



Appeal Decision

Site visit made on 18 April 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th May 2023

Appeal Ref: APP/J1860/W/22/3309634

**Structons Heath Farm, Structons Heath, Great Witley, Worcestershire
WR6 6JA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr N Birkmyre against the decision of Malvern Hills District Council.
 - The application Ref M/22/01274/AGR, dated 18 August 2022, was refused by notice dated 6 October 2022.
 - The development proposed is prior notification for installation of agricultural track.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The principle of development is established by the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) and the provisions of Schedule 2, Part 6, Class A of the GPDO do not require regard to be given to the development plan. I have therefore only had regard to the policies of the development plan and the National Planning Policy Framework in so far as they are a material consideration relevant to matters of siting and means of construction.

Background and Main Issues

3. Schedule 2, Part 6, Class A of the GPDO permits any excavation or engineering operations on agricultural land comprising a unit of 5 hectares or more, but only where it is reasonably necessary for the purposes of agriculture within that unit. In addition, Paragraph A2(2) of Class A also requires (amongst other things) the developer to apply to the Council for a determination as to whether its prior approval will be required for the siting and means of construction of the private way.
4. The Council considers that the proposal does not comply with the GPDO because it is not reasonably required for the purposes of agriculture. It also objects to the siting of the proposal because of its potential effects on trees. The Council has therefore required that its prior approval is obtained and has refused to give that approval. It is disputed whether compliance with the GPDO is a matter to be considered during this application. Also disputed is whether the proposal does comply with the GPDO, the effect of the proposal on trees, and their importance.

5. The main issues are therefore:

- whether compliance or otherwise of the proposal with the GPDO is a matter that I can consider and, if so, whether the proposal would involve the provision of a private way reasonably necessary for the purposes of agriculture within an agricultural unit, to comply with the description of permitted development at Schedule 2, Part 6, Class A of the GPDO, and
- the effect of the siting of the proposal on the character and appearance of the area, in particular trees, and their importance.

Reasons

Whether reasonably required

6. In support of his stance that the Council should not have considered whether the proposal would comply with the GPDO, the appellant has cited the High Court decision of *Marshall*¹, and an appeal decision². However, the more recent Court of Appeal decision of *New World Payphones*³ and the High Court decision of *Smolas*⁴ have since confirmed that a Council is entitled to assess whether a proposal falls within the scope of the GPDO, where this is at issue.
7. The decision at *New World Payphones* is from a higher court than *Marshall*, and post-dates it, as does *Smolas*, and so these decisions are preferable to *Marshall*. I therefore consider that the Council was able to question whether the proposal would be reasonably necessary for the purposes of agriculture within the unit. This is therefore a matter for my consideration.
8. Structons Heath Lane is a narrow, single-track road that bends sharply on a rising gradient. There are existing dwellings located hard onto the lane. Representations refer to the regular use of the lane by agricultural vehicles but given its constraints, I accept that parts of the lane are difficult or unsuitable for use by large agricultural machinery.
9. On my visit, I saw that the land is in active agricultural use, for grazing sheep. Movements of large machinery or vehicles associated with the farm include the transport of livestock as required. Vehicle movements also include twice-daily visits for the management of livestock, annual shearing and the delivery of hay and food. Hay is harvested once a year over several days. The delivery of food requires a large vehicle, as does the collecting or moving of hay.
10. Some of the agricultural work is undertaken by a contractor, who also uses his machinery in other locations. Therefore, whilst feed for the holding can be stored on site, at least some of the equipment is brought in. The contractor works on behalf of the appellant at the farm and so this forms part of the unit as a whole. Some of the holding is sub-let to a local farmer, but this would not, of itself, prevent the track from being reasonably necessary for the appellant's unit.
11. Currently, large vehicles which are unable to use the most constrained parts of the lane access the site directly over the fields via an existing gate. It is from this gate that the proposed track would start. Notwithstanding the soil type and

¹ R(oao) *Marshall v East Dorset DC & Pitman* [2018] EWHC 226 (admin)

² APP/J1860/W/19/3223681

³ *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250

⁴ *Smolas v Herefordshire County Council* [2021] EWHC 1663 (admin)

ability of agricultural vehicles to travel over fields, I have little reason to doubt that this route is unsuitable for large vehicles in wet weather, and that this limits the practical operation of the business.

12. The proposal would allow access to the farm by large vehicles serving the unit, whilst also avoiding the need for them to pass close to existing residential properties. It would also aid any diversification of agricultural activities at the farm, for example for arable use, in the future. It has been put to me that because the contractor also visits other sites, time constraints mean that vehicle movements using the track would be limited. However, the use of a contractor could equally be the cause of the same or a greater number of movements, because of their need to travel to and from different sites.
13. The Council suggests that alternative access to the fields could be achieved requiring less track and a shorter distance, or that lesser measures could be used instead. However, there is no requirement for the appellant to explore alternative options. Regardless of whether the Council's suggestions would be feasible or suitable, they are not the proposal before me. Similarly, representations have suggested that the proposal seeks to provide access for dwellings to be created within the barns. However, I can only deal with the proposal as submitted, for an agricultural track.
14. For these reasons, the compliance or otherwise of the proposal with the GPDO is a matter that I can consider. However, I find that the proposal would involve the provision of a private way that is reasonably necessary for the purposes of agriculture within an agricultural unit, to comply with the description of permitted development at Schedule 2, Part 6, Class A of the GPDO.

Trees, Character and Appearance

15. The fields through which the track would pass are well-contained by hedgerows and trees. The Council has not objected to the width of the track, or its effect on the landscape, other than in respect of its proximity and impact on trees.
16. The lower section of the track would be no less than six metres from an area of woodland to the south. This distance may well provide sufficient space to allow the trees and woodland adjacent to it here to be unaffected by the proposal. However, I have little clear evidence, such as a tree survey and assessment, to demonstrate conclusively the effects of the proposal in respect of these trees.
17. Moreover, at the other end of the track, near to the farm buildings, the proposal would pass directly through another appreciable area of woodland. As such, construction of the proposal would be likely to require trees within this area to be significantly pruned or felled.
18. These trees may not be covered by a Tree Preservation Order, and the appellant says that he planted them himself, and so are not particularly significant. However, I have little substantive evidence about the number, type or importance of the trees affected or whether they are (for example) veteran trees. Furthermore, in the absence of this information, I cannot conclude on the effect of the proposal on its surroundings.
19. The PPG⁵ makes clear that prior approval is a light-touch process where the principle of the development has already been established. It also advises that

⁵ Reference ID: 13-028-20140306

unnecessarily onerous requirements should not be placed on developers as part of this process. However, without sufficient tree information, I cannot be satisfied that the siting of the proposal would not have a harmful effect on the character and appearance of the area, in particular its effects on trees.

Planning Balance and Conclusion

20. Although I have found that the proposal would be reasonably necessary for the purposes of agriculture, for the reasons given above and taking into account all other matters raised, the appeal is dismissed.

O Marigold

INSPECTOR