



Appeal Decision

Site Visit made on 10 May 2021

by J Hunter BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2021

Appeal Ref: APP/E2734/W/21/3269109

Wharfe Valley Farm, Mill Lane, Kearby, Wetherby, LS22 4BU

- 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 by Mr Mike Plowman against the decision of Harrogate Borough Council.
 - The application Ref 20/03411/PNA, dated 6 September 2020, was refused by notice dated 4 November 2020.
 - The development proposed is described as erection of agricultural storage building.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. The revised National Planning Policy Framework was published on 20 July 2021. Both of the main parties have been given the opportunity to comment and my decision is made in the context of the revised Framework.
3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) enables certain types of development to take place without the need for an application for planning permission to the Local Planning Authority, provided that certain criteria are met. Class A of Part 6 of Schedule 2 grants planning permission for, amongst other things, the erection of an agricultural building, subject to certain limitations and restrictions.
4. The Court of Appeal judgement in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250 related to the consideration of the duality of phone kiosks proposed under Part 16 of the GPDO. This judgement sets out the principle that to take advantage of being permitted development, the proposed development must fall entirely within the scope of the GPDO.
5. Although the judgement considered development under a different class to this appeal proposal, I am satisfied that the findings in *New World Payphones Ltd* refer to the GPDO generally and not one particular class. The judgement sets out that the provisions of the GPDO do not confer the power upon an Authority to grant planning permission for development outside the defined class of permitted development.
6. Furthermore, it confirms that on an application to an Authority for a determination as to whether its prior approval is required, when it is in issue, the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class. These findings were reiterated in a very recent judgement *R (Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin) where it was held that the Local Planning

Authority in that case did not act unlawfully in determining that the proposed development would fall outside of the scope of Part 6, Class A and so prior approval should be refused for the proposed development.

7. The Council's decision notice states the development is not considered to comprise permitted development under Class A of Part 6, as it has not been confirmed that the proposal is reasonably necessary for the purposes of agriculture on the unit in relation to an agricultural trade or business. Furthermore, they consider that the proposed building, due to its proposed siting and design would be visually intrusive and thereby detrimental to the character and openness of the Green Belt location.
8. Having regard to the above, there is a two stage process, the first is to consider whether the proposed development would constitute permitted development under Class A of Part 6 of Schedule 2 of the GPDO. Should I conclude that the proposals fall within the scope of the GPDO, I will reach a determination as to whether the siting and design of the proposal is acceptable.

Reasons

9. In order to satisfy Permitted Development (PD) rights for a new agricultural building under Part 6 Class A para A.(a) the land has to be a unit exceeding 5 hectares in size, be in use for agriculture; and be so used for the purposes of a trade or business. In other words, whether the site is in use as agricultural land and forms part of an agricultural unit, the building must also be reasonably necessary for the purposes of agriculture.
10. In this case the proposed building would be located on the crest of the hillside to the north west corner of two fields which form a land holding of around 10.4 hectares. I note from the information before me that the larger of the two fields (east field), which sits at the bottom of a very steep incline, is in separate ownership to the (west) field where the building would be located. It is stated in the documentation that the two fields are owned jointly by the appellant and his daughter.
11. I saw during my site visit that there is an access road into the north west corner of the land holding which extends southward for a short distance and provides access to two large residential properties at its eastern side. The proposed building would lie to the west of the access road on a relatively level plateau before that land falls away abruptly to the east and towards east field which sits much lower down the valley.
12. I noted during my site visit that there were a number of farm vehicles parked in west field, opposite the residential properties. I did not see any other agricultural type buildings or storage facilities and it is not clear from the information before me where these vehicles are currently stored overnight, or indeed, whether they are in the appellant's ownership. Similarly, I saw that there were sheep grazing in east field but I do not have any information in relation to the number of sheep grazing the land, who owns them or where feed, hay and other agricultural tools or paraphernalia is stored at present.
13. I note that the appellant states that the proposed agricultural building is required to support a business which breeds and sells a variety of sheep breeds as well as the management of an onsite Quarry. Nevertheless, very limited business information has been supplied in relation to any business or trade

operating from the site. I do not have any information in relation to livestock numbers or any verified accounts or returns nor do I have any copy invoices for materials, feed, machinery or labour costs. Therefore, I cannot be certain that the activities amount to a trade or business as defined in Part D.1 (1) of the Order.

14. Consequently, whilst I am satisfied that the size of the unit exceeds the 5ha required, I am not able on the evidence available to find that the building would be reasonably necessary for the purposes of agriculture. As such the agricultural building could not be permitted development under Schedule 2 Part 6, Class A of the GPDO.
15. As the proposal would not be permitted development, it is not necessary for me to consider the prior approval application any further including whether the proposed development would be acceptable in siting, design and appearance terms.

Conclusion

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

J Hunter

INSPECTOR