



Appeal Decision

Site visit made on 23 January 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2024

Appeal Ref: APP/U1105/W/23/3325082

Land at Woodhouse Fields, Lyme Road, Uplyme, DT7 3UZ

- 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 E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Justin Lacey against the decision of East Devon District Council.
 - The application Ref 22/2802/AGR, dated 20 December 2022, was refused by notice dated 13 February 2023.
 - The development proposed is a general purpose forestry building.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In November 2023, the National Landscapes Association reported that all designated Areas of Outstanding Natural Beauty (AONBs) had become National Landscapes. In this decision I have continued to use the term AONB, consistent with the evidence. The legal designation and policy status of such areas is unaffected, whichever term is used.
3. The plan entitled Block Location (JL:01) identifies other development features on site labelled as 'Rainwater Harvesting' and 'PV'. These features are not mentioned on the application form or detailed in the application documents. As such I have limited my considerations to the proposed development within the prior approval process described as a 'general purpose forestry building'.

Background and Main Issues

4. Under Article 3(1) and Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for the erection of buildings reasonably necessary for the purposes of forestry, subject to limitations and conditions.
5. The GPDO procedures require that before starting work, the developer applies to the local planning authority for a determination as to whether prior approval of the authority will be required as to the siting, design and external appearance of the building.

6. The appellant relies initially upon the judgements of *Keenan*¹ and *Marshall*² and several identified appeal decisions³ which set out that it is not the purpose of such applications to determine whether or not a proposal is permitted development. The appellant therefore considers that the Council was not empowered to determine whether or not the proposed development would fall within the description of the relevant class within the GPDO.
7. The Council has provided a copy of the more recent High Court *Smolas*⁴ judgement and subsequent appeal decisions⁵, which confirm that the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class of permitted development. While *Smolas* considered development under a different class to that sought in this instance, I am satisfied that its material points refer to the Order generally, and not specifically to one particular class or part.
8. The appeal cases referred to by the appellant pre-date the *Smolas* judgement, and in this respect the weight that I can afford to the approach taken within them is limited. Moreover, the appellant has had the opportunity to comment on the relevance of this judgement, and it has not been put to me that the approach in the *Smolas* judgement is incorrect. Therefore, taking the above into account, the main issues are:
 - whether the proposal would be permitted development under Schedule 2, Part 6, Class E of the GPDO; and
 - if so, the effect of the siting, design and external appearance of the proposed development, having regard to its location within the Dorset AONB.

Reasons

9. In determining whether or not the proposed development is permitted development, it is necessary to consider whether the land is used for the purposes of forestry, including afforestation, and whether the building is reasonably necessary for those purposes.
10. A small amount of tree planting has been carried out at the site, largely focussed around the access track. There are also young saplings present in an area of 'nursery' planting. Discrete areas of trees and vegetation alongside the river have clearly been managed recently, and log storage is apparent in the upper corner of the site. There is also some evidence, mainly through storage of machinery, of timber processing on site. These works clearly relate to the management of trees and timber, but are, in my view, peripheral to an otherwise open field, and do not constitute a forestry use of the land.
11. The appellant has also put forward evidence of intended works in relation to tree planting. These appear to mainly focus on planting between 600 and 700 fast-growing trees, with the aim of generating coppice material within 5 to 10 years. Other areas of copse, orchard, and pasture planting are also proposed. Alongside native tree planting, reference is made to the planting of Paulownia as fast-growing non-native trees suitable for timber production.

¹ *Keenan v Working BC & SSCLG* [2017] EWCA Civ 438

² *R (Marshall) v East Dorset DC & Pitman* [2018] EWHC 226 (Admin)

³ PP/W1145/W/18/3202153, APP/X0360/W/19/3243308, and APP/X1118/W/20/3255229

⁴ *R (Smolas) v Herefordshire Council* [2021] EWHC 1663 (Admin)

⁵ APP/C1435/W/21/3271731 and APP/J1860/W/22/3291979

12. I note also that funding has been approved under the Woodland Trust MOREwoods scheme, however no detail of the number or species of proposed trees has been provided. There is also no indication as to what management is required as part of the funding, or whether short rotation coppice would be a suitable long-term use of the native trees.
13. When taken as a whole, while the evidence identifies a clear intention to carry out some tree planting and management on site, it does not demonstrate that the land is in a forestry (afforestation) use. Moreover, the proposals provide little substantive detail of the long-term management operations required for the intended planting. For example, at what intervals thinning, coppicing, or re-stocking would be needed, and what machinery might be needed for those works.
14. Generally, the intended planting proposals appear to be at a relatively early stage. The appellant's Landscape Appraisal and Preliminary planning report identifies a series of recommendations including undertaking detailed planning and specifications for all woodland management and creation proposals. This is clearly an important step in identifying the type of forestry operations needed in the long term, and consequently, the need for permanent machinery, tool storage, or welfare facilities on site.
15. The detailed management proposals at present relate primarily to a narrow area of riverside planting. They identify limited provisions including the replacement of some of the timber extracted, coppicing or pollarding laurel, and planting suitable native tree and shrub species. Though some machinery will be used for these works, the limited scale and scope of these operations do not justify the permanent storage of machinery in a building on site.
16. I note the evidence demonstrating that the appellant has an external contract to clear weather damaged and Ash Dieback infected trees, along with ongoing maintenance at a 10ha woodland site in Chard. However, there is no substantive information regarding the amount of work this would actually entail, for example through a management plan or survey information. Nor do I find that the provision of forestry services at a location some distance away demonstrates that a forestry building would be reasonably necessary at the appeal site.
17. Overall, while it may be convenient to store equipment on site, I have been presented with limited evidence which demonstrates that the building is necessary in this location for the management of the small number of trees on site, or for woodland off site. Even if the intended tree planting would, in the future, bring the land into forestry use, the evidence does not provide sufficient justification that the proposed building would be reasonably necessary for this purpose.
18. Taking all of the above into account, I conclude that the appeal proposal would not comply with the definition of permitted development as set out in Schedule 2, Part 6, Class E of the GPDO.
19. I note that the earlier refusal of prior approval⁶ included a refusal reason in relation to the siting, design and external appearance of the building. As considerations in relation to these prior approval matters are a follow-on

⁶ 22/1668/AGR

condition stage under paragraph E.2, they can therefore only apply if the development is otherwise permitted development. As the proposal would fail to constitute permitted development, there is no need to consider whether these conditions would be met.

Other Matters

20. The appellant has highlighted several applications that have been determined by the Council. In these cases the planning authority determined that the buildings were reasonably necessary for the purposes of forestry, and on that basis, would constitute permitted development under Part 6, Class E of the GPDO. However, I must assess this appeal on the basis of the information before me, and the evidence in relation to the particular use and needs of the appeal site. I therefore attach limited weight to these decisions which each have specific individual circumstances.
21. I acknowledge that machinery is currently stored externally and within trailers and a static caravan on site, and that this makes securing the site difficult for the appellant. I also accept that the building would facilitate the removal of much of the external storage, and would 'tidy' the site in visual terms. However, while these may be benefits, they are not determinative factors as to whether or not the proposal would constitute permitted development.
22. I note the concerns raised by third parties regarding issues such as the existing fence, noise impacts and vehicle movements associated with the proposal, but these are matters outside the scope of this appeal. Accordingly, these concerns have not been determinative in my decision.

Conclusion

23. For the reasons given above, the appeal is dismissed.

K Jones

INSPECTOR