The Planning Inspectorate

Appeal Decision

Site Visit made on 6 July 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2021

Appeal Ref: APP/B3438/W/21/3272531
19 Congleton Road, Mow Cop ST7 3PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Article 3(1), Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
- The appeal is made by Mr David Mellor against the decision of Staffordshire Moorlands District Council.
- The application Ref DET/2020/0058, dated 17 November 2020, was refused by notice dated 8 March 2021.
- The development proposed is farm machinery/implement storage unit.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr David Mellor against Staffordshire Moorlands District Council. This application is the subject of a separate Decision.

Procedural Matters and Main Issues

3. The appellant contends that the Council took 113 days to notify them of its decision. Schedule 2, Part 6, Class A.2 Paragraph (2) of the GPDO sets out amongst other things the procedures which are required to be followed for applications such as that which led to this appeal. It includes that development must not begin before the occurrence of one of three events, one of which is following the expiry of 28 days following the date that 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.

4. Two decisions are before me. The first is dated 15 December 2020 and confirms 'Prior Approval Required', the second is dated 8 March 2021 and states 'Prior Approval Refused'. It is the first of these decisions which must comply with the timescales within Part 6 of GPDO. This decision was made on the 28th day following the Council's receipt of the application. The Council has provided me with a copy of an email sent to the agent representing the appellant on the same date which attached a copy of this decision. The email address this was sent to corresponds with that given on the application form and I find no reason to doubt that it was not received. Therefore, based on the evidence before me, I am satisfied that the Council made its determination that prior approval was required and notified the appellant of its determination in

accordance with the specified timescale in the GPDO. In that regard prior approval is not therefore deemed to be granted.

5. The parties are in dispute in respect of whether the proposed development is reasonably necessary for the purposes of agriculture. The judgement in New World Payphones Ltd v Westminster City Council [2019] EWCA Civ 2250 stated that 'on an application to an authority for a determination as to whether its "prior approval" is required, the authority is bound to consider and determine whether the development falls within the definitional scope of the particular class of development'. This judgement was applied in R (oao Smolas) v Herefordshire Council [2021] EWHC 1663 (Admin), where it was held that the LPA in that particular case did not act unlawfully in deciding that the proposed development would fall outside of the scope of Part 6, Class A and so prior approval should be refused for the proposed development.

6. Taking the above matters into account, the main issues are:

   (i) Whether the proposal would be permitted development (PD) under Schedule 2, Part 6 Class A of the GPDO; and

   (ii) If so, whether or not the proposal would satisfy the detailed prior approval matters including the effect of the siting, design and external appearance of the proposed development on the character and appearance of the area.

Reasons

Whether the proposal is permitted development

7. In order to satisfy PD rights for a new agricultural building under Schedule 2 Part 6 Class A paragraph A. (a) the land has to be a unit exceeding 5 hectares (Ha) in size, and be on land in use for agriculture and which is so used for the purposes of a trade or business[1]. In other words, whether the site is in use as agricultural land and forms part of an agricultural unit, and the building must also be reasonably necessary for the purposes of agriculture.

8. I have been provided with a 'Grazing Map' which shows a separate area of land to the appeal site. The individual areas within this area of land equate to 6.17 Ha. This corresponds with the area referenced on the 'Grazing and Mowing Agreements' dated between 2016 and 2020 which have also been provided as part of the appellant's appeal submission. However, the agreements provided have expired.

9. The appellant suggests in their statement of case that they have further land with an area of 5.35 Ha. It is not clear whether this relates to the same land as that shown on the 'Grazing Map'. Either way, there is no compelling evidence before me to be able to corroborate that the appellant has existing control of an agricultural unit exceeding 5 Ha for example maps with up-to-date land titles and agricultural holding numbers. There is also no substantive information before me in respect of any existing agricultural activity or requirements.

10. In addition, the Council have also raised concerns with regards to the size of the parcel of land upon which the building would be constructed. This is

[1] Schedule 2, Part 6, Interpretation of Classes A to C, D.1-(1) of the Town and Country Planning (General Permitted Development Order 2015 (as amended) (GPDO).

because to benefit from these PD rights it is also necessary for the development to meet the requirements set out in paragraph A.1, which states amongst other things, development is not permitted by Class A if (a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare (Ha) in area.

11. The proposed plans and elevations drawing provided annotates the parcel of land subject of the proposal as measuring 0.7871 Ha. The appellant contends that the actual area of the site is 1.56 Ha. However, it has not been confirmed whether this relates to a re-measurement of the appeal site or whether this incorporates other land not previously included. Therefore, notwithstanding my concerns in respect of the existing overall land holding, I am also not convinced that the parcel of land where the building would be erected meets the minimum requirement in the GPDO.

12. Consequently, based on the evidence before me, I am unable to find that proposal would be on agricultural land which meets the requirements of Schedule 2, Part 6, Class A of the GPDO, and that the building would be reasonably necessary for the purposes of agriculture. As such the proposal would not be permitted development.

Detailed Prior Approval Matters

13. As I have found that the proposals would not be development permitted by the GPDO, the detailed prior approval matters do not fall to be considered as part of the determination of the appeal.

Conclusion

14. For the reasons outlined above, I conclude that the appeal should be dismissed.

M Russell

INSPECTOR