



Appeal Decision

Site visit made on 21 February 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Appeal Ref: APP/V2635/W/23/3325640

72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nigel Marsh against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 23/00566/PACU6.
 - The development proposed is notification for prior approval for change of use of agricultural building to a small hotel (C1) (Schedule 2, Part 3, Class R).
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of agricultural building to a small hotel (C1), at 72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB, in accordance with the application Ref 23/00566/PACU6, and the details submitted with it.

Preliminary Matter

2. Concurrently with this appeal, I have determined two other appeals relating to the same site.¹ The matters at issue in each case are distinct, and therefore these appeals are the subject of separate decisions.

Application for costs

3. An application for costs has been made by Mr Nigel Marsh against King's Lynn and West Norfolk Borough Council. This is the subject of a separate decision.

Main Issues

4. The first main issue is whether the application was determined within the required timescales of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). If so, the next issue is whether the proposal amounts to permitted development under Class R and, if that is the case, whether prior approval should be given.

Reasons

5. Schedule 2, Part 3, Class R of the GPDO permits the change of use of a building and any land within its curtilage from use as an agricultural building to a flexible use falling within one of Class B8 (storage or distribution), Class C1

¹ Appeal References APP/V2635/W/23/3322063 and APP/V2635/W/23/3322299.

- (hotels) or Class E (commercial, business or service). Notwithstanding the reference to specific use classes in Class R and the appellant's description, Paragraph R.2.(b) makes clear that after a site has changed use under Class R the site is to be treated as having a *sui generis* use. The right under Class R is subject to the prior approval procedure set out at Paragraphs R.3.(1) and W.
6. Paragraph W.(2) sets out the information required to be submitted with an application for prior approval. Paragraph W.(11)(c) states that the development must not begin before the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused. The appellant argues that the Council failed to notify him of its decision within this statutory period and that prior approval is deemed to be granted as a result.
 7. The application form is dated 21 March 2023 but the appellant refers to the application being submitted and received by the Council on 22 March, as shown on the online planning file on the Council's website. The appellant paid a fee of £96 applicable where the proposal does not involve operational development in addition to the change of use. On 27 March, the Council sought a higher fee of £206 where operational development is proposed, which was initially paid by the appellant. Email correspondence shows this was later refunded in September 2023, following the Council's decision on the application. As such, the correct fee was paid with the initial application on 22 March 2023.
 8. With respect to the requirements of Paragraph W.2, a description of the development, the developer's contact address and email address were given within the application form, and a plan was submitted indicating the site and showing the proposed development, as required by criteria (2)(a)-(d).
 9. With respect to criterion (2)(e), the application form indicates that the site falls within Flood Zone 1, supported by copies of the appellant's correspondence with the Environment Agency (EA), who confirmed to the Council in a letter dated 3 May 2023 that the site was in Flood Zone 1 and outside the area shown to be at risk of flooding on Tidal Hazard Mapping. On this evidence, I am satisfied that a flood risk assessment was not a necessary document to be submitted under criterion (e) and sub-paragraph W.(6), and its absence did not stop the commencement of the 56-day determination period.
 10. However, the Council wrote to the appellant on 27 March 2023 seeking further documents, namely a transport and highways impact report; noise assessment report and a full flood risk assessment, the latter on the basis that the site was within the tidal flood risk area and the access is within Flood Zones 2 and 3.
 11. Having regard to the judgment of the Court of Appeal in *Murrell*², concerning the adequacy or otherwise of the content of a prior approval application and the validity of a subsequent determination, I find that the requirements of Paragraph W.(2) were satisfied upon receipt of the initial suite of documents on 22 March 2023. Whilst the other documents sought by the Council may have been pertinent to whether it would grant prior approval, they are not documents required under Paragraph W.2 for a valid application. Therefore, the

² *Murrell v SSCLG* [2010] EWCA Civ 1367

56-day statutory period in which to determine the application commenced on 22 March 2023 and ended on 17 May 2023.

12. The Council has pointed to the building having undergone an unlawful change of use through the installation of a shower and toilet block, for which a lawful development certificate was refused in 2021 (Council Ref: 21/01444/LDE), and to the proposal subsequently failing to accord with the requirements of Paragraph R1.(a)(iii) as this change effected a break in the agricultural use of the building and thus it would not have been in a solely agricultural use for a period of 10 years before the development under Class R begins.
13. However, contrary to the Council's view, the 56-day time limit to determine an application for prior approval is not disapplied where the Council has doubts over the compliance of the proposal with the requirements of the GPDO. In this case, the documents submitted by the appellant satisfied the requirements of Paragraph W.(2) and the statutory period to determine the application commenced on 22 March 2023. Whilst the Council had misgivings over the building's past use, the GPDO does not provide that the Council may delay the commencement of the statutory determination period, or 'stop the clock' as expressed in *Murrell*, if the information provided at the outset has met the basic requirements of W.(2), which in this case it did.
14. It was open to the Council to refuse the application within the 56-day period under the provisions of Paragraph W.(3) where in its opinion the proposed development did not comply with any conditions, limitations or restrictions specified in Class R as being applicable to the proposal, including concerns over any past change of use of the building. It was also open to the Council to seek additional information from the appellant to address its concerns, but it still had to consider this information and make its decision within 56 days.
15. However, the statutory period expired before the Council issued a decision on 8 June 2023. Therefore, prior approval is deemed to be granted on the expiry of the statutory period on 17 May 2023. Consequently, it is not open to me to address any questions of lawfulness or whether the proposal would be acceptable in respect of the conditions and limitations of Class R, or the prior approval matters under Paragraph R.3.(1)(b). Accordingly, I have not further considered the parties' submissions in these respects.

Conclusion

16. As notice was not served within the 56-day period required under paragraph W.(11), prior approval is deemed to have been granted. Therefore, the appeal should be allowed.
17. Whilst prior approval is deemed to be granted, this does not in itself automatically mean that the development meets the limitations and conditions of Class R and hence is permitted development. The appellant would need to apply for a lawful development certificate if they wanted legal certainty that the proposal was permitted development and that the development could be lawfully implemented.

K. Savage INSPECTOR