



Appeal Decision

Site visit made on 1 May 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/J1535/W/23/3328811

Epping Road, Harlow (Easting: 541769, Northing: 208241)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 A Montalbano against the decision of Epping Forest District Council.
 - The application Ref is EPF/1185/23
 - The development proposed is new agricultural building.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Mr A Montalbano against Epping Forest District Council. This is the subject of a separate Decision.

Background and Main Issues

3. Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (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. Paragraph A.2 (2)(iii) of the GPDO states that development must not begin before the occurrence of one of the following (aa) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; (bb) where the local planning authority give the applicant notice within 28 days following the date of receiving the applicant's application of their determination that such prior approval is required, the giving of such approval; or (cc) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination.
5. The Council's reason for refusal states that insufficient evidence has been provided to demonstrate that the building is reasonably necessary for the

purposes of agriculture and therefore it is not permitted development under this class.

6. 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 whether the 28-day statutory time period in paragraph A.2 (2)(iii) passed without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination.
7. Consequently, the main issues in this appeal 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 prior approval would be required in accordance with the condition set out in paragraph A.2 (2)(i) of the GPDO, including whether notification was provided in accordance with the 28-day deadline set out in paragraph A.2 (2)(iii) of the GPDO.

Reasons

Permitted development

8. The appeal site comprises a grassed field located on a corner of Epping Road. The field is surrounded by a hedgerow and has vehicular accesses onto Epping Road.
9. The proposal is described as a new agricultural building. The submitted drawings indicate that it would have a mono-pitched roof and would have a floor area of 445 square metres.
10. Paragraph D.1 of Part 6 of the GPDO states that 'agricultural land' means land which, before development permitted 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. Paragraph D.1 also confirms that 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 application form indicates that the land has been in use for agriculture for the purposes of a trade or business for 20 years. However, at the time of my site visit there was no apparent agricultural activity being undertaken on the site. Whilst there is no requirement within the GPDO that the building is intended to accommodate an existing agricultural activity, the GPDO requires that the building is reasonably required for agriculture.
13. The application form indicates that there are currently no buildings on the site that can be used for agricultural equipment, crops and tools associated with farming the land. However, no other details have been provided to assist in the assessment of the need for the proposed building. For instance, there is no detail in relation to the type of agriculture that would be undertaken, and no

information about the type of tools, equipment and crops which would be stored within the building. There is therefore little substantive information to demonstrate the nature or basis of the agricultural activity which the building would be used for, or why the building is required to support the agricultural activity.

14. Therefore, the balance of the evidence does not support the view that the proposed building would be reasonably necessary for the purposes of agriculture within this unit. Consequently, there is little to demonstrate that the definitional requirements applicable to Part 6 development have been met. As such, the agricultural building could not be permitted development under Schedule 2, Part 6, Class A of the Order.

The statutory period for determination

15. The appellant indicates that notification of the Council's decision to refuse prior approval dated 17 July 2023, occurred after the 28-day period for determination had expired. This is not disputed by the Council.
16. However, given my conclusion that the proposal would not be development permitted under Schedule 2, Part 6, Class A of the GPDO, there is no need for me to consider whether or not the 28 day statutory time period in paragraph A.2 (2)(iii) passed without the local planning authority making any determination as to whether such approval is required, or notifying the applicant of their determination. This is because development may only be lawfully begun after prior approval is deemed to be or expressly granted, and the development is carried out in accordance with the submitted plans and is in fact permitted development.

Other Matters

17. Interested parties have raised concerns over whether the agricultural unit is 5 hectares in size, as required by the GPDO. However, given my conclusion that the proposal would not be development permitted under Schedule 2, Part 6, Class A of the GPDO, I have not considered this matter further.

Conclusion

18. I conclude that the proposed development would fall outside the scope of that permitted under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and the appeal should be dismissed.

B Pattison

INSPECTOR