

IN RE: Prior Approval application at
Hundredsteddle Farm, Bell Lane, Somerley,
Chichester, PO20 7BL

FURTHER ADVICE

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FURTHER ADVICE

1. I have been instructed on behalf of Somerley Agricultural Contractors, The Granary, Hundredsteddle Farm, Hundredsteddle Lane, Somerley, Chichester, PO20 7BL (“the Applicant”) to provide further advice on an agricultural prior approval notification for a barn which was submitted to Chichester District Council (“the Council”). This advice should be read with my previous advice.
2. My original advice related to the extent of any considerations which the Council was entitled to take into account on a prior approval notification such as this. Since providing that advice the Council has produced an officer’s report recommending that prior approval be granted. An advice has also been provided to the Tile Barn Lane Residents association (“TBLRA”) by Counsel whom they have instructed. I am asked to provide this further advice in respect of one aspect of that advice namely that:

“the officer’s report that has been prepared adopts a legally erroneous approach in being premised on the assumption that the Council’s remit is to identify the most suitable location for the proposed store on the site, in light of the various constraints that apply. The report fails to recognise that (it) is open to the Council to withhold prior approval on the basis that the proposed location is not an appropriate siting for the store, notwithstanding that there may be no better locations for the store elsewhere on the farmholding”.

3. As set out below, my advice is that the GPDO operates so as to grant permitted development rights for the development set out in Class A subject only to the exclusions in A.1 and the conditions in A.2. Highways considerations are not relevant in and of themselves. As correctly discussed in the officer's report, they only become relevant to the extent that the "siting, design and external appearance" of the barn has an impact on them. Furthermore, because development which comes within the detailed limitations set out in Class A and does not fall foul of the detailed exceptions in A.1 is permitted in principle, although the Council can control where development may be sited and how it is designed and appears, it cannot withhold prior approval for the siting of the barn which comprises permitted development somewhere on the application site.

The Operation of the GDPO

4. By section 57(1) of the Town and Country Planning Act 1990 ("TCPA 1990"), planning permission is required for the carrying out of development. By section 58(1)(a), planning permission may be granted by a development order made by the Secretary of State. By section 60, planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order, including conditions as to prior approval.
5. Article 3(1) of the GPDO provides that planning permission is granted for the classes of development described as permitted development in Schedule 2. By article 3(2), any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2. Schedule 2, Part 6, Class A relates to agricultural development and is set out insofar as is relevant in my previous advice. Permission is granted for Class A development provided it comes within the detailed limitations set out in A and does not fall foul of the detailed exceptions in A.1. The detailed exceptions in A.1 form part of the development for which permission is granted: see *Regina*

(Marshall) v East Dorset District Council [2018] EWHC 226 (Admin) [2018] P.T.S.R. 1508 at [33].

6. The way in which the conditions operate was addressed by Richards LJ in *Murrell v SSCLG [2010] EWCA Civ 1367* at [2012] 1 P & CR 6, para 45:

“The question of prior approval under paragraph A2(2) can only arise in respect of “permitted development” within Class A (i.e. development falling within the terms of Class A and not excluded by paragraph A1). Such development is permitted subject to the conditions in paragraph A2, including the condition relating to prior approval, but those conditions do not affect the principle of development. In recognition of the importance of agriculture and its operational needs, the GPDO has already taken a position on the issue of principle. Thus, as the guidance in Annex E spells out, if [the GPDO 1995] requirements are met, “the principle of whether the development should be permitted is not for consideration” in the prior approval procedure (paragraph E15).”

7. In *Regina (Marshall) v East Dorset District Council [2018] EWHC 226 (Admin) [2018] P.T.S.R. 1508* at [58] Lang J. noted (obiter) that issues of “siting, design and external appearance of the building” could properly include the impact on neighbouring properties and a particular listed building. Nowhere does she purport to state that such issues could operate so as to enable a Council to withhold prior approval for any form of permitted development. Such a conclusion would conflict with the conclusions of Richards L.J. set out above that the conditions, including that relating to prior approval, cannot affect the principle of development. It would ignore the fact that the GDPO has already taken a position on the issue of principle in recognition of the importance of agriculture and its operational needs. In doing so the GDPO has included a detailed list of exceptions which prescribe the extent of the development for which permission is granted. They include for example at (h) a limitation where any part of the development would be within 25 metres of a metalled part of a trunk road or classified road.

8. It follows that the capacity of the application site, taking into consideration any highways considerations, to accommodate agricultural development of the type

proposed by this application is determined as a matter of principle by the operation of the GDPO which grants permission for Class A agricultural development.

The Officer's Report

9. The gravamen of the planning officer's committee report on the issue of siting provides as follows:

“8.8 The current access road is not capable of handling articulated lorries as it is too narrow and the corner is too sharp. Notwithstanding the above, if the existing buildings were (sic) to be used or a new building proposed at the main grouping, this would require a new access road from the southern end of the farm. This would have a visual impact on the landscape, located within the Conservation Area and would be in close proximity to neighbouring houses. Deliveries to the Farm currently occur via Hundredsteddle Lane, which is unable to accommodate articulated HGV's. HGVs are therefore currently offloaded on the main B2198, which is likely to cause highway concerns. WSCC Highways have expressed some concerns with use of the existing access on to Tile Barn Lane, however, there are no preferable existing access points to the farm that could accommodate the required vehicular movements and would result in a better or safer access. As the principle of the development is established through the GPDO the remit of the Local Planning Authority is limited to establishing the most favourable siting of the building, rather than the consideration as to whether the principle of development in itself is acceptable.”

10. It follows that the planning officer has in my view correctly recognised both that highways considerations are only relevant to the extent that they are affected by the siting of any development, and that the principle of the development is established through the GDPO.

11. Please contact me with anything further arising out of this advice.

David Lintott

Cornerstone Barristers

28/07/20