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## Appeal Decision

Site visit made on 16 August 2021

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 September 2021**

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**Appeal Ref: APP/E2734/W/21/3274201**

**Land Part of Hollins Farm, Weeton Lane, Weeton, Leeds LS17 0BG**

- 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 (GPDO).
  - The appeal is made by Hawksworth Estates against the decision of Harrogate Borough Council.
  - The application Ref 20/02559/PNA, dated 13 July 2020, was refused by notice dated 8 September 2020.
  - The development proposed is erection of agricultural storage building.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Hawksworth Estates against Harrogate Borough Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. There is some variation in the description of the location of the development in the various appeal documents. I have taken the location in the heading above from the planning appeal form, and I have considered the proposal on the basis of the submitted plans.
4. After the date of the submission of the appeal, a court judgment was made regarding *Paul Smolas v Herefordshire Council* [2021] EWHC 1663 (Admin) which raised matters relevant to this appeal. Both main parties were given the opportunity to comment on this decision and I have had regard to the comments made.
5. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. Both main parties have had the opportunity to comment on any relevant implications for this appeal.

### Background and Main Issues

6. 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. Schedule 2, Part 6, Class A grants

- planning permission for, amongst other things, the erection of an agricultural building, subject to certain limitations and restrictions.
7. The appellant has previously sought approval for a building on the site of the current appeal proposal. However, this was dismissed on appeal<sup>1</sup> in 2018 as the Inspector could not conclude that the building was reasonably necessary for the purposes of agriculture within that unit.
  8. A subsequent proposal for a building elsewhere on the landholding was allowed on appeal in 2019<sup>2</sup> (the 2019 Appeal), as the Inspector concluded that there was no provision for any determination to be made as to whether the proposal would be permitted development, and they went on to conclude that the proposal was acceptable in terms of its siting, design and external appearance. The evidence suggests that the 2019 Appeal related to a building which was of an identical size and design to that before me, albeit in a different location.
  9. The Court of Appeal judgment 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 judgment sets out the principle that to take advantage of being permitted development, the proposed development must fall entirely within the scope of the GPDO.
  10. Although the judgment considered development under a different class to this appeal proposal, the findings in *New World Payphones* refer to the GPDO generally and not one particular class. The judgment 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. The *New World Payphones* judgment post-dates the 2019 Appeal and the subsequent challenge<sup>3</sup>.
  11. Furthermore, *New World Payphones* 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 *Smolas* 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.
  12. The Council's decision notice states that it has not been demonstrated that the proposal is reasonably necessary for the purposes of agriculture within the unit. On that basis, it is not considered to comprise permitted development under Schedule 2, Part 6, Class A of the GPDO. Furthermore, it considers that the proposed building, due to its form, scale and siting would be detrimental to the character and visual amenity of the site and landscape setting.
  13. Having regard to the above, this is a two stage process. First, to consider whether the proposed development would constitute permitted development under Schedule 2, Part 6, Class A of the GPDO. Second, and if appropriate, I may also consider whether the siting, design and external appearance of the proposal is acceptable.

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<sup>1</sup> Appeal Ref: APP/E2734/W/17/3183538

<sup>2</sup> Appeal Ref: APP/E2734/W/19/3226250

<sup>3</sup> *Harrogate Borough Council v Secretary of State for Housing Communities and Local Government and John Ogden*, 30 October 2019

## Reasons

### *Whether Permitted Development*

14. I have had regard to the previous approval of the 2019 Appeal as a fallback to the current appeal. The appellant confirms that the current proposal is intended to replace that which was previously approved, rather than be in addition to it. The appellant also confirms that the reason for the proposed site is to minimise visual impact, rather than operational agricultural requirements. This indicates that the reasonable agricultural needs of the appellant could be met by the building approved by the 2019 Appeal.
15. Both main parties were given the opportunity to comment on whether there was a mechanism to ensure that the previous approval is not implemented.
16. The appellant refers to this being addressed by condition. However, that is not appropriate procedurally as a condition cannot in effect revoke an extant permission.
17. The Council states that it would be necessary to complete a legal agreement with the appellant to ensure that the previous approval is not implemented. The appellant has offered to submit a unilateral undertaking to this effect, but there is no such undertaking before me. The Planning Practice Guidance<sup>4</sup> (the Guidance) sets out that planning conditions limiting development that can take place until a planning obligation or agreement has been entered into are unlikely to be appropriate in the majority of cases. Although the Guidance advises that such a condition may be appropriate in exceptional circumstances, it sets out that such exceptions may apply in the case of particularly complex development schemes. The circumstances of the appeal proposal are not exceptional, and as a minor proposal it is not particularly complex. For these reasons, I consider that the imposition of a condition requiring a planning obligation would run contrary to the advice of the PPG.
18. On the basis of the evidence before me, the 2019 Appeal proposal could be implemented. Notwithstanding the intentions of the appellant, it has not been demonstrated that the further building which would result from the appeal proposal is reasonably necessary for the purposes of agriculture. As such, the proposed building would not be permitted development under Schedule 2, Part 6, Class A of the GPDO.

### *Siting, Design and External Appearance*

19. Given that I have found that the proposal would not be permitted development, I am not required to consider the further prior approval matters. However, mindful of the history of appeals at this site, the emergence of case law, and the appellant's reference to a potential legal agreement, I consider it is appropriate for me to proceed to consider these matters in this instance.
20. In the 2019 Appeal, the Inspector concluded that the design and external appearance of the building was acceptable. On the basis that the appeal before me relates to an identical building, I have no reason to disagree with the conclusions of the previous Inspector on these matters; although the evidence provided by the appellant in respect of the agricultural operation and necessity is not particularly detailed.

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<sup>4</sup> Paragraph: 010 Reference ID: 21a-010-20190723

21. However, the current appeal proposal would be located on an area of raised ground which rises from Weeton Lane. Although the slope is relatively shallow, the appeal proposal would be sited in a particularly prominent location and would be an unduly obtrusive feature in views from the surrounding area. Whilst I have concluded that the design of the building is acceptable as an agricultural building, the height of the proposal would add to its visibility on this site. Due to the height and prominence of the proposal, intervening landscape features including hedges and trees would not mitigate for its unacceptably intrusive siting.
22. The appellant refers to a number of other freestanding agricultural buildings in the wider area. However, these do not reflect the prominent location of the appeal site or set a prevailing context for its siting within the landscape.
23. The previously approved building would be located adjacent to Weeton Lane, and would therefore be readily visible in short distance views from the highway. However, this does not outweigh the unacceptably prominent location of the appeal proposal. The previously approved building would also be viewed in the context of an existing nearby building which is similarly located in relation to the road.
24. I conclude that, due to its siting, the proposal would lead to significant harm to the character and appearance of the landscape. The proposal would therefore be contrary to the landscape considerations of policies HP3 and NE4 of the Harrogate District Local Plan 2020, insofar as they are relevant to the prior approval matters. On the same basis, the proposal would also conflict with the Framework in respect of harm to the intrinsic character and beauty of the countryside. The proposal would also not reflect the advice of the Council's Farm Buildings Design Guide 1986 regarding the siting of the building in the landscape.

### **Conclusion**

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

*David Cross*

INSPECTOR