



Appeal Decision

Site visit made on 5 July 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2022

Appeal Ref: APP/J1860/W/22/3291979

Hillhampton Farm, Hillhampton, Great Witley, Worcester WR6 6JU

- 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 Nigel Drew against the decision of Malvern Hills District Council.
 - The application Ref 21/02080/AGR, dated 11 November 2021, was refused by notice dated 4 January 2022.
 - The development proposed is creation of a track consisting of crushed stone over hardcore base for agricultural vehicles.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for creation of a track consisting of crushed stone over hardcore base for agricultural vehicles (a private way), at Hillhampton Farm, Great Witley, Worcester WR6 6JU in accordance with the application, Ref 21/02080/AGR, dated 11 November 2021, and the drawings submitted with it pursuant to Article 3(1) and Schedule 2, Part 6, Class A, paragraph A.2.(2).

Preliminary Matters

2. I note the caselaw referred to by the appellant, namely the judgements in *Keenan and Marshall*¹. However, subsequent judgements, in *New World Payphones Ltd. and Smolas*², set out how it is legitimate to consider whether development would be permitted development in the first instance, before assessing compliance with any conditions. I have approached the appeal on that basis.
3. The proposal relates to works for the construction of a private way within an agricultural unit in excess of 5 hectares. Schedule 2, 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, of any engineering operations, which are 'reasonably necessary' (rather than essential) for the purposes of agriculture subject to certain restrictions, limitations and conditions.
4. Paragraph A.2(2)(b)(i) of Part 6 states that for development permitted by Class A the developer must, before beginning the development, apply for a

¹ *Keenan v Woking BC & SSCLG* [2017] and *R (oao Marshall) v East Dorset DC & Pitman* [2018].

² *New World Payphones Ltd. v Westminster City Council* [2019] and *R (oao Smolas) v Herefordshire Council* [2021].

determination as to whether prior approval will be required as to the siting and means of construction of the private way.

Main Issues

5. Part 6, Class A, Paragraph A.1 sets out limitations under which development would not be permitted by Part A. The proposal would be on part of the main unit, would not involve a building, would not relate to livestock, fish farming, slurry or plant and machinery, would be no higher than ground level, and would be more than 25 meters from a trunk or classified road. Consequently, the proposal would meet the requirements of all of the limitations set out under Paragraph A.1. The Council does not contest this. In addition, conditions to which development permitted by Class A are subject are listed under Paragraph A.2. I have not been made aware of any issues that would mean the conditions are not capable of being met.
6. Consequently, the main issues are:
 - Whether the proposed development is reasonably necessary for the purposes of agriculture and hence permitted development; and
 - The effect of the proposed siting and means of construction of the private way on the character and appearance of the site and its surroundings.

Reasons

Whether permitted development

7. There is no dispute that the site is part of an agricultural unit in excess of 5 hectares. While there is some tourism activity, the main parties agree, and it was evident from my site visit, that the unit is primarily in use for agricultural purposes. The matter in dispute is whether the proposed development is 'reasonably necessary for the purposes of agriculture' within the unit.
8. At present, an informal track of exposed earth runs the length of the proposed private way. It connects with existing gravelled tracks which lead to the two hubs of the farm, consisting of the glasshouses/poly-tunnels to the west and farm buildings and worker caravans to the east. The proposed private way would formalise the track. The appellant states that the private way is needed to allow modern agricultural machinery and equipment to move easily around the undulating unit, between the two hubs of the farm, and to get crops off site.
9. My site visit was undertaken on a dry day during the summer, but I have been provided with photos which show the poor condition of the track during wetter months. The western section of the informal track follows a steep incline. This would be likely to become muddy and slippery in wet weather, with vehicles churning up the surface as they navigated the slope.
10. The long section of track along the northern boundary is significantly rutted in several places and would be prone to water pooling in the ruts. I also observed that the informal track was wider in these areas where vehicles seem to have tried to avoid the ruts. The proposed private way would resolve these issues allowing vehicles to move around the unit more easily, particularly when the land is wet, and confining movement to the surfaced area.

11. The Council have suggested that alternative routes could be used when conditions on the informal track were difficult, meaning the private way is not needed. However, they have provided no substantive information on alternative routes or their suitability. During my site visit I observed no obvious alternative route which would provide reliable access to all areas of the farm and allow for movement within it. A route to the south of the irrigation pond would involve using a very steep section of slope on one side of the pond, which would be more challenging than the current informal track. Vehicles could use the public highway to move between the two farm hubs, and I observed no evidence to suggest that this would be an issue in terms of mud deposits or highway safety, on this quiet stretch of road. However, this would not address the issue of vehicles moving around within the unit and navigating steep slopes to get from the lower land to the farm hubs on higher land. Given the topography and layout of the site, I have no substantive information which would lead me to conclude that there are existing routes that provide the functionality of the proposed private way.
12. The Council also suggest that lesser works could be undertaken, such as patching the rutted areas, but this may not provide a sustained solution. Furthermore, no such alternative scheme is before me for consideration under this appeal.
13. I conclude that the proposed development would be reasonably necessary for the purposes of agriculture within the unit and so is permitted development under Schedule 2, Part 6, Class A of the GPDO.

Effect of siting and means of construction on character and appearance

14. In terms of siting, the majority of the proposed private way would run along low ground, with higher ground to the south and higher ground, including a ridge of trees to the north. The section of the private way on higher ground to the west would be partly screened by hedgerow. This siting means that visibility of the private way from outside of the site would be limited and much of it follows the contours and natural features of the site.
15. In terms of the means of construction, the private way would be simple and functional, consisting of crushed grey stone over a hardcore base. It would be a permanent feature running for approximately 600 metres and would be more prominent than the existing informal track. However, the private way would be no more than 3.6 metres wide at the surface, which would be at existing ground level. As such, its scale, siting, surfacing and appearance would not be untypical of agricultural private ways which are common within an agricultural landscape.
16. The appeal relates to an application for prior approval, rather than an application for planning permission, so there is no requirement to have regard to the development plan. Nevertheless, I have considered a relevant policy of the South Worcestershire Development Plan (SWDP), but only in so far as it relates to the means of construction and siting, and only in support of my assessment. Policy SWDP25 of the SWDP seeks to ensure that development takes account of and integrates with the character of the landscape setting and conserves primary characteristics. I accept that the proposal would be a significant and artificial intervention in the landscape. However, it would neither affect woodland elements nor hedgerows, key components of local landscape character as defined in the Worcestershire County Landscape Character

Assessment in respect of the 'Wooded Estatelands' landscape type. I note that the landscape here, which is subject to no formal protection relevant to landscape character, is described as one with a somewhat functional farmed appearance also incorporating much human intervention in the landscape in terms of estates. In that respect the proposal would not be obtrusive or discordant and would comply with the relevant provisions of Policy SWDP25 of the SWDP.

17. I conclude that the proposed siting and means of construction of the private way would have an acceptable impact on the character and appearance of the site and its surroundings.

Other Matters

18. I note that the route of the proposed private way is the same as was proposed in a 2019 application for 9 holiday caravans, which was refused. That was an application for planning permission, rather than prior approval, and involved a change of use and installation of caravans which would be much more visible within the landscape than just a private way. Therefore, both the matters for consideration and the impacts are different. Reference has been made to comments on the previous application stating that vehicles crossing agricultural land would not integrate effectively with the existing surrounding landscape character. Whilst that may be the case for domestic vehicles accessing a holiday caravan, it would not apply in the same way to agricultural vehicles.
19. The creation of the private way would inevitably create some noise and disturbance and necessitate some additional traffic associated with bringing in the materials. However, I have been presented with no substantive information regarding what would be a temporary construction phase which would lead me to conclude that this would result in an unacceptable impact on neighbouring living conditions or highway safety.

Conditions

20. This Part of the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for agricultural development on units of 5 hectares or more, which are set out in paragraphs A.2.(2)(v) and (vi). These specify that the development must be carried out in accordance with the approved details and within 5 years from the date of this approval. Notwithstanding this, I have considered the condition suggested by the Council which seeks to secure landscaping. Given my reasoning above, I do not consider that additional landscaping would be necessary.

Conclusion

21. For the reasons given above, the proposal would be permitted development and the effect of the siting and means of construction on the character and appearance of the site and its surroundings would be acceptable. Therefore, the appeal should be allowed and prior approval should be granted.

Helen Davies

INSPECTOR