



Appeal Decisions

Site visit made on 7 July 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 10 August 2020

Appeals A & B Refs: APP/J9497/C/19/3243098 & 3243099

Land to the south west of Willis's Cross, Ilsington, Devon TQ12 6LB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Derek James Guppy & Mrs June Elizabeth Guppy respectively against an enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice – 'Enforcement Notice (1)' – was issued on 6 November 2019.
 - The breach of planning control as alleged in the notice is:
 1. the erection of a timber building with veranda in the approximate position labelled 'X' on the plan accompanying the notice;
 2. the construction of a blockwork retaining wall to the side and rear of building 'X';
 3. the construction of a level yard area shown in the approximate position edged green on the attached plan.
 - The requirements of the notice are:
 - Permanently remove the development from the land, including all debris and materials; and
 - Restore the land to its former condition as agricultural land.
 - The period for compliance with the requirements is 180 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d) & (f) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/J9497/W/19/3243096

Land to the south west of Willis's Cross, Ilsington, Devon TQ12 6LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Derek Guppy against the decision of Dartmoor National Park Authority.
 - The application Ref 0259/19, dated 11 January 2019, was refused by notice dated 22 July 2019.
 - The development proposed is the erection of an agricultural storage building including welfare facilities (9.5m x 3.6m).
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Decisions

1. It is directed that the enforcement notice (the Notice) is varied by the deletion of the words "as agricultural land" in the second requirement above, such that it now reads: "Restore the land to its former condition". Subject to this variation the enforcement notice is upheld and Appeals A & B are dismissed.
2. Appeal C is dismissed.

Reasons

Appeals A & B – Ground (c)

3. Ground (c) is that the matters specified in the Notice do not constitute a breach of planning control. The onus is upon the appellants to demonstrate, on the balance of probability, that the matters do not constitute a breach of planning control.
4. The appellants point out that Section 55(2)(e) of the Act states that the use of any land for the purposes of agriculture or forestry and the use for any of those purposes of any building occupied together with land so used shall not be taken to involve development requiring planning permission. That may be so, but the Notice is concerned with operational development and not use, albeit I will consider the use and the agricultural need for the development under Appeal C below. I understand another separate notice has been served relating to the use of other parts of the land, but that notice is not before me.
5. There is a timber building with veranda in the approximate position labelled 'X' on the plan accompanying the Notice. It is a building within the meaning of Section 55(1) of the Act. To the side and rear of it is a retaining wall, which is a structure and is also development as defined by S55(1)&(1A). In front of the building is a level yard area shown in the approximate position edged green on the plan attached to the Notice, which is an engineering operation as defined by S55(1). No planning permission exists for any of this development either expressly from the Council or from the Town and Country Planning (General Permitted Development) Order 2015. Consequently, there has been a breach of planning control and so the appeal under ground (c) fails.

Ground (d)

6. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Again, the onus is on the appellants to show, on the balance of probability, that at the date when the notice was issued no enforcement action could be taken.
7. Where there has been a breach of planning control consisting of operational development, Section 171B of the Act makes clear that no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
8. The appellants state that the photographic evidence shows a yard area existed at the site over nine years prior to the date of the notice. The yard area is the only matter they are challenging on ground (d). I agree that the Google Earth aerial photo dated 1 January 2010 shows an open yard area in the approximate position of the edged green area on the map attached to the notice. The Google aerial photo dated 23 September 2017 shows this area being used as open storage although it is unclear what exactly was being stored there at the time because the image is unclear.
9. However, the notice specifies the construction of a level yard area. From my visit I was able to see that the level area or at least the majority of it looks to have been reasonably recently formed. The LPA confirms that it was there when one of its officers visited in November 2018, after concerns had been raised with it the previous month. From the composition of the surface material

and the difference in the bank profile of this material within the field to the south of the building now, compared to the bank in the Google Earth photo of 2010, it appears that the level surface of the yard has been increased or certainly altered in size by new construction activity that can only have taken place using earth moving machinery within the last four years.

10. For the above reasons I conclude, on the balance or probability, that the appeal on this ground – that the level yard has existed for four years or more – fails.

Ground (f)

11. Ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or, as the case maybe, to remedy any injury to amenity which has been caused by any such breach. In this case the requirements of the notice seek to remove what has been built and for the land to be put back to how it was. It is clear to me, therefore, that the purpose of the notice comes under S173(4)(a) which is to remedy the breach of planning control by restoring the land to its condition before the breach took place. Given that the requirements seek to do no more and no less, they are not excessive. That said, it is not necessary to specify that the land's condition should be agricultural. I therefore intend to delete the words "as agricultural land" from the Notice's second requirement.
12. Whether or not there was an old stone retaining wall at the foot of the slope, as alleged by the appellants – and there is no clear photographic evidence of such – there is no denial from them that the current retaining wall to the side and rear of the building is new and contemporaneous with it.
13. The appellants argue that the shape of the land requires some means of retention here. I disagree. The site is an agricultural field, albeit there were two former storage buildings in this location. In order to return the site to agricultural use I see no reason why the current retaining wall should remain. Its removal and the regrading of the slope of the field in this area would be in compliance with the Notice by restoring the land back to its former condition.
14. Apart from the variation referred to above, the ground (f) appeal also fails.

Appeal C

15. The retrospective planning application was refused for two reasons. The first was that there is no demonstrable agricultural need for the development.
16. The appellants' land comprises an agricultural smallholding of 6.65 hectares. The Planning Statement attached to the application states that they normally look after suckler cows and calves up to 12 months old. I saw cows in the field next to the building during my visit, albeit no calves. Their Statement mentions that at the time of the application they also had one sow with a litter of 12 piglets. I saw no pigs on the holding during my visit.
17. The Statement says that the welfare facilities within the building enable the appellants to remain on the smallholding for longer periods of time when there are calves or piglets being born and raised.
18. The building has a concrete floor with timber partitions and contains a room with a domestic kitchen sink as well as a separate room with a WC. Although it contains no domestic furnishings now, it resembles a half completed residential

dwelling, albeit the window in the south west elevation has been removed and the window and door have been removed from the room labelled as a 'store' on the submitted plan of the building.

19. However, the Local Planning Authority (LPA) has provided photographic evidence that it was being used as a dwelling on 21 November 2018 and it would be easy to restore such a use now. The construction and layout of the building makes it suitable for residential use and it is unlikely, on the balance of probability, that it would be suitable or required to be used for the rearing of calves or piglets, which are generally reared externally or in open barns, which this building clearly is not.
20. I acknowledge that the children's trampoline, climbing frame, and the barbecue and domestic benches, which the LPA photographed on the site in November 2018, have now all been removed. But again, they are clear evidence that the site was being used residentially and it would be easy to return such items and resume such a use.
21. There are two other large agricultural barns on the holding nearer to the access. It would be easy to accommodate any necessary animal welfare facilities within one of these barns and I am unclear why this has not been done if they are genuinely needed, especially since I noticed that these barns appear to be under used.
22. Given the record of unauthorised residential use of the building and land adjacent to it, the design of the building which makes it ideal for such residential use, and the lack of its clear need for agricultural purposes, I conclude that no agricultural need for it has been demonstrated.
23. Policy COR2 of the LPA's Core Strategy (CS) states that, outside the Local Centres and Rural Settlements of the National Park, development will be acceptable in principle subject to a number of criteria including if it is necessary to meet the proven needs of farming. The building is not necessary to meet farming needs for the above reasons and it therefore fails to comply with COR2 or Policy DMD34 of the LPA's Development Management and Delivery Development document (DMD), the most relevant policies in respect of this refusal reason.
24. The second refusal reason was that the building has a harmful impact on the character and visual appearance of this part of the National Park by reason of its scale, design and siting.
25. The building has, even now, a somewhat residential appearance and its lack of a clear agricultural need or purpose means that there is no requirement for it to be located here.
26. Because of this it does not conserve and enhance the characteristic landscapes and features that contribute to Dartmoor's special environmental qualities, and therefore fails to comply with CS Policies COR3 and COR4. Consequently, it does not foster the three purposes of the National Parks expressed in DMD Policies DMD1b, DMD3, DMD5 or DMD7, in English National Parks Circular 2010 or in the National Planning Policy Framework.
27. For these reasons I conclude that Appeal C should be dismissed.

Conclusion

28. In light of my above conclusions Appeals A & B are dismissed and the enforcement notice is upheld subject to variation, and Appeal C is dismissed.

Nick Fagan

INSPECTOR