



Appeal Decision

Site visit made on 10 December 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/C1625/W/19/3238227

Land off Ryalls Lane, Cambridge, Gloucestershire GL2 7AU

- 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 (as amended).
 - The appeal is made by Mr K Wherrett against the decision of Stroud District Council.
 - The application Ref S.19/1667/AGR, dated 5 August 2019, was refused by notice dated 29 August 2019.
 - The development proposed is the erection of a general purpose agricultural building for storage of winter fodder, agricultural implements and to provide animal shelter in adverse weather conditions.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) for the siting, design and external appearance of a general purpose agricultural building for storage of winter fodder, agricultural implements and to provide animal shelter in adverse weather conditions at land off Ryalls Lane, Cambridge, Gloucestershire GL2 7AU in accordance with the terms of the application Ref S.19/1667/AGR, dated 5 August 2019, and the plans submitted with it.

Application for costs

2. An application for costs was made by Mr K Wherrett against Stroud District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Class A of Part 6, Schedule 2 of the Order permits, amongst other things, the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of works for the erection of a building which is reasonably necessary for the purposes of agriculture within that unit. In order to benefit from the provisions of Schedule 2, Part 6, Class A of the Order the proposed development must fall within the class of development described and comply with paragraph A.1 of the Order. In this case the parties dispute whether the building is reasonably necessary for the purposes of agriculture and whether the requirements of paragraph A.1(i) of the Order would be met. The requirements for prior approval, including paragraph A.1(i), are akin to a pre-commencement condition attached to the grant of permission by Article 3(1) of the Order.

4. Paragraph A.1(i) does not permit development if *'it would consist of, or include the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building'*.
5. However, in the case of *R (on the application of Marshall) v East Dorset District Council and Pitman [2018] EWHC 226 (admin)* (the Marshall case) it was held that local planning authorities, and therefore by extension Inspectors, do not have power under Part 6 of the Order to determine whether or not the proposed development comes within the description of the relevant class, or would comply with the limitations or restrictions applicable to development permitted in the Order.
6. Furthermore, the case indicated that the appropriate time to consider such issues is in response to an application for a certificate of lawfulness, an application for planning permission or potentially in the context of enforcement proceedings. This is consistent with Planning Practice Guidance (PPG) which indicates that if it is not clear whether works are covered by permitted development rights, it is possible to apply for a lawful development certificate¹.
7. Both parties have been given the opportunity to comment on the implications of the caselaw in relation to the appeal proposal. Given the similarities with the circumstances of the appeal proposal, this recent case law is of significant weight and I have not seen evidence to suggest otherwise.
8. Accordingly, notwithstanding the refusal reason on the decision notice that refers to criterion A.1(i) of Part 6, I cannot purport to decide whether the proposal meets the limitation set out in paragraph A.1(i) of the Order nor whether the building would fall within the description for Class A of Part 6, as these matters are outside the remit of discretion open to me. Therefore, my determination is confined to the consideration of the siting, design and external appearance of the building in accordance with condition A.2(2)(i) of the Order.
9. I have been made aware of a subsequent decision made under the Order, reference S.19/2257/AGR dated 26 November 2019 relating to a similar proposal which was also refused. In addition to criterion A.1(i), the decision notice also refers to the lack of evidence to show that the proposal forms part of an established agricultural unit, and therefore, would not fall within the description of development permitted by Class A of Part 6 of the Order. However, in light of the caselaw above, this decision does not lead me to take a different view as to the scope of the decision available to me.
10. It follows that, given the limited scope of the decision, the outcome should not be interpreted as a determination as to whether the development comes within the description of the relevant class of the Order. Nor that, in the event of an approval as to siting, design and external appearance, this confers permission for development outside the range of permitted development rights allowed by the Order, as a developer could not at any stage obtain permission for development that was not, in fact, permitted development via the prior approval procedure.

¹ Paragraph 024 Reference ID: 13-024-20140306

11. In this regard the parties may find it pertinent to note paragraphs 33-37 of the judgement of Mrs Justice Lang in the Marshall case where she indicated that paragraph D.1(3) cannot be read into paragraph A.1(i) of the Order. Furthermore, paragraph A.1(i) must be distinguished from paragraph A.2(1)(a) as it is not subject to the same exception as condition A.2(1)(a). She drew a distinction with the limitation in paragraph A.1(i) which applied to the scope of the permitted development under Class A in the first instance, as opposed to a condition that might subsequently apply to an existing building.
12. I have had regard to the appellant's questioning of the validity of the Council's decision notice in light of the Marshall case. I acknowledge that the decision notice does not explicitly state that prior approval in relation to the siting, design and external appearance is refused, which is verified by the Council's comments dated 22 November 2019. However, looking at the notice as a whole, it does refer to the application being refused, and it is therefore, reasonable to read the notice as a refusal of prior approval and I have determined the appeal accordingly.

Main Issue

13. Having regard to the above, the main issue is the impact of the building on the surrounding area having regard to its siting, design and external appearance.

Reasons

Siting, design and external appearance

14. The area of Ryalls Lane nearest the appeal site, due to the surrounding fields, established hedgerows, watercourses and limited sporadic built form, has a rural character commensurate with a working agricultural and equestrian landscape.
15. The proposed building would be sited towards the back of a small, broadly triangular shaped field and would be close to mature hedgerows on two sides. As a result of the natural screening provided it would not be prominent in the wider landscape yet would be relatively close to the adjacent road and existing access for practical purposes.
16. The building would be a relatively modest sized structure with a mono-pitch roof and largely open on the north elevation. This would result in a utilitarian appearance typical of a conventional agricultural building and in-keeping with nearby agricultural and equestrian buildings. This would be reinforced by the use of concrete panels and timber weather boarding for the walls².
17. Accordingly, I find that the siting, design and external appearance of the building would not result in harm to the surrounding area and therefore, prior approval should be given in respect of these matters in accordance with paragraph A.2 of Part 6 of the Order.
18. Specific attention is drawn to the conditions listed in Paragraph A.2 of Part 6 of the Order. These include requirements that development is carried out in accordance with the details approved within a period of 5 years from the date of approval.

² Application form, Question 4

Other matters

19. The site is located within the 7700m buffer zone of the Severn Estuary Special Protection Area (SPA) and Special Area of Conservation (SAC), habitats recognised as European sites under the Conservation of Habitats and Species Regulations 2017 (the Regulations) as being of international importance for the breeding, feeding, wintering and migration of rare and vulnerable species of birds.
20. Article 3(1) of the Order grants planning permission for the classes of development specified in Schedule 2 subject to Regulations 75-78 of the Regulations. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017 that development which (a) is likely to have a significant effect on a European site or a European offshore marine site, alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77.
21. The Council have indicated in the appeal questionnaire³ that the appeal site is not likely to affect an internationally designated site. Nevertheless, there is nothing before me to show that the development would not, either alone or in combination with other plans or projects have a significant effect on the internationally important features of the SPA or SAC. As such, such an effect cannot be ruled out.
22. I am aware that, although it is good practice to establish whether the Regulation 77 process has been followed, this process is administered under separate specific legislation and therefore, may be submitted and approved after prior approval is given for development. Therefore, it is not a pre-requisite to issuing such an approval. Furthermore, given that the Council has fundamental concerns as to whether the proposal falls within the description and limitations of Class A of Part 6, Schedule 2 of the Order, it is not surprising that I have not seen evidence that the Regulation 77 process has been followed in this case.

Conclusion

23. As outlined above, this decision is not a determination as to whether the development comes within the description of Class A, Part 6 of the Order, nor the limitations set out in paragraph A.1, including paragraph A.1(i). Furthermore, this decision does not address or prevent the application of the Regulations under Article 3(1) of the Order in relation to European sites.
24. However, in relation to the limited scope of the decision before me, for the reasons given above I conclude that the siting, design and external appearance of the building would be acceptable and therefore, the appeal should be allowed.

Helen O'Connor

Inspector

³ Question 19a