



Appeal Decision

Site visit made on 15 November 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2022.

Appeal Ref: APP/V4630/W/22/3291312

Land East of Winterley Lane, Winterley Lane, Rushall, Walsall WS4 1LR

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Matthew Manison against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 21/1434, dated 2 October 2021, was refused by notice dated 28 October 2021.
 - The development proposed is for an agricultural building used for the storage of farming, forestry equipment and horse supplies.
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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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO') for an agricultural building used for the storage of farming, forestry equipment and horse supplies at Land East of Winterley Lane, Winterley Lane, Rushall, Walsall WS4 1LR, in accordance with the terms of the application Ref 21/1434, dated 2 October 2021, and the details and plans submitted with it, including plans drawing 5914.88 Appeal Site Location, Location Plan, Proposed Front & Back Elevations, Proposed Right & Left side Elevations, Proposed Roof Plan, Proposed Building Visual and Access to Field photo image.
2. The approval is subject to standard conditions that the development must be completed within a period of 5 years from the date of this decision, is carried out in accordance with approved details, and if the use of the building for the purposes of agriculture within the unit permanently ceases within 10 years from the date on which the development was substantially completed the building must be removed from the land and the land must, so far as is practicable, be restored to its condition before the development took place.

Preliminary Matters

3. The address is taken from the Council's decision notice and appeal form as it more accurately describes the location of the site and the appellant has agreed to it.
4. At my request, the Council provided the Tree Preservation Order (the TPO) that covers the site. The parties have been given the opportunity to comment.

Procedural Matters

5. By Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'), planning permission is granted for the various classes of development described as permitted development in Schedule 2 of the GPDO.
6. Part 6 of Schedule 2 makes provision for various permitted development on land used for agricultural and forestry purposes. Despite some discrepancies regarding the size of the agricultural unit, the Council does not dispute that the unit is more than 5 hectares and therefore falls to be considered under Class A of Part 6. Class A permits the carrying out on agricultural land of (a) works for the erection, extension or alterations of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit, subject to a number of limitations set out in Paragraph A.1.(a)–(k). The Council does not dispute that the erection of an agricultural storage building would benefit from permitted development. I have no reason to take a different view.
7. Permitted development must then meet a number of conditions set out in Paragraph A.2, including that the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to the siting, design and external appearance of the building.
8. As prior approval applications are not planning applications, and the principle of development is already established through the grant of permission by the GPDO, they are not determined, expressly or otherwise, on the basis of Section 38(6)¹ or as though the development plan must be applied. However, development plan policies may be relevant but only insofar as they relate to the prior approval matters, which in this case is the siting, design and appearance of the building, and only as evidence to support a planning judgement rather than the basis of it.

Main Issue

9. In light of the above, the main issues are:-
 - Whether the proposal would be inappropriate development and effect openness of the Green Belt,
 - The effect of the siting, design and appearance of the proposed agricultural building on the character and appearance of the area, taking into account nearby protected trees, and
 - The effect of the siting of the proposed building on a potentially untreated limestone mining area.

Reasons

Green Belt Issues

10. The site is located within the Green Belt and the Council's first refusal reason refers to the harm that would be caused to the openness of the Green Belt.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

National Green Belt policy set out in the National Planning Policy Framework (the Framework) requires substantial weight to be given to any harm to the Green Belt when considering planning applications.

11. However, a prior approval application is not a planning application. The Planning Practice Guidance (the PPG) describes² that the statutory requirements relating to prior approval is deliberately less prescriptive than those relating to planning applications, as the prior approval process is a 'light touch' which applies where the principal of development has already been established. In addition, permitted development rights have not been withdrawn in the Green Belt in the GPDO, in total or in part. Therefore, the prior approval application does not fall to be judged against national Green Belt policy and hence impact on openness does not fall to be considered.
12. Nonetheless, as the Council refers to harm to the openness of the Green Belt I shall deal with it. Paragraph 147 of the Framework states that 'inappropriate development' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. Policy GB1 of the Walsall Site Allocations Documentation (the SAD) seeks to protect Green Belt from inappropriate development. There is some additional detail and linkage with saved Policies ENV32 and ENV33 from the Walsall Unitary Development Plan (the UDP) to promote good design. I am satisfied that the policies are broadly consistent with the Framework.
14. The Framework regards the construction of new buildings in the Green Belt as inappropriate development, subject to various exceptions listed in paragraph 149. The proposal would involve the erection of a large agricultural building for the storage of farming, forestry and horse supplies. Buildings for agriculture and forestry are one such exception under paragraph 149a), regardless of the siting, size, design and appearance of the buildings. Therefore, the proposed agricultural building falls within exception 149a) and therefore is not inappropriate development in the Green Belt.
15. The Courts have established that development found to be 'not inappropriate', when applying the exception paragraphs of the Framework, should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt. In other words, the impact on openness is implicitly taken into account in the listed exceptions, unless there is a specific requirement to consider the actual effects on openness. Therefore, for those exceptions within paragraph 149, where the effect of the development on openness is not expressly stated as a determinative factor in gauging inappropriateness, there is no requirement to assess the impact of the development on the openness of the Green Belt. Under paragraph 149a) there is no specific requirement to consider the impact of agricultural or forestry buildings on the openness of the Green Belt.
16. Accordingly, the proposed agricultural building is not inappropriate development and is not deemed harmful to the openness of the Green Belt under the terms set out in the Framework and would also accord with SAD Policy GB1.

² Paragraph: 028 Reference ID: 13-028-20140306

Character and appearance

17. There is no dispute between the parties that the appeal site lies in countryside. It is a large field laid to grass, which I saw lies on the edge of the built up area. A restaurant and its car park, on the corner of Daw End Lane and Winterley Lane, sit adjacent to the gated entrance to the field and there are houses and an area of open space on the opposite side of Winterley Lane, as well as opposite the restaurant on Daw End Lane.
18. The site and surrounding land is generally flat. Long range views of the site are limited by the surrounding topography and the hedgerow along Winterley Lane screens much of the site from view. There is also a mature woodland boundary along the site's eastern boundary with the industrial estate and a larger area of woodland to the site's south eastern border, and hedgerows along Daw End Lane. There are some localised views of the site from the field entrance and track and the restaurant car park where there is limited boundary screening. The Council advise that a burial ground has been granted planning permission on land adjacent to the north west of the site, but I have not been provided with any further details of this.
19. The proposed building would measure approximately 40 metres long by 20 metres wide, with a height of about 5 metres to eaves and over 7 metres to the ridge. It would be sited in the north west corner of the field, with its longest side parallel to the site's landscaped boundary with the adjacent undeveloped land. The building would have 2 roller shutter doors on the long front elevation facing into the field and a roller shutter door in the end elevation facing towards the field entrance.
20. The Council finds the overall design of the building, with its pitched roof, to be appropriate for an agricultural use. It also finds the anthracite grey metal clad sheeting for the walls and roof to be acceptable, reflecting those typically seen on modern agricultural buildings. I have no reason to take a different view. The Council's concern seems to be the combined effect of the 'substantial scale and height' on the design and appearance of the building and the harm this would cause to the character and appearance of the area.
21. The 800sqm floor area of the proposed building falls within the ground area threshold permitted under Part 6. The height of the building is below the permitted 12 metre threshold (when beyond 3 kilometres of an aerodrome) and there are no other restrictions on other dimensions such as length and width. Therefore, Part 6 of the GPDO allows taller and larger buildings than the one proposed. As already described above, the appearance and design of the building per se is not an issue and the building would not be unusual to those often found on agricultural land in the countryside.
22. However, a planning judgement is required to assess the building overall in relation to its siting, design and appearance and this will depend on the location and context of the proposal. The building would be sited in the north west corner of the site away from Winterley Lane and its boundary hedge. As such, when progressing along Winterley Lane, views of the proposed building would only be glimpsed and views for the most part would be filtered by the roadside hedge that is fairly mature, although gappy in places.
23. Furthermore, the building would be sited in the corner of the field away from the road and residential properties, and there are no nearby public footpaths.

As a result, the building would not be viewed close up and would not have an overbearing impact on the local community. People using the dog-walking area to the south of the site can already look across the appeal site and would be able to see the building. However, over the substantial intervening distance and with the building's dark grey coloured cladding viewed against a backdrop of boundary trees, the building would not be unduly prominent or incongruous in this countryside location, which is not far from built-up development or the stacked-up coloured storage units at the nearby industrial estate which are visible.

24. The Council refers to potential harm to protected trees. The plan submitted with the appeal documentation did not identify which protected trees would be affected by the proposal. The subsequently submitted Tree Preservation Order (TPO) was made in 1960. I saw on my visit that a number of the protected trees shown on the TPO plan are no longer on site, particularly those shown in the middle of the site. The trees nearest to the proposed building are identified as T21 and T22, both Ash trees, on the west and north west site boundaries. However, both would be some distance away from the proposed building and would not be affected. This is confirmed by the appellant who has superimposed the outline of the building onto the TPO plan to show the relationship. I am satisfied, from the submitted evidence and what I saw on site, that the proposed building would have no adverse effect on the nearest protected trees. Furthermore, the proposal would not involve the loss of any existing trees.
25. In conclusion, the principle of an agricultural building on the site is already established by the GPDO. I have found the siting, design and appearance of the proposed building would not harm the character and appearance of the area or protected trees. Consequently, prior approval is granted.
26. In so far as it is relevant to siting, design and appearance, there would be no conflict with Saved UDP Policies GP2, ENV18 and ENV32, and Black Country Core Strategy Policies CSP4, ENV2 and ENV3. Collectively these policies seek, amongst other things, to protect local character, the local environment and trees and woodland. It would also accord with guidance in Designing Walsall Supplementary Planning Document (SPD) and Walsall's Natural Environment SPD.

Limestone mining area

27. The site falls within a potentially untreated limestone mining area. This may have implications for ground stability and safety. Nonetheless, the GPDO already establishes the principal of erecting an agricultural building without recourse to ground conditions. Part 6 only requires determination as to whether prior approval will be required as to the siting, design and external appearance of the building. Therefore, the presence of a limestone mining area is not a determinative prior approval matter and there is no scope for me to consider its impacts on the proposed building.

Conclusion

28. For the reasons above the proposal is permitted development under Schedule 2, Part 6, Class A. The appeal is allowed and prior approval is granted.

K. Stephens INSPECTOR