The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th January 2017

Appeal Ref: APP/P1425/W/16/3154832
Bineham Park Farm, Lewes, North Chailey, East Sussex BN8 4DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the *Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (the GPDO)*.
- The appeal is made by Mr Stuart Vaughan against the decision of Lewes District Council.
- The application Ref LW/15/0957, dated 27 November 2015, was refused by notice dated 15 January 2016.
- The development proposed is described on the appeal form as *'agricultural improvement under Part 6 of the GPDO comprising the excavation of soil and importation of clean subsoil to slightly raise ground levels and reprofile to improve drainage'*.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Stuart Vaughan against Lewes District Council. This application is the subject of a separate Decision.

Reasons

3. The GPDO grants planning permission for certain classes of development, subject to meeting specific conditions and circumstances set out within the Order. If a proposal meets these requirements, then the proposal can be considered to be 'permitted development' as it would benefit from planning permission by reason of Article 3(1) of the Order. In this case, the main parties agree that *Schedule 2, Part 6 Class A- agricultural development on units of 5 hectares or more* of the GPDO is relevant and that which the proposal should be considered against. Given the size of the total landholding exceeds this; being about 77 hectares in size (see appellant's S*upporting Statement*) I see no reason not to concur.

4. The appeal site comprises an open grassed agricultural field, which the appellant indicates is mainly used for sheep pasture and haylage. The proposal in this case seeks the temporary removal of the topsoil in parts of the field and then the removal of subsoil from another, unspecified, site in order to raise lower parts of the site to reduce the impact of historic localised flooding within the field.

5. On 15 January 2016, the local planning authority (LPA) issued a letter which, amongst other things, stated that *'If by the 29 December 2015, you have not*

been told that your application is invalid, or you have not been told that your cheque has been dishonoured, or you have not been given a decision in writing, you can carry out the work without further notice.' In the appellant's view, this means that the proposal can be implemented without the need for any further notification. Indeed, the appellant maintains that the proposal seeks the use of clean subsoil to re-contour the ground. In such circumstances, they consider that this imported subsoil will be non-waste material registered under the CL:AIRE protocol which is recognised by the Environment Agency and Lewes District Council.

6. I have also been directed to another decision of the Council by the appellant at Bonner dated 'November 2015', which involved a similar form of development on another site where prior approval was given. I do not have the full details of that case before me and cannot be sure that the circumstances are of direct relevance to those before me. In any case, it is for me to determine the merits of the evidence before me on the basis of the appeal scheme.

7. On 19 January the LPA wrote to the appellant informing them that the proposal was essentially a county matter, which East Sussex County Council (ESCC) should consider. This was partly on the basis that the LPA considered that the imported subsoil of around 6750 cubic metres would constitute 'waste'. In March 2016, the LPA's solicitor provided further reasons as to why the proposal could not be considered under Part 6 of the GPDO, which were sent to the appellant's solicitor. The application for prior approval was considered to be invalid by the LPA, and the fee returned to the appellant on 22 April 2016.

8. Be that as it may, there is an appeal before me in which the appellant considers the proposal does meet the criteria set out in Part 6, Class A (b) of the GPDO, whereas the LPA considers it does not. It is on this matter that the appeal proposal turns.

9. The LPA points to the fact that they consider that the proposal does not necessarily constitute an excavation or engineering operation. However, the works in this case would appear to involve some excavation on the appeal site (of the top soil) and works which require an element of pre-planning which would normally be supervised by a person with some engineering operation. For example, work involved in working out how much subsoil is required and how the land would be re-contoured.

10. The LPA also point to the use of the field for horse grazing and it being advertised with some local agents for equestrian uses. However, there is no cogent evidence before me that demonstrates that the land is not used for sheep grazing or the growing of haylage[1] as the appellant suggests. What is more, the works appear to be necessary for the welfare of livestock in order to reduce the risk to the sheep from deadly fluke-worm carrying snails and general adverse health impacts of water logged fields to farm animals. In such circumstances, the proposal would fulfil the initial requirement set out in the GPDO.

11. However, my attention has been drawn to Condition A2 (1) (c) which indicates that *'Development is permitted by Class A subject to the following conditions - … waste materials are not brought on to the land from elsewhere for deposit…'* In this case, beyond the appellant's confirmation that the proposal would use

[1] See letter from T.Moon Contracts –Paddock Maintenance & Agricultural dated 23 August 2015

clean subsoil registered with the CL:AIRE protocol, there is no indication where the subsoil to be used in this development will come from.

12. The lack of knowing where the clean subsoil would be imported from means that as the decision-maker I am not able to be entirely confident that the imported soil would not be waste. I am reinforced in this view by the fact that the Waste Framework Directive (WFD) defines waste as *'any substance or object which the holder discards or intends or is required to discard'* (Article 3(1), WFD). I understand this to include not only the typical dictionary definition of 'to get rid of something useless or undesirable' but also to include the recovery of a substance or object, for example recycling, whether by the person producing the substance or someone else. This definition needs to be calibrated by the fact that the substance, in the form of the imported subsoil, would be from another unidentified site.

13. On the basis of the evidence before me, there is insufficient evidence to demonstrate that it would not involve waste materials being brought in from elsewhere. Therefore I can come to no other conclusion than the proposal would fail to satisfy Condition A2 (1) (c) of Schedule 2, Part 6 Class A of the GPDO. Accordingly, it would not constitute permitted development. I note the Council's observations on other matters, such as the SSSI and land drainage concerns. However, as the proposal would not constitute permitted development in this case, there is no need for me to consider these matters further.

14. For the reasons given above, and having taken into account all matters raised, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR