



Appeal Decision

Site Visit made on 6 July 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021

Appeal Ref: APP/P2365/W/21/3271044

Land Off Greens Lane, Downholland

- 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 GPDO).
 - The appeal is made by Mr Molyneux against the decision of West Lancashire Borough Council.
 - The application Ref 2021/0143/PNP, dated 3 February 2021, was refused by notice dated 24 February 2021. The proposal relates to an application for determination as to whether prior approval is required; the proposal is for an agricultural building to be used for the storage of agricultural machinery and equipment.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Molyneux against West Lancashire Borough Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. A court judgement was issued on 21 June 2021¹, which was after the deadline for submissions. As I consider the judgement to be relevant to the appeal, parties were given the opportunity to comment. A brief response was provided by the appellant, reiterating what was stated in his original submissions; the Council did not respond.
4. A revised National Planning Policy Framework (the Framework) was published on 20 July 2021. As the proposal is to be assessed primarily against relevant criteria in the GPDO, I consider the revisions do not have any significant bearing on the outcome of the appeal. For this reason, it was not necessary for parties to be given the opportunity to comment on the revisions of the Framework.

Legislative context

5. As the proposal is for a determination as to whether prior approval is required for an agricultural building associated with an agricultural unit over 5 hectares, it relates to Schedule 2, Part 6, Class A of the GPDO.

¹ *Paul Smolas v Herefordshire Council* [2021] EWHC 1663 (Admin), WL 025 0610, Hereafter referred to as *R (oao Smolas) v Herefordshire Council*

Main Issue

6. In light of the judgement in *R (oao Smolas) v Herefordshire Council*, I consider the main issue to be whether the proposal constitutes permitted development (PD).

Reasons

7. Following the *R (oao Smolas) v Herefordshire Council* judgement, the first stage of the assessment is to consider whether the proposal falls within the definitional scope PD as outlined in paragraph 'A' of Part 6 of the GPDO, ie
- 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."*
8. Therefore, questions to be addressed are: is the land in question agricultural land? is it part of an agricultural unit of 5 ha or more? and, is the erection of the proposed building "*reasonably necessary for the purposes of agriculture within that unit*"?
9. In summary, the evidence for the appellant consists primarily of a completed copy of the relevant Council application form, a Planning Statement, Plans Ref NJSR A100: Location Plan, site plan and typical visual, and NJSR A101: Proposed plans and elevations, copies of 2 appeal decisions APP/P2935/W/20/3258334 and APP/DC320/W/19/3258334, reference to 2 court judgements², an appeal Statement of Case and comments on the *Smolas v Herefordshire Council* judgement.
10. On the application form the appellant stated that the land on which the proposed building would be located had been in agricultural use for the purposes of a trade or business for 100 years; that the agricultural unit was 51.6 ha, and that he was applying for an agricultural building to be used for the storage of agricultural machinery and equipment. Additionally, in response to the question: "*Is the proposed development reasonably necessary for the purposes of agriculture?*" he ticked "yes".
11. Additionally, the appellant's submissions contend that: he has a sizeable agricultural holding; he grows various crops; the site is used solely for agricultural purposes; the heaps of soil on the site observed by the Council Officer were material extracted from an irrigation lake south of the appeal site, in land owned by the appellant, which was being stored on the site; he has a subsidiary business selling topsoil gathered from his land; the topsoil business does not operate from the appeal site, and the topsoil business only provides a very small amount of the appellant's annual income.

² The appellant refers to *Marshall v East Devon*, and *Keenan v Woking DC* 2018. I assume he means *Marshall v East Dorset* and *Keenan v Woking Borough Council* 2017.

12. Hence, according to the information provided by the appellant, the land in question is agricultural land, belonging to an agricultural unit over 5 ha and the proposed building is reasonably necessary for the purposes of agriculture.
13. However, as noted, the Council Officer observed piles of topsoil and associated processing machinery on the site, along with a steel container and 3 narrow boats. During my site visit, which was undertaken at least 4 months after the Council Officer's, I also observed heaps of soil and topsoil processing machinery on the site, along with a steel container and 3 narrow boats. I did not see any evidence on the site to suggest it is being used for agricultural purposes.³
14. In addition to observations of soil heaps and topsoil processing machinery on site, I also observed 2 buildings and an area of land around the same size as the appeal site, located in the north-eastern corner of the land edged blue, where heaps of topsoil and topsoil processing machinery were also present.
15. Furthermore, the appellant applied for the building that is the subject of this appeal in July 2020, Ref 2020/0632/PNP, via the same application process, with the same plans as those submitted with this appeal. In section 5 of that application form the appellant stated that the building was required for use in connection with an existing topsoil business; he also informed the Council at that time that he owns DPM Topsoil, a supplier of topsoil and turf in the north-west, as well as providing the Council with a link to the website of the business.
16. Essentially, the only difference between application Ref 2020/0632/PNP and the current appeal is that in the earlier application the appellant claimed the proposal was for use in connection with a topsoil business and in the current proposal the appellant claims the proposal is for the storage of agricultural machinery and equipment. Furthermore, the plans submitted with each application are the same; and although the appellant has removed the reference to a topsoil business from the application form related to this appeal, the proposed site plan provided on plan Ref NJSR A100 still includes text and an arrow pointing to the site saying: "*existing yard used in connection with topsoil business.*"
17. Thus, the evidence available includes conflicting claims about the use of the land and use of the proposed building. Furthermore, I consider that there is no clear evidence of: i) the extent of land used by the appellant for agricultural purposes and that used for the topsoil business; ii) existing buildings associated with the respective businesses, or iii) the nature and extent of existing agricultural machinery and equipment.
18. Consequently, notwithstanding the appellant's claims, I consider from the evidence available and my observations on site, that it has not been clearly demonstrated that the land in question is agricultural land, that it is part of an agricultural unit of 5 ha or more, or that the erection of the proposed building is "*reasonably necessary for the purposes of agriculture...*". I therefore conclude that the proposal does not fall within the scope of PD outlined in Class A, Part 6, Schedule 2 of the GPDO.

³ The extraction and processing of topsoil does not fall within the definition of 'agriculture' provided in the Town and Country Planning Act 1990 as amended

19. Having reached this conclusion, it is not necessary to consider whether to grant prior approval for the siting, design, and external appearance of the proposal.

Conclusion

20. For the reasons outlined, having concluded that the proposal does not constitute permitted development as outlined in paragraph A of Part 6 of Schedule 2 of the GPDO, the appeal is dismissed.

J Williamson

INSPECTOR