



Appeal Decisions

Site visit made on 13 June 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal A Ref: APP/V2635/W/22/3304394

Nursery Lodge Farm, The Street, Syderstone, King's Lynn, Norfolk

PE31 8SD

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr and Mrs Michael and Rachel Cooper against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/00714/AG, dated 4 April 2022, was refused by notice dated 3 May 2022.
 - The development proposed is a steel barn.
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Appeal B Ref: APP/V2635/W/22/3304429

Nursery Lodge Farm, The Street, Syderstone, King's Lynn, Norfolk

PE31 8SD

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr and Mrs Michael and Rachel Cooper against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/00715/AG, dated 4 April 2022, was refused by notice dated 3 May 2022.
 - The development proposed is a polytunnel.
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Appeal C Ref: APP/V2635/W/22/3304431

Nursery Lodge Farm, The Street, Syderstone, King's Lynn, Norfolk

PE31 8SD

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr and Mrs Michael and Rachel Cooper against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/00990/AG, dated 18 May 2022, was refused by notice dated 16 June 2022.
 - The development proposed is a steel barn.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. Appeal C is dismissed.

Preliminary Matters

4. Schedule 2, Part 6, Class A, the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), permits the erection, extension or alteration of a building, and any excavation or engineering operations reasonably necessary for the purposes of agriculture within that unit, on agricultural land in an agricultural unit of 5 hectares or more in area. This is subject to certain criteria, and circumstances where development is not permitted are listed under Paragraph A.1.

Main Issues

5. The main issue in the appeals is therefore whether the proposal would be permitted development under Schedule 2, Part 6, Class A of the GPDO, with particular regard to:
 - the height of the proposed buildings in the context of the site's proximity to the perimeter of an aerodrome; and
 - whether the site meets the definition of agricultural land.

Reasons

Proximity to an aerodrome

6. At Schedule 2, Part 6, paragraphs A.1.(f) and A.1.(g), the GPDO permits buildings and structures up to 3 metres in height within 3 kilometres of the perimeter of an aerodrome, or 12 metres in height where not within 3 kilometres of the perimeter of an aerodrome.
7. In defining an "aerodrome", paragraph 2.(1) of the GPDO draws on the definition set out at paragraph 1 of Schedule 1 to the Air Navigation Order 2016 (ANO). The ANO's definition means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft. The appeal site is within 3km of the Sculthorpe Training Area, a former RAF base. From my site visit and from OS mapping and aerial photography provided in the submissions, it is evident that the training area is laid out with facilities for the landing and departure of aircraft, with features such as runways and taxiways remaining visible within the landscape.
8. The GPDO's definition applies only to aerodromes of certain types. This includes, at Paragraph 2.(1)(b), a Government aerodrome. The GPDO again draws on the definition provided by the ANO, which includes any aerodrome in the United Kingdom which is in the occupation of any Government Department or visiting force. Land within the training area is regulated by the Sculthorpe Training Area Byelaws 2015¹ as land belonging to the Secretary of State that has been appropriated for military purposes. I therefore consider the training area to be within the occupation of a Government Department.
9. It is also necessary to consider whether the facilities for aircraft landing and departure are abandoned, and not resumed, since the ANO's definition would not apply. As set out above, the 2015 byelaws state the training area has been appropriated for military purposes including use by air forces. The Council has provided recent video evidence from 2022, 2021 and 2016 showing various military aircraft landing and departing from the training area. The submitted

¹ SI 2015 No. 1492

evidence does not therefore suggest the facilities for the landing and departure of aircraft are abandoned.

10. The Defence Infrastructure Organisation's Senior Safeguarding Manager indicates the training area is no longer an operational aerodrome and is not safeguarded as an aerodrome by the Ministry of Defence (MOD). I also note prior approval has previously been granted for construction of a new barn at the appeal site² and for agricultural development within a neighbouring authority's area. However, irrespective of the MOD's view regarding the operational status of the training area or the previous decisions of Councils, in my decisions I must apply the relevant provisions of the GPDO.
11. As set out above, as an aerodrome within the occupation of a Government Department with landing and departure facilities that are not abandoned, the GPDO's definition of an "aerodrome" applies to the Sculthorpe Training Area. The appeal site is therefore within 3km of the perimeter of an aerodrome.
12. The steel barns proposed by Appeal A and C would have ridge heights of 8.5m and the height of the polytunnel proposed by Appeal B would be 4.25m. The height of the developments proposed by Appeals A, B and C would therefore exceed the 3m maximum height limit imposed by Schedule 2, Part 6, paragraph A.1.(f) of the GPDO. Prior approval should not, therefore, be granted.

Whether agricultural land

13. For development to be permitted development under Part 6, Classes A, it must be undertaken on 'agricultural land comprised in an agricultural unit' and 'reasonably necessary for the purposes of agriculture within that unit'. Since there is no definition in the GPDO, I have taken the meaning of 'agriculture' from s336(1) of the Town and Country Planning Act 1990 (the Act), which sets out examples of agricultural activities.
14. The list set out under s336(1) of the Act 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 the use of land for agricultural purposes, and 'agricultural' shall be construed accordingly'.
15. The appeal site is a large, open area of grassland interspersed with trees, associated with Nursery Lodge Farm. The land is subdivided by stock fencing and the outbuildings, structures and farm equipment located on the site appear related to the keeping of livestock.
16. At time of my site visit, the land was being grazed by various livestock. Whilst this included the grazing of horses, there were no features to suggest the site is not in agricultural use. The appellant's statement demonstrates the purposes of the keeping of horses on the land for agricultural business. I am therefore satisfied that the developments proposed would be sited on agricultural land.
17. The intended use of the proposed buildings relates to the growing of herbs, and hay and machine storage. Even if I were to accept the contention that the development was reasonably necessary for the purposes of agriculture, the

² LPA Ref: 22/00206/AG

proposals would not benefit from the provisions of Schedule 2, Part 6, Class A, since the height of the proposed buildings would exceed the limits set by the GPDO, as set out above.

Other Matters

18. The appellant has provided details of wind turbine and residential developments granted planning permission within proximity of Sculthorpe Training Area. However, for Appeals A-C the issue is not whether the proposed developments would harm the operations of the training area, but rather whether the proposals would be permitted development within the provisions of the GPDO, which I have found they would not.
19. Whilst concerns have been raised regarding the extent of objections made by the parish council to the appellant's proposals for the site, my consideration of the appeals has been on the basis of the provisions of Schedule 2, Part 6, Class A of the GPDO.
20. The application site is within the Nutrient Neutrality area recently set out by Natural England. Unmitigated, the development has the potential to lead to impacts on water quality and drainage within the catchment area, ultimately leading to potential nutrient pollution in the River Wensum Special Area of Conservation. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to establish whether the Regulation 77 process under the Conservation of Habitats and Species Regulations 2017 had been followed, and the pre-commencement condition imposed under Article 3(1) pursuant to Regulation 75 had been complied with. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
21. Thurnby House, a Grade II listed building, is situated near the appeal site at The Street. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision-maker to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. This duty is not directly relevant for prior approval applications because planning permission is granted by Article 3(1) of the GPDO. Such issues would be considered as part of prior approval matters relating to the siting, design and external appearance of the proposed buildings, as set out at paragraph A.2.(2)(i) of Schedule 2, Part 6 of the GPDO.
22. The appellant asserts that, in the absence of the development, their human rights are being overridden and they are being prevented from earning a living and from enjoying their home. However, the scope of my decision is limited to whether each proposal would be permitted development under the provisions of the GPDO. Consideration of matters of human rights therefore have no effect in this regard.

Conclusion

23. Given my conclusion that Appeals A, B and C would not be permitted under Schedule 2, Part 6, Class A of the GPDO, there is no need for me to consider the proposal against the conditions set out in Class A.2(1).
24. For the reasons given above I conclude that Appeals A, B and C should be dismissed.

E Dade

INSPECTOR