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PLANNING STATEMENT

**IN RESPECT OF A PRIOR NOTIFICATION APPLICATION FOR AN
AGRICULTURAL ACCESS TRACK**

AT

MOORGATE FARM, MOORGATE LANE, DINCKLEY BB6 8AN

320210034P

Prepared by: Colin Sharpe.
Our Client: Mr J Brewer
Our Reference: Bre/096/2946/CS
Date: January 2021



Chartered Surveyors ■■■ Planning & Development ■■■ Land Agents

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INTRODUCTION

1. Gary Hoerty Associates has been instructed by Mr. J. Brewer to submit this Prior Notification Application on his behalf for an agricultural access track at Moorgate Farm, Moorgate Lane, Dinckley, BB6 8AN.
2. The application is the third submission in respect of this proposed track following the Council's previous refusal of applications 3/2020/0121 and 3/2020/0271. The second of those applications was refused by decision notice dated 29 April 2020 for the following reason:

"The applicant has failed to provide sufficient information to demonstrate that the proposed development is reasonably required for agriculture."

3. In this Statement we will explain the background to the submission of the application and will then put the case for the applicant, leading to our conclusion that the Council has had no legitimate reasons to refuse the previous applications and that this current application should therefore be approved.

BACKGROUND INFORMATION

4. In addition to the agricultural activities at Moorgate Farm, our clients have recently established a camping pod development that has proven to be a very successful diversification venture. It has, however, resulted in a problem regarding the health and safety of the occupiers of the camping pods and an adverse effect on the level of amenity afforded to those persons. This is due to the fact that some lengths of the existing tracks at the farm are being used for both tourism and agricultural purposes and one of the tracks passes right next to the pods.
5. However, most of the land at Moorgate Farm is still in agricultural use. Prior to the submission of the two previous applications in respect of this proposed length of track, our clients had sought prior approval for a different length of agricultural track that was needed for agricultural reasons but would have had the added benefit of separating the agricultural vehicle movements from the camping pod development. That application was as follows:

3/2019/1006 – Proposed 105m length of track to the east of the existing camping pods site – Decision Letter dated 29 November 2019 confirming

that Prior Approval of details is NOT REQUIRED prior to commencement of any development.

- 6.. In the covering letter that we submitted with application 3/2019/1006, with respect to the track being 'reasonably necessary for the purposes of agriculture' we commented as follows:

"The farm track is required at Moorgate Farm to enable the applicant to access his fields with tractors and machinery without having to cause ruts when travelling across the fields in bad weather. The proposed track will prevent the soil/sward from being compacted and waterlogged. As the track is for agricultural purposes, I believe the application satisfies all the requirements of Part 6 of the Town and Country Planning (General Permitted Development) Order 2015 and as such the proposal is permitted development".

7. In respect of this requirement, it is stated in the officer's Delegated Item File Report (DIFR) that:

"The proposed agricultural track would be used to allow agricultural machinery and personal vehicles to access the parcels of land owned by the applicant improving efficiency within the agricultural enterprise"

8. The DIFR then listed all the other requirements that needed to be satisfied in order for the track to be permitted development. It was stated that the proposal did satisfy all the requirements, leading to the officer's conclusion that planning permission is not required. The Decision Notice dated 29 November 2019 accordingly confirmed that Prior Approval of Details was not required.

9. In the covering letter that we submitted with application 3/2020/0121, with respect to the track being 'reasonably necessary for the purposes of agriculture' we commented as follows:

"The farm track is required at Moorgate Farm to enable the applicant to access his field with tractors and machinery without having to cause ruts when travelling across the fields in winter months. The proposed track will prevent the soil/sward from being compacted and waterlogged. As the track is for agricultural purposes, and is reasonably necessary, I believe

that the application satisfies all the requirements of Part 6 of the GPDO 2015 and as such the proposal is permitted development”.

10. With slight changes in the wording, the explanation that we gave in respect of this track being reasonably necessary for the purposes of agriculture is the same as that we gave for the previous Prior Approval Application. However, for this second application, the planning officer advised us in an email dated 25 February 2020 that, on the basis of the information that we had submitted, the track was not reasonably necessary for the purposes of agriculture. We provided further information in a response email on the same day, as you will be able to verify from your records.
11. In the DIFR for this second application, the officer refers to the additional information that we submitted, but then states that *“no information has been provided in relation to agricultural activities that take place on the land to justify the provision of a new agricultural track”*. In addition to the legitimate agricultural need for the new track, there is a further benefit that would result from the provision of the proposed track. This relates to an improvement in the existing unsatisfactory (and, to some extent, dangerous) situation whereby agricultural vehicles and machinery need to use a track that passes close to a complex of camping pods. In the DIFR the officer appears to dismiss this matter as not relevant and a problem that is of the applicant's own making as it was his choice to seek planning permission for the camping pod site in this particular location. The officer considers that *“guests are likely to expect a degree of noise from agricultural activities at the site given its location in the open countryside”*. We do not disagree with this comment but would add that neither the guests or the operators of the tourism business would consider the juxtaposition of camping pods and moving agricultural vehicles and machinery to be satisfactory from the point of view of health and safety. For reasons that will be explained below, when the site was chosen for the camping pods, this juxtaposition did not exist.
12. Irrespective of the secondary matter relating to the camping pods, we consider that we had provided sufficient information with application 3/2020/0121 to demonstrate that the proposed new length of track was reasonably necessary for the purposes of agriculture and that the application should therefore not have been refused.

13. We were very disappointed at the refusal of that application, not least because the application appears to have been determined in a manner that was totally inconsistent with the way in which the earlier application for a different length of track had been considered. However, despite additional information that we provided, application 3/2020/0271 was refused for the same reason as 3/2020/0121.

THE CASE FOR APPROVAL OF THE APPLICATION

14. In the DIFR for Application 3/2020/0121, the officer commented that:

“Furthermore, it is noted that an alternative route is also available to the recently approved agricultural track via an existing track to the east of “The Bungalow”. Therefore, it is deemed that the new track would not be reasonably necessary for the purposes of agriculture.”

This is the route that was intended to be used for all the agricultural traffic following the opening of the camping pod development. Therefore, as stated above, at the time of development of the camping pod site, this access route ensured that agricultural vehicles would not cause harm to either the health and safety or the amenities of the tourism development. Unfortunately, however, (as explained and illustrated in the supporting letter for application 3/2020/0271) some of the applicant’s neighbours have interfered with his use of this access by erecting obstructions within the highway verge of the unadopted Moorgate Lane. These obstructions have made it impossible for the applicant to bring farm equipment onto his land through this access and, whilst we are firmly of the opinion that the obstructions are an unlawful interference with his right of way, the applicant chose to overcome the problem by creating a new length of access track that would enable farm traffic to move around the holding without having to pass immediately next to the camping pod site where there will be families and young children playing. This, of course, is the length of track to which this third application relates.

15. The 105m. length of track that was the subject of application 3/2019/1006 was therefore an extension of the existing track to the east of “The Bungalow” and was needed in order to complete an access route for farm vehicles between Moorgate Lane and the applicant’s field to the north of the camping pod site, whilst avoiding any conflict with vehicles and pedestrians using the camping pods. As previously stated, your officers

considered that length of track to be reasonably necessary for the purposes of agriculture such that prior approval of details was not required. However, as explained above through no fault of our client, the existing section of that route is no longer available to him for use by agricultural vehicles and machinery. Due to these changed circumstances, the length of track that is the subject of this third application, is also now required to complete a route between Moorgate Lane and that same field. The agricultural need for this length of track is therefore exactly the same as the need for the length of track that was 'approved' by the Council under application 3/2019/1006.

16. Our client would not be applying for prior approval for this length of track if it was not necessary for the purposes of agriculture on his farm. If he gains prior approval, he would also not go to the expense of forming a length of track that he does not need. Furthermore, although he has absolutely no intentions of using the track for anything other than agriculture, if it had been authorised through the prior approval procedure, he would not be able to use it for any other purpose without a further planning permission from the Council. Therefore, not only was the decision on this application inconsistent with the decision on 3/2019/1006, but also amounted to your officers making a judgement on what constituted a development that was "reasonably necessary for the purposes of agriculture" that differed from the opinion of the applicant, a farmer with many years' experience. We would respectfully contend that this goes beyond the Council's remit in the consideration of applications of this type. As previously stated, but repeated here for the sake of emphasis, the applicant would not go to the trouble, time, and financial expense of gaining approval for and constructing a length of agricultural track that he does not need.
17. As we have explained above, the Council has been inconsistent in the way that it has considered similar Prior Approval applications at Moorgate Farm. Having examined a number of similar applications on different sites, there also appears to be inconsistency in how this type of application is considered by the Council. In some instances, the applicant's explanation of the agricultural need for the proposed development appears to have been accepted without question. In other instances, however, your officers appear to have questioned and cast doubt upon the integrity of the applicant's claims. When, as in this case, it is clear that the application relates to a working farm, we consider it entirely inappropriate that the farmer's stated agricultural reasons for requiring the development are

brought into question. We are aware that all planning applications fall to be determined on their own merits, but, with regards to Prior Approval applications it is not the planning merits of the proposal in respect of which we consider the Council to have been inconsistent but the manner in which the applications are considered.

- 18 Whilst there are many more examples to which we could refer, we would like to refer to two planning applications at Cunliffe House Farm, Longsight Road, Langho, BB6 8AD. You will, of course, have records of these applications.
- 19 The first application (3/2019/0716) was a Full Planning Application for the conversion of a barn into one dwelling. The reason that we refer to this application relates to the officer's Delegated Item File Report (DIFR) in which it is stated that *"Cunliffe House Farm operates as a riding school, provides livery stables and there is also a tack shop on site"*. There is no mention in this DIFR of any agricultural activities at Cunliffe house Farm.
- 20 The second application (3/2020/0166) was a Prior Approval application for what was described on the application form as "single storey timber building with pitched roof for storage of logs and machinery replacing polytunnel destroyed in recent storm". In addition to the equestrian use of the site as described in the previous DIFR, we would ask you to note the notation "Garden Centre" on the existing and proposed site plans submitted with this Prior Approval application. We consider that either of these matters should have raised doubts about the legitimacy of the claim that the building to which the application relates was necessary for agricultural purposes. When both of these matters are considered in conjunction with one another, we find it especially surprising that, in the DIFR, with respect to the requirements for the development to be reasonably necessary for the purposes of agriculture, the officer simply states that *"The proposed agricultural building will be used to provide a storage building for agricultural machinery"*. Even this statement is open to question on two counts. Firstly, the officer uses the word "agricultural" twice within the sentence. On the application form, however, in answer to the question of why the proposed development is reasonably necessary for the purposes of agriculture, it is stated that the *"building will be used to store machinery and logs"*. There is no confirmation that it would be agricultural machinery, and we question how the storage of logs (that is not even mentioned at this point in the DIFR) could, in any circumstances,

even at a legitimate working farm, be regarded as reasonably necessary for agriculture.

- 21 Therefore, in this case, where, in respect of a previous application, your officers clearly stated that the site was in equestrian, as opposed to agricultural use, the claim that the proposed building was reasonably necessary for the purposes of agriculture was accepted without question. Prior Approval was therefore granted for a building that, in our opinion, was not reasonably required for agriculture at a site that was described in a previous Council report as being in equestrian use and notated as "Garden Centre" on a plan submitted with the Prior Approval application. This is in stark contrast to the way in which the Council considered the two previous applications for the track proposed in this third application in which the site is clearly in agricultural use and the proposed track is genuinely required for agricultural purposes at a long-established farm.

SUMMARY AND CONCLUSIONS

- 22 In our opinion, the Council's planning officers considered application 3/2019/1006 in a manner that was entirely correct and appropriate for this type of application and determined that, for the reasons stated in the application, the proposed length of track was reasonably necessary for the purposes of agriculture such that Prior Approval of Details was Not Required. However, even though the agricultural need for the track proposed in applications 3/2020/0121 and 3/2020/0271 was exactly the same as that of the previous application, the Council's officers considered that, in the case of this proposed length of track, *"the applicant has failed to provide sufficient information to demonstrate that the proposed development is reasonably necessary for the purposes of agriculture"* and the applications were both refused. On behalf of our client, we have submitted this third application for the same length of track.
- 23 We hope that, in the light of the contents of this Statement, the Council will accept that there was no legitimate reason to refuse the previous applications and will accordingly determine in respect of this application that "prior approval of details is not required".

Colin Sharpe Dip TP MRTPI
January 2021

