

KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

**Town and Country Planning (General Permitted Development) (England)
Order 2015 - Schedule 2, Part 6**

DELEGATED DECISION FOR DISCHARGE OF CONDITION - NOTIFICATION OF AGRICULTURAL DEVELOPMENT

Reference no. **2023/N /93717/W**

Site Address	land adj, 56A, Kaye Lane, Almondbury, Huddersfield, HD5 8XU
---------------------	--

Description	Prior notification for erection of agricultural building
--------------------	---

Recommending Officer	Katie Chew
-----------------------------	-------------------

DECISION – DETAILS WITHHELD/REFUSED

I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kevin Walton

AUTHORISED OFFICER

Date: 14-Feb-2024

Officer Report

Site Description

Land adj, 56A Kaye Lane, Almondbury, Huddersfield, HD5 8XU

The application site relates to a portion of grassland (approx. 0.83 ha in size) located between residential properties on Kaye Lane in Almondbury. The site is bounded to the east, south and west by dry stone walling and to the north fields appear to be separated by hedging and planting. The site currently comprises of a small timber and metal open sided structure which runs along the north-western boundary of the site. The land also appears to be used for the open storage of machinery.

The application site is not located within a Conservation Area or in close proximity to any Listed Buildings.

Description of Proposal

The applicant is seeking prior notification for erection of agricultural building.

The proposed agricultural building would measure 18.2m x 9.1m, with a ridge height of 4.8m. The building would be enclosed to the sides and rear but open to the front. The building is to be constructed utilising pre-stressed concrete panels on the lower half of the structure and treated Yorkshire timber boarding on the upper half, with green box profiled sheeting to the roof.

The submitted application forms indicate that the proposed agricultural building would provide storage of hay bales and to house the grass land machines.

Relevant Planning History

There is no relevant planning history at this site.

Representations

As this is an application for prior approval, advertisement of the application has been undertaken in accordance with The General Permitted Development Order 2015, Schedule 2, Part 6, Class A, paragraph A.2 (iv). No representations have been received.

Consultation Responses

No technical consultations took place during the course of this application.

Parish/Town Council

N/A.

Local Ward Members

None.

Procedural Matters and Policy Context

The above-described proposal is defined as development within Section 55 of the Town and Country Planning Act 1990. The relevant policy is the General Permitted Development Order 2015, Schedule 2, Part 6, Class A.

Part 6, Class A of the GPDO refers to development on units of 5 hectares or more and development is permitted for:

A. The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of –

(a) works for the erection, extension or alteration of a building; or

(b) any excavation or engineering operations,

Which are reasonably necessary for the purposes of agriculture within that unit.

A.1 outlines when development is not permitted:

(a)The development would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in area;	Fail: The applicant confirms on the application form that the development is to be carried out on a separate parcel of land which whilst forming part of the unit, would measure approximately 0.83ha in size. However, this appears contrary to the submitted location plan which indicates the red line boundary as the 0.83ha parcel of land but also indicates other contiguous land edged blue adding a further 1ha.
(b)It would consist of the erection or extension of any agricultural building on an established agricultural unit (as defined in paragraph X of Part 3 of this schedule) where development under Class Q or S of Part 3 (changes of use) of this schedule has been carried out within a period of 10 years ending with the date on which development under Class A(a) begins;	Pass: None of the listed have taken place.
(c)It would consist of, or include the erection, extension or alteration of a dwelling;	Pass: No works are proposed to a dwelling as part of the application.

(d)It would involve the provision of a building, structure or works not designed for agricultural purposes;	Pass: The design, scale and size of the building proposed is considered to appear generally suitable for agricultural purposes.
(e)The ground area would be covered by – (i) Any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations; or (i) Any building erected or extended or altered by virtue of Class A would exceed 1000 square metres calculated as described in paragraph D.1(2)(a) of this Part;	Pass: The footprint of the building concerned would not exceed 1000 square metres, nor is it intended to accommodate livestock or any plant or machinery arising from engineering operations.
(f)The height of any part of any building, structure or works within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres;	Pass: The building would not be within 3 kilometres of an aerodrome.
(g)The height of any part of any building, structure or works not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;	Pass: The building would not be within 3 kilometres of an aerodrome and would not exceed 12 metres in height.
(h)Any part of the development would be within 25 metres of a metalled part of a trunk road or classified road;	Pass: The site is not within 25 metres of a metalled part of a trunk road or classified road.
(i)It would consist of, or include, the erection of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building;	Pass: The building is not to be used for the keeping of livestock or slurry/sewage sludge.
(j)It would involve excavations or engineering operations on or over article 2(4) land which are connected to fish farming; or	Pass: Not applicable.
(k)Any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system – (i) Would be used for storing waste not produced by that boiler or system or for storing	Pass: It is not proposed that the building will be used for the storage of waste for a biomass boiler or anaerobic digestion system.

(i) fuel not produced on land within the unit; or Is or would be within 400 metres of the curtilage of a protected building.	
---	--

Taking the above assessment into consideration, the proposals are not deemed to meet the requirements as set out by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 6, Class A due to the development being undertaken in relation to a unit which falls under the required 5ha or more in size. While the application form indicates the size of the agricultural unit to be 13 hectares, the applicant has only provided a location plan showing land edged red and blue to be 1.9ha in area. No further evidence is provided to demonstrate other land form part of any wider agricultural holding. In addition and according to the applicant's information the proposed development is to be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in size (0.83ha). Moreover, the applicant has not provided any evidence to demonstrate the nature of agriculture operating on the land. Aerial photographs from 2000 to 2021, while accepting only provide information of a single point in time do not indicate any significant agricultural operations. The proposals are therefore not considered to be permitted development. Nevertheless, for completeness an assessment in terms of the general principle of erecting an agricultural building in the proposed location, and its siting, design and appearance have been undertaken below.

Assessment

Paragraph (2) of Class A requires the developer to apply in writing to the local planning authority (LPA) for a determination as to whether the prior approval is required for the siting, design, and external appearance of the building. As part of the assessment, the LPA should determine whether or not the proposals comply with the requirements and conditions of the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 6, Class A.

In compliance with the Order, the LPA gave written notice within 28 days of receipt of the application requesting details of the siting, design and external appearance of the building in writing.

The GPDO states that the building must be reasonably necessary for the purposes of agriculture with the "unit".

The proposal is for the creation of an agricultural building. A search of planning history indicates that there is no relevant planning history at the site although there is a structure located along the north-west boundary of the application site that appears to have been in-situ (or something similar in this location) since at least 1955.

Whilst the submitted application form makes reference to the entire agricultural unit forming 13 hectares in size, from looking at the submitted location plans

which show a red line boundary around the application site, and blue boundaries around 2 adjacent fields, if this is to be the full agricultural unit this would equate to just 1.9ha in size. No additional information has been provided in respect of any other fields that are owned/available to the applicant. As such it appears the proposed development is sited on a unit less than 5 hectares in size and therefore Class A cannot be relied upon.

In this context, weight is afforded to caselaw provided by the decision of the High Court in relation to *Smolas, R (On the Application Of) v Herefordshire Council* [2021] EWHC 1663 (Admin) (21 June 2021). This was an unsuccessful challenge by way of judicial review of two decision notices issued by Herefordshire Council; the first refused prior approval for the erection of an agricultural building under paragraph A, Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO") and the second was a notification to the claimant that planning permission was required for the building.

Within this case, ground 2 of the claimants ground of challenge was that the LPA reached an irrational decision in determining that, on the basis of a lack of evidence submitted by the applicant, that the building was reasonably necessary for the purposes of agriculture.

In the decision of the aforementioned case it is set out at paragraph 78 that:

'The claimant... explained that the proposed building was a "General purpose building for storage of machinery & fodder". When asked whether the proposed development was reasonably necessary for the purposes of agriculture, he answered "yes", repeating that it was for "storage of machinery and fodder".'

At paragraph 84 the decision sets out the following:

'The Council was entitled to conclude that it had insufficient evidence to satisfy it, as the onus of establishing permitted development was on the Claimant. Contrary to the Claimant's submission, the Council did not reverse the burden of proof.'

The decision concludes on this matter at paragraph 85, setting out the following:

'Once the Council had concluded that the Claimant's application could not progress further because the proposed development fell outside the scope of the permitted development in paragraph A of Part 6, it was rational for it to exercise its discretion to determine the application for prior notification and prior approval on the same occasion. There was no purpose in going on to consider whether to grant prior approval for siting, design and external appearance at a later date, when the application did not come within the scope of permitted development under paragraph A of Part 6.'

Given the decision of the High Court in relation to *Smolas, R (On the Application Of) v Herefordshire Council* [2021] EWHC 1663 (Admin) (21 June 2021), it is considered there is a requirement for it to be demonstrated that the

development can meet the requirements of the description of development set out within Part 6, which requires the building to be such that it is 'reasonably necessary for the purposes of agriculture within that unit which must be 5 hectares or more.'

In this case the building has a footprint in excess of 165 square metres and is to be located adjacent to an existing open-ended structure located along the north-western boundary of the application site. The applicant has failed to provide a reasoned justification in relation to livestock numbers served by the food to be stored within the building or the reason for significantly sized doors which would serve sizable Agricultural machinery, and what such machinery is used for. Whilst the submitted application form notes the storage of grass land machines from looking at aerial images of the site over the course of several years, and following on from a site visit undertaken by Officers in January 2024 it was clear to see that the site has been used for the open storage of machinery for a significant period of time. At the time of the Officers site visit, the land was overrun with machinery, with evidence of tractors also being parked on the main road. Whilst this could be said to support the need for a storage building, the sheer number of machines, when compared to what is considered to be a small holding is not deemed to be justifiable. In addition, there was no clear evidence of any animals on site, either in the application site, or adjacent owned fields.

Furthermore, from looking at the recent appeal decision (10th January 2024) by K Stephens between the appellant Mr James Whitlow (of E James Whitlow) v Cheshire East Council (reference APP/R0660/W/23/3322631) in relation to the provision of a building for the storage of agricultural machinery in the Green Belt. Officers consider that some of the conclusions drawn within this appeal bare resemblance to this current application. The appeal decision outlined that the appellant operated an agricultural contracting and land management business and therefore required a building to store such machinery. The inspectorate questioned whether the intended purpose of the building falls under the definition of 'agriculture', making reference to Section 336 of the Town and Country Planning Act 1990 which provides the definition of agriculture as being *"includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins, fur, or for the purposes of the farming of the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly"*. Taking the above into consideration, the inspector concluded that the storage of machinery and equipment does not fall within this definition, and whilst there is no doubt that agricultural machinery and equipment of various types are needed to carry out the above defined 'agriculture' purposes, it is also not uncommon for farmer to hire various machinery as and when they need it. The site related to 1.15 hectares of grassland which was cropped and used for the production of baled grass, silage, haylage and hay. The site does not form part of a farmstead or complex of other farm buildings and the majority of the proposed building would be used for the storage of materials, with only a small portion used for the storage of hay. The Inspector therefore concluded that the storage of hay would be

ancillary to the storage of machinery and that this use does not fall within the definition of agriculture. Having taken the above into consideration, Officers are of a similar opinion that the proposed building at land adjacent to 56A Kaye Lane, would be in majority used for the storage of machinery, with the storage of hay being a more ancillary component. A simple search of the applicant on the internet also indicates the machinery stored on the site is to be primarily kept for hire purposes (<https://raireyservicesltd.co.uk/equipment>). As no floor plans or additional supporting information have been submitted alongside the application to counter this argument, and with no clear evidence available elsewhere to contradict this conclusion Officers are of the opinion that the building may not be reasonably necessary for the purposes of agriculture of that unit.

In terms of design and siting the proposal is for the creation of an agricultural building. The building would be situated 37+ metres away from residential properties located along Kaye Lane to the west, and around 81+ metres away from residential properties located along Kayle Lane to the east. To the south, residential properties are to be located approximately 67+ metres away. It is considered that these distances would help to mitigate against the scale and size of the proposal, and that the proposed building would be read in conjunction with the existing structure found on the site. As such, the siting of the building would be considered to be acceptable in this instance.

The building would be constructed from grey pre-stressed concrete panels on the lower half of the structure and treated Yorkshire timber boarding on the upper half, with green box profiled sheeting to the roof. The building is to be of a simple utilitarian design, would have a rectangular footprint and would benefit from a pitched roof design. The structure would have an eaves height of 3.6m, rising to an overall height of 4.8m to the ridge line, this is likely provided to allow enough headroom for the storage of machinery. For these reasons, the design and external appearance of this development are considered appropriate.

Nevertheless, a full assessment can only be undertaken when it has been clearly demonstrated that the building is reasonably required for the purposes of agriculture and evidence to show the agricultural unit is 5 hectares or more. Without the submission of sufficient detail to make an assessment as to whether the building is reasonably necessary for the purposes of agriculture within that unit, the proposed development is not considered to constitute permitted development.

Taking the above into account, it is considered that there is no demonstration that the development is reasonably necessary or that the building may benefit from a general permitted development permission. There is no clarification of the full extent of the agricultural unit to which the building would serve, despite some reference to hectare sizes within the application forms submitted.

Conclusion

On the basis of the submitted detail it is considered that the development is likely to result in storage mainly used for machinery which is currently stored

out in the open at the application site, and that any storage of hay would be ancillary to this use. Therefore, the proposed development may not be reasonably necessary for the purposes of agriculture, as the storage of machinery does not fall within the definition of agriculture outlined within Section 336 of the Town and Country Planning Act 1990. Moreover, the applicant has not demonstrated that the agricultural unit is 5 hectares or more, or that the development would be carried out on a separate parcel of land forming part of the unit, measuring at least 1ha in size. It is therefore recommended that prior approval be refused.

Recommendation:

Approval of details withheld.

Decision Authorisation - Delegated Powers

Application Number: 2023/93717

Officer Recommendation: Approval of details withheld.

The proposal as submitted is not considered to be permitted development and a full and proper assessment as to whether the building is reasonably necessary for the purposes of agriculture within the unit is unable to be undertaken on the basis of the submitted information. It is also considered that insufficient evidence has been submitted to demonstrate that the agricultural unit is 5 hectares or more as required by Class A, Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). Prior approval is refused.

Plans and specifications schedule:-

Plan Type	Reference	Web ID	Date Received
Location Plan	-	-	18 th December 2023
Site Layout Plan	-	-	16 th January 2024
Proposed Elevations	23-23590	-	16 th January 2024

Report Dated:

07/02/2024