow-on condition stage under paragraph A.2, this can therefore only apply if the development is permitted development. As the proposal is not permitted by Article 3(1) and Class A, there is no need for me to consider whether prior approval is required.

Conclusion

18. For the reasons given above, the appeal should be dismissed.

L Reid

INSPECTOR