



Appeal Decision

Site Visit made on 7 September 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

Appeal Ref: APP/M2372/W/21/3275709

Land South of Cranberry Fold Court, Darwen BB3 2HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr D Bell against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/21/0205, dated 27 February 2021, was refused by notice dated 29 March 2021.
 - The development proposed is the erection of an agricultural storage building and access track.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application for determination as to whether prior approval was required for the construction of an agricultural building was made under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). The proposed development is the erection of an agricultural building. Paragraph A.2(2) of the GPDO requires, amongst other things, that a determination be made as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.
3. The prior approval procedure as set out under Schedule 2, Part 6, Class A of the GPDO makes no provision for any determination to be made as to whether the proposal would be permitted development. However, there is dispute between the parties as to whether the development benefits from the provisions of the GDPO. I have subsequently determined this appeal in accordance with the judgement in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250 and I return to this matter below.

Main Issues

4. The main issues are:
 - whether or not the proposed development benefits from the provisions of Schedule 2, Part 6, Class A of the GDPO
 - if so, whether the siting, design and appearance of the building are appropriate in their contexts

Reasons

Class A of Part 6

5. The *New World Payphones Ltd* judgement sets out that 'on an application to an authority for a determination as to whether its "prior approval" is required, the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class of permitted development'.
6. It was held in *R (oao Marshall) v East Dorset DC & Pitman* [2018] EWHC 226 (Admin) that there are limits to LPA powers to decide whether development would be PD when determining Part 6 prior approval applications on the basis that the LPA does not have power under the prior approval provisions of the GPDO to determine whether or not the proposed development comes within the description of the relevant class.
7. However, as a more recent decision made in a higher court, until such a time the tension is resolved, I attach greater weight to the *New World Payphones Ltd* judgement. Furthermore, I find there is no reason not to apply its established principles to a development proposal under Part 6 of the GPDO. Although the case in *New World Payphones Ltd* related to an application for prior notification under Part 16 of the GPDO, they are a similar type of case.
8. There is dispute between the main parties as to whether the building would be reasonably required for the purposes of agriculture. For Part 3 of the GPDO, paragraph X states that "agricultural building" means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and "agricultural use" refers to such uses'. For Part 6, the meaning of 'agricultural land' is given under paragraph D.1 as 'land which, before development permitted by this part is carried out, is...in use for agriculture and...so used for the purposes of a trade or business, and excludes any dwellinghouse or garden'.
9. Some of the land associated with the appeal site has been flail mowed. The appellant states that this is preparatory work for proposed tree planting works undertaken to produce a cash crop of Christmas trees. It was also to facilitate the appellant's intent to improve the sward to enable a hay crop to be taken from the land. Furthermore, it is contended that the appellant rears livestock and that the land has been grazed on a commercial basis during the winter months and has taken place for a number of years.
10. On the evidence before me, the tree planting and hay crop have yet to occur such that they do not meet the pre-existing requirement in paragraph D.1 of Part 6. Moreover, whilst I have little doubt that the land has been used for grazing at certain times in the past, there is little evidence to demonstrate the agricultural business basis of any livestock rearing enterprise by the appellant.
11. The appellant previously withdrew an earlier application Ref 10/20/1008 seeking a determination as to whether prior approval was required for a new building. According to the appellant this was due, amongst other things, to a dispute over whether any agricultural use taking place on the site was in conjunction with an agricultural trade or business. The Council indicate that, at the times when proposals for a building on the site or adjacent land were under

consideration, no livestock had been present. At the time of my own site inspection there was little evidence of grazing activity on the wider site.

12. In this respect, the Council sought information to support the claim, a matter which is not contested by the appellant. Although the planning statement accompanying the application subject of this appeal referred to the intended activities, including the use of the land for grazing and summer crop growing, there was little substantive information to demonstrate the nature or commercial basis of the agricultural enterprise.
13. Furthermore, at the time of the resubmission application subject of this appeal, it was open to the appellant to demonstrate that status through the submission of livestock records or accounts, for example. This would have allayed the Council's concerns and demonstrated that any such activities were in relation to an agricultural business operated by him. However, in the substantial absence of information to demonstrate an established agricultural enterprise, there was little basis for the Council to enable it to conclude in support of the appellant.
14. I acknowledge the assertion that the Grade 5 agricultural land has an agricultural holding number. Even if that is the case, which is not supported in the evidence before me, it does not necessarily convey any associated agricultural business or trade use. I also note a letter of support from the National Farmers Union, however, this refers to discussions in relation to 'intention' rather than evidence of an existing enterprise. It does not therefore add weight to a case required to demonstrate an established agricultural business.
15. Although I have little doubt that the site could be actively managed in the interests of enhancing public enjoyment of the land, reduce fire risk or improve biodiversity, none of these activities are demonstrated to be grounded on a commercial agricultural basis.
16. Taking all of the above together, I find that, on the balance of the evidence before me, there is little to demonstrate that the definitional requirements applicable to Part 6 development have been met. I am therefore unable to conclude that the proposal is reasonably necessary in conjunction with an established commercial agricultural enterprise and can only fairly conclude that the proposal does not benefit from the Class A of Part 6 rights.

Siting, design and appearance

17. Despite its conclusion in relation to the validity of relying on Part 6 provisions in the GPDO, the Council proceeded to assess the effects of the siting, design and appearance of the building. However, as I have determined that the proposal does not meet the qualifying provisions of Part 6, it is not necessary for me to comment further in relation to those matters.

Other Matters

18. I acknowledge that a previous proposal for a building was allowed under Part 6 elsewhere on the land, however, there is little information provided in relation to the circumstances of that decision. I also note a previous decision by one of my colleagues which assessed an alternative development under the requirements of s38 of the Commons Act 2006. This is a regulatory regime

relating to Common Land and is therefore distinct from the case before me, a case I have considered on its own merits.

Conclusion

19. For the reasons given above, I conclude that the proposed development would fall outside the scope of that permitted under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and the appeal therefore fails.

R Hitchcock

INSPECTOR