



Appeal Decision

Site visit made on 20 April 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Appeal Ref: APP/M3645/W/21/3277261

Puttenden Farm, Haxted Road, Lingfield RH7 6DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mrs Jane Surtees against the decision of Tandridge District Council.
 - The application Ref TA/2021/217/N, dated 10 February 2021, was refused by notice on 11 March 2021.
 - The development proposed is an agricultural storage building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal relates to the refusal of prior approval for the erection of an agricultural building under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'). The submitted plans indicate a new access and turning head to serve the proposed building. Nonetheless the description of development cited on the application form and decision notice relates to the building only. The appeal is determined on that basis, being the development expressly sought by the appellant and determined by the Council.
3. The decision notice is undated. The officer report is dated 11 March 2021 and the appellant's Statement and appeal form indicate the decision was made on that date. I have no reason to conclude that the decision was not made on that date and the appellant informed accordingly. I have therefore proceeded on that basis.
4. The Council's decision indicates that in its opinion the proposed building would not be reasonably necessary for the purposes of agriculture and thus would not constitute permitted development.
5. Notwithstanding the Council's assertion that the proposal is not considered permitted development, the decision also notes that the building is considered harmful to the landscape character of the area. Although the Council's decision notice does not explicitly state that prior approval is therefore refused, looking at the notice as a whole, it would also be reasonable to read it as a refusal of prior approval, were the proposed building considered to be permitted development.

Main Issue

6. The main issue is whether or not the appeal proposal constitutes permitted development by virtue of Schedule 2, Part 6, Class A of the GPDO.

Reasons

7. The proposal falls to be considered under Part 6, Class A of Schedule 2 of the GPDO, which subject to conditions, allows the erection of an agricultural building. Such a building would be permitted development provided it is reasonably necessary for the purposes of agriculture within that agricultural unit.
8. Paragraph A.2(2)(i) of the GPDO requires the developer to apply to the Council for a determination as to whether prior approval would be required for the proposal. It is the appellant's view that this does not impose on the Council a duty to decide whether or not the development in question is, in the first instance, permitted development under Class A.
9. In support of this contention, the appellant refers to the decision in *R (on the application of Marshall) v East Dorset District Council and Pitman* [2018] EWHC 226 (admin), which itself referenced the decision in *Keenan v Woking Borough Council & Anor* [2017] EWCA Civ 438. These decisions concluded that it was not the decision maker's role to consider whether the proposal initially fell within the scope of being permitted development. Instead, the function of the prior approval provisions was said to enable the Council to determine whether its own prior approval would be required for the specified details of that permitted development.
10. However, both those decisions pre-date the judgement in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250, which referenced *Keenan*, but took an alternative view. It found that on an application to a Council for a determination as to whether its prior approval is required, when it is in issue, the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class.
11. The *New World Payphones* judgement was subsequently applied in *R (on the application of Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin), where it was held that the Council did not act unlawfully in deciding that the proposed development would fall outside of the scope of Part 6, Class A and so prior approval should be refused for the proposed development. It was also found that the Council in that case did not err in proceeding to refuse prior approval when determining the prior notification application as to whether prior approval was required.
12. In my opinion, the *New World Payphones* judgment should be preferred to the *Marshall* judgment because it is more recent and from a higher Court. Thus, I conclude that it was permissible for the Council in this current appeal proposal to question whether the building was permitted development.
13. It appears that the absence of any justification or demonstration of the need for the building within the initial application formed the basis of the Council's concerns. The appeal Statement set out some broad reasons to justify the building, but it was only in their final submission that a more detailed breakdown was provided by the appellant. Various items of agricultural

- machinery and vehicles were listed together with a stated need to store hay bales.
14. This detailed breakdown also identified that an intention of the building was to house pregnant ewes during the lambing season and provide livestock accommodation during bad weather. The need for approximately a third of the building's floorspace is justified on such livestock purposes.
 15. In accordance with Paragraph A.1(i) of the GDPO, a building which accommodates livestock, and which is within 400m of the curtilage of a protected building¹ is not permitted development. The appellant has confirmed that the building is within 400m of the curtilage of a protected building but relies on other provisions within the GDPO that allow the temporary use of agricultural buildings to accommodate livestock.
 16. Paragraph A.2(1)(a) of the GPDO controls, amongst other things, the use of an agricultural building and prevents it from accommodating livestock. However, it contains a proviso set out in Paragraph D.1(3). This proviso recognises that there may be circumstances (such as giving birth or to provide shelter against extreme weather conditions) where an existing building within 400m of the curtilage of a protected building can be used as temporary livestock accommodation. It is Paragraph D.1(3) on which the appellant relies for being able to use the proposed building to accommodate livestock in the manner proposed.
 17. The appellant contends that there is no restriction on this provision from applying to proposed buildings. In support of this, it is pointed out that there are no prequalifying statements in Paragraph A.2(1)(a) such as, 'in relation to an existing building'. Furthermore, it is pointed out that the start of Paragraph A.2(1) states that "*Development is permitted by Class A subject to the following conditions....*", and therefore this paragraph not only controls existing development but also development that is proposed.
 18. The wording of Paragraph A.2(1), when read as a whole, implies to me that it is an on-going condition to ensure that once it exists, the permitted development does not evolve into something which is evidently not permitted development. Paragraph A.2(1) does not need the suggested clarifications to be read as applying solely to development that has already been carried out. More specifically, the words 'where development is carried out' at the start of Paragraph A.2(1)(a) seems to clearly imply that it relates to a situation where the permitted development already exists.
 19. To accept the appellant's contention would in effect be to allow an agricultural building, one of whose purposes is to accommodate livestock, to initially be built within 400m of the curtilage of a protected building. This seems to me to undermine the general presumption of seeking to safeguard protected buildings and their occupants in the first instance from such situations.
 20. I have also had regard to the *Marshall* judgement, which is quite clear that these temporary or emergency provisions for livestock accommodation have no place when considering a proposal in relation to Paragraph A.1(i). The judge in

¹ Paragraph D.1(1) interprets a 'Protected Building' as being any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is designed; but does not include (a) a building within the agricultural unit; or (b) a dwelling or other building on another agricultural unit which is used for or in connection with agriculture.

that case noted in paragraph 37 of the judgement that 'I do not accept the Defendant's submission that paragraph D.1(3) should be read into paragraph A.1(i), so that it is subject to the same exception as condition A2(1)(a). In my view, this would amount to an impermissible re-writing of the GPDO'.

21. Accordingly, I do not find the appellant's reasoning stands up to scrutiny. Therefore, it does not lead me to alter my own conclusions or to reach different findings to those in *Marshall*, which clearly establish that Paragraph D.1(3) cannot be read into paragraph A.1(i), which is not subject to the same exception as condition A.2(1)(a).
22. Therefore, as the proposed building is predicated on accommodating livestock and would be within 400m of the curtilage of a protected building it would be contrary to the provisions of Paragraph A.1(i) of the GDPO. As such, it would not be permitted development under Class A of Part 6 of Schedule 2 of the GPDO.
23. As the development is not permitted development for the reasons I have set out above, it is not necessary for me to make any determination on the prior approval matters.

Other Matters

24. I note that the site is within the Green Belt, but this is not a matter for consideration under Schedule 2, Part 6, Class A of the GDPO.
25. I acknowledge that the agricultural unit does not have any other buildings. However, it is open to the appellant to submit a fresh application to the Council to seek approval for a revised development.

Conclusion

26. For the reasons set out above, and having regard to all the matters raised, the appeal should be dismissed.

Stewart Glassar

INSPECTOR