



Appeal Decisions

Site Visit made on 14 October 2021

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal A: APP/G5180/W/20/3256137

Sky Farm, Land at New Years Lane, Knockholt TN14 7PQ

- 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.
 - The appeal is made by Samuel Harii against the decision of London Borough of Bromley.
 - The application Ref DC/20/01279/AGRIC, dated 9 April 2020, was refused by notice dated 13 May 2020.
 - The development proposed is an agricultural barn.
 - This decision supersedes that issued on 4 March 2021. That decision on the appeal was quashed by order of the High Court
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Appeal B: APP/G5180/W/20/3259004

Sky Farm, Land at New Years Lane, Knockholt TN14 7PQ

- 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.
 - The appeal is made by Samuel Harii against the decision of London Borough of Bromley.
 - The application Ref DC/20/01690/AGRIC, dated 15 May 2020, was refused by notice dated 2 July 2020.
 - The development proposed is an agricultural barn.
 - This decision supersedes that issued on 4 March 2021. That decision on the appeal was quashed by order of the High Court
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Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed and prior approval is given under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 for an agricultural barn in accordance with the application Ref: DC/20/01690/AGRIC, dated 15 May 2020, and shown on the plans submitted with it, subject to the relevant requirements set out in Part 6, Class A and the following condition:
 - 1) No site clearance, preparatory work or development shall take place until a scheme for the protection of nearby trees (the tree protection plan), including a timetable for its implementation, and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing

by the local planning authority. The tree protection plan shall be carried out as approved.

Preliminary Matters

Legislative Context

3. Both applications were submitted under the provisions of Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Paragraph A of Class A allows the carrying out, on agricultural land comprised in an agricultural unit of five hectares or more in area, of works for the erection of a building. Such development must be reasonably necessary for the purposes of agriculture within that unit.
4. Development permitted by Class A is also subject to various conditions, one of which is that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building: Condition A.2.(2)(i).
5. Condition A.2.(2)(iii)(cc) stipulates that the development must not begin before the occurrence of the expiry of 28 days following the date on which the application under sub-paragraph A.2.(2)(ii) was received by the local planning authority without it making any determination as to whether such approval is required or notifying the applicant of their determination.

Background

6. These appeals follow appeal decisions made on 4 March 2021 for identical development proposals. These were allowed on the grounds that it was considered that neither had been determined within the 28 day statutory period and that prior approval was deemed to be given. However, the High Court subsequently quashed these decisions, together with associated costs decisions, finding that the Council had notified the appellant of its decision that prior approval would be required within the statutory period. This matter is therefore settled.
7. These current appeals and associated costs applications are now being re-determined as the previous decisions have no status in law. I shall determine them again on the basis of the evidence before me and on their individual merits.

Other Preliminary Matters

8. Both planning applications and appeals were made by Samuel Harii. Although there has been a request to change this, I have had no formal confirmation from Samuel Harii that this may take place. I have therefore used this name in the banner headings above. That said, it should be noted that any planning permission runs with land rather than an individual.
9. Applications for costs by the appellant against the London Borough of Bromley are the subject of separate decisions.
10. Notwithstanding the photographic evidence that has been provided, I have based my decisions on the submitted plans.

Main Issues

11. The main issues in respect of both appeals are;

- Whether or not the proposed buildings would comply with the conditions and limitations of Class A of Part 6 to Schedule 2 of the GPDO, with particular regard to whether or not they would be carried out on agricultural land within an agricultural unit and are reasonably necessary for the purposes of agriculture within the unit; and
- if so, whether or not prior approval can be given having regard to the siting, design and external appearance of the buildings.

Reasons

Conditions and Limitations of Class A

Agricultural Land and Unit

12. The appeals relate to a large, irregularly shaped, parcel of predominately open land known as Sky Farm. From the evidence, Sky Farm is around 5.6 hectares in size but is split into three areas (Areas 'A', 'B' and 'C'). Area A covers a large central section of the land. Area C extends northward from Area A in a broadly rectangular fashion. Area B comprises a considerably smaller pocket of the land to the north east of Area A, close to New Years Lane. Appeal A seeks prior approval for the construction of a new building at Area B. Appeal B seeks prior approval for the construction of a new building at Area A.
13. Part D.1 to Class A shows that 'agricultural land' means land which, before development permitted by this Part is carried out, is in use for agriculture and which is so used for the purposes of a trade or business. 'Agriculture' as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended) ('the 1990 Act') includes, amongst other things, the breeding and keeping of livestock. An 'agricultural unit' is defined for the purposes of Part 6 as agricultural land which is occupied as a unit for the purposes of agriculture but includes specified dwellings.
14. Sky Farm is divorced from surrounding farms. Nevertheless, from the evidence it is currently used to graze a number of sheep which are bred and then sold for breeding purposes. These were indeed present at my visit. It would also appear that repairs to fences have been carried out to facilitate this use. There is no substantive evidence before me to show that the current use of Sky Farm is anything other than for the productive process of agriculture. The current use of the land is therefore agricultural within the meaning of the 1990 Act.
15. The appellant's submitted Business Plan shows that Sky Farm could accommodate between 70 and 120 sheep by 2023. Even with the presence of established trees, this does not seem to be unrealistic given the amount of open land at the farm. Commercial viability is not a prerequisite to permitted development rights under Class A of Part 6 to Schedule 2 of the GPDO. However, the Business Plan also shows that the appellant has made a considerable initial investment in this agricultural use and that there is a clear expectation of reasonable, and increasing, yearly financial returns.
16. I am therefore satisfied that the existing agricultural enterprise is not carried out on a hobby basis. Rather, that it is the intention of the appellant to operate

it as a growing trade or business and as an occupation to earn a living. Taking this, and all of the above into account, Sky Farm constitutes 'agricultural land' within the meaning of Part D.1 of Class A.

17. Turning to the agricultural unit, Sky Farm Limited has been registered with Companies House as an agricultural business. This company appears to have a traditional, indefinite term, lease of the land at Sky Farm. There is therefore security of tenure. Furthermore, the current agricultural use does not appear to be temporary. Taking everything together, regardless of the appellant's previous agricultural experience, I am also satisfied that Sky Farm comprises land which is occupied as a unit for the purposes of agriculture.

Reasonably Necessary

18. Both proposed buildings would have a width of around 17 metres, a depth of around 9 metres and a height of around 4.8 metres. Their individual footprint would therefore be approximately 153sq.m in area. They would be constructed of a light gauge steel portal frame with steel box profile sheets for walls and roof. Amongst other things, buildings would allow for the storage of hay and farming equipment and machinery, a dry feed hopper, a workshop and an area for sheep during lambing, breeding or treatments throughout the year.
19. Given that Class A permits a new building of up to 1,000sq.m, the individual size of proposed buildings is somewhat irrelevant in this particular assessment. However, the associated engineering operations required to construct them would not be significant in scale. Further, each building would occupy only a small area of the sizeable agricultural unit. I have no substantive evidence to show that features within the proposed buildings, including the area for the storage hay bales, would be excessive or unnecessary for the agricultural intentions of the appellant or indeed those of future occupiers at this unit. Consequently, the overall size of each building would not be disproportionate to the agricultural use the land might reasonably be put to.
20. In addition, a utilitarian structure of this nature to provide for suitable standards of welfare for livestock as well as enhanced security is not uncommon or unreasonable at agricultural units. It would also appear fundamental to the growth of the business at Sky Farm in line with the aspirations of the Business Plan.
21. The 'reasonably necessary' assessment does not carry with it any connotation of profit or business viability. Taking everything together, a building of the size and nature proposed under either appeal would be reasonably necessary for the use of this particular land as an agricultural unit. The existence of planning permissions for other agricultural developments in the surrounding area does not alter this finding.

Overall Finding – Conditions and Limitations of Class A

22. For the reasons given, the proposed buildings would be erected on agricultural land comprised in an agricultural unit of five hectares or more in area. Buildings of the size and nature proposed would also be reasonably necessary for the purposes of agriculture within the unit. As such, they would comply with these particular conditions and limitations of Class A of Part 6 to Schedule 2 of the GPDO.

Siting, Design and External Appearance

23. Sky Farm is positioned on the north western side of New Years Lane. Established trees run along the length of its south eastern boundary, separating the agricultural unit from the narrow carriageway. A large woodland bounds a section of the unit's south western side and there are other patches of woodland within the wider area. Divorced from settlements, the immediate area is distinctly rural and verdant in character. Surrounding trees, some of which are protected by Tree Preservation Orders, are of significant visual amenity value and contribute positively to this rural character. Furthermore, the agricultural unit falls within Norsted Valley Woods Site of Interest for Nature Conservation (SINC) and the Green Belt.

Appeal A

24. The building proposed under Appeal A would be set back from the carriageway and served by an existing access track. Nonetheless, regardless of the exact distance, the building would be sited within close proximity of several protected trees which appear to be in good health. It is therefore highly likely that it would be within their root protection areas (RPAs). Whilst relatively small scale, I have no substantive evidence before me to show that engineering operations during construction would not be harmful to the health of these trees including their associated RPAs. Such harm would be reinforced by the physical presence and use of the building following construction.
25. Consequently, although smaller than other nearby barns, I cannot be certain that the siting of the building would not result in harm to the long term health, or indeed the removal, of several established trees. There is therefore potential for the proposal to cause unacceptable harm to the verdant, rural, character of the area. Moreover, it has not been shown that such trees are not of nature conservation value in terms of habitat. Accordingly, their loss could be significantly harmful to the ecological value of the SINC. This potential harm would not be outweighed by benefits to the local community. Neither would it be appropriate to attempt to mitigate it through the imposition of a condition. This reinforces my concerns regarding the proposal's siting.
26. For these reasons, I cannot conclude that the building proposed in Appeal A would not have an adverse impact on the area by virtue of its siting. In addition, it would conflict with Policy 69 of the London Borough of Bromley Local Plan 2019 (LP) insofar as it seeks to restrict significant harm to the nature conservation interest of a SINC unless certain preconditions are met. The proposal therefore fails to meet the conditions set out Condition A.2.(2)(i) to Class A.

Appeal B

27. The building proposed under Appeal B would be set back from New Years Lane, well away from the trees along this carriageway. Such trees would therefore not be harmed and would provide a degree of screening. The proposal's utilitarian appearance, with green walls and roof, is also typical of agricultural development and its modest scale would not be dominant or oppressive. Consequently, the proposal would not appear discordant when viewed from New Years Lane or when glimpsed from certain vantage points along the surrounding public footpath network. On the contrary, it would assimilate successfully into this rural, agricultural, setting.

28. I appreciate that the nature conservation features within the SINC include habitats other than woodland. However, the proposal would be sited upon a relatively small part of the field at Area A. I have no substantive evidence to show that this land is of any ecological value. As such, particularly given the proposal's siting away from protected trees, I am not persuaded that the building would cause significant harm to important flora or fauna. Furthermore, given the nature of the proposed building, I am also not persuaded that there are realistic alternative locations for it away from the agricultural unit outside of the Green Belt.
29. For these reasons, I conclude that the building proposed in Appeal B would not have an adverse impact on the area by virtue of its siting, design or external appearance. There would be no conflict with Policy 69 of the London Borough of Bromley Local Plan 2019 (LP) insofar as it seeks to restrict significant harm to the nature conservation interest of a SINC. The proposal therefore meets the conditions set out Condition A.2.(2)(i) to Class A.

Other Matters

30. The lawfulness of works to trees and the formation of accesses at Sky Farm falls outside of the remit of these decisions. This is also true for concerns relating to the planting of new trees at the farm.
31. Concern has been raised that proposed buildings could set a precedent for similar developments in the area and could facilitate a residential use at Sky Farm in the future. However, the Council would retain the right to consider such developments on their individual planning merits, against relevant legislation and planning policy, as I have done here. This, therefore, does not alter my findings.

Conditions

32. I have considered the conditions put forward by the Council. I have amended the wording where necessary in the interests of clarity and simplicity.
33. Given the sensitive location of Sky Farm, which is within a SINC and close to protected trees, a condition requiring a tree protection plan and associated arboricultural method statement is reasonable. This condition relates to the matters of prior approval insofar as it would ensure that the proposal's siting would not unduly harm the character of the area or biodiversity. Such a condition may be similar to those imposed on other developments which are not directly comparable to that under Appeal B. Nevertheless, it is necessary following assessment of this proposal on its own individual merits and in the light of relevant legislation.
34. The Council has requested a condition relating to surface water drainage and a condition requiring details of vehicle off-loading, parking and turning within the site. These are in the interest of flooding and highway safety respectively. I am not persuaded that such conditions relate to the matters of prior approval. In any event, I have no substantive evidence to show that the proposal would be particularly susceptible to flooding or increase the risk of flooding off-site. Nor that it would be prejudicial to highway safety. Consequently, these suggested conditions would not meet the test of necessity.

Conclusions

Appeal A

35. Prior approval of the siting, design and external appearance of the building is required. For the reasons set out above, the proposal's siting would be unacceptable. Consequently, prior approval is refused. The proposal is therefore not permitted development under the provisions of Class A of Part 6 to Schedule 2 of the GPDO and the appeal is dismissed.

Appeal B

36. Prior approval of the siting, design and external appearance of the building is required. For the reasons set out above, the proposal would be acceptable in this regard. Accordingly, it is permitted development under Class A of Part 6 to Schedule 2 of the GPDO. The appeal is therefore allowed, subject to the identified condition, and prior approval is given.

M Heron

INSPECTOR