



Appeal Decision

Site visit made on 8 May 2018

by Mrs J Wilson BA BTP MRTPI DMS

Inspector appointed by the Secretary of State

Decision date: 4th June 2018

Appeal Ref: APP/X1118/W/18/3194959

**Whiddon Service Reservoir, North Lane, Muddiford, Barnstaple, Devon
EX31 4HG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr N Woofenden against the decision of North Devon District Council.
 - The application Ref 64135, dated 13 November 2017 was refused by notice dated 8 January 2018.
 - The development proposed is Change of Use of a Water Tank (Reservoir) and land within its curtilage (Use Class B8) to Dwelling House (Use Class C3).
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the Change of Use of a Water Tank (Reservoir) and land within its curtilage (Use Class B8) to a Dwelling House (Use Class C3) at land at Whiddon Service Reservoir, North Lane, Muddiford, Barnstaple, Devon EX31 4HG. The approval is granted in accordance with the terms of the application Ref 64135, dated 13 November 2017, and the plans submitted with it but only insofar as it applies to the use of the site and subject to the standard conditions set out in paragraph W (12)(a) of the GPDO.

Main Issue

2. The main issue is whether the proposed development would constitute permitted development for the purposes of Schedule 2, Part 3, Class P of the GPDO.

Reasons

3. The site comprises a subterranean water tank, above ground evidence exists only in the form of curved vents but these are low to the ground. The tank itself is covered with vegetation and the "building" is not visible.
4. Initially the Council refused permission on the basis that the proposal failed the qualifying criteria under the GPDO and was not considered to be, or have last

been, used for B8 purposes as defined in the Use Classes Order¹. This was the basis that the use was not a storage use in its own right but one ancillary to the wider distribution network of South West Water, and therefore a Sui Generis use.

5. In evidence the Council has now revised that approach following the consideration of the advice of Counsel on a separate application. In that case the storage of water was considered to be a B8 Use and in the absence of a reference in the Use Classes Order as to whether such storage was ancillary to a primary use or a use in its own right. In further evidence an appeal decision² is referred to whereby a service reservoir was considered to be a B8 Use Class. Therefore on the basis of a materially similar case (though not a material planning consideration in a prior approval case) the Council no longer seeks to defend the refusal reason. On this basis there is agreement between the parties regarding a change of use in respect of permitted development under Class P.
6. It is important to note that Class P permits only a change of use, not any building operations. Any enlargement of the building would necessarily involve building operations and so would require a separate planning permission, including operational works; access; and the formalising of the curtilage to all of which other considerations apply. This decision should not therefore be taken as forming any view on the issue of the suitability (or otherwise) of the building (i.e. the tank) as to whether works to effect a change of use would meet other policy considerations or requirements.

Conclusion

7. On the basis that there is now common ground between the appellant and the Council that the building falls within a Class B8 use, the change of use to Class C3 from B8 would be permitted development under Schedule 2, Part 3, Class P of the GPDO. Prior approval is therefore granted for the change of use only and the appeal succeeds.

Janet Wilson

INSPECTOR

¹ Town and Country Planning (Use Classes) Order 1987

² APP/F9498/W/15/3134763