



Appeal Decision

Site visit made on 21 February 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Appeal Ref: APP/X1545/W/23/3322241

84 Nipsells Chase, Maylandsea, Chelmsford, Essex, CM3 6EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Oliver Gozzett (Gozzett Forestry Services and Supplies) against the decision of Maldon District Council.
 - The application Ref AGR/MAL/23/00218, dated 21 February 2023, was refused by notice dated 28 April 2023.
 - The development proposed is timber frame forestry building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The reason for refusal cites failure of the proposal to fall within Class B, Schedule 2, Part 6, of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). Considering the Appellant's contention that they were intending to rely on rights conferred under Class E, I have determined the Appeal on this basis.
3. Both parties refer to an application for prior approval dated 10 October 2022 (Ref - 22/01047). This proposal has limited relevance as my decision concerns the merits of the application set out in the banner.

Main Issues

4. The main issues is whether the proposal falls within the scope of Class E, Schedule 2, Part 6, GPDO.

Reasons

5. For Class E to be within scope a proposal must involve the carrying out on land used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes consisting of the developments listed (a) to (d).
6. There is no dispute that the proposal involves development of land of a type that falls within (a) to (d). Paying regard to the Appellant's business evidence and intended use of the building, the specific activities proposed to be carried out in the new building itself are reasonably necessary for the purposes of forestry.

7. The key question in this case is whether the land itself can be regarded as used for the purposes of forestry. If it is not, then the proposal would fall outside the scope of Class E regardless of whether the 'reasonably necessary' stipulation would be met.
8. There is no definition of forestry for GPDO purposes. The definition provided by the Appellant is informative but has no legal basis. Class E does not say 'sole use'. However, the primary use of the land must be for the purposes of forestry. Competing primary uses on the same land results in mixed use and therefore land that is not used for the purposes of forestry. Genuinely ancillary or incidental activities to a primary forestry use are capable of keeping a proposal within the scope of Class E.
9. The submitted site plan, with a red line area used to identify the site for development management purposes, includes a residential dwelling, garden, outbuilding (use of which is not clarified in the evidence), open field with vegetation within it, and woodland.
10. Although the Appellant has submitted details of the forestry business and intended use of the proposed building, there is less specific detail about how different parts of the land are used. However, even accepting on the face of it that the open field and wooded area are used for the purposes of forestry, I cannot reasonably conclude likewise for the residential dwelling and its garden. This points towards the land within the red line area being in mixed use and therefore outside the scope of Class E.
11. The red line area is an administrative development management tool that gives some indication of land ownership and development area. It does not on its own fully establish what is a question of fact and degree. The physical and functional nature of the land should also be looked at.
12. The dwelling and garden are directly accessible from the rest of the land through a gate and is separated by fencing and the outbuilding. Moving away from the dwelling the land becomes increasingly more wooded and narrow before arriving at a gate at the boundary of the site that gives access to a track/dirt road. There is minimal physical separation between different parts of the land, including between the garden of the dwelling and the field.
13. Functionally, there is some sense of character change between the formal garden of the dwelling and the field. However, the gated access, a low degree of physical separation, and the common open and green characteristics between the field and the garden do not lead me towards a fact and degree conclusion that the dwelling and its garden sits on different land to the rest of the site.
14. Although the use of the outbuilding is not detailed in the evidence, it being accessible from both the garden of the dwelling and the field further blurs the functional distinction between different parts of the land. The fact the land can be accessed to the rear without passing through the dwelling and garden lends some minor positive weight to a view that the dwelling is functionally separate from the rest of the land. However, not enough weight to counter the evidence to the contrary.

15. Weighing this matter up, as a question of fact and degree the evidence does not demonstrate that the land is used for the purposes of forestry. This is principally because the dwelling and its garden falls within the land and cannot be regarded as ancillary or incidental to forestry. This indicates a mixed use of land.
16. In these circumstances, it serves no purpose to go on to consider specifically whether the limitations and conditions at paragraph E1 and E2 of Class E would be met. Specifically, the timing for the Council responding to the prior notification application is not relevant as the proposal falls outside of the scope of the permitted development right. A development falling outside the scope of a Class cannot become permitted development by default if the Council does not determine a prior approval application within the statutory period.
17. The Appellant's example case¹ does not consider the issue of whether the land itself can be regarded as used for the purposes of forestry, specifically where residential use is also included. The conclusions in this case are of limited relevance. As the Council note, the second example case from South Gloucestershire cannot be found due to what appears to be a typographical error. The Appellant has not addressed this issue in final comments.
18. For the reasons set out, the proposal would fall outside of the scope of Class E, Schedule 2, Part 6, (GPDO).

Other matters

19. Although the Appellant has specifically clarified that the proposal is to be assessed under Class E, for completeness and on the basis of the evidence provided, it would not fall within Class A or B for the reasons set out by the Council.

Conclusion

20. The appeal is dismissed.

D R McCreery

INSPECTOR

¹ 3140928