



Appeal Decision

Site visit made on 19 July 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2022

Appeal Ref: APP/W1525/W/21/3286621

Rectory Paddock, Hyde Hall Lane, Great Waltham, Chelmsford CM3 1BY

- 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 appeal is made by Ms C Bennett against the decision of Chelmsford City Council.
 - The application Ref 21/01800/AG, dated 2 September 2021, was refused by notice dated 29 September 2021.
 - The development proposed is Agricultural storage building providing secure lockable store for machinery and equipment used on the holding and open bays for hay storage and for keeping equipment under cover.
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Decision

1. The appeal is dismissed.

Background & Main Issue

2. Class A of Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants permission for certain types of agricultural development, provided certain criteria and limitations are met. For a new agricultural building, under paragraph A.(a) of Part 6, it must be on agricultural land in an agricultural unit of 5 hectares or more in size, and be reasonably necessary for the purposes of agriculture within that unit.
3. Paragraph D.1(1) of Part 6 states that 'agricultural unit' means agricultural land which is occupied as a unit for the purposes of agriculture. It also states 'agricultural land' means land which, before development permitted is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business. Amongst other things the Council's decision notice states the development is not considered to be permitted development, as the Council is not satisfied the site falls to be considered as agricultural land, or that the building is reasonably required for the purposes of agriculture. The Council's report also states was not satisfied the land extends to 5 hectares in size.
4. The Council has provided copies of two appeal decision letters¹ highlighting the judgements in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250 (the NWP judgement) and *R (oao Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin) (the Smolas judgement). In applying findings from the NWP judgement, in the Smolas Judgement, it was held that

¹ Appeal Refs APP/N4720/W/21/3282622 and APP/B3438/W/21/3272531.

the authority in that case did not act unlawfully in deciding that, as the development would fall outside of the definitional scope of Class A of Part 6, prior approval should be refused for that development. There is no evidence before me that that approach in the Smolas judgement is incorrect. Therefore, taking the above into account, the main issues are:

- (i) whether the proposed development would be permitted development under Schedule 2, Part 6, Class A of the GPDO; and
- (ii) if so, whether the proposed development would satisfy the detailed prior approval matters including the effect of the siting, design and external appearance upon the character and appearance of the area.

Reasons

Permitted development

5. The appeal site comprises part of a triangular piece of land of approximately 1.8 hectares. The appellant utilises another area of land which I am informed is approximately 3.6 hectares in size west of Broads Green. I see no reason why the two, at approximately 4km apart, cannot in principle constitute one holding. The Council has subsequently confirmed it does not dispute the size of the land holding, and I see no reason to disagree.
6. The Council advances that the use of the holding is equestrian and not an agricultural one. At my visit the land at Hyde Hall Lane included amongst other things, a gated access, stable block, small chicken run and shelter accommodating approximately 50 chickens, a trailer, tractor, horsebox, caravan, barn shelter, a small vegetable growing area, and some paraphernalia. However, the significant majority was divided into paddock areas some used by horses or ponies. The land at Broad Green comprised paddock areas, some with horses or ponies, and a small area given over to, amongst other things, a stable, barn shelter, tractors and a mower attachment.
7. While there was some activity that could be identified as being of an agricultural nature, this appeared to occupy a very small proportion of the land. I have not been provided with an agricultural holding number for the land. The use of both land parcels appeared primarily equine. Grazing by horses might be capable of being agricultural in some circumstances. However, given the number of animals and the stated purpose of growing hay, that they are kept for agriculture is not clear from what I saw and the evidence before me.
8. The application form states the building is required to store equipment, machinery and hay bales cropped from the land. I don't doubt that storage of hay bales outside may lead to its wastage, and it is preferred that agricultural machinery is stored in a building. At my visit there was little sign of a hay crop at either site, or recently cultivated bales. Therefore, I have little certainty as to whether this took place and if so how much hay was produced. On-balance, for the reasons outlined above, I cannot be satisfied the land is in an agricultural use before development is permitted, as required by paragraph D.1(1) of Part 6.
9. The appellant's Appeal Statement advises in 2021 that no hay was made. Reference is made to hay previously cropped at other land, as well as from Broads Green and being stored at Broads Green in 2020. Production and the size of an overall holding might well fluctuate over the years. However, there

is no substantive evidence explaining quantities of hay production in recent years, or demonstration that a new building is reasonably necessary to store quantities recently or to be generated on the holding as submitted. The photographs including those of a mower and stored bales, are not sufficient to demonstrate the land is so used as an agricultural trade or business.

10. At my visit the area given over to growing vegetables and for chickens was a very small proportion of the land. These may generate need for the storage for some feed and equipment, but this is likely to be very limited. It is not clear why it is reasonably necessary to have the proposed storage for these components. Given the limited land area and size of those uses any money generated is likely to be small. It is not clear and there is no substantive evidence to demonstrate, the chickens and vegetable growing are operated as, or form part of a business.
11. There may not be a need to demonstrate business is profitable. However, there is no substantive evidence to demonstrate what is taking place is more than just a hobby. I have been provided with no substantive details or analysis of figures or accounts in respect of quantities of hay or other agricultural products produced, or details of any turnover, that demonstrate there is an agricultural trade or business operating at the holding.
12. Therefore, for the reasons set out above, it is not demonstrated that the land is in use for agriculture, that it is so used as a trade or business, or that the building is reasonably necessary for the purposes of agriculture within the unit. Therefore, the proposed development would not be permitted development.
13. The Council states that it is satisfied that the building meets all the other limitations in Paragraph A.1 of the GPDO. Based upon the evidence before me, I see no reason to disagree. However, this does not overcome the concerns I have set out above.

Prior approval matters

14. The Council states that it does not object to the siting, design and external appearance of the building under the conditions set out in Paragraph A.2. However, as I have found that the proposed development would not be development permitted by the GPDO, the detailed prior approval matters do not fall to be considered as part of the determination of this appeal.

Conclusion

15. For the reasons set out above, and having regard to all the matters raised, I conclude that the appeal should not succeed.

Dan Szymanski

INSPECTOR