



Appeal Decision

Site visit made on 6 February 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2024

Appeal Ref: APP/C3620/W/23/3326110

Land at Oaklawn Road, Leatherhead, Surrey KT22 0BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval under Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Andrew Egby against the decision of Mole Valley District Council.
 - The application Ref MO/2023/0315/DEA, dated 3 March 2023, was refused by notice dated 6 April 2023.
 - The development proposed is Prior notification for the erection of an agricultural building of 6 metres x 5 metres for the storage of forestry vehicles and equipment.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The description of development is taken from the appeal form and decision notice and omits minor details and descriptive elements of the building that are not development. However, I have taken these aspects of the description into consideration in determining the appeal.
3. The Council's reason for refusing the application in its decision notice was because it took the view the proposed building would not comply with Class E of Part 6 of Schedule 2 of the GPDO¹ as the land is not used for forestry or agricultural purposes. Class E is for forestry developments. The land under the appellant's control is partly cleared woodland covered by a wider Tree Preservation Order² (TPO). The application form states the building is for forestry purposes and their appeal case is not for an agricultural use, so I have confined my consideration to Class E of Part 6, for forestry purposes.
4. Class E permits certain developments for 'the carrying out on land used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes consisting of...', subject to limitations and conditions. Although the Council's reason for refusal relates to the use of land, both parties have made references to whether it is reasonably necessary in their evidence. Given this and the requirements of Class E, it is incumbent upon me to consider whether the proposal is reasonably necessary.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

² The Mole Valley District (land on the corner of Oxshott Road and Oaklawn Road, Leatherhead) Tree Preservation Order 1989 (confirmed on 13 December 1989).

5. At my visit what is understood to be a temporary storage container was present near the appeal site entrance. Neither party has referred to its status as being approved. Therefore, I have not taken it to be approved for the purposes of my assessment of this appeal proposal.

Main Issues

6. The main issues are:

- whether or not the proposed development would be permitted development under Class E of Part 6 of Schedule 2 of the GPDO; and,
- if so, whether the proposed development would satisfy the prior approval matters including its siting, design and external appearance.

Reasons

7. The area of land in which the building would be located³, is a limited area of partially cleared and re-planted deciduous woodland comprising a variety of trees from saplings to mature specimens in varying condition, with ground cover. It has been the subject of tree management works, some felling, and new planting, including as required by a Tree Replacement Notice⁴ (TRN).
8. Forestry or afforestation are not defined in the Town & Country Planning Act 1990 or the National Planning Policy Framework (2023) (the Framework). The reference to forestry as the growing of a utilisable crop of timber in relation to aftercare of mineral workings in the former iteration of the GPDO, was for very specific aftercare purposes, is now superseded and not extant, so I attribute it limited weight.
9. The Council also refers me to the Oxford Dictionary (OD) definitions of forestry and afforestation as “the science or practice of planting, managing and caring for forests” and “the process of planting areas of land with trees in order to form a forest”. The appellant has referred me to that and other similar unreferenced dictionary definitions. In the absence of other suitable legislative definitions or caselaw advanced, the forestry and afforestation dictionary definitions put to me, appear rational and reasonable for my assessment.
10. The land is relatively limited in area, but no specific quantitative size thresholds are set out in the GPDO or other definitions advanced. It is not so limited it prevents forestry or afforestation as defined, and there also does not appear to be any necessity it is used upon a commercial basis.
11. The appellant has undertaken works including felling, removal of deadwood, maintenance, and planted between approximately 150 – 247⁵ trees. Forty (40) heavy standards were planted under the TRN. Many other new young trees have been planted outside this requirement, and further planting is proposed.
12. Many types of works to trees protected by the TPO may require a consent from the Council, although whether this applies to deadwood and those allowed under a forestry exemption notice is not clear. Even if it does, and some works might be considered to also constitute arboriculture, this would not preclude them from falling within the dictionary definitions. Therefore, from what I saw

³ As defined in Site Plan Drawing Ref. ACE/SP/001.

⁴ Upheld by Appeal Decision Letter Ref APP/TRN/C3620/7825 (28 May 2021).

⁵ *ibid* paragraph 6, and Page 2 of the Appellant’s Statement of Case.

and the substantive evidence before me, the land can be considered to be being used for forestry and afforestation.

13. Felling, removing dead branches, eradication of Oak Processionary Moth (OPM), TRN and other planting, some floor clearance and habitat creation has taken place. The appellant states previous works were, and those proposed to be implemented in forestry plans, would use equipment including a cherry picker, crane, stump grinder, brush cutter, tracked woodchipper, diggers, 4x4 vehicle and a trailer. From what I saw and the implementation dates in the 2019 forestry plan, a significant proportion of physical works appear to have been implemented⁶.
14. There is no substantive evidence demonstrating log drying requires a physical building, or of the scale proposed. I see no reason why planting of small trees, for example for hedgerows, could not be hand dug as such stock tends to have small root balls. The approved forestry exemption⁷ is for felling and branch removal on a total of 20 trees. The photographs provided suggest some trees are sizeable, but many others in the schedule are not. The schedule includes removing six small trees and branch removal on five trees. The overall amount of remaining felling and branch removal in the exemption and forestry plan would appear very limited.
15. Other objectives and actions in the 2019 forestry plan⁸, and referenced in the 2023 plan, such as increasing biodiversity, removing infestations and OPM, dead branch removal, removing trees for safety purposes, watering, floor habitat management, creating log piles, paths/tracks and introducing a hedgerow⁹ appear to be longer-term. The on-going monitoring actions in the 2019 plan are stated as being 'twice annually minimal'¹⁰. Those in the 2023 plan suggest very limited physical works¹¹. The likely amount of work is not fully explained in the substantive evidence, but the nature and the amount of works appear to be very limited.
16. It is not demonstrated it is necessary for many of the forestry and afforestation works to use the mechanical equipment or building put to me, or that all the equipment listed is reasonably necessary for forestry and afforestation at the site. Moreover, and even if I were able to conclude all equipment was reasonably necessary to physically carry out the works on the land, given the limited site area, it appears the required works could be undertaken over very short durations and would not be required very often. Therefore, I cannot conclude it is reasonably necessary for them to be stored on the land.
17. Though it is stated it is not a financially viable option to rent equipment, no prices are given of this, or a comparison with purchase price and the price of erecting the building. Much of what is proposed appears to have commendable aims, such as woodland creation, regeneration, management for biodiversity, and working with forestry schools. They would achieve objectives of various policies and strategies. However, many of these positive beneficial effects of a scheme are not determinative in an assessment under this part of the GPDO as to whether the building is reasonably necessary for forestry and afforestation.

⁶ Section 6 of the Small Woodland Management Plan dated 01/5/2019.

⁷ Email from Ron Howe (Tree Officer – Planning, Mole Valley District Council) dated 25 August 2023.

⁸ Small Management Plan Template 05/02/2024 (Ref. ACE/WMP/2023).

⁹ Site Plan Ref. ACE/SP/001.

¹⁰ Section 9 of the Small Woodland Management Plan dated 01/5/2019.

¹¹ Section 9 of the Small Management Plan Template 05/02/2024 (Ref. ACE/WMP/2023).

18. For the reasons set out above, based upon the evidence before me, the proposed building is not reasonably necessary for carrying out forestry and afforestation on the land. Therefore, the building cannot be considered as permitted development under Class E of Part 6 of Schedule 2 of the GPDO.
19. There is no dispute that the proposed building would have conformed to the limitations set out in section E.2 of Class E and I see no reason to disagree. However, this does not overcome the concerns set out above.

Prior approval matters

20. Although the Council observes the proposed building would be visible above a previously approved fence and gates¹², it does not state it has a substantive objection specifically in respect of its siting, design and external appearance. Were the fence to be erected evidence suggests its visibility would be very limited. However, whether it would be or not, as I have found the proposed building is not development permitted, the prior approval matters do not fall to be considered as part of the determination of this appeal.

Conclusion

21. For the reasons given, I conclude that the proposed development is not permitted development under Schedule 2, Part 6, Class E of the GPDO. Therefore, the appeal should not succeed.

Dan Szymanski

INSPECTOR

¹² Ref. MO/2020/0373.