



Appeal Decision

Site visit made on 1 February 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/N4720/W/21/3282622

The Ferns, Tithe Barn Lane, Bardsey, Leeds, LS17 9DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
 - The appeal is made by Mr and Mrs J Broadbent against the decision of Leeds City Council.
 - The application Ref 21/06056/DAG, dated 11 July 2021, was refused by notice dated 5 August 2021.
 - The development proposed is a single storey agricultural building.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for an award of costs were made by both main parties in respect of the other. Those applications are the subject of separate Decisions.

Background and Main Issues

3. 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, works for the erection of a building which is reasonably necessary for the purposes of agriculture within that unit. GPDO paragraph A.1. (a) to (k) sets out a range of limitations for which failure to meet restricts the permission granted at Class A.
4. Paragraphs A.2.(1) to (7) of Class A set out a range of conditions that the permission granted by Class A is subject to. Amongst these, paragraph A.2.(2) states that the developer is required to apply to the local planning authority for a determination as to whether the prior approval [of the decision maker] will be required as to the building's siting, design and appearance.
5. The appellants rely initially upon the judgements of *Keenan*¹ and *Marshall*² and an appeal decision³ elsewhere within the Leeds City Council area which set out that it is not the purpose of such applications to determine whether or not a proposal is permitted development. The Council's conclusion that the proposed development does not benefit from being permitted development was based, the appellant states, upon an assessment of the proposal as if it were an application for planning permission, not for a determination as to whether the prior approval of the Council would be required.

¹ *Keenan v Working BC & SSCLG* [2017] EWCA Civ 438

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

³ APP/N4720/W/19/3221705

6. The Council's case, as per the more recent Court of Appeal *New World Payphones*⁴ and High Court *Smolas*⁵ judgements, is that as the appellant has not demonstrated that the proposed building would be reasonably necessary for the purposes of agriculture within that unit, the development cannot be permitted development. Although the Council broadly accept that the proposed development would not fall foul of the limitations, exclusions or conditions set out at paragraphs A.1.(a) to (k) or A.2.(1) to (7) of the Order, as they do not consider the proposal to be permitted development those matters for prior approval set out under paragraph A.2.(2)(i) have not been considered further.
7. Although the New World Payphones judgement considered development under a different class to that sought in this instance, I am satisfied that its material points refer to the Order generally, and not specifically to one particular class or part. The judgement in *Smolas* is more recent than that of *Keenan* or *Marshall*, whilst that of *New World Payphones* was by a higher authority than that of *Marshall*. Together, *New World Payphones* and *Smolas* establish that the decision maker is bound to consider and determine whether the development otherwise falls within the scope of a particular class of permitted development. I note too, that the appeal case referred to by the appellant pre-dates the *Smolas* judgement and in this respect the weight that I can afford it is limited.
8. The reason for refusal states that the development is not considered to comprise permitted development under Class A of Part 6, as it has not been demonstrated that the proposed building is reasonably necessary for the purposes of agriculture within the unit.
9. Thus, having regard to the above, there is a two-step process; the first being to consider whether the proposed development would constitute permitted development under the terms of Class A of Part 6 of the Order. Should I conclude that the proposals fall within the scope of this particular part of the Order, consideration must then be given to matters relating to the siting, design and external appearance of the building.

Reasons

Class A of Part 6

10. In order to benefit from permitted development (PD) rights for a new agricultural building under Part 6 Class A paragraph A.(a) it has to be carried out on agricultural land comprised in an agricultural unit exceeding 5 hectares in size; and be so used for the purposes of a trade or business. In other words, whether the site is in use as agricultural land and forms part of an agricultural unit, the building must also be reasonably necessary for the purposes of agriculture.
11. The extent of the appellants' land holding extends to approximately 5.8 hectares and four field enclosures which the appellants intend to take over the management of for the growing and sale of hay crops. The smallest field enclosure⁶ had a small stable structure on it at the time of my visit, with two ponies and a goat grazing. Setting aside this smallest field enclosure the three remaining field enclosures would exceed the 5 hectares required for an

⁴ *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250

⁵ *R (Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin)

⁶ Referred to as enclosure 2559 extending to 0.34 hectares

agricultural unit under the requirements of Class A of Part 6. The appellants reiterate that the entirety of the remaining holding would be used for the established agricultural business.

12. However, whilst noting this I am also mindful of an extant planning permission for a stable building⁷ within the same field enclosure⁸ as the proposed agricultural building. The appellants have indicated an intention to implement the extant permission, the site plan for which shows only the stable building's footprint and a narrow margin around it. The building would be sited only a short distance away from the building proposed in the current instance.
13. Although it is stated that with the exception of field enclosure 2559 the entirety of the holding would be used for the agricultural business, the presence of an extant permission for a stable building with limited space around it within a second field enclosure introduces a significant element of doubt as to the split of activities to be carried on within the extent of the 'unit'. The role of the proposed stable building and the existing equestrian use in terms of agriculture, agricultural purposes and the operation of the agricultural holding is not clear. Nor is the demarcation of land within field enclosure 2152 clear between the stabling and equestrian use and the agricultural use.
14. Although the appellants maintain that the agricultural element of the appellant's land would still exceed 5 hectares, for the reasons I have set out above I cannot be certain that an agricultural unit of at least 5 hectares in area would remain, or that at least 5 hectares would remain as agricultural land. Given these uncertainties, I cannot conclude that an agricultural unit of 5 hectares or more would be retained and therefore the proposal would fail to comply with this requirement of Class A of Part 6 of the GPDO.
15. A contractor currently farms the appellant's holding but it is stated that it is the appellants' intention to take on the management of the land. The proposed building would be used for the storage of machinery for the maintenance and cropping of the hay, and the cropped hay as a product. Although the Council take issue with the footprint (too large for the size of the unit) and height (too low for practical use and access by larger tractors) of the building, the GPDO only requires the building to be 'reasonably' rather than 'absolutely' necessary.
16. Albeit not submitted at the outset to accompany this application, the appellants have nevertheless demonstrated that the building could accommodate a range of machinery and equipment used to crop and maintain the land in question. The appellants have also provided evidence to demonstrate that the cropping of hay would provide an income, albeit limited, but as the 'reasonably necessary' test does not carry with it any connotation of profit of business viability the low level of income does not
17. However, whilst these assurances may, in isolation, be capable of demonstrating reasonable necessity, given the particular circumstances and context noted above regarding the balance of uses within the holding, I cannot be certain that the building would be reasonably necessary for the purposes of agriculture or that the agricultural unit would exceed the 5 hectares required by the Order. As such, the agricultural building could not be permitted

⁷ LPA Ref No 19/07525/FU – as shown on site plan for previously approved (LPA Ref No 20/02268/FU) scheme for agricultural building attached as Appendix A to appellant's Final Comments

⁸ Referred to as enclosure 2152

development under Schedule 2, Part 6, Class A of the Order and, as it would not be permitted development, it is not necessary for me to consider the prior approval matters of siting, design and external appearance.

Conclusion

18. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR