



Appeal Decision

Site visit made on 6 September 2022

By C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Appeal Ref: APP/P2935/W/22/3302788

Land to the rear Of 19 Sycamore Grove, Prudhoe, Northumberland NE42 6QA

- 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 E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Chris Sheehan against the decision of Northumberland County Council.
 - The application Ref 22/01946/AGRGDO, dated 29 May 2022, was refused by notice dated 29 June 2022.
 - The development proposed is described as a 10 ft shipping container.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There is a discrepancy in the address cited by the main parties. However, I am satisfied that the address relied upon by the Council which is contained in the heading above adequately reflects the appeal site as identified on the original site location plan which is before me. It does not prejudice any aspect of this appeal and therefore, the appeal proceeds on that basis.
3. The Council's decision notice refers to a "notice of refusal of planning permission". However, the evidence before me clearly demonstrates that this appeal relates to an application to determine if the Council's "prior approval" is required for the proposed erection of a building for forestry use. My determination of this appeal is therefore made in respect to the provisions of Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("Part 6 of the GPDO"). Where the decision maker both finds that a development falls within the definitional scope of permitted development set by that part of the GPDO and requires "prior approval" the next step is to determine the acceptability of the relevant matters requiring that approval. My Decision is set within the scope of this procedure.
4. As the principle of development is established through the grant of permission by the Order, my Decision has not be made, expressly or otherwise, on the basis of section 38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan for the area must be applied.

5. I am satisfied that the main parties have been given the opportunity to comment on whether or not the appeal proposal constitutes a “building” for the purposes of interpreting the provisions of Part 6 of the GPDO.

Main Issues

6. The main issues are:

- whether or not the appeal proposal falls within the definitional scope of permitted development as set out in Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended); and if so
- whether or not the appeal proposal requires “prior approval” in terms of its siting, design and external appearance, and if so, whether such “prior approval” should be granted.

Reasons

Permitted development

7. The appellant disputes the Council’s stance that the appeal proposal does not constitute permitted development (“PD”) by virtue of Part 6 of the GPDO. This part of the GPDO recognises the carrying out on land used for the purpose of forestry, including afforestation, of development reasonably necessary for those purposes and Class E (a) enjoys PD rights. This includes, amongst other things, works for the erection of a building.
8. The Court of Appeal¹ has previously 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 PD. The Council has determined that the particular appeal proposal before me falls outside of the definitional scope of Part 6 of the GPDO. The officer report and decision notice do not confirm that, in doing so, the Council has expressly refused “prior approval” of siting, design and external appearance matters. However, its approach is consistent with that particular judgement which found that there is no purpose in going on to consider whether to grant “prior approval” of these matters in such a circumstance.
9. In making their decision, the Council has not disputed that the proposed metal storage container is not a building. However, the Council determined that the appellant has not demonstrated that it is “reasonably necessary” for the purpose of forestry and therefore the proposal does not fall within the definitional scope of PD. In summary, this is because the Council considers that there is no evidence of forestry activity or details of the items to be stored.
10. It is evident that the Council issued its decision within the prescribed statutory period. I am therefore satisfied that “prior approval” is not deemed to have been already granted.
11. The appellant has advised that the appeal proposal is a metal container to serve as a storage building for purposes connected to forestry activity within the existing woodland within which it is to be located. The appellant has advised that the appeal proposal is required to store his tools and equipment

¹ *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250

which he believes are “reasonably necessary” to undertake forestry activity in this woodland. The appellant has not provided specific details of his forestry activities.

12. In the absence of any challenge from the Council to its status as a building and, based on the appellant’s intent and definition for a building set out in Article 2(1) of the GPDO, there is no cause for me to dispute that the particular appeal proposal is capable of falling within the scope of Class E (a) of Part 6 of the GPDO.
13. In determining whether or not the proposed development is “reasonably necessary” for the carrying out on land used for the purpose of forestry, including afforestation, it is evident that the appeal site does indeed form part of the Horseclose Wood Ancient Semi Natural Woodland contained on natural England’s Ancient Woodland Inventory, albeit it would be positioned within a recently fenced zone which is currently devoid of trees and is located directly behind the rear gardens of dwellings on Sycamore Grove.
14. The Council has not disputed the appellant’s reference to his communication with another Council department about his forthcoming forestry plans for this woodland. Crucially, the GPDO does not require the decision maker under this Class to assess either the existence or necessity of forestry activity here or the existing viability of any related forestry business. During my site inspection, I observed some limited evidence that forestry works had been undertaken in the proximity of the appeal site. Based on the evidence that is before me, future forestry activity in this woodland is not inconceivable.
15. Since the Council made its determination the appellant has provided a list of the equipment and tools to be stored. The appeal proposal would be capable of storing these types of items both securely and from the elements. I am satisfied that they are related to woodland management and are “reasonably necessary” for the undertaking of any existing or future forestry related activities. Furthermore, the evidence before me confirms that the appeal proposal would not represent any of the constraints set out in E.1 of Part 6 Class E of the GPDO.
16. For all of these reasons and, contrary to the Council’s assessment, I find that the appeal proposal does fall within the definitional scope of “permitted development” as set out in Schedule 2, Part 6, Class E (a) of the GPDO.

Prior approval of siting, design and external appearance

17. The appeal proposal will be set back from the nearby Eltringham Road on the edge of the wooded part of identified Ancient Woodland. Public rights of way run in the vicinity of the site. Although the appeal proposal will be sited in an area devoid of trees it still forms part of the recognised Ancient Woodland. That fact has not been disputed.
18. In view of the potential visual and environmental sensitivities of the appeal proposal’s surroundings arising from its Ancient Woodland and residential context and nearby public rights of way network, I find that “prior approval” of siting, design and external appearance is necessary in this particular instance.
19. In terms of siting, the Council has stated in their questionnaire that the appeal proposal will affect protected species. However, neither of the main parties have provided any further detail in this regard. Nonetheless, Article 3(1) of the

GPDO 2015 grants planning permission for the classes of development described as PD in Schedule 2 subject to Regulations 75- 78 of the Conservation of Habitats and Species Regulations 2017. This effectively imposes a pre-commencement condition on all development that is PD by virtue of the GPDO and would affect a European protected habitat. The Wildlife and Countryside Act (1981) and the Protection of Badgers Act (1992) do not impose a general duty of the kind set out in the Habitats Regulations, and the onus rests on the appellant to satisfy himself of compliance with any statutory provisions in respect to these where "prior approval" is granted.

20. Furthermore, in terms of siting the appeal proposal will maintain sufficient separation distances with neighbouring dwellings, Nos 18, 19 and 20 Sycamore Grove. It will represent a limited storage facility which, by virtue of its siting, is not significantly different in the effect on living conditions to the potential for disturbance from a large garden shed, if it is used in the manner proposed.
21. Consequently in so far as they relate to siting, these particular findings do not in themselves warrant the refusal of "prior approval" in this instance.
22. However, given the very limited submitted details of the particular appeal proposal, it is insufficiently clear whether or not any ground works will be required to facilitate the siting of the appeal proposal. No evidence is before me to determine the nature and severity of any impacts on important soils and ground cover that would arise as a consequence of the proposed siting here. It is also insufficiently clear from the particular appeal submission as to whether the appeal proposal will affect the root zone of any part of this Ancient Woodland.
23. Consequently, it has not been sufficiently demonstrated that the appeal proposal would not cause unacceptable harm to the Ancient Woodland. The relevant procedures do not provide me with a mechanism to address this. These particular findings are highly significant insofar as they relate to siting and weigh substantially against the appeal proposal.
24. In terms of design and external appearance, the appeal proposal is of a simple design and form. The use of an appropriate colour coating could ensure the appeal proposal would be further recessive in the view. Its scale in terms of height and volume is not excessive relative to its purpose. It will not extend significantly above the existing fence lines.
25. Consequently in so far as they relate to design and external appearance, these particular findings do not in themselves warrant the refusal of "prior approval" in this instance.
26. In summary for these reasons, I find that the appeal proposal's siting, design and external appearance require prior approval under the terms of condition E.2(1)(a) of Schedule 2, Part 6, Class E of the GPDO. However, in view of the substantial weight that I attach to the potential harm to the Ancient Woodland the necessary "prior approval" should not be granted in this instance.

Conclusion

27. I have found that the appeal proposal falls within the definitional scope of PD in respect to Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

However crucially, I have found the potential for unacceptable consequences on the integrity of the Horseclose Wood Ancient Semi Natural Woodland.

28. For this reason, the appeal is dismissed.

C Dillon

INSPECTOR