



Appeal Decisions

Site visit made on 27 April 2022

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2022

Appeal A Ref: APP/W3330/W/21/3289971

Field B, Curland, Somerset TA3 5SB

- 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 Mr William Allen against the decision of Somerset West and Taunton Council.
 - The application Ref 15/21/0005/AGN, dated 10 September 2021, was refused by notice dated 1 December 2021.
 - The development proposed is described as "Application for prior notification for the formation and continuation of an access tract at Field B, Curland".
-

Appeal B Ref: APP/W3330/W/21/3289972

Field B, Curland, Somerset TA3 5SB

- 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 Mr William Allen against the decision of Somerset West and Taunton Council.
 - The application Ref 15/21/0004/AGN, dated 14 September 2021, was refused by notice dated 8 December 2021.
 - The development proposed is described as "Application for prior notification for the erection of a general purpose agricultural fodder storage building at Field B, Curland".
-

Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. Applications for costs were made by Mr William Allen against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Preliminary Matters

4. Whilst I have considered each proposal on its individual merits, I have dealt with both appeals in a single document, given that they relate to the same site and raise similar issues, and in the interests of brevity.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits works for the erection, extension or alteration of a building or any excavation or engineering operations which are reasonably

necessary for the purposes of agriculture on units of 5 hectares or more. As set out in the GPDO, 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, and the siting and means of construction of the private way. The local planning authority is required to give the applicant notice within 28 days following the date of received the applicant's application of their determination that such prior approval is required.

6. Four decisions are before me. There are firstly decisions dated 7 October 2021 for Appeal A and 13 October 2021 for Appeal B, confirming that prior approval is required, and then decisions dated 1 December 2021 for Appeal A and 8 December 2021 for Appeal B, refusing permission for the prior approval applications. In each case, it is the first of these decisions which must comply with the timescales set out in Part 6 of the GPDO (e.g.28 days). The period is exclusive so that day 1 is the day following the application date, and the clock stops at midnight on day 28.
7. The decisions stating that prior approval is required were therefore issued within the specified timescales, and indeed the appellant confirmed that the decisions were received shortly afterwards. Based on the evidence before me, I am therefore satisfied that the Council notified the appellant of its determination within 28 days as set out in the GPDO, and prior approval is subsequently not deemed to be granted.
8. There is a lengthy planning history associated with the appeal site. Following recent appeal decisions, the Council accepts that the agricultural unit exceeds 5 hectares. However, there is a dispute between the main parties regarding the size of the appeal site. Although the Council appeared to have previously accepted that this parcel of land was more than 1 hectare in area, the matter has been discussed by both parties as part of the appeal process. Furthermore, the parties disagree on whether the proposed building is reasonably necessary for the purposes of agriculture within that unit, having particular regard to its size.
9. In *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250, the Court of Appeal held that "on an application to an authority for a determination as to whether its "prior approval" is required, the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class of permitted development". Accordingly, I am required to determine whether the proposals comply with the relevant conditions, limitations and restrictions, before considering whether to grant prior approval for the siting, design and external appearance of the building, and the siting and means of construction of the track.

Main Issues

10. The main issues are:

- Whether the proposals would be permitted development under Schedule 2, Part 6, Class A of the GPDO; and
- If so, the effect on the character and appearance of the area, including the setting of the Blackdown Hills Area of Outstanding Natural Beauty (AONB).

Reasons

Whether the proposals would be permitted development

11. As noted above, it is agreed by the main parties that the appeal site forms part of a larger agricultural unit exceeding 5 hectares in size. The appellant owns the appeal site and a nearby piece of land known as Field A, and has lease agreements elsewhere. The appellant stated on the application forms that the agricultural unit is approximately 5.5 hectares, but I understand that additional lease agreements have enabled the size of the unit to be increased to around 10 hectares.
12. The Council has raised concerns regarding the size of the parcel upon which the building would be constructed. The appellant's submissions include detailed notes and calculations, suggesting that the appeal site is larger than 1 hectare. For this exercise, a large part of the site has been subdivided into smaller parcels, and in that regard, the calculations appear relatively straightforward. However, it remains unclear how the smaller areas around the stream have been calculated.
13. The Council has provided its own measurements of the site using different sources, which seem to indicate that the site is in fact noticeably smaller than 1 hectare. Even when accounting for the gradient, I have been presented with limited information to explain the considerable difference between the appellant's and Council's measurements.
14. The appellant has referred to additional land contiguous with the appeal site, which he is currently farming. However, this is not supported by detailed evidence, for example in the form of a lease agreement, and I am unable to ascertain whether this area of land forms part of the agricultural unit. Overall, the information submitted by the appellant is not sufficiently precise and unambiguous. In the absence of further substantive evidence to the contrary, there is therefore no certainty that the site exceeds the 1 hectare threshold and meets the relevant requirements of Part 6, Class A.
15. There are also concerns regarding the size of the proposed building and whether it is reasonably necessary for the purposes of agriculture within that unit, due to the current scale of the enterprise. As part of the previous appeals, the Inspector found that "the quantum of development proposed would, on balance, be commensurate with the role and function of the agricultural unit in this case, having regard to the intentions of the unit". That said, she also noted that "any further development necessary to expand the enterprise as suggested would, in all likelihood, be subject to further scrutiny".
16. Cost information and projections have been supplied as part of the appeals, but this evidence is by no means comprehensive, and does not appear to be substantiated by verified accounts or returns. Whilst I have no reasons to doubt that the appeal building would be used for agriculture, insufficient evidence has been presented to demonstrate that it would be used for the purposes of a trade or business.
17. The appellant has indicated that the building is required for the storage of hay bales and other fodder, and that the footprint of the proposed building reflects that of the various piles of hay currently stored on the land. I appreciate that

there may be a need for the storage of hay bales, which would otherwise carry on being stored outside.

18. However, as the structure would be constructed within 400 metres of the curtilage of a protected building (which is defined as a permanent building normally occupied by people), it could not be used for the accommodation of livestock. Even accepting that there is a need for the proposed building, insufficient evidence has been presented to justify its footprint and height. This is to my mind critical, given that the site lies in a sensitive location, within proximity to the Blackdown Hills AONB.
19. In the absence of further substantive evidence to the contrary regarding the existence of a trade or business, and information to justify the size of the building, other than for hay and fodder storage, I am not satisfied that the developments meet the requirements of Schedule 2, Part 6, Class A of the GPDO. There is firstly no certainty that the parcel of land forming part of the unit is more than 1 hectare in area, secondly that the proposed building is reasonably necessary for the purposes of agriculture and would be so used for the purposes of a trade or business. On this basis, I am not satisfied that the proposals can be regarded as permitted development.

Character and appearance

20. As the proposals fail to accord with the requirements of the GPDO, it is not necessary for me to consider whether to grant prior approval for the proposals, particularly in respect of their effect on the character and appearance of the area, including the Blackdown Hills AONB.

Other Matters

21. My attention has been drawn to other agricultural buildings which appear to have been constructed recently in the area. However, I do not have the full details of the circumstances which led to these proposals being accepted, and cannot therefore be certain that they represent a direct parallel to the proposals before me.

Conclusion

22. For the reasons detailed above, I conclude that both appeals should be dismissed.

S Edwards

INSPECTOR