



Appeal Decision

Site visit made on 28 October 2021

by David Prentis BA, BPI, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2021

Appeal Ref: APP/C1435/W/21/3271731

Barn Farm, Gateway on left 300 metres up Parsonage Lane, going north of Chiddingly BN8 6HF

- 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 J & H Wilsdon Agriculture against the decision of Wealden District Council.
 - The application Ref WD/2021/7007/AD, dated 12 February 2021, was refused by notice dated 17 March 2021.
 - The development proposed is described as erection of a steel framed, timber clad building to provide facilities for staff for vineyard and sheep/land wilding work, machinery and produce storage, workshop.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The description of development set out above is taken from the application form. It differs from the shorter description used in the appeal form. That said, I do not consider that these differences are significant in the context of this appeal.
3. The appellant has drawn attention to an appeal decision¹ in which the Inspector concluded that there was no power under the prior approval provisions for agricultural buildings to determine whether the proposed development would fall within the description of the relevant class of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO). In reaching that view, the Inspector had regard to case law in *Marshall*². However, subsequent case law³ has established that it is lawful for a Council to decide whether or not a proposal such as this falls within the description of the relevant class, which is what Wealden District Council has done in this case.

Main issue

4. The main issue is whether the proposal is within the scope of the development described in Schedule 2, Part 6, Class A of the GDPO.

¹ APP/X1545/W/20/3254349

² R (oao Marshall) v East Dorset DC and Pitman [2018] EWHC 226 (Admin)

³ New World Payphones Ltd v Westminster City Council [2019] EWCA Civ 2250 and R (oao Smolas) v Herefordshire Council [2021] EWHC 1663 (Admin)

Reasons

5. Class A of Part 6 of the GPDO makes provision for the erection of a building which is reasonably necessary for the purposes of agriculture on agricultural land comprised in an agricultural unit of 5 hectares or more. There is no dispute that the land holding, of which the appeal site forms a part, is in excess of 5 hectares. The appellant intends to establish an enterprise that would include viticulture on the most suitable land, with the rest of the land (including areas of woodland) being managed in ways that would promote wildlife.
6. The terms "*agricultural land*" and "*agricultural unit*" are defined within Part 6 of the GPDO:
 - "*agricultural land*" means land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden;
 - "*agricultural unit*" means agricultural land which is occupied as a unit for the purposes of agriculture....
7. The landholding has the appearance of farmland, comprising open grassland interspersed with woodland. At the time of my visit, there was no evidence of any agricultural activity taking place. To my mind that factor is not determinative on its own because some agricultural activities may be intermittent, for example if livestock is moved elsewhere for a time. It is also necessary to have regard to the written evidence. The appellant's statement of case makes clear that the proposed building would support the new enterprise described above. It is stated that an offer for the purchase of the land has been accepted. However, it is not suggested that the transfer of ownership has taken place or that the appellant is currently carrying out any activity on the land, agricultural or otherwise, or that the land is currently occupied by the appellant.
8. The appellant's site ownership certificates confirm that notices have been served on two persons who were owners of part of the land and on one agricultural tenant (Barn Farm Estate Management). The appellant states that, historically, the sheep that were kept on the land were taken off in winter because there was no building. Whilst that may be so, there is no evidence from Barn Farm Estate Management or the appellant that the land is still in its previous use for agriculture for the purposes of a trade or business. Having regard to the lack of such evidence, together with the advanced stage the sale process has reached and what I saw on site, it appears to me to be likely that any agricultural activities formally carried out by the agricultural tenant have ceased.
9. Whilst the subject land may well have been agricultural land in the past, the evidence before me indicates that it is not currently agricultural land as that term is defined for the purposes of Class A. It follows that the proposal cannot benefit from the permitted development rights granted by Class A of Part 6.

Other matters

10. The Council also has concerns about the siting and design of the proposal. However, in view of my findings on the main issue, it would not be appropriate for me to comment on those matters.

Conclusion

11. For the reasons given above, the appeal should be dismissed.

D Prentis

Inspector