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## Appeal Decision

Site visit made on 21 August 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 25<sup>th</sup> November 2020.

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**Appeal Ref: APP/F9498/W/20/3252410**

**Pikes Farm, Bungalow, Elworthy to Elworthy Cross, Elworthy TA4 3PX**

- 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.
  - The appeal is made by Robert Andrews against Exmoor National Park Authority.
  - The application Ref 6/12/19/101, is dated 4 June 2019.
  - The development proposed is construction of an agricultural building for the housing of sheep and storage of fodder.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appellant lodged an appeal against non-determination after the expiry of the statutory period without the Local Planning Authority (LPA) having issued a decision. There is no evidence before me that an extension of time was agreed between the main parties. The LPA subsequently issued a decision notice setting out two reasons for refusal, however as the appeal against non-determination was submitted in advance of the LPA's decision, I have considered it on that basis.
3. It is however an important part of the fairness of the appeal process that all parties can make their case and provide evidence to substantiate it, including in appeals against non-determination. The Procedural Guide: Planning Appeals – England states that the LPA's statement of case must respond to the appellant's full statement of case, including addressing each of the likely reasons for refusal where the appeal is against non-determination.
4. The LPA's statement, 'decision' and report set out the putative reasons for refusal and the appellant has responded to these. The appellant would not therefore be prejudiced by my accepting the LPA's evidence. Furthermore, to disregard that evidence would prejudice the LPA and would therefore be unfair. I have therefore had regard to the LPA's submissions when determining this appeal.
5. The LPA suggests that some engineering works have been carried out on the appeal site, however I saw at my site visit that the appeal site appeared undisturbed, although some excavation appeared to have been undertaken on adjacent land. I have therefore considered the appeal on the basis that the proposed development has not yet occurred.

## **Main Issues**

6. The LPA has set out that it would have refused permission due to the impact of the proposal on the character and visual amenity of the landscape of this part of the Exmoor National Park (ENP) without an overriding functional need; and, in the absence of a proportionate archaeological assessment, the potential for the proposed development to have an unacceptable adverse impact on the historic environment and archaeological heritage assets.
7. The main issue is therefore whether the appeal site would be an appropriate location for the proposed development with particular regard to: whether there is a functional need for the proposed building; the effect of the proposal on the character and appearance of the area and the landscape and scenic beauty of the ENP; and the effect of the proposal on the cultural heritage of the ENP.

## **Reasons**

8. Part 1 of Policy SE-S4 of the ENP Local Plan 2011-2031 (LP) allows for new agricultural buildings in the ENP where they meet specific criteria. Part 2 sets out that new isolated buildings will not be permitted unless it can be demonstrated that there are exceptional circumstances relating to an overriding functional need for a more isolated location, and where they meet two further criteria.
9. Elworthy is a small settlement arranged along a valley bottom, surrounded by largely undeveloped fields on rising land, interspersed by areas of woodland. Roads and footpaths around the village and appeal site offer expansive views over this rolling rural landscape, with only a few agricultural buildings and dwellings visible, generally on lower ground.
10. The appeal site is physically separate from Elworthy and surrounded by fields with no other buildings for some distance in any direction. From the road and nearby public footpath, it is not seen together with any other development. As such, it is in an isolated location.

### *Functional need*

11. The appellant farms sheep on a parcel of land which includes the appeal site and adjacent fields at Elworthy Cross, as well as farming another land holding at Higher Woolcotts. However, very limited details have been provided about the scale and operation of the existing farming business. For example, I have no details of the number of sheep and lambs produced, whether they are moved around seasonally to different parts of the appellant's land, or where lambing currently takes place. Neither is there any information before me on the amount of fodder required for the sheep, the times of year storage is required, or how much storage space would be needed. It has not therefore been demonstrated that there is a need for a building of the size proposed.
12. Furthermore, the evidence before me is that the appellant has been farming the land at Elworthy Cross for several years. Despite this, no information has been provided to show that, to date, the absence of a suitable building at Elworthy Cross has had any adverse effect on animal welfare, or had any financial implications for the business such as loss of livestock.
13. There are also no details before me of how the business would change if the proposed building were constructed. As such, it has not been demonstrated

that the proposal would be critical to the business, or how it would enable the business to grow, as the appellant contends. Consequently, the potential welfare and economic benefits of the proposed building carry very limited weight and do not represent a functional need for a building in this location.

14. Even if there were a demonstrable need for a building, I cannot be certain that there are no other buildings on the appellant's land that could meet that need. The buildings adjacent to Pikes Farm Bungalow are unlikely to be suitable for keeping sheep or storing fodder due to their small size, design and poor condition. However, the LPA has provided evidence of other buildings on the appellant's land at Higher Woolcotts, which the appellant has not sought to dispute. There is no substantive evidence before me that they are unsuitable to keep sheep and fodder.
15. Nor has it been demonstrated that it is undesirable to use them for any other reason, such as access, or that keeping sheep at Higher Woolcotts would adversely affect their welfare or the viability of the business. While it may be beneficial for the appellant to be close to his livestock during lambing, when the sheep are at particular risk, this is a seasonal activity and therefore does not justify a permanent building close to the appellant's dwelling.
16. Accordingly, it has not been demonstrated that there is a functional need for a new agricultural building of this size and scale to meet the needs of the business. It therefore follows that there are no exceptional circumstances to justify the isolated location proposed. As such, the proposal would conflict with LP Policy SE-S4 1a) and 2.

*Character and appearance of the area and landscape and scenic beauty of the ENP*

17. The statutory purposes of National Parks are set out in the Environment Act 1995, and include conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Parks. Paragraph 172 of the National Planning Policy Framework (the Framework) sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in these areas, which have the highest status of protection in relation to these issues.
18. The appeal site is within the Exmoor Landscape Character Type (LCT) I – Wooded and Farmed Hills with Combes. Key features of this LCT include medium sized fields on valley sides delineated by banked mixed hedges, and linear hamlets and small villages that nestle alongside streams in valley bottoms. Land use is predominantly pasture and arable, while settlement is sparse and small in scale. The appeal site and surrounding area share these characteristics.
19. From the nearby public footpath, gaps in hedges provide views down into the site. It is also visible in longer distance views from the road rising up the other side of the valley, due to a sizeable gap between groups of mature trees in the hedge on the western boundary. Although there are some enclosures and areas of hardstanding on the site, due to their low height these are screened from view from the roads by the existing gates, bank and hedges. Consequently, the site does not detract from the landscape character of this part of the ENP.
20. Due to its height, scale and siting, the proposed building would be clearly visible from surrounding roads and the public footpath through the large gaps in boundary vegetation. It would be seen in an isolated position part way up

the hill, and as such the partial excavation into the slope would do little to ameliorate its visual impact. Consequently, it would be a prominent feature in the landscape and would detract from the largely undeveloped character of the hills around the village. Therefore, it would not respect the pattern of development which characterises this LCT and would not be appropriately sited in the context of local topography.

21. Furthermore, while the proposed design and materials would be typical of many modern farm buildings, they would not incorporate the natural, sustainable materials traditional to farm buildings on Exmoor. As such, the proposed design would not minimise the visual impact of the proposal on its immediate and wider setting. Alternative materials and colour for the proposed steel frame could be secured by planning condition, however due to the scale of the proposed building, any change in materials would have limited effect on its visual impact, and would not mitigate the harm set out above.
22. While the appellant suggests that more planting could be required by planning condition, there is no landscaping scheme before me. Furthermore, given the height and scale of the proposed building any new planting would take a considerable time to grow large enough to provide any meaningful screening. Therefore, it has not been demonstrated that the identified harm could be mitigated by landscaping.
23. Consequently, the proposal would harm the character and appearance of the area and the landscape and scenic beauty of the ENP. It would therefore conflict with LP Policies SE-S4 d), GP1, CE-S1, CE-D1 and CE-S6, which seek to deliver high quality design that conserves and enhances local distinctiveness and the landscapes and natural beauty of the ENP; and with Policy SE-S1, which requires business development to demonstrate that it will not have an unacceptable adverse impact on landscape character. The proposal would also conflict with the Framework requirements to protect and enhance valued landscapes.

#### *Cultural heritage*

24. During the application process, the site of a potential Roman road between Exeter and Watchet was identified, running through the proposed site. Although it was not part of the Historic Environment Record at the time the appellant submitted the application, the correspondence submitted shows that the LPA made the appellant aware of it during the application process.
25. LP Policy CE-S4 and the Framework require that development proposals likely to affect heritage assets should be supported by a desk-based assessment appropriate to their significance. The Framework sets out that this should be sufficient to understand the potential impact of the proposal on the asset's significance. However, although the appellant has addressed the potential Roman road in their submissions, no such assessment has been submitted.
26. Evidence of Roman roads is scarce on Exmoor and therefore the potential presence of a Roman road and associated earthworks or buried remains is of high significance. Consequently, I consider it appropriate to consider the potential Roman road as a locally important heritage asset, and in the terms of the Framework, a non-designated heritage asset (NDHA). The Framework requires that the effect of a proposal on the significance of an NDHA should be taken into account in determining the proposal, and that a balanced judgement

will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

27. The excavation and construction of the proposed building could impact on any surviving earthworks and below-ground archaeology. As such, the siting and foundation design of the proposal have considerable potential to harm the NDHA. In some circumstances a planning condition can be used to secure archaeological investigations and recording. However, for such a condition to be necessary and reasonable, I would need to be able to conclude that the benefits of investigating and recording evidence of the asset would outweigh any adverse impact on its significance. In the absence of even a desk-top assessment of the impact of this proposal, I am unable to draw that conclusion.
28. Given the potential significance of a Roman road in the ENP, and having regard to the importance that both local policies and the Framework afford to the conservation of heritage assets, I consider that a precautionary approach should be taken. As set out above, the potential benefits of the proposal would be very limited. In the absence of any investigations, the scale of any harm or loss to the NDHA has not yet been established. Therefore, I cannot conclude that the benefits would outweigh any harm to the NDHA.
29. It has not therefore been demonstrated that the proposal would conserve or enhance the significance of heritage assets and, therefore, the cultural heritage of the ENP. As such, the proposal conflicts with LP Policies SE-S4 f), CE-S4 and CE-D3, and with the Framework.

#### *Overall conclusion on main issue*

30. It has not been demonstrated that there is a functional need for the proposed building in this location. Furthermore, the proposal would harm the character and appearance of the area and the landscape and scenic beauty of the ENP and would not conserve or enhance its cultural heritage. Accordingly, the appeal site would not be an appropriate location for the proposed development.

#### **Other Matters**

31. Local and national policies support business in rural areas, however both require such developments to respect the character of the countryside, which this proposal would not. Given that the proposal would not result in any increase in employment, I cannot be certain that it would result in any material benefit to the local economy or the ENP. As such, this carries limited weight, and would not outweigh the harm identified above.
32. The evidence before me indicates that satisfactory provision could be made for drainage of the proposed development, which could be secured by condition. However, this is a neutral matter which does not weigh in favour of the proposal.

#### **Conclusion**

33. The appeal is therefore dismissed.

*L McKay*

INSPECTOR