



Appeal Decision

Site visit made on 10 July 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Appeal Ref: APP/X1545/W/22/3308656

Land south of Park Wood Lane, Little Totham, Maldon CM9 8LE

- 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 (as amended).
 - The appeal is made by Mr J Purdy against the decision of Maldon District Council.
 - The application Ref AGR/MAL/22/00612, dated 12 May 2022, was refused by notice dated 9 June 2022.
 - The development proposed is an agricultural grain, straw and hay storage building.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) for an agricultural grain, straw and hay storage building at land south of Park Wood Lane, Little Totham, Maldon, CM9 8LE in accordance with the details submitted pursuant to Schedule 2, Part 6, Class A, paragraph A.2 (2) of the GPDO via application reference AGR/MAL/22/00612, dated 12 May 2022.

Preliminary Matters

2. The site address is taken from the appeal form, with duplication removed as it more clearly identifies the location of the appeal site.
3. Schedule 2, Part 6, Class A of the GPDO relates to development that can be undertaken within an agricultural unit of 5 hectares or more. It allows for the erection of a building reasonably necessary for the purposes of agriculture within that unit. Condition (2) (i) of paragraph A.2 includes the requirement for the developer to apply to the Local Planning Authority for a determination as to whether its prior approval would be required for the siting, design and external appearance of the agricultural building.
4. The Council's reason for refusal states that the development is not considered to comprise agricultural land in an agricultural unit and therefore it is not permitted development under this class.
5. My determination of this appeal is therefore firstly made in respect of whether the proposal falls within the definitional scope of permitted development set out in Part 6 of the GPDO. Should I conclude that the proposal falls within the scope of this part of the GPDO, consideration must then be given to matters relating to the siting, design and external appearance of the building. The Council considered the matters of prior approval in its Officer Report.

6. As the principle of development is established through the grant of permission by the GPDO, my decision has not been 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.

Main Issues

7. 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 A of the GPDO 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

8. The appeal site comprises part of an agricultural field known as the 'Terribles'. Access is made into the field through the track which runs through the adjacent building supplies yard. To the north of the appeal site is an adjacent field known as the 'Broilers', which is used for the grazing of horses.
9. The proposal relates to an agricultural building. The building is identified as being used to store crops including grain, straw and hay and crop inputs such as seed and fertiliser. Amongst other criteria, to be permitted under Class A, this building must be undertaken on agricultural land comprised of an agricultural unit of 5 hectares or more, a matter disputed by the Council.
10. Paragraph D.1 of Part 6 of the GPDO states 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 and excludes any dwellinghouse or garden.
11. An 'agricultural unit' means agricultural land which is occupied as a unit for the purposes of agriculture including any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit, or any dwelling on that land occupied by a farmworker.
12. The Council do not dispute that some of the land owned by the appellant is in agricultural use. The appellant has provided extracts from the Field Data Sheets used for the Basic Payment Scheme which identifies that the field in which the building is proposed, has a total field size of 12.1650 hectares. The field was cropped at the time of my site visit and the evidence provided demonstrates that it has been in crop production for some time. The appellant's information states that the overall agricultural unit equates to 20.2 hectares in total, including the adjacent field which is currently used for the grazing of horses.
13. The evidence before me confirms that the primary purpose of the agricultural unit is to grow different crops on rotation and the harvesting of straw in the field known as the 'Terribles' along with the harvesting of hay on the field known as the 'Broilers' in combination with the grazing by horses. Even without

including the land known as the 'Broilers', the agricultural unit would still comprise an agricultural unit that exceeds 5 hectares in area.

14. The Council raises concerns about the level of agricultural activity at the site, due to the fact that planning permissions have been granted and implemented on neighbouring land under the control of the appellant, for a building supplies business and for a stable building on the 'Broilers'. The Council is also concerned that the building supplies business is overspilling into the field where the building is proposed and that access to the building would be via the track that runs through the adjacent building supplies yard.
15. The area shown in the submitted aerial photographs which appears to include the storage of items within the corner of the field closest to the track, did not appear as such during my site visit. The proposed building would be removed from this corner of the field, sited on an area that is currently cropped. In any case the area identified by the Council would be minimal and would not affect the overall size of the agricultural unit to the extent that it would no longer meet the requirements of Class A. It is a matter for the Council if it wishes to look further into this alleged change of use of land.
16. I have not been made aware of any provision within the GPDO which requires that the access into the proposed building must only be over agricultural land. I also am not aware of any preclusion that means that if adjacent land uses change, then an agricultural unit is no longer an agricultural unit for the purposes of the GPDO.
17. I am therefore satisfied that the proposed building would be sited on agricultural land which is occupied as a unit for the purposes of agriculture and would therefore meet the requirements of the GPDO.

Siting, design and external appearance

18. The proposal is for a building of agricultural character and appearance which would not be out of keeping with the rural landscape or its intended use. It is proposed to locate the building on the edge of the field alongside a hedgerow. The appeal site is relatively flat and the siting is set well back from public roads, with intervening agricultural land and grazing land to all sides. A hedgerow runs around the northern, eastern and western boundaries of the wider field. The building would therefore be screened due to intervening vegetation and the level of separation from public vantage points.
19. Consequently, the proposal's siting, design and external appearance would not unacceptably harm the character and appearance of the area.

Other Matters

20. I note that the appeal proposal follows a similar proposal on a different site, on the grazing land to the south, that was also identified by the Council as not being permitted development as set out in Schedule 2, Part 6, Class A of the GPDO. Be that as it may, I must consider this case on its individual merits.
21. Reference is also made by the Council and the appellant to another appeal decision¹ where my Inspector colleague considered an appeal under Schedule 2, Part 3, Class Q of the GPDO. The Inspector stated in this case that the

¹ APP/X1545/W/20/3255117

presence of a non-agricultural use which was under the ownership of the appellant does not mean that the wider unit ceased to be an agricultural unit. However, this case was under a different part of the GPDO and I have considered the merits of the appeal before me under the relevant part of the GPDO.

Conditions

22. The Council has suggested a number of conditions in the event that the appeal is allowed. However, the GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for agricultural development on units of 5 hectares or more in paragraphs A.2(2) (v) and (vi). These specify that the development must be carried out in accordance with the approved details submitted with the application and within 5 years of the date of this approval. Under paragraph A.2(7) the developer must notify the local planning authority in writing within 7 days of the date on which the development is substantially completed.
23. Paragraph A.2 (1) (a) states that development is permitted by Class A subject to a range of conditions. Where development is carried out within 400 metres of the curtilage of a protected building, any building, structure, excavation or works resulting from the development cannot be used for the accommodation of livestock except in circumstances described in D.1(3) of Part 6. The storage of slurry or sewage sludge, housing a biomass boiler or an anaerobic digestion system, the storage of fuel or waste from that boiler or system or the housing of a hydro-turbine is also not permitted within 400 metres of the curtilage of a protected building.
24. As such, there is no reason for me to impose any additional conditions.

Conclusion

25. For the reasons given, I conclude that the proposal would be permitted development and would be acceptable with regard to siting, design and external appearance. The appeal should therefore be allowed, and prior approval is granted.

G Dring

INSPECTOR