

## APPEAL STATEMENT ON BEHALF OF APPELLANT, MR NIGEL MARSH

**ADDRESS: 70 SOUTH BEACH ROAD, HEACHAM NORFOLK PE31 7BB**

**COUNCIL REF: 23/00566/PACU6**

**DECISION DATE: 8<sup>th</sup> JUNE 2023**

### 1.0 Introduction

1.1 In June 2023, the Council refused the following application (23/00566/PACU6):

*“Notification for Prior Approval for change of use of agricultural building to a small hotel (C1) (Schedule 2, Part 3, Class R) at 70 South Beach Road, Heacham, King’s Lynn, Norfolk PE31 7BB.”*

1.2 The application was refused for only one reason, as follows:

*“The building in question was host to an unlawful change of use through the installation of a shower and toilet block (sui generis use) as evidenced by the refusal of Certificate of Lawfulness 21/01444/LDE. As a result there has been a break within the lawful agricultural use of the building. On this basis, a new time period for an agricultural use starts again and as the building has not been solely used for agriculture for a period of at least 10 years before the development under Class R begins, the proposal does not comply with the requirements of Schedule 2, Part 3, Class R1 (a) (iii) of the Town and Country Planning Act (General Permitted Development) Order 2015 as amended.”*

1.3 In this statement we provide details of the site, surroundings and planning history and then set out the grounds of appeal, considering time limits, the above reason for refusal and other matters.

1.4 This appeal statement has been prepared by a qualified planning consultant with appropriate expertise. Suzanne Asher, BA (Hons), DipTP and Member of

the Royal Town Planning Institute (RTPI), has over 20 years' experience working as a town planning consultant.

## 2.0 Site and surroundings

2.1 The site is part of Beach Farm, located on the southern side of South Beach Road in Heacham. There are holiday parks to the north and open fields in all other directions. The site is accessed from South Beach Road.

2.2 The building which is the subject of this appeal is the former grainstore close to the southern boundary of the site.

**Figure 1 – Site Plan**

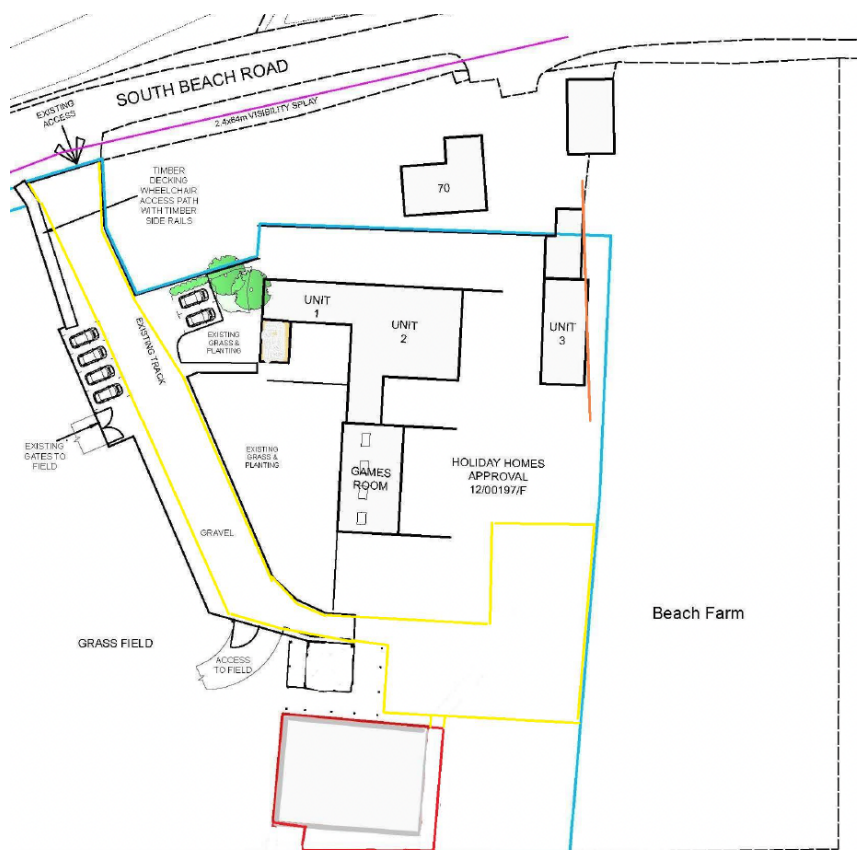


Figure 2 – Aerial view (from Bing Maps) – grainstore circled in red



### **3.0 Planning history**

3.1 Relevant planning history is as follows:

- 22/01878/PACU3 – Withdrawn – Notification for Prior Approval for a change of use of agricultural building to a small hotel (C1) (Schedule 2, Part 3, Class R).
- 21/02027/PACU6 – Refused – Notification for Prior Approval for a change of use of agricultural building to a flexible use (small hotel (C1)) (Schedule 2, Part 3, Class R).
- 21/01444/LDE – Not Lawful – Certificate of Lawfulness: use of part of the former grain store (agricultural) as camping showers and toilets.
- 20/00542/PACU3 – Refused – Prior Notification for the proposed change of use from agricultural buildings to dwellinghouse.
- 16/01494/PACU3 – Withdrawn – change of use from agricultural building to dwelling house.

#### 4.0 Grounds of appeal

##### Time limit

- 4.1 The application was submitted on 22<sup>nd</sup> March 2023 and registered by the Council on 13<sup>th</sup> April 2023. The Council refused the application on 8<sup>th</sup> June 2023. These dates are confirmed on the Council’s website, extract below.

Figure 3 – Extract from King’s Lynn and West Norfolk planning applications database

Reference	23/00566/PACU6
Alternative Reference	PP-12013268
Application Received	Wed 22 Mar 2023
Application Validated	Thu 13 Apr 2023
Address	70 South Beach Road Heac
Proposal	Notification for Prior Appro
Status	Application Refused
Decision	Prior Approval – Refused
Decision Issued Date	Thu 08 Jun 2023

- 4.2 The GDPO (2015) states at Schedule 2, Part 3, W (11) that development must not begin before:

*“(c) 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.**”*

- 4.3 The relevant date in this case is therefore 22<sup>nd</sup> March 2023 when the application was received, not the 13<sup>th</sup> April 2023 when it was registered.
- 4.4 With regard to payment, the appellant paid the application fee of £96 via the planning portal on submission of the application. The planning portal’s fee list confirms that the fee for this type of Prior Approval application (Schedule 2, Part 3, Class R) is £96 – see page 5 of Appendix 5 which states as follows:

Change of Use of a building and any land within its curtilage from an Agricultural Building to a flexible commercial use within Commercial/Business/Service (Use Class E), Storage or Distribution (Use Class B8), or Hotels (Use Class C1)	£96
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- 4.5 The applicant received a letter from the validation team dated 27<sup>th</sup> March (see Appendix 6) requesting a further payment of £110 and the appellant paid it. No explanation was given to why this fee was different to the standard national fee. This delay was not the fault of the appellant. With regard to the 56 day time limit, the appellant submitted the application, and paid the correct fee, on 22<sup>nd</sup> March 2023.
- 4.6 The legislation - The Town and Country Planning Act (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 – states at para. 14 (1) (zb) as follows:
- “...for an application under Part 3 of that Schedule relating to development consisting of the making of a material change in the use of any buildings or other land and building operations in connection with that change of use, £206...”*
- 4.7 The Council appear to have incorrectly applied a fee of £206, which is only applicable when, alongside the change of use, building operations are proposed. In this case no building operations were proposed. The situation is clarified by Government guidance (Paragraph: 023 Reference ID: 22-023-20210820) which states that:

*“Under regulation 14 of the 2012 Fees Regulations, the amounts to pay are:*

- *for a material change of use under any part of Schedule 2 to the 2015 Order – £96*
- *for a material change of use and associated building operations under Part 3 of Schedule 2 to the 2015 Order – £206”*

4.8 The applicable amount is £96 for a material change of use.

4.9 The 56-day period therefore expired on 17<sup>th</sup> May 2023 without the Council notifying the applicant of any decision. The appellant did not agree to any extension of time. Therefore the application should be deemed granted. This was the conclusion reached in appeal APP/M9584/W/20/3246733 - Unit 138, Omega Works, 4 Roach Road, London (see Appendix 1).

4.10 Para. 12 of the appeal decision states that:

*“Article 7 and Paragraph W.(11)(c) of the GPDO both make it clear that the 56 days for determination start on the day following the date on which the application was received by the LPA.”*

### **Reason for refusal**

4.11 The reason for refusal relates to compliance with Schedule 2, Part 3, Class R1 (a) (iii) of the Town and Country Planning Act (General Permitted Development) Order 2015 as amended.

4.12 This section of the legislation states that:

#### ***“Development not permitted***

*R.1 Development is not permitted by Class R if -*

*(a) the building was not used solely for an agricultural use as part of an established agricultural unit -*  
*(i) on 3<sup>rd</sup> July 2012;*  
*(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or*  
*(iii) in the case of a building which was brought into use after 3<sup>rd</sup> July 2012, for a period of at least 10 years before the date development under Class R begins...*

- 4.13 The building was used solely for an agricultural use as part of an established agricultural unit on 3<sup>rd</sup> July 2012. It therefore complies with criterion (i) and is permitted.
- 4.14 Criterion (ii) applies to *“a building which was in use before that date but was not in use on that date”*. It is not therefore applicable to the grainstore, which **was in use on that date**.
- 4.15 Criterion (iii) refers to *“a building which was brought into use after 3<sup>rd</sup> July 2012”*. Again is not applicable to the grainstore because it was not brought into use after 3<sup>rd</sup> July 2012, it **was in use on that date**.
- 4.16 The Council agree that the building was in a solely agricultural use on 3<sup>rd</sup> July 2012 and so meets criterion (i). This is confirmed in the officer report (Appendix 2):

*“A Biodiversity and European Protected Species Survey dated 31st January 2012 has been submitted in support of the application to evidence that the building in question was solely used for agricultural purposes on 3rd July 2012. The report refers to the building as an agricultural barn and also shows photos of the building with agricultural machinery inside. Therefore, it is considered that sufficient evidence has been provided to prove that the building was in agricultural use on 3rd July 2012 **and therefore complies with criterion (i).**”*

4.17 In order to be permitted, a development is required to meet only one of the three criteria set out at R1 (a) (i-iii), as each criteria refers to a different scenario. The Council have misinterpreted this legislation.

### **Other matters**

4.18 As part of the application, comments were received from Natural England saying that:

*“Prior to development commencing, an application under Regulation 77 of the Conservation of Habitats and Species Regulations 2017 needs to be submitted to and approved by the LPA, in consultation with Natural England.”*

4.19 Natural England stated that a Habitat Regulations Assessment (HRA) was required, as well as a GIRAMS contribution regarding mitigation of potential effects on sensitive European sites and details of the impact of surface and foul water discharges on the above listed sites.

4.20 On 19<sup>th</sup> May 2023, we replied to the planning officer by email confirming that:

- A full Shadow HRA was submitted with the application.
- A GIRAMS contribution was made and confirmation of this was submitted with the application.
- With regard to management of surface and foul water:
  - Rainwater will follow the existing route. The proposal is for the development of an existing building so there will not be in any increase in rainwater.
  - Foul water will be cleaned as shown in the HRA and will then join the watercourse.
  - Solids will be removed by an appropriate courier and disposed of at an approved licensed disposal site run by Anglia.
  - There is no mains sewer this far out of the village. A treatment system will be installed - this cannot be included within the red line so will



need a planning application - this could be a condition of the Prior Approval.

- 4.21 The Shadow HRA was reviewed after Natural England submitted guidance that a treatment system within 500 metres of a SSSI should not go to a watercourse, it should go to ground. Therefore, the new Shadow HRA advised a different treatment system to ground and advised of the details of the request for a permit from EA. The SHRA is submitted with this appeal. An ecology report (supporting the SHRA) is also in progress and will be submitted to the Inspectorate as soon as possible.
- 4.22 As no reference to this is made within the decision notice or officer's report, we assume that the SHRA was considered acceptable and was authorised.
- 4.23 With regard to the treatment system, this will be operational development and so will need a separate planning application. The change of use cannot physically be effected without this planning application being submitted and approved.
- 4.24 The Natural England comments and the email response are provided at Appendix 4.

## **5.0 Conclusions**

- 5.1 This appeal is against the refusal of application (23/00566/PACU6):

*"Notification for Prior Approval for change of use of agricultural building to a small hotel (C1) (Schedule 2, Part 3, Class R) at 70 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB."*

- 5.2 In our view the application is deemed approved because it was not determined with the required 56 day time limit. Both the legislation and case law make clear that the 56 days runs from the date that the application is submitted, not the date that it is registered/validated by the Council.

- 5.3 Furthermore the application fully accords with the requirements of the GDPO Schedule 2, Part 3, Class R1 (a) because it meets criterion (i) having been used solely for an agricultural use as part of an established agricultural unit on 3<sup>rd</sup> July 2012. The Council agree in the officer report that this criterion is met. There is no requirement to meet all three criteria (i-iii), a proposal need only meet one, because each refers to a different circumstance.
- 5.4 With regard to comments submitted by Natural England, we confirm that an SHRA was submitted with the application and a GIRAMS payment made. The Council has not referred to this in the decision notice or officer report and so we assume that it was considered acceptable and the SHRA authorised.
- 5.5 With regard to the treatment system, this will require a separate planning application.
- 5.6 We respectfully request that the appeal be allowed.