



Appeal Decision

Site visit made on 9 January 2025

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 February 2025

Appeal Ref: APP/X1735/W/23/3323722

Stoke Farm, Northwood Lane, Hayling Island PO11 0LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr G North against Havant Borough Council.
 - The application Ref is APP/23/00056.
 - The development proposed is change of use of land and a building from an agricultural use to a building used for log storage (Class B8) and log processing (Class B2), extension to the building and an area of hardstanding.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr G North against Havant Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council did not issue a decision notice determining the proposal. The appeal was submitted on the basis that the Council failed to give notice of its decision within the appropriate period on an application for planning permission. It is evident from the information before me that the Council's failure to give notice of its decision has arisen because the planning application was not validated. I have dealt with the appeal accordingly.
4. I have identified the main issues in this appeal having regard to the above as well as the Council's Appeal Statement, which sets out its main concerns should it be determined that a valid planning application was in fact made.
5. Following the submission of the appeal, the revised *National Planning Policy Framework* (the Framework) was published on 12 December 2024. I have had regard to the latest version in reaching my decision. Whilst paragraph numbers have changed, the policies of the Framework most relevant to the appeal have not substantially altered from the previous version. Therefore, I consider there is no requirement for me to seek further submissions in this respect, and I am satisfied that this approach would not prejudice any party's interests.

Main Issues

6. The main issues are:

- Whether or not the planning application should have been validated by the Council; and, if I find it should have been validated,
- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on neighbouring living conditions with particular regard to noise and disturbance impacts;
- The effect of the proposal on highway safety; and
- The effect of the proposal on SPA supporting sites and protected species.

Validation

7. The planning application that is now the subject of this appeal was made on 23 January 2023. The description of the proposed development accords with that which is the subject of this appeal, as stated in the banner heading above. This includes proposals to change the use of, and enlarge, an existing agricultural barn.
8. The Council wrote to the appellant on 13 February 2023 stating that the application was deemed to be invalid for 5 reasons, when assessed against the mandatory national information requirements and local information requirements, as set out in the Planning Practice Guidance (the Guidance)¹.
9. After a follow-up reminder letter from the Council offering an extension of time in which to submit the requested information and the subsequent non-submission of the asked for details by the appellant, the Council deemed that the application would not be proceeded with and would require re-submission should the appellant intend to pursue it thereafter.
10. The appellant did not formally dispute the Council's 5 reasons for not validating the planning application through the statutory procedure of serving of a notice under Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) (DMPO).
11. The appellant did, however, respond² in respect of the first of the Council's reasons for invalidating the planning application. This related to the description of the proposed development, and linked to this, the lawfulness of the existing barn. The appellant considered that this needed to be resolved before it could provide the other requested information.
12. The description of the development proposed assumes that the agricultural barn, which has recently been built on the appeal site, and is proposed to be extended and used in connection with log storage and processing, is lawful.
13. Put simply, the appellant contends that the barn obtained permission as a result of an Agricultural Prior Approval application³ (the 2022 PA) under Schedule 2, Part 6, Class A of the GPDO. This is refuted by the Council, who sought to agree a description of development for the planning application which included the retention of the barn, reflecting its view that there was a requirement to obtain planning permission for the structure.

¹ Paragraph: 016 Reference ID:14-016-20140306, Paragraph: 022 Reference ID: 14-022-20140306, and Paragraph: 038 Reference ID:14-038-20140306

² Email dated 20 February 2023 to the LPA

³ LPA Ref: APP/22/00069 – *Application to determine whether prior approval is required for new barn (for farm machinery storage) and hard standing, within caravan site* – Submitted to the Council on 1 February 2022

14. The appeal submissions from both main parties include detailed evidence to support their view on the matter of the lawfulness of the existing barn, including details of the 2022 PA application and correspondence between the parties relating to whether it should have been validated, the procedures associated with Prior Approval applications, and relevant case law.
15. This appeal has been submitted in respect of planning application Ref APP/23/00056. The description of development in the banner heading above is that contained within the planning application form. I have no evidence before me that a formal application for a certificate of lawfulness with respect to the existing barn has been determined by the Council.
16. Moreover, and notwithstanding the detailed submissions in respect of the lawfulness of the existing barn having regard to the previous 2022 PA application, it is not for me, under this section 78 appeal in respect of a later planning application, to determine whether the building is lawful.
17. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal.
18. Moreover, the matter of the description of the proposed development is not determinative to my conclusion on this first main issue. The Guidance states that the local planning authority should be satisfied that the description of development provided by the applicant is accurate before publicising and consulting on an application, and that it should not amend the description of development without first checking with the applicant or their agent. However, the Guidance is clear⁴ that checking the accuracy of the description of the development should not delay the validation of an application.
19. With the above in mind, in determining whether the planning application should have been validated by the Council, I turn to the Council's remaining 4 reasons for not validating the planning application as set out in its letter to the appellant dated 13 February 2023. In so doing, I have had regard to advice in the Guidance in respect of the national information requirements as well as the Council's local information requirements⁵. I have also taken account of the Framework which states that local planning authorities should only request supporting information that is relevant, necessary, and material to the application in question (Paragraph 45).
20. The first of the remaining matters concerns the provision of a wider site location plan to include other nearby land within the appellant's ownership. This falls within the national information requirements of the Guidance, which confirms that a location plan should show the application site in relation to the surrounding area and include all land necessary to carry out the proposed development, with the application site edged in red and any other land owned by the application close to or adjoining the application site edged with a blue line.
21. I find the Council's request that the location plan include the appellant's land south of Northwood Lane, which is the site of the existing log processing/firewood

⁴ Paragraph: 046 Reference ID: 14-046-20140306

⁵ Local Information Requirements - Havant Borough Council. (Implementation date: 12 December 2022 with minor updates made 3 April 2023).

business⁶, to be reasonable and in accordance with Paragraph 45 of the Framework. This is because the appeal scheme is linked to this piece of land through the proposed relocation of the business from that site to the appeal site and the proposed re-use of an existing building on the present farmyard to replace the existing agricultural storage use that would be lost on the appeal site.

22. The remaining 3 items requested as validation requirements by the Council are included within its local list. Having regard to the nature and scale of the proposed development I find that each of these, namely, details of the proposed hedge planting, a flood risk assessment, and ventilation/extraction details, to be reasonable requests.
23. They also relate to matters which it is reasonable to assume will be material considerations in the determination of the planning application. These are, specifically, visual impact and biodiversity habitat provision, flood risk, having regard to the location of the site within an identified Future Flood Risk area, and the potential for impacts upon health or neighbouring living conditions as a result of dust emissions from the proposed development.
24. As such, based on the information before me, including the appeal submission documents and the published version of the Council's local list requirements, and noting that the appellant has not formally disputed these specific requirements, I am satisfied that they accord with the Guidance in respect of requests for information from its local list⁷.
25. Considering all of the above, I can only dismiss the appeal. This is because the evidence before me does not allow me to conclude that the application contains adequate information to enable it to have been validated by the Council.
26. I acknowledge that I have a scheme before me which includes detailed information in respect of the existing situation and the proposed development, to enable me to exercise professional planning judgement in respect of the merits of a number of aspects of the scheme.
27. However, the structure of the legislation is that it is a dispute about the need for the required information to enable the application to be validated that provides the right to appeal. Hence this appeal determination must first resolve that dispute before going on to consider whether a grant of planning permission is justified.
28. Given my conclusion on the first main issue, there is no need for me to consider the remaining issues, as this would not alter the outcome of the appeal.

Conclusion

29. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR

⁶ Approved under LPA Ref: APP/18/01228

⁷ Paragraph: 040 Reference ID: 14-040-20140306