The Planning Inspectorate

Appeal Decision

Site visit made on 7 September 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 8 November 2016

Appeal Ref: APP/F9498/C/16/3145918
Land at Combeshead Hill, Brompton Regis, Dulverton, Somerset TA22 9PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Leo White against an enforcement notice issued by Exmoor National Park Authority.
- The Authority's reference is ENF/0121/15.
- The notice was issued on 5 February 2016.
- The breach of planning control as alleged in the notice is:
  1. *The erection of a building with a concrete base and foundations (not in accordance with application 6/3/14/121 granted on 6 January 2015) within the red line site area shown on Plan A and Plan B, and shown in the photographs at Appendix A.*
  2. *Undertaking of engineering operations involving the laying of areas of concrete, level changes and the construction of banks within the red line site area shown on Plan A and Plan B, and shown in the photographs at Appendix A.*
- The requirements of the notice are:
  a. *Remove the building, including its concrete base and foundations, including all resulting spoil, debris and materials from the red lined area shown on Plan A and Plan B.*
  b. *Remove all areas of concrete surface (including any base) and the banks, including all resulting spoil, debris and materials from the red lined area shown on Plan A & Plan B.*
  c. *Re-grade with soil the red lined site to its former levels such that there is a level slope down from the eastern side of the existing barn permitted under applications 6/3/12/122 (on 21 December 2012) and 6/3/13/112 (on 12 December 2013) to the field edge at the eastern side of the red lined area shown on Plan A and Plan B and described in the photographs at Appendix B; and*
  d. *Re-seed the land with grass and return it to agricultural grassland.*
- The period for compliance with the requirements is six months after the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. I allow the appeal, and direct that the Enforcement Notice ('the EN') be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of an agricultural building and associated engineering operations on land at Combeshead Hill, Brompton Regis, Dulverton, Somerset TA22 9PA referred to in the Notice, subject to the following conditions:

(1) The development hereby approved shall be used solely for the purposes of agriculture or horticulture as defined in section 336 of the Town and Country Planning Act 1990.

(2) The agricultural building (including its concrete base and foundations) and the engineering operations consisting of the concrete surface and banks, together with any resultant spoil, debris and materials shall be removed and the site re-graded and re-seeded within three months of the date of failure to meet any of the requirements set out in (i) to (ii) below:

(i) Within 1 month of the date of this decision, a landscaping scheme shall be submitted to and agreed in writing by the local planning authority. The scheme shall include the details and locations of all existing trees and hedgerows on the land, identify trees and hedges to be retained and, where applicable, strengthened. The work shall be carried out in full in accordance with the approved landscaping scheme during the next planting season or during a later season which has first been agreed in writing by the local planning authority. Any tree or hedge found to be dying, damaged or diseased within 10 years from the date on which the scheme has been completed shall be replaced with the same species unless the local planning authority agrees in writing to a variation.

(ii) Within 2 months of the date of this decision, a drainage scheme shall be submitted to and approved in writing by the local planning authority. It shall specify:

- Details of the temporary storage facilities, means of access for maintenance (6 metres minimum), the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and surface water relating to the development together with a management and maintenance plan for surface water for the lifetime of the development.
- The site must be drained on a separate system of foul and surface water drainage, with all clean roof and surface water being kept separate from foul drainage.
- All foul drainage, including foul surface water run-off, must be disposed of in such a way as to prevent any discharge to a well, borehole or spring or any watercourse, including dry ditches with a connection to a watercourse.

The scheme shall be completed in accordance with the approved details within 1 month of the date of the local planning authority's approval.

(iii) If within 2 months of the submission of such details the Local Planning Authority refuses to approve the schemes submitted under (i) or (ii) or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iv) If an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(v) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Procedural and Preliminary Matters

2. The Authority has drawn my attention to the relevant saved policies in the adopted Exmoor National Park Local Plan (LP) 2005 and the corresponding policies in the Exmoor National Park Local Plan Publication Draft (LPPD) 2015. As the LPPD is not sufficiently advanced, I have given it only limited weight in coming to my decision.

3. Planning permission was granted for the erection of an agricultural building in January 2015[1]. The approved building measures some 42.6 metres by 21.34 metres with a ridge height in the order of 6.5 metres. As I understand it, the permission also includes the construction of a yard around the building which extends approximately 6 metres out from the east elevation of the building, along its length and returns around the north and south ends. A 6 metre diameter soakaway within the yard area to the south end of the building also forms part of the approved scheme.

4. The building that has been constructed measures some 55 metres by 23 metres with a ridge height of approximately 7.5 metres. The yard around the building extends approximately 14 metres out from the east elevation of the building and I am told that the area for the soakaway appears to have been concreted over to provide the extended yard area.

5. The Authority has confirmed that it served the EN following several requests to the appellant for a planning application to be made, which was not forthcoming; it did so on the basis that it had been presented with insufficient detail to assess the acceptability of the impact of the development and there was no means by which mitigation in relation to surface water drainage or landscaping could be secured.

6. However, it also states in the reasoning for issuing the EN that '*…if a convincing case were presented, the Authority may have been minded to grant retrospective planning permission with conditions and limitations*'.

7. Whilst the Authority initially concerned itself with whether there is agricultural justification for the development, it has since confirmed in its appeal submissions that the case put forward by the appellant in respect of the need for the development has been accepted.

8. The outstanding issues therefore relate to landscape impact, drainage and flood risk from surface water. Furthermore, the Authority has subsequently raised the issue of 'intentional unauthorised development' and considers that this matter is a material consideration which weighs against the grant of planning permission and a successful ground (a) appeal.

Deemed planning application / ground (a)

9. The appeal on ground (a) is that planning permission should be granted for what is alleged in the EN.

Main Issues

10. Against the background that I have outlined, the main issues in this case are:

[1] Planning permission Ref 6/3/14/121 refers.

- The effect of the development on the character and appearance of the area, with particular regard to the principal aim of protecting landscape and scenic beauty in the Exmoor National Park.
- Whether the site can be satisfactorily drained.
- Whether the development constitutes 'intentional unauthorised development'.

Character and appearance

11. The site is located in the open countryside, approximately 1km north of Brompton Regis and to the west of Combeshead Hill. It lies within the Exmoor National Park (NP). It is accessed by an unmade private track, which also serves New Mill and Lower Foxhanger.

12. The site occupies an elevated position on rising land when seen from open, long range views to the east, north east and south. It is not highly visible from the north and west owing to the topography and that it is heavily screened by vegetation.

13. The National Planning Policy Framework ('the Framework') makes clear that great weight should be given to conserving landscape and scenic beauty in National Parks which are one of the designations which have the highest status of protection in relation to landscape and scenic beauty[2]. This is reinforced in saved Policies LNC1 and CBS12 of the LP which require proposals to be compatible with the conservation of the natural beauty and to respond to opportunities to enhance the natural and built environment. LP Policy A1 deals specifically with agricultural buildings, and states that proposals will not be permitted where there would be an unacceptable adverse impact on the landscape.

14. In support of the appeal, the appellant has submitted a Landscape and Visual Impact Assessment (LVIA) which concludes that the increase in the size of the building would be imperceptible from most viewpoints and only barely perceptible from other points.

15. I also note the Authority's contention that the LVIA did not take into account viewpoints from Haddon Hill and, as such, the visual impact from this vantage point has not been assessed. At my site visit, I observed that Haddon Hill is comprised of open moorland and has distant views of the appeal site.

16. The site is visible from long range views. I concur with the Authority that, in general, the site is in a location where there is little farmstead development of this scale, and that these tend to be located in lower, more sheltered areas.

17. However, the appeal building and yard is read against a backdrop of the adjacent large agricultural building and yard and the hedgerows and trees along field boundaries. I have thus had regard to the visual impact of the existing farm complex, which clearly has an effect on the natural beauty and scenic quality of the landscape to which the Authority refers.

18. From distant views, the appeal building sits in front of the other agricultural building which is of a similar design and form. Hence, it replaces the visual impact of that first building and its additional effect on the landscape is

[2] Paragraph 115 of the Framework.

therefore minimal. The Authority concedes that '…*when purely considered in elevation, the increase in the building is less harmful against the existing and approved and built development*'.

19. Nonetheless, the Authority takes issue specifically with the change in plot size, and that it can be easily detected in surrounding views such that it adversely affects visual amenity. Be that as it may, and whilst these works may be visible in part, the increase in the size of the yard alone has not resulted in any serious adverse effect on the wider landscape not least as it is partly screened by existing vegetation and landform.

20. I have also given consideration to the fallback position established by the 2015 permission for an agricultural building and associated yard. That is, the siting of the appeal building is similar to that approved and it would continue to be seen against a backdrop of the farmstead to which it relates.

21. Although materially larger than the approved building and of a utilitarian design, its appearance is such that it would be read as a typical agricultural building on an existing farm complex in a rural setting. In this context, I do not find that it jars with the character that I have described.

22. I am aware that the approved scheme included the formation of earth banks around the north, east and southern sides of the building, which were to be planted with hawthorn and beech. It was intended that, once established, the landscaping would screen the development from wider views. The LVIA states that the earth banks have been formed around the building, albeit 9 metres further east and 10 metres further south than that approved and that it remains the intention to plant the banks with hawthorn and beech. I agree that the landscape planting would assist in assimilating it into the wider landscape. I see no reason why landscaping could not be secured via a suitably worded condition.

23. I do not dispute that the views and viewpoints are an essential part of the enjoyment of the National Park for residents and visitors. However, I do not find the additional landscape impact to be so significant, particularly when the development is softened by additional planting / landscaping, that it harms the natural beauty and scenic quality of the National Park. I therefore conclude on this issue that the development does not materially harm either the character or appearance of the area, and would ensure the protection of landscape and scenic beauty in the Exmoor National Park. Hence I do not find conflict with saved Policies LNC1, CBS12 or A1.

Drainage

24. The Authority tells me that the previous planning permission included a condition to deal with water management and, in particular, a soakaway to carry roof run-off. However, I understand that it is no longer possible to provide that surface water mitigation as the area set aside for the soakaway has been built over.

25. I have received representations from neighbouring residents, stating that run-off is not controlled and that heavy rainfall combined with debris from the appellant's farm blocked their run-off in recent months.

26. A Drainage Strategy has been submitted as part of the appeal. It continues to outline proposals for a soakaway to deal with the on-site drainage and states

that, during periods of exceptional rainfall, the landscaping bunds would contain the temporary ponding that would occur. It concludes that in providing the facilities detailed in the drainage strategy, any run-off will be managed properly and would not cause any significant risk of flooding.

27. The Lead Local Flood Authority (LLFA) has confirmed that the original proposal to utilise a soakaway on site for the capture, storage and removal of surface water will no longer be adequate in light of the increased amount of impermeable area and the covering of the proposed soakaway with the concrete apron. It also raises concerns regarding the separation of rainwater and dirty water from the development. Whilst the LLFA has maintained an objection to the development it does not explain why the amended details in relation to the drainage scheme are unacceptable.

28. The Environment Agency has visited the site and concluded that the risk to the water environment as a result of the development is medium to low.

29. Notwithstanding this, I am satisfied that conditions requiring the submission of a drainage scheme would ensure that surface water run-off from the development is effectively managed and would not increase the risk of flooding or pollute the quality of surface and / or ground water sources. I therefore conclude that the site can be satisfactorily drained, subject to the imposition of a relevant condition. As such, the development would not conflict with LP Policies U1 and U8 which seek to protect water resource and reduce flood risk from new development.

Whether 'Intentional unauthorised development'

30. On 31 August 2015, the Department of Communities and Local Government published a planning policy statement on Green Belt protection and intentional unauthorised development. The policy came into force at that date and makes intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. Although the appeal before me does not relate to Green Belt, the policy applies to all new planning applications and appeals received from 31 August 2015. The Government is particularly concerned about harm that is caused where the development of land has been undertaken in advance of planning permission being granted.

31. The Authority states that the appellant intentionally flouted the development control process and carried out the development despite being advised not to do so. I have been provided with a copy of the correspondence between the Authority and the appellant, and the appellant's agent, confirming this to be the case. I also accept that the Authority has had to take enforcement action which, I am in no doubt, has been time consuming and expensive.

32. I am of the view that the development is 'intentional unauthorised development', and this is a material consideration weighing against the grant of planning permission. However, in this case, I do not find harm to the landscape qualities and scenic beauty of the National Park and, in respect of drainage, I find that a condition can be attached to the permission to deal with the disposal of surface water. Whist it is regrettable that there is some evidence of failure of the drainage regime as a result of the appellant's actions, I am satisfied that it can be effectively mitigated.

33. Section 73A of the Act allows applications for planning permission for development that has already taken place and the retrospective validation of a contravention of planning control. Thus I do not consider that the matter of 'intentional unauthorised development' carries such significant weight that the appeal ought to be dismissed and the EN upheld on this basis alone given the acceptability of the scheme in all other respects.

Other Matters

34. I did not see any external lighting at the site at the time of my visit. Neither has any been alleged as part of the EN. Consequently, I am uncertain as to why the Authority has raise concern regarding this matter when such development has not occurred. I cannot consider the acceptability of development that is yet to occur if, indeed, at all. In this respect, I do not find conflict with LP Policy LNC2 relating to external lighting.

35. I note the concerns of residents regarding the use of the local public access road known as Combeshead Hill. I understand that straw and other deliveries to the appeal site are unloaded at or near Combeshead Cross junction, and neighbours have expressed concern that this compromises highway safety insofar as the highway verge is used causing mud to be deposited on the highway. However, these concerns appear to relate to an existing and ongoing arrangement associated with the farm rather than as a consequence of the development before me.

36. The Authority also states that, if the development materially increases traffic movements to the site, this would present a highway safety concern that would need to be considered. However, the Authority did not cite highway safety in its EN, nor has it produced any evidence to the effect that the likely increase in traffic movements would be so significant as a result of the increase in the size of the building so as to cause a highway safety concern.

37. These and the other matters raised do not, therefore, outweigh the conclusions I have reached on the main grounds and issues of this appeal.

Conditions

38. The Authority has suggested conditions relating to landscaping, drainage, external lighting, limiting the use of the building to agriculture and the removal of the building within a period of 1 year in the event of it becoming redundant.

39. I have had regard to whether the suggested conditions meet the tests outlined in the Framework and the National Planning Practice Guidance (PPG).

40. I have attached a condition relating to landscaping to ensure a satisfactory appearance to the development and to aid its assimilation into the landscape. Drainage conditions are necessary to ensure suitable measures are in place to control surface water run-off, minimise the risk of flooding and prevent pollution of the water environment.

41. A condition limiting the use of the building for the purposes of agriculture or horticulture is necessary as the development has been justified on this basis.

42. As the development does not include external lighting, a condition controlling the same is neither reasonable nor necessary.

43. Turning to the suggested condition requiring the removal of the building in the event that it is no longer necessary for the purposes of agriculture. It is undesirable to impose a condition requiring demolition, after a stated period, of a building that is clearly intended to be permanent. In this case, there are no material considerations before me that lead me to the conclusion that such a condition would be exceptionally justified. Thus, I do not find it to be necessary or reasonable, or to meet the tests outlined in the PPG.

Conclusion

44. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Melissa Hall

Inspector