



Appeal Decision

Site visit made on 26 January 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/G5180/W/22/3301440

Archangel's Farm, Land north west of Ashmore Lane also west of Blackness Lane, Keston BR2 6DJ

- 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 Agricultural and Farm Services Ltd against the decision of London Borough of Bromley.
 - The application Ref 22/00657/AGRIC, dated 16 February 2022, was refused by notice dated 23 March 2022.
 - The development proposed is the erection of two agricultural storage buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit. Paragraph A.2.(2) of Class A requires (amongst other things) the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.
3. Although not contained within their reason for refusal, the Council in their Officer Report and Appeal Statement have set out that they consider the proposed development would not be on agricultural land comprised of an agricultural unit and would not be reasonably necessary for the purposes of agriculture within that unit. Nevertheless, the Council proceeded to determine that prior approval was required for the development and was subsequently refused due to its siting, design and external appearance.

Main Issues

4. The main issues are 1) whether or not it has been demonstrated that the proposal would be permitted development under the Order and 2) if the development is deemed to constitute permitted development, the effect of the proposed development on the character and appearance of the surrounding area, with particular regard to siting, design and external appearance.

Reasons

5. The permitted development right conveyed by the Order is conditional under paragraph A of Class A on the erection of the proposed building being carried out on agricultural land comprised in an agricultural unit. Clarification of the interpretation of Class A is provided at paragraph D.1.(1) to Part 6 where it is stated that “agricultural land” means land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business’.
6. There is no definition in the Order for the meaning of ‘agriculture’. It is therefore taken from s336(1) of the Town and Country Planning Act 1990, which sets out examples of agricultural activities. The s336(1) list is not exhaustive but includes: ‘horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock...the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to...agricultural purposes.
7. At the time of my visit there were no ongoing operations on the land. The appellants evidence¹ states that *‘the applicants have established the farming enterprise on site, having recently acquired the land. The agricultural enterprise includes longhorn cattle and market gardening, including orchards for fruit and nut harvesting. The applicant also intends to grow the enterprise and purchase some chickens and goats.’*
8. I did not observe any of the activities occurring on site as described above. Although there was clear evidence of tree felling and site clearance, such activities do not automatically amount to forestry which would typically entail the practice of planting, managing, and caring for forests or woodland. Other than the evidence of the works being undertaken, there is limited substantive evidence that the land is used for forestry. Additionally, the appellants assertion that the felling was undertaken with Forestry Commission consent also does not serve to demonstrate that the land is used for forestry purposes.
9. There is also limited evidence that the land is in use for agriculture and is so used for the purposes of a trade or business, as is required in the Order. Although the appellant is connected to a company, the necessary land use planning link as it relates to the operations on the appeal site to demonstrate agricultural land used for the purposes of a trade or business have not been satisfactorily demonstrated.
10. The evidence focuses significantly on the appellant’s proposals and future plans to farm the land involving such activities as grazing and planting of fruit trees and vegetables. I accept, as the appellant highlights, such enterprises can make a positive contribution to the local economy. There are also many commendable elements of the appellant’s business plan such as their intended approach to biodiversity and charitable donations. In an appeal of this nature however, for the development to amount to permitted development, it must take place on existing agricultural land comprised in an agricultural unit. It does not apply to a proposed or future use of land.
11. I acknowledge the appellant’s position whereby they suggest the buildings are required to realise their future plans for the land. The Order is however clear

¹ Supplementary planning information – The Rural Planning Co.

on this matter and grants such permitted development rights to agricultural land. I acknowledge that the appellant has no doubt sought to make use of the 'lighter touch' prior approval process. This is not however the sole means to seeking to gain consent for such developments.

12. Unlike the current appeal, an application for planning permission would be required to take into account several of the arguments that have been put forward by the appellant, such as new buildings for agricultural and forestry not constituting inappropriate development in the Green Belt, and the aim to support a prosperous rural economy. Such factors are not however pertinent to the establishment of whether or not the proposed development would constitute permitted development.
13. The appellant has referred to the historic use of the site for agriculture and referred to case law² in terms of the change of use of land. Although I do not have a copy of the judgment, the citation in the evidence states that for '*a material change of use is a once-and-for-all event. There is no need to demonstrate that a use has been in continuous existence throughout a ten-year period. Unless there has been a clear-cut change in planning circumstances, such as a grant of planning permission for an alternative use, the introduction of another use incompatible with the original use or an indication of a deliberate intention to abandon the original use then the use will survive throughout the ten-year period.*'
14. The lawful use of the land is not a matter for me to rule on in this appeal and there are other mechanisms available to establish the lawful use of land. Whilst I have had regard to the case law quotation above, it does not lead me to conclude that the proposed development would be carried out on agricultural land comprised in an agricultural unit, as is required.
15. As such, based on the evidence before me and my observations on my site visit, I am not convinced that the proposed development would be carried out on agricultural land comprised in an agricultural unit as is required by the Order.
16. The proposed development would therefore not be permitted under Part 6 Class A of the Order. On this basis it is not now necessary for me to consider whether the proposed development would be reasonably necessary or the effect of its siting, design and external appearance on the character and appearance of the area. Therefore, while I have some sympathy with the appellant's desire for suitable buildings, and I acknowledge the efforts to achieve an appropriate design, I am unable to take the merits of these into account.

Other Matters

17. The appellant has submitted a copy of the relevant officer report and judgment in *Smolas vs Herefordshire Council* [2021] EWHC 1663 (Admin). In that case it was accepted that the site comprised a farm holding which included an agricultural field. The dispute centred on whether or not the building was 'reasonably necessary' as required. In this appeal, the proposed development would not constitute permitted development due to my conclusion that it would not be carried out on agricultural land comprised in an agricultural unit. The

² *Sec of State and Anor v Thurrock Council*

case law is therefore not pertinent to that matter, and I give it limited weight in the appeal.

18. The appellant has also submitted a document that outlines planning consents for developments at properties surrounding the appeal site. These are for different forms of development and appear to have been applications for planning permission as opposed to the prior approval in this case. I therefore give them limited weight in the appeal.

Conclusion

19. For the reasons given above, and having had regard to all other matters raised, I do not find the proposal to amount to a permitted development under the Order and I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR