
Appeal Decision

Site visit made on 17 February 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2022

Appeal Ref: APP/X1545/W/21/3274665

Creeksea Place Farm House, Ferry Road, Burnham-On-Crouch CM0 8PJ

- 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 Mr John Wilsdon against the decision of Maldon District Council.
 - The application Ref AGR/MAL/21/00354, dated 3 April 2021, was refused by notice dated 4 May 2021.
 - The development proposed is to 1) Take off top soil from 1/2 acre of field hollow, 2) Excavate pond up to 2 metres in depth, 3) Lay drainage course, 4) Landscape subsoils level over the surrounding 1/2 acre, 5) Return top soils back into place, 6) in the autumn stabilise banks with grass and suitable saplings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 6, Class A(b) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) relates to any excavation or engineering operations, to be carried out on agricultural land within an agricultural unit of 5 hectares or more, and which are reasonably necessary for the purposes of agriculture with that unit. Condition A.2(2)(c)(i) confirms that if the proposed works are for the carrying out of excavations then prior approval is required. The appellant made an application for prior approval to the Council, which was refused, and which is now the subject of this appeal.
3. The appellant has made it clear that they do not intend to carry out the works and that they are primarily interested in determining whether or not the appeal site constitutes agricultural land, for planning purposes. There are other avenues to secure such a determination. I am required to determine this appeal as made, considered against the reason for refusal as set out on the Council's Decision Notice.

Main Issues

4. It is common ground, and I agree, that the appeal site is in excess of 5 hectares. This applies whichever of the two agricultural units are considered (see below). The main issues are therefore whether or not:
 - the appeal site is agricultural land comprised in an agricultural unit; and,

- the proposal is reasonably necessary for the purposes of agriculture within the site.

Reasons

Agricultural land and agricultural unit

5. The GPDO does not define 'agriculture' but The Town and Country Planning Act 1990 (as amended) defines 'agriculture', at s336(1), as including a range of mostly self-explanatory activities¹. In coming to a view on the development proposed, it is reasonable to use this definition.
6. The proposed operations would be on a field that has been planted and where crops are beginning to grow, which is both self-evidently agricultural in nature and is covered by the s336(1) definition.
7. The field sits within a larger agricultural unit. The appellant maintains that, for the purposes of this appeal, the unit comprises an area of mostly open land bordered by a railway line to the north, a marina and associated land to the east, the estuary to the south, and a mixture of private properties, Creeksea Place Caravan Park, and the Creeksea Place Farm complex to the west. That area of land includes ploughed or planted fields, an existing small pond, a small coppice, a further small planting of sapling trees, and a fenced off area hosting goats. These are all in agricultural use, or ancillary to agricultural use. However, the land also includes a small area for overspill car parking for the adjacent farm complex, and a large area of closely mown grass that is used for a mixture of disk and foot golf. These activities are not agricultural in nature and, combined, comprise a significant proportion of the agricultural unit, as defined by the appellant.
8. The Council maintains that the relevant agricultural unit also includes a complex of farm buildings, to the west. The farm complex comprises a mixture of holiday lets, a gym/spa, a café, a house, and associated car parking. Although the only access to the open part of the site is through the farm complex, which suggests that a functional relationship may exist between the two areas, I have not been provided with evidence that any of the buildings or land within the complex is used for the storage of agricultural materials, produce or machinery. I did not observe any such storage or activity on my site visit. Therefore, with the possible exception of the main house, which could operate as a farmhouse, it would seem that none of these uses are agricultural in nature.
9. Without further evidence, it is not possible for me to conclude definitively whether or not the farm complex should be included in the agricultural unit. However, the appeal does not turn on this issue because, in either scenario, the agricultural unit is not solely in agricultural use. It appears, on the evidence before me, to comprise a mixed use that includes extensive leisure and commercial activities. The proposed works would not, therefore, be on agricultural land comprised in an agricultural unit, and thus fail to meet the definition of Class A works as set out in the GPDO.

¹ "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes

Reasonably necessary for the purposes of agriculture

10. The proposed works would be to create a pond/lake within the south east corner of the application site. This is part of the site that is used for agriculture. The proposed works would be for drainage purposes to help with creating suitable soil and conditions for arable farming in a part of the agricultural unit that is currently prone to flooding. The Council has raised concerns that the pond would not provide sufficient water drainage to be a solution to the drainage issues and that a land drain would normally be installed. However, I have been provided with no substantiated evidence that the proposed pond, even if not standard practice, could not provide a solution, or at least a part solution, to the current drainage issues. I am also conscious that the Planning Practice Guidance finds that mitigating flood risk to agricultural activity is increasingly important to provide resilience against climate change².
11. I am also mindful that the pond would have scenic qualities. In the context of the leisure and commercial facilities provided on the site, there would be some non-agricultural value from the scenic qualities of the pond. However, this does not negate the value the works would have for agricultural purposes, and I view the scenic qualities simply as additional benefits. A further benefit of the pond would be habitat diversification. As with the scenic qualities, I do not see this as negating or reducing the value to be attributed to any value the works would have for agricultural use. In addition, I note the appellant's contention that re-wilding is an increasingly important objective for farmland, promoted by the government.
12. Overall, it has therefore been demonstrated that the proposed works are reasonably necessary for the purposes of agriculture within the agricultural unit, whichever unit is adopted.

Conclusion

13. It has been demonstrated that the works are reasonably necessary for the purposes of agriculture within the agricultural unit. However, it has not been demonstrated that the proposed works would take place in a solely agricultural unit. There only needs to be a failure to comply with one element to fall outside the scope of Class A of Part 6 to Schedule 2 of the GPDO. I therefore conclude that the appeal be dismissed.

O S Woodward
INSPECTOR

² Paragraph: 116 Reference ID: 13-116-20180615