



Appeal Decision

Site visit made on 20 February 2024

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2024

Appeal Ref: APP/V3310/W/23/3317970

Cannington Enterprises Ltd, Cannington, Bridgwater, Somerset TA5 2NJ

- 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, Paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Cannington Enterprises Ltd against the decision of Somerset Council.
 - The application Ref 13/22/00027, dated 11 August 2022, was refused by notice dated 7 September 2022.
 - The development proposed is described as 'excavation work only to facilitate short-term external bulk BSI PAS 110 fertiliser storage and associated rainwater run-off storage'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was submitted against the decision of Sedgemoor District Council. Since the submission of the appeal, Sedgemoor District Council have merged with other Councils to form Somerset Council. As a result, I have referred to Somerset Council in the banner heading above.
3. I have taken the description of development as set out above from the application form as neither party has provided written confirmation that a revised description has been agreed.
4. Under Article 3(1) and Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for agricultural development on units of 5 hectares or more subject to limitations and conditions. GPDO paragraph A.1. (a) to (k) of Part 6 sets out a range of limitations for which failure to meet restricts the permission granted at Class A.
5. Paragraphs A.2.(1) to (7) of Class A set out a range of conditions that the permission granted by Class A is subject to. Amongst these, paragraph A.2.(2) states that the developer is required to apply to the local planning authority for a determination as to whether the prior approval of the decision maker will be required as to the building's siting, design and appearance.
6. The Council's first reason for refusal states that the proposal is not considered to comprise permitted development under Class A of Part 6 of the GPDO, as it has not been demonstrated that it is reasonably necessary for agricultural

purposes under Paragraph A.1(d) and does not comply with the restriction set out under Paragraph A.1(k) with regard to the distance to a protected building. However, during the course of the appeal the Council confirmed that the proposal complies with the restriction under Paragraph A.1(k) and withdrew this part of the first reason for refusal. As I have no reason to disagree with the parties in relation to Paragraph A.1(k), I will not deal with this part of the reason for refusal further.

7. The second reason for refusal states that the proposal exceeds the 1000 square metres size limit set out under Paragraph A.1(e) and that therefore an application for full planning permission is required.

Main Issue

8. In light of the above, the main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 6, Class A of the GPDO with regard to whether it would involve the provision of a building, structure or works designed for agricultural purposes and whether it comprises a building exceeding 1000 square metres. Should I conclude that the proposal falls within the scope of this particular part of the Order, consideration must then be given to matters relating to the siting, design and external appearance of the building.

Reasons

9. The proposal comprises the formation of an impervious concrete or asphalt base and associated drainage lagoon. Dry digestate would be stored on the impervious base and is produced following an energy-extracting anaerobic digestion process. Following storage, the dry digestate is sold as organic fertiliser. The digestate comes from Cannington Enterprises Ltd.'s own anaerobic digesters and is produced from feedstock that comprises crops solely produced on land owned or controlled by Cannington Enterprises Ltd as part of their farming operation. The associated crops are brought to the appeal site and ensilaged before being fed into the anaerobic digester.
10. The impervious base and associated drainage lagoon are required to aid efficiency and as the dry digestate is currently stored on grassed fields and elsewhere on land owned by Cannington Enterprises Ltd leading to loss of materials during storage and collection. The proposal would also enable improved control of water run-off from the dry digestate into the proposed lagoon.
11. The parties agree that the dry digestate is not waste and I have no reason to disagree.

Whether for agricultural purposes

12. In order to benefit from permitted development (PD) rights for agricultural development on agricultural land comprised of an agricultural unit of 5 hectares or more under Part 6 Class A paragraph A of the GPDO, the works for the erection of a building or any excavation or engineering operations need to be reasonably necessary for the purposes of agriculture. This is clarified in paragraph A.1.(d) that states that development is not permitted by Class A if it would involve the provision of a building, structure or works not designed for agricultural purposes.

13. In relation to Part 6 Class A of the GPDO, the Council state that the proposal comprises the erection of a building, while the appellant states that it is an engineering operation. I will return to this below, but either way, the proposal falls to be considered against Part 6 Class A, and under A.1 (d), as it involves the provision of a building, structure or works.
14. The appellant states that the proposal is for an agricultural purpose. This is on the basis that the whole process directly results from the appellants own crops with no residual food source material added, utilises the appellants own on-farm anaerobic digester and is on land owned by the appellant who also distribute the resultant natural Soil Association approved fertiliser and soil improver to third parties.
15. The definition of 'reasonably necessary for the purposes of agriculture' is partly set out in paragraph D.1(7) of Schedule 2, Part 6 of the GPDO. While this includes the erection of a building housing an anaerobic digestion system or for storage of fuel or waste from that system, the proposal is for a storage base and associated lagoon rather than an anaerobic digestion system. Furthermore, the proposal does not comprise the storage of fuel or waste from that system.
16. While the dry digestate would be a result of crops grown by the appellant and taken through their own anaerobic digester, the anaerobic digester would handle the crops and process them into the dry digestate that would be sold as fertiliser. As part of this process, energy is also produced. By reason of the processing of the crops and the proposed storage area and associated lagoon being necessary to allow the product to be stored for the required period prior to sale as fertiliser, the proposal is not reasonably necessary for the purposes of agriculture. It is required as part of a process of turning crops into another product that is packaged and sold as 'Rocket Gro'. Or in other words, necessary for the production of fertiliser.
17. The appeal process therefore falls under the definition of an 'industrial' process as defined under Article 2(1) of the GPDO by virtue of comprising the altering, finishing and adapting for sale any article. This sets it apart from the storage of baled hay, drying of crops and ensilage that do not generally involve the crops being processed through an anaerobic digester to create a different product for sale (in this case fertiliser).
18. As a result of the above, the proposal is not reasonably necessary for the purposes of agriculture and as a result does not fall under Part 6, Class A.
19. I acknowledge the evidence from the appellant seeking to demonstrate how the wider site owned by Cannington Enterprises Ltd comprises four planning units with part of the anaerobic digester forming part of the agriculture based business and associated planning unit. The other three planning units comprise chilled and refrigerated bulk storage, processing of residual food substances in a different part of the anaerobic digester with separate lagoons, and the combined offices and administration area. However, Part 6 Class A does not mention the 'planning unit'. Instead, it relates to the carrying out on agricultural land comprised in an agricultural unit. In light of the location of the appeal site forming part of an agricultural field used for the purposes of agriculture separate from the land used for the anaerobic digester, bulk storage area and offices, the appeal site is in agricultural use and comprises part of an agricultural unit. As the extent and number of planning unit(s) would have no bearing on the appeal, there is no need for me to consider this further.

Whether a building

20. Paragraphs A.1.(e)(ii) of Part 6, Class A.1 of the GPDO states that development is not permitted by Class A if the ground area which would be covered by any building would exceed 1000 square metres. There is no dispute between the parties that the proposal exceeds 1,000 square metres in ground area, and I have no reason to disagree.
21. The GPDO definition of a 'building' includes any structure or erection. As a result of the proposal comprising sizable permanent structures constructed on site and set into the ground, the storage area for the dry digestate and associated drainage lagoons would fall within this definition as a 'building'. In simple terms, to provide the proposal, building operations are necessary.
22. My attention has been drawn to Part 6, Class A D.1(1) of the GPDO that clarifies that for the purposes of this part of the GPDO, a 'building' does not include anything resulting from engineering operations. I further acknowledge that the appellant considers that the proposal comprises engineering operations rather than a building.
23. Engineering operations are not defined within the GPDO or within the Town and Country Planning Act 1990 (as amended). While the proposal would require the involvement of an engineer to lay it out and suitably construct the proposal, it would also require the importation of a considerable amount of materials to construct the impervious base and to create the water-tight lined drainage lagoon. For these reasons, and as a fact and degree judgement, the construction works would go beyond engineering operations.
24. As a result, and by virtue of the GPDO definition of a building including any structure or erection, the proposal comprises a 'building' that exceeds the 1,000 square metre threshold under paragraph A.1.(e)(ii) of Part 6, Class A.

Conclusion on Main Issue

25. As the development is not for the purposes of agriculture, the proposal is not permitted development under Schedule 2, Part 6, Class A of the Order. As it would not be permitted development, it is not necessary for me to consider the prior approval matters of siting, design and external appearance.

Other Matters

26. The appellant states that a decision was not made by the Council within the required 28-day period. However, as I have found that the proposal does not benefit from permitted development under Schedule 2, Part 6, Class A of the GPDO, the timescale is not relevant. In any case, the notification application was received by the Council on the 12 August 2023 with the decision issued on the 7 September 2023. A decision was therefore made within 28 days.

Conclusion

27. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

C Rose

INSPECTOR