



Appeal Decision

Site visit made on 2 May 2012

by **Julia Gregory BSc (Hons) BTP MRTPI MCMI**

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

Decision date: 19 July 2012

Appeal Ref: APP/Y2736/A/12/2168714

**Steam and Moorland Garden and Machinery Centre, Malton Road,
Pickering, North Yorkshire YO18 7JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Charles Hopkinson against Ryedale District Council.
- The application Ref 11/00622/73A is dated 10 June 2011.
- The application sought planning permission for the erection of a garden centre without complying with a condition attached to planning permission Ref 00/00400/OUT, dated 4 August 2000. The condition in dispute is No 6 which states that:

The building(s) hereby approved shall only be used as a garden centre for the display and sale of the following categories of goods:

- *Pot and bare rooted plants, ornamental fruit bushes and trees, seeds/bulbs, vegetable and bedding plants, ornamental and fruit trees, cut flowers;*
- *Garden requisites such as composts, fertilisers, weed killers/disinfectants, spray equipment, netting, cloches, plant supports;*
- *Gardening and greenhouse tools and equipment;*
- *Gardening protective clothing and footwear;*
- *Garden pond liners, pumps and equipment, pebbles, aquatic plants, fish and fish food;*
- *Fencing, path and patio construction materials such as gravel, paving slabs, edging materials;*
- *Garden furniture and ornaments such as seating, umbrellas, barbecue and barbecue fuel, bird tables, feeders and bird feed;*
- *Incidentals such as gardening books and videos, cards, artificial flowers, small animal feed (e.g. rabbit food); and*
- *Natural and artificial Christmas trees, Christmas decorations, table decorations, Christmas cards.*

The building(s) and land shall not be used for any other purpose (including any other purpose in Use Class A1 of the Schedule of the Town & Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification).

- The reason given for the condition is: *The site is in open countryside where current planning policy would not normally permit general retail uses.*
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Preliminary matter

1. The Government has recently introduced a National Planning Policy Framework (the Framework). This has replaced various national planning policy documents including PPS4 that was referred to in the Council's appeal statement. I have taken the Framework into account in my determination of the appeal.

Decision

2. The appeal is dismissed and planning permission for the erection of a garden centre at Steam and Moorland Garden and Machinery Centre, Malton Road, Pickering, North Yorkshire YO18 7JW without complying with condition No 6 attached to planning permission Ref 00/00400/OUT, dated 4 August 2000 is refused.

Main Issue

3. The main issue is the effect on the vitality of Pickering Town Centre.

Reasons

4. The garden centre has been built and is in operation. It is sited outside the town of Pickering. It lies within the open countryside adjacent to the A169. The appellant wishes to extend the range of goods covered by condition No 6 of the original planning permission to allow for the sale of the following categories of products in addition to those included in the original condition:
 - Garden and general toys;
 - Garden gates and furniture; handles, bolts, locks, chain;
 - Conservatory furniture and decorations;
 - Greenhouses and sheds and ancillary goods necessary for their erection and maintenance; alarms, ladders, door fittings, hooks, power sockets, wiring flex, sealant, paint and watering systems;
 - Giftware; candles, pictures, pottery, ceramics & glassware, bath & beauty, soft furnishings (cushions etc) and homeware style gifts e.g., trays, coasters, biscuit tins;
 - Winter necessities: coal, gas, logs, lighters, grit, de-icer, fuel, fireside accessories and animal feeds;
 - Farm shop style produce; Jams, biscuits, breads, vegetables, meats;
 - Water features, aquatics, spas and pools;
 - Country and protective style clothing and footwear;
 - Hardware goods ancillary to gardening goods; hand tools, light power tools, fixings;
 - Solar and electrical lighting and items required for their installation; and switches, cables, and bulbs.
5. As part of the appeal the appellant asked to add "pets and accessories" to the list of goods that could be sold. However, I am unable to alter the proposal in that manner since it could prejudice the rights of those who might wish to comment on this alteration.
6. The Framework seeks to support the vitality and viability of town centres. It specifies that local planning authorities should apply a sequential approach to the consideration of planning applications for main town centre uses that are

- not in an existing centre and are not in accordance with an up to date local plan.
7. This proposal is not for small scale rural development to which the sequential approach should not be applied. The sequential approach requires applications for main town centre uses to be located in town centres, then in edge of centre locations. Only if suitable sites are not available should out of centre sites be considered.
 8. The Council granted planning permission for the garden centre on the basis that the business was aligned to the neighbouring nursery business, a use which required a rural location, and that the premises was not going to be used for general retailing purposes. The list of goods covered by condition no 6 and the reason for the condition broadly reflects previous and current national planning policy on retailing and development in the open countryside. In addition, when the Council granted planning permission for the machinery centre, the Council again restricted sales, this time to garden and agricultural machinery.
 9. Extending the list could result in, for example, the whole of the premises being used for the sale of hardware and DIY goods. Alternatively, the premises might be used solely for the sale of food stuffs - jams, biscuits, breads, vegetables and meats. Those and the other products in the list could equally well be sold from town centre sites. No mechanism has been suggested that would control the amount of floorspace devoted to or turnover that might be expected from the sale of any of the goods included in the extensive list of products. Even if the balance of the goods sold in the store were to be a relatively balanced mix, the overall character of the store would very much change away from a garden centre, based on the sale of plants and associated garden goods.
 10. Whilst greenhouses and sheds are sometimes sold in garden centres they are equally sold in DIY stores and I am unable to disaggregate these from the ancillary goods that are specified along side them. The same is the position on winter necessities and water features, aquatics, spas and pools. I note that the sign on the building describes its use as a "DIY Centre", which is not what the planning permission specifies as the use. I have insufficient evidence to suggest that coal, gas lighters and grit could not be sold from a site within Pickering.
 11. This site is not only out of centre, it is outside the settlement. No assessment has been submitted to demonstrate that the proposal would satisfy the sequential test set down in the Framework. The Framework specifies that where an application fails to satisfy the sequential test, that it should be refused.
 12. The Framework does seek to promote development and diversification of agricultural and other land based businesses and promotes a strong rural economy. I acknowledge also that employment would be provided by the business, including in the winter months, and that there is a need to ensure that businesses are allowed to develop and modernise. Nevertheless, the diversification of the product range would be contrary to other parts of the Framework which seek to ensure the vitality of town centres and which is clear in its requirement that a sequential test needs to be satisfied.

13. The appellant argues that some of these products have been sold in the store for 10 years in breach of the condition. It is not before me to consider whether the sale of any of these products would be lawful. Nothing within this decision prevents the appellant from making an application for a certificate of lawful use for the sale of those products. I note the concerns of the appellant about the handling of the application by the Council. Nevertheless, the procedures adopted by planning authorities for determining planning applications are generally a matter for the authority within the context of local government accountability.
14. I have insufficient information about other garden centres elsewhere referred to in representations, including about how they came to sell the range of products that they currently sell and also retail proposals within the District to reach any conclusions as to their relevance to the proposal before me.
15. For the reasons given above, I conclude that the appeal should be dismissed.

Julia Gregory

INSPECTOR