



Appeal Decision

Site visit made on 1 February 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2022

Appeal Ref: APP/E2734/W/21/3283525

Field 8262 East Of Swindon Lane, Kirkby Overblow

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 6, Class A of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr S Fawcett against the decision of Harrogate Borough Council.
 - The application Ref 21/00604/PNA, dated 11 February 2021, was refused by notice dated 9 April 2021.
 - The development proposed is an agricultural building for the storage of machinery, equipment, feed stock, fertilizer and grass crops.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 6, Class A of the GPDO permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.
3. Paragraph A.2(2)(i) states that for development permitted by Class A the developer must, before beginning the development, apply to the local planning authority for determination as to whether its prior approval will be required as to the siting, design and external appearance of the building.
4. Therefore, there are two stages to the process. The question of whether the proposal is permitted development needs to be dealt with before the question of the prior approval matters is addressed.

Main Issues

5. The first main issue, therefore, is whether the proposal would be permitted development, having particular regard to whether the building would be reasonably necessary for the purposes of agriculture. If so, the second main issue is the effect of the proposal on the appearance of the surrounding area, having regard to its siting, design and external appearance.

Reasons

6. The appellant's holding extends to some 24.2 hectares of land to the south of the village of Kirkby Overblow and is of sufficient size for the purposes of Class A. The other tests to be considered, therefore, are whether the land is in agricultural use, whether that land forms part of an agricultural unit, and

whether the proposed building is “reasonably necessary for the purposes of agriculture within that unit.”

7. Paragraph D.1.(1) of Schedule 2, Part 6 of the GPDO defines “agricultural land” for the purposes of Class A as land “in use for agriculture and which is so used for the purposes of a trade or business...”. An “agricultural unit” is so defined as “agricultural land which is occupied as a unit for the purposes of agriculture...”
8. The appellant became the owner of the land in 2018. I understand that prior to this it formed part of a wider holding owned by a local farmer, and that since the purchase, the former owner has continued to farm the holding. A letter submitted with the application states that the land is intended to be used for grazing of sheep and an annual hay crop. The appellant indicates that the land is currently being grazed by 20 highland cattle, with 50 sheep to be added in the near future. The Council and some interested parties refer to a herd of 200-250 sheep, but such figures are not referred to in the submissions for the appellant, which is the evidence I have based my considerations upon.
9. The grazing of sheep and cattle, and production of hay, are practices which fall under the definition of agriculture set out at s336(1) of the Town and Country Planning Act 1990 (as amended). However, for the proposal to fall within permitted development under Part 6, Class A, the agricultural use must form part of a trade or business, rather than agriculture undertaken solely on a hobby or ad-hoc basis.
10. The appellant’s evidence in this regard includes statements of purchases already made, namely the highland cattle at £35,000, new fencing at £20,000 and a tractor for which a cost is not given. The appellant also makes statements of intent with respect to acquiring additional livestock, but that the proposed building is not to be used for housing livestock. The appellant further states that the production of hay will require secure storage on the land, as will the necessary equipment and materials, including a tractor, cutting equipment, cultivating machinery and fertiliser. It is stated that equipment is presently being stored at an industrial estate some 7km away. Additional statements from the appellant refer to the potential of growing other crops on the land and the keeping of other livestock.
11. At my site visit, I saw no livestock grazing the land, nor any other indication of agricultural activity, though given the size of the holding, livestock may have been unsighted from my vantage points. The appellant’s photographs showing cattle being introduced into a field are not dated or captioned and whilst they appear to show a field in the general area of the appeal site, they do not contain sufficient identifying features that would confirm they were taken at the appeal site. Consequently, I do not regard these as persuasive evidence of ongoing agricultural activity.
12. This notwithstanding, there is little evidence of the stated activity of the appellant amounting to a functional trade or business. Despite the claimed outlay of large sums on machinery and livestock, there is no detail as to how the appellant intends to operate a functional enterprise and ultimately recoup this investment and/or become profitable. Purchase of a tractor or the erection of new fencing is not of itself evidence of a trade or business being carried on, nor is the fact that the holding is DEFRA registered. Moreover, the numbers of livestock are modest and in the case of the sheep, are only intentions at this stage, with no guarantee that they would be acquired by the appellant.

13. I recognise that new farming enterprises may start at a modest scale, and may not be initially profitable due to start-up costs; however, in such cases, it would be expected that evidence would be provided, such as through a business plan or similar, of how it is intended to operate the business, when it would become profitable and its prospects for being viable in the long term. No such evidence has been adduced by the appellant in this respect.
14. Conversely, there have been a considerable number of comments from interested parties. Many of these dispute that a viable farming operation exists, and argue that the appellant's existing and intended levels of investment are not commensurate with the level of farming activity which is proposed. The parish council further points out that at the time of the application, the land was being farmed by the previous owner of the land who cut hay from it, whilst it is also stated that the land has been farmed for decades without the need for an agricultural building.
15. Overall, the evidence before me from the appellant is limited and in some respects aspirational. The levels of agricultural activity outlined by the appellant are modest and there is no clear indication that they form part of a trade or business, or would do so in the future. In the absence of such evidence, I find that the proposal would not relate to agricultural land forming part of an agricultural unit within the meaning of the GPDO.
16. In terms of whether the proposal would be reasonably necessary, other comments from interested parties suggest that a barn is not required for the amount of livestock indicated, or at least not one of the size proposed, and it would not be financially viable to erect one at the stated level of farming activity. It is also pointed out that cutting of hay on the land would be more cost effectively undertaken by a local agricultural contractor, rather than investing significant sums to purchase and store machinery used only once or twice a year. Despite the appellant's criticisms of these comments, in my view they raise reasonable points, which the appellant's evidence does not address in any substantive way.
17. Rather, the appellant argues that the way in which the land is used is his choice and should not be fettered, and that it is not unreasonable for a holding of this size to have a barn, regardless of the type of agriculture being pursued. I accept that how the appellant invests his money is his choice; however, that the appellant may have outlaid significant sums of money is not evidence of a functional agricultural enterprise, nor is it the case that a proposal should be viewed favourably solely on the basis that the holding is a certain size.
18. The appellant also cites the need to securely store machinery and stock, referring to the theft of equipment and livestock in the area. However, no equipment or materials are presently stored on the land in an unsecured manner, the indication being they are stored off-site. As such, there is no existing security risk on the site. Also, given the building is not intended for housing livestock, it would not provide a security function in this respect.
19. I also have no specific details of the size of equipment or the quantity of materials in question to judge whether the proposed size of the barn would be necessary to store them. Nor has it been demonstrated that a building on the land is the only means by which materials could be secured. Therefore, I do not regard the stated security needs as substantive evidence of the proposed building being reasonably necessary for the purposes of agriculture.

20. More generally, having regard to the Council's comments and those of interested parties versed in farming practices, the proposed building would be well in excess of the size that would be required to serve the stated levels of activity on the land. The appellant states that no-one would invest in a building that was not absolutely needed. However, if other genuine reasons exist for the building to be the size that is proposed, they have not been advanced in evidence by the appellant. Therefore, even if I were to accept that an agricultural business exists, I am not persuaded that the proposal, at the size proposed, would be reasonably necessary for the purposes of agriculture.
21. For these reasons, therefore, I find that it has not been clearly demonstrated that the land in question is agricultural land as defined by the GPDO, that it is part of an agricultural unit of 5 hectares or more, or that the erection of the proposed building is reasonably necessary for the purposes of agriculture. I therefore conclude that the proposal does not fall within the scope of permitted development outlined in Schedule 2, Part 6, Class A of the GPDO.
22. Having reached this conclusion, it is not necessary for me to consider whether to grant prior approval for the siting, design, and external appearance of the proposal, as this would have no bearing on the outcome of the appeal.

Other Matters

23. The appellant refers to other agricultural buildings within the local area. However, their presence is not relevant to consideration of whether the proposal constitutes permitted development under Part 6, Class A. Similarly, the location of the site in the Green Belt is not determinative of whether the proposal would accord with the requirements of the GPDO.
24. The Council refers to two subsequent prior approval applications made on the land for agricultural buildings, one of which was refused in September 2021, the other indicated to have been recommended for refusal. Neither of these applications is ultimately determinative of the appeal before me, which I have considered on its own planning merits.
25. I have had regard to other matters raised by interested parties in correspondence; however, given my findings in respect of the main issues, there is no need to consider these in further detail as they would not alter my overall decision.

Conclusion

26. For the reasons outlined, I conclude that the proposal does not constitute permitted development under Schedule 2, Part 6, Class A of the GPDO. Therefore, the appeal should be dismissed.

K. Savage

INSPECTOR