



Appeal Decision

Site visit made on 24 August 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2022

Appeal Ref: APP/E2734/W/22/3300897

**Fields to the south of Swindon Lane, Swindon Lane, Kirkby Overblow
HG3 1HW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 6, Class A of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr S Fawcett (Ministral Developments) against the decision of Harrogate Borough Council.
 - The application Ref 21/04545/PNA, dated 8 October 2021, was refused by notice dated 10 December 2021.
 - The development proposed is Agricultural Barn.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an amended plan with the appeal which repositions the building within the land edged red so that it is 25m from the road. The building itself would remain as originally submitted. This change would not relate to the substance of any particular concerns expressed by interested parties. Having applied the Wheatcroft Principles, I conclude the development would not be so changed that to grant it would deprive those who should have been consulted on the amendments the opportunity of such consultation. Accordingly, my decision is made on the proposal as amended.
3. 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 works for the erection, extension or alteration of a building which are reasonably necessary for the purposes of agriculture within that unit. Paragraph A.2(2)(i) states that for development permitted by Class A the developer must, before beginning the development, apply to the local planning authority for determination as to whether its prior approval will be required as to the siting, design and external appearance of the building. As such, the question of whether the proposal is permitted development needs to be dealt with before the question of the prior approval matters is addressed.

Main Issues

4. Taking the above into account, the main issues are:
 - whether the proposed development would be permitted development under Schedule 2, Part 6, Class A of the GPDO; and

- 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

Background

5. The appeal site forms part of a holding, amounting to approximately 24.2 hectares (ha). The appellant has submitted previous applications for a building within the land holding. This has included an application, which was dismissed at appeal in March 2022 (Ref:3283525) (hereafter referred to as the 'previous appeal'). The appeal was dismissed, amongst other things, as the Inspector was not satisfied that it had been clearly demonstrated that the land in question was agricultural land, as defined by the GPDO. The Council, and several local residents, have questioned the activities undertaken and whether they amount to a trade or business or hobby farming.
6. Both parties have referred extensively to this previous appeal decision. Moreover, the evidence submitted as part of the appeal scheme before me expands on the information before the Inspector at that time. Whilst having regard to the previous appeal decision as a material consideration, I have reached my own conclusions on the proposal based on the evidence before me.

Whether permitted development

7. For the purposes of Class A, 'agricultural land' is defined as land in use for agriculture and which is so used for the purposes of a trade or business. Agriculture is not defined in the GPDO, but s336(1) of the Town and Country Planning Act 1990 provides examples of agricultural activities. This includes the use of land for seed growing, grazing, breeding and keeping of livestock.
8. The appellant has provided a Business Plan, which was not before the Inspector in the previous appeal. The appellant's initial intentions for keeping of sheep are now suspended, instead the intention is to focus on cattle. The goals in the Business Plan include, amongst other things, stocking the land with selected rare breeds, creating a herd of pedigree cattle to generate an income.
9. The appellant advises that 18 pedigree Highland cattle were purchased in August 2021, which comprised of 10 heifers and 8 bullocks. At the time of the submission of the appeal before me, 8 calves were born. The appellant has provided an invoice for the purchase of a Highland Bull and 4 Bullocks. This, I'm told, would enable a breeding programme with an aim of one calf per heifer every year. The keeping of livestock on the land would be in conjunction with hay. This would be grown on the land and used as winter feed by the cattle with some sold, supplementing the income from the herd.
10. A small number of Highland Cattle were present in the field, that forms part of the appeal site, during my site visit. Moreover, I have no reason to question that the land is, and has been, used for agricultural purposes. This is different to the disputed matter of whether the land is being used for the purposes of a trade or business.
11. The land was purchased by the appellant in 2018, with initial stock purchased, in August 2021, but the only records before me are an undated invoice to Mistral Developments Ltd and a Business Plan for Mistral Meadows dated 2022.

12. There is no evidence when the company was formed, no documents evidencing the holding number or single farm payments referred to by the appellant and no records of accounts before me. There is no map of the full land holding before me, only of the appeal site edged red. This makes it difficult for me to verify beyond the appeal field my observations from my site visit. There are no invoices to the company for the initial Cattle purchased in 2021 or records of ownership, or similar, for the purchasing of equipment that is referred to in the Business Plan. Moreover, there is no evidence from any sales made to date, such as from hay crops.
13. I'm told that the current equipment is stored some 7km away, but I have no firm details of this, or any rental invoices, from the current storage arrangements if the unit is rented. Moreover, the storage arrangements are not incorporated into the Business Plan as either an ongoing running cost, or, if the proposed building is built, the costs of the building itself and then how these costs are factored into the Business Plan.
14. The Inspector in the previous appeal, raised concerns regarding the lack of evidence including, for example, a Business Plan demonstrating how it would operate, when it would become profitable or its prospects for being viable in the long term. Whilst the Business Plan before me provides some information, it does not address the latter two points.
15. I accept that matters of profitability and viability are not for consideration under the appeal, as the Order requires only that the land is used for the purposes of an agricultural trade or business. Nonetheless, the level of information within the Business Plan, given there is little other firm evidence before me, does add to my concerns.
16. The appellant argues that the number of livestock is substantial. However, I disagree, the existing stock levels are modest and of a level that could constitute recreational farming. They are not of an existing level that would, in isolation, evidence a business operation. Moreover, I accept that the appellant has invested in the land, but this does not demonstrate business activities.
17. Overall, for the combination of the above reasons, the evidence before me falls short of convincing me that the land in question is currently in use for agriculture and which is so used for the purposes of a trade or business. On this point, and therefore, I conclude that the proposal before me is not within the scope of permitted development set within Schedule 2, Part 6, Class A of the GPDO.
18. Having concluded that the proposal would not fall within the scope of permitted development on this basis, it is not necessary for me to consider further the question of whether the proposal would be reasonably necessary for the activities undertaken, as it would not change the outcome of the appeal. Nor is it necessary for me to consider whether to grant prior approval for the siting, design, and external appearance of the proposal.
19. For the reasons set out above, and having regard to all the matters raised, I conclude that the appeal should not succeed.

Mr R Walker

INSPECTOR