

DELEGATED DECISION REPORT

DET/2022/0006
Valid 24/02/2022

ELDERBERRY BARN
BENTY GRANGE LANE
WATERFALL

ERECTION OF
AGRICULTURAL BUILDING
FOR STORAGE OF
MACHINERY, IMPLEMENTS
AND FODDER.

(AGRICULTURAL/FORESTRY
DETERMINATION)

MAIN ISSUES

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.

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.

DESCRIPTION OF SITE

The site lies on the east side of Bentygrange Lane, a short way to the south of Hill Rise and on the opposite side of the road. The site consists of a roadside stone barn that has been recently converted to a dwellinghouse, the access to the site is via a gateway just to the south of the barn. Bentygrange is an unclassified rural road, designated the D1130. A squared area from the adjacent field to the north of the barn and a linear roadside field parcel to the south of the barn, make up about 2.3 ha of land belonging to the applicant.

Here, the landscape character type falls within the Gritstone Highland Fringe, a large scale undulating landscape with plateaus, steep slopes and valleys. Fields are generally large and enclosed with gritstone walls and some hedgerows. The site is surrounded by open grazing on three sides with Bentygrange Lane and Hill Rise on the other. Tyre Farm and Benty Grange Farm lie a short way to the south west. Boundaries are formed by drystone walls to the south and west of the barn, sheep fencing to the north and metal gates to the east.

PROPOSAL

To provide an implement and fodder storage building. The proposed building would be sited adjacent to, on the eastern side of, the converted barn and 'cut in' to the existing landform. There is an intention to landscape with new clump planting and hedgerow.

The proposed building would provide an internal floor area of approximately 156.27m². The building would be open internally allowing flexible use of the internal space. It would have concrete panel base with sheet cladding on the walls above and providing roof sheeting.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

DET/2015/0034 Building into a dwellinghouse, Class Q. Approved Oct 2015.

SMD/2017/0440 Conversion of agricultural building. Approved Sep 2017.

PARISH COUNCIL

No Objection

OFFICER COMMENTS

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 (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)). 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.

The application would be provided on a separate parcel of land with an area of 2.4ha (the land surrounding the recently converted barn under the applicant's ownership) on its own, short of the 5ha required to make a unit where the provision of a new building can be permitted. The application statement infers that the parcel forms part of the unit which consists of 9 acres at Martinslow Lane at Winkhill (roughly 2km from the application site, but precise location not specified) and 5 acres at Old Carr Farm at Longnor (roughly 15km from the application site, but precise location not specified), and that together they make up the requisite 5ha unit.

Little is said in the application about the extent to which these three, relatively remote and separate, parcels contain 'agricultural land' (land in use for agriculture and so used for the purposes of a trade or business) and are occupied as one agricultural unit – essential requirements of development being permitted. We are told only that the 2.4ha parcel providing the application site, has two fields which are both pasture and suitable for both mowing and grazing, the land produces fodder that is wrapped in plastic and stored outside with a collection of machines, and sheep graze the meadows seasonally.

The proposed building would however be erected on an 'established agricultural unit' (as defined in paragraph X of Part 3 of Sched 2) because on or before 20th March 2013 the land was occupied as a unit for the purposes of agriculture – apparently the unit occupied by Crowgutter Farm, Park Lane, Ipstones (the former owner). Development

under Class Q of Part 3 has been carried out on this 'established agricultural unit' within a period of 10 years prior to the date of this application; and the development proposed under Class A(a) of Part 6, with this application, would be carried out within 10 years of that 'Class Q' development having been carried out.

The applicant has completed the work necessary to convert the building into a dwellinghouse and it has been occupied as such, with the change of use to a use falling within Class C3 (dwellinghouse) being carried out. The change of use is development permitted under Class Q of Part 3 of Sched 2, and the authority accordingly granted prior approval for this change of use with some operational works, under reference DET/2015/0034 in October 2015. A later planning permission was granted under SMD/2017/0440 for conversion works of agricultural building, apparently an application to make revisions to the proposed operational works already approved and submitted and assessed on the basis that the change of use was already permitted with prior approval granted, as a kind of 'strong fall back'.

Consequently, the evidence and information submitted with the application is not sufficient to determine that the development would be on 'agricultural land' occupied as part of a 5ha agricultural unit for the purposes, and 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. Conversely, it is clear that the development would, however, take place on an 'established agricultural unit' (as defined in paragraph X of Part 3 of Sched 2) and that development under Class Q of Part 3 of Sched 2 has been carried out within 10 years from the date of this application.

As such the proposal would not, on either count, be permitted development. As the proposal would not be development permitted by the GPDO, the detailed prior approval matters do not fall to be considered as part of the determination.

CONCLUSION / PLANNING BALANCE

As such the proposal would not, on either count, be permitted development. As the proposal would not be development permitted by the GPDO, the detailed prior approval matters do not fall to be considered as part of the determination.

OFFICER RECOMMENDATION: PRIOR APPROVAL REQUIRED AND REFUSED

Case Officer: Ben Hurst

Recommendation Date: 24/03/2022

X *J. Colley*

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council