
Appeal Decision

Site visit made on 13 April 2017

by M Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 May 2017

Appeal Ref: APP/E2734/W/17/3167294

Land adjacent to North Lane off Kirkby Lane, Kearby, Harrogate, North Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 6, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Tom McManus against the decision of Harrogate Borough Council.
 - The application Ref 16/02621/PNA, dated 23 June 2016, was refused by notice dated 8 August 2016.
 - The development proposed is for an agricultural shed.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed erection of an agricultural building may be regarded as permitted development in accordance with Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

3. Part 6, Class A of the GPDO permits *the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit*. The permitted development right exists subject to a number of restrictions and conditions which must be met.
 4. The appellant made the application for prior notification of agricultural development for the erection of a building of 431.68 m², which it is indicated would be required for the storage of a tractor and other machinery and equipment. This would be in connection with a recently purchased 13.4 hectare area of land which currently does not have a building associated with it. The existing equipment and machinery is indicated as currently being temporarily stored in a rented shed nearby in Barrowby. In addition to the proposed building, a set of amended plans were submitted (at the behest of the Council) during the course of the prior approval application, highlighting the extent of hardstanding and engineering works which would also be required.
-

5. The Council's sole point of objection to the application as expressed in the decision notice, is that the combination of the proposed building and associated hard surfacing would exceed the threshold of 465 m² set at Schedule 2, Part 6, Class A, paragraph A.1(e) of the GPDO. I am satisfied from the submissions before me that there is no reason to dispute the proposals on the basis of any of the other restrictions set out in the GPDO.
6. Schedule 2, Part 6, Class A, paragraph A.1(e) of the GPDO states that development is not *permitted where the ground area which would be covered by—(i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or (ii) any building erected or extended or altered by virtue of Class A, would exceed 465 square metres, calculated as described in paragraph D.1(2)(a) of this part.* In this respect the Council has calculated that the combined area of the building (431.68 m²) and the proposed hardstanding (indicated circa 227 m²) would total circa 659 m², exceeding the 465 m² threshold.
7. The appellant disputes that the hard surfacing should have been included as part of the calculation given its ancillary nature, and that the assessment should be against the building alone, which it is contended would amount to permitted development. The wording of Schedule 2, Part 6, Class A, paragraph A.1(e) of the GPDO is clear in that the assessment is against either sub-section (i) or (ii). In this instance, as there is no suggestion that the building is to be used for the accommodation of livestock or any plant or machinery arising from engineering operations, I am satisfied that the assessment must therefore be against sub-section (ii).
8. However, I am mindful that Schedule 2, Part 6, Class A, paragraph A.1(e) of the GPDO refers to paragraph D.1(2)(a) of the same Part, which sets out the Interpretation of Classes A to C, as a means of describing the calculation. This paragraph states that *for the purposes of Classes A, B and C – (a) an area "calculated as described in paragraph D.1(2)(a)" comprises the ground area which would be covered by the proposed development, together with the ground area of any building (other than a dwelling), or any structure, works, plant, machinery, ponds or tanks within the same unit which are being provided or have been provided within the preceding 2 years and any part of which would be within 90 metres of the proposed development.* I have dealt with the proposals on the basis of both the building and the hard surfacing, as works which are also being provided.
9. With reference to this interpretation, I am satisfied that it would be reasonable to incorporate within the calculation both the area of the building and the works to provide hard surfacing which would be immediately adjacent to the building, in defining the ground area which would be covered by the proposed development. In this respect, I note that the appellant in setting out the Grounds of Appeal has contended that the hard surfacing is ancillary to the proposed development but has not provided any justification or explicit evidence that the hard surfacing would be required or provided in the event that the building was not proposed and could therefore be regarded as unrelated. In any event, it is clear from the submitted evidence and the appellant's description regarding the use of the hard surfacing as an all-weather area to turn vehicles and work outside, that its use would be intrinsically linked to the function, occupation and use of the adjacent building. Nevertheless, I note that there no such delineation as to the nature of the use

is included within the relevant sections of the GPDO, and which provides clarification that ancillary or unrelated works should be omitted from any calculation.

10. As such, I consider that the hard surfacing proposed are works which are directly related to, and form part of the proposals in accordance with the interpretation as set out at Schedule 2, Part 6, paragraph D.1(2)(a) of the GPDO. Therefore, the cumulative ground area coverage of the building and works would exceed the limit of 465 m² placed on permitted development by Schedule 2, Part 6, Class A, paragraph A.1(e) of the GPDO. Accordingly the current appeal for prior approval must fail.

Other Matters

11. The appellant has highlighted that they did not originally apply for hard surfacing, but that it was only included on the advice of the Council. Whilst this may be the case, the appeal proposal before me, and the scheme assessed in the determination of the application, included the hard surfacing, and this therefore must also be the basis for the determination of the appeal scheme.
12. In reaching my decision, I have noted that the Council has referred me to a recent quashed prior approval decision from 2015, related to an agricultural storage building elsewhere within Kearby, where the Council submitted to judgement on the basis of the interpretation of Schedule 2, Part 6, Class A of the GPDO. However, whilst I have considered the submissions of the points raised within Keystone Law's Pre-Application Protocol Letter dated 16 February 2015, it is clear that the circumstances are materially different with the conclusions reached based upon contested agricultural need and the accommodation of livestock, albeit with reference to the inclusion of an associated yard area within the calculation. In any event, this submission has not had any significant bearing on my decision in this instance.
13. The appellant has referred to a perceived inconsistency in decision-making by the Council in respect of the interpretation of the GPDO for similar schemes, with reference made to a 2014 prior approval application for a 'general purpose' agricultural building. However, I do not have the specific circumstances and detail before me from which to draw a direct comparison, and note that this other scheme would have been determined on the basis of an earlier version of the GPDO and associated guidance. I have determined the appeal on the basis of the current up-to-date GPDO and guidance, and the specific facts of the case.

Conclusion

14. For the reasons given above, I conclude that the appeal should be dismissed.

M Seaton

INSPECTOR