



Appeal Decision

Site visit made on 28 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 08 June 2020

Appeal Ref: APP/X1545/W/19/3229642

Bridgemarsh Marina, Bridgemarsh Lane, Althorne, Essex CM3 6DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made Mr John Wilsdon (W & H Wilsdon Agriculture) against the decision of Maldon District Council.
 - The application Ref AGR/MAL/19/00401, dated 19 March 2019, was refused by notice dated 21 May 2019.
 - The development proposed is described as 'A new road'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This type of appeal cannot be assessed on the basis of the proposal's planning merits and/or its impacts. Instead, by its nature, the only determinants are evidential fact and planning legislation.

Main Issue

3. The consideration is limited to whether the particular circumstances allow for compliance with the provisos set out under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). The main issue is whether the Council's decision in refusing to grant approval was well founded.

Reasons

4. Schedule 2, Part 6, Class A allows for the carrying out, on an agricultural unit of 5 hectares or more, any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit. The proposal here involving the construction of a 5m wide new access track must be assessed in accordance with the terms and limitations of this legislation.
5. An 'agricultural unit' is defined for the purposes of Part 6 as agricultural land which is occupied as a unit for the purposes of agriculture and including specified dwellings.
6. In the judgement of *Fuller v SSE and Dover DC* [1987] JPL 854 it was held that an agricultural unit is not the same thing as the planning unit, and it may comprise more than one planning unit. It is a question of fact as to whether land forms part of an agricultural unit, meaning agricultural land occupied as a

- unit. In coming to his decision as to whether there was a material change of use, the Secretary of State did not regard the entire holding as one planning unit. The Court of Appeal upheld this decision. The identification of the planning unit is a question of fact and degree.
7. Although Part 6 does not refer to the planning unit the requirement is that the permitted development (PD) is carried out on 'agricultural land', in an 'agricultural unit' and for the 'purposes of agriculture'. Accordingly, it sets out a sequential approach to be gone through. First, it must be established whether the land is agricultural, second, it must be shown that it is comprised in an agricultural unit of 5ha or more, and finally, whether the proposed development is reasonably necessary for the purposes of agriculture within that unit.
 8. In *Lyons v SSCLG* [2010] EWHC 3652 (Admin) the judge remarked that the Inspector would have been required to apply the above sequential approach, and it was only once these requirements were met that the issue of prior approval for the details of siting and construction fall to be considered. The judgement held that a planning unit in a mixed use of agriculture and other primary use does not benefit from Part 6 rights.
 9. In this particular instance the site, as identified on the application form, covers 55ha. It comprises a multitude of uses, including part of the marina, a storage yard (known as the stackyard) associated with the marina, a 15 acre field, an area of woodland and a track running towards Station Road (the existing road access down to the marina). Indeed, the appellant, in his representations as to "Justification for a new 5 metre Wood, Field and Relief Marina Track" describes the various areas of which the intended track would pass through.
 10. Reference is also made to the track's use to assist the management of the woodland and the track accessing the marine stackyard area and *"thence into the marina itself which has a caravan park and some 150 boats and heavy lifting plant."*
 11. The appellant's representations make reference to "The Role and Benefits of the New Track", and state four points in this regard namely, and as per the appellant's wording:
 - 1) a necessary management access to the Bridgemarsh Wood;
 - 2) an emergency access to the marina for larger loads that can no longer access via the Lane;
 - 3) a better access to the 15 acre marina field (which the appellant says is registered for sheep grazing); and
 - 4) a wider route to the marina stackyard for agricultural traffic.
 12. In an attempt to further justify the above the appellant indicates that the proposed track would run alongside a railway and ditch, would not intrude into the countryside, and would mean an improvement in matters of highway safety. However, as I have mentioned, such factors are extraneous to the considerations that I can take into account for the purposes of this appeal.
 13. At my site visit I observed, when walking across the site from the marina through to Station Road, that its character changes markedly. Indeed, the

roughly demarcated and unrelated uses suggest that more than one planning unit is involved. Moreover, the agricultural element comprises only a small element of the entire site. The 15 acre (6.07 ha) constitutes only approximately 11% of the 55 ha site, the subject of the application made. The adjoining farm, referred to by the appellant, is not included in the application site.

14. In the circumstances, I find, as a matter of fact and degree, that the 55 ha site identified comprises of more than one planning unit, and the agricultural element represents only a small percentage of the entire site. Moreover, the agricultural field, which must constitute the agricultural unit, is neither the primary use nor the primary planning unit involved.
15. Turning then to the required sequential test exercise I have found that only a relatively small part of the land is used for agricultural purposes and, although this area might measure in excess of 5 ha, the appellant's four point justification for the proposed new 5m wide track does not demonstrate that the development is reasonably necessary for the purposes of agriculture. Instead, it suggests that access to the '15 acre field' represents only one of its purposes and, reference to these four points, would suggest that the main purpose of the proposed track would be to aid access to the marina and its associated stackyard storage area.
16. Accordingly, the proposal would not fall within the parameters of Schedule 2, Part 6, Class A of the GPDO and would not be considered as PD. The Council's decision to refuse to grant approval was therefore well founded.
17. The development at issue is therefore that for which express planning permission is required, and that could only be granted on an application for such made to the local planning authority in the first instance.
18. For the above reasons, and having had regard to all matters raised, the appeal does not succeed.

Timothy C King

INSPECTOR