



Appeal Decisions

Site visit made on 7 December 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Appeal A: APP/F9498/C/20/3255394

Appeal B: APP/F9498/C/20/3255395

Land at The Dairy, Middle Dean Farm, Trentishoe EX31 4PY

- 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 Mrs Virginia Kingshotte (Appeal A) and Mr Alex Kingshotte (Appeal B) against an enforcement notice issued by Exmoor National Park Authority.
 - The enforcement notice was issued on 1 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years, the erection of a dwellinghouse on the Land.
 - The requirements of the notice are: a. Permanently cease the use of the Building as a dwellinghouse. B. Permanently remove the Building from the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice upheld.

The ground (b) appeal

2. For the ground (b) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the erection of a dwellinghouse, has not occurred as a matter of fact at the time the enforcement notice was issued.
3. To this effect the appellants assert that the building that has been erected comprises an annexe to the dwelling known as 'The Dairy' and so is not a dwelling. It is also said that the relationship *'is such that use as an independent dwelling would be impractical and undesirable'*.
4. These assertions however do not amount to evidence to demonstrate on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact. It is thus a statement of what might be felt to be desirable, as opposed evidence as to why the building had actually been constructed and then how it was used and occupied. For the same reasons, that services are also said to be shared and a planning application was made to

retain the building as ancillary accommodation does not demonstrate the appellants case on the balance of probabilities.

5. The Council has also provided some evidence that The Dairy has been let as self-catering holiday accommodation. That being the case, it casts further doubt in my mind as to how the appeal building would have been ancillary to such occupation.
6. The Council also state that the building contains an open plan kitchen and living area, bedroom and bathroom. This is not disputed by the appellants. A fenced garden area has also been created which demonstrates a further degree of separation from The Dairy.
7. The appellant's state that the specific relationship between family members is not known to the Council. However, the onus rests with the appellants to provide such evidence, and there remains very little before me to demonstrate on the balance of probabilities that there is not physical and functional separation between the appeal building and The Dairy.
8. I accept that the payment of Council Tax does not automatically equate to the use of a building as a dwelling. Nevertheless, the evidential onus lies with the appellants and there is very little evidence before me to demonstrate on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact. The appellants have therefore not discharged the necessary burden of proof.
9. The appeal on ground (b) accordingly fails.

The ground (a) appeal (Appeal A)

Main Issues

10. The main issues are:

- i. whether or not the site is in a suitable location for a dwellinghouse having regard to local and national planning policy; and,
- ii. the effect of the building on the character and appearance of the area, having particular regard to construction materials.

Reasons

11. The site is located within rural surroundings although there is a nucleus of built development surrounding it. The building attacked by the notice is located in close proximity of an agricultural building and to the rear of other residential properties. It is finished in timber cladding, under a fibre cement roof with uPVC windows.
12. The deemed planning application before me relates to the retention of the dwellinghouse that has been erected.

Location

13. For the purposes of the Exmoor National Park Local Plan 2011-2031, adopted July 2017 (the LP), the site is located in the open countryside as it is not within a named settlement. Policy GP3 of the LP sets out the spatial strategy for the National Park and thereby states that the focus of new build development will be on improving the sustainability of rural land-based businesses. Policy GP1 of

- the LP is concerned with achieving National Park purposes and sustainable development. Taken as a whole, the Council's approach to residential development within the National Park is broadly consistent with the housing approach set out in the National Planning Policy Framework (the Framework).
14. In order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality and sustainability of rural communities. However, the site is not well related to a named settlement and is therefore remote from many day-to-day services and facilities. Occupiers are also heavily reliant upon a private car as the nearby roads are single-track and unlit. There is also little evidence about employment opportunities that could be accessed without being reliant upon a private car. It is therefore not a location where a new dwelling would normally be considered acceptable and is a significant factor weighing against its retention.
 15. Policy HC-S1 of the LP sets out that the purpose of housing development will be to address the housing needs of local communities; the principle community identified need is for affordable housing with local occupancy ties. Policy HC-S2 is then concerned with a balanced housing stock. However, it is not suggested by the appellant that the dwelling is intended to meet with the definition of affordable housing¹, and I note there is no mechanism before me to secure this even if that were the case.
 16. It is also not contended by the appellant that the dwelling is required for a rural worker and therefore the provisions of policy HC-D8 of the LP are not engaged.
 17. Accordingly, the site is located in the open countryside where the provision of new dwellings is restricted. Moreover, it is in particularly rural surroundings. Whilst I appreciate that there is a tourism related use at the site, there is very little evidence that this then relates to a land-based business, and so it does not justify the retention of a new dwelling in this location.
 18. I conclude that the site is not in a suitable location for a dwellinghouse having regard to local and national planning policy. The dwelling therefore conflicts with Policies GP1, GP3, HC-S1, HC-S2 and HC-D8 of the LP as well as the Framework, which, in particular, seeks to locate new residential development in the most accessible and sustainable locations. This is a matter to which I attach substantial weight.

Character and appearance

19. The building is well screened from public views owing to its location. Whilst the building is generally of makeshift appearance for a dwelling, the Council only take exception to the use of the fibre cement roof material and use of uPVC windows and doors.
20. However, the local context is of a building sited in close proximity of a large steel portal framed agricultural building. The appeal building has a flat or very shallow pitched roof and therefore the materials used cannot be readily seen from ground level or other public vantage points. Whilst the windows and doors are of uPVC construction, they are dark grey in colour which significantly reduces their prominence and perception within the elevations of the building. On-balance, the use of such construction materials is not incongruent.

¹ As defined in the Glossary to the Framework

21. I conclude the building is not harmful to the character and appearance of the area, having particular regard to construction materials, and therefore accords with Policy CE-S6 of the LP. This policy, amongst other things, requires development to complement the local context. This is however a matter to which I attach limited weight.

Other matters

22. The deemed planning application relates to a dwellinghouse, not ancillary accommodation. I do however note that a planning application has been refused and it is said that this will be appealed. Any such appeal is however not before me. As ancillary accommodation represents a materially different scheme to that of the deemed planning application, I therefore cannot consider such a proposal further.
23. I have very little evidence concerning the appellant's personal circumstances and therefore why a temporary permission, suggested for a period of some 5 years, would be appropriate or reasonable in order to find a long-term solution or to assist with their financial position. I therefore afford this contention little weight.
24. It might be the case that a mobile home could be stationed in the curtilage of a dwellinghouse for ancillary purposes, without the need for planning permission. Such a proposition however does not persuade me to grant planning permission to retain the dwelling that has been erected, even though the appellant considers it to be a close substitute.

Planning balance

25. The Government is seeking to significantly boost the supply of housing and the development makes a contribution, albeit very modest, to this supply. However, the development of a single dwelling would bring only very limited benefits to the economic and social well-being of the wider community.
26. I have found that the dwelling is not in a suitable location which is a harm that attracts substantial weight. Whilst I have some sympathy for the appellants and have found that the building itself to not be harmful to the character and appearance of the area, this does not outweigh the harm I have identified.

Conclusion

27. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) fails.

The ground (f) appeal

28. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellants to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
29. No lesser alternative steps have been proposed by the appellants. Rather, the prospect of retaining the building subject to planning conditions has again been suggested. However, I have already considered the suggested planning conditions, where it is appropriate to do so, under the ground (a) appeal.

30. As no alternative lesser steps are before me to remedy the breach of planning control, namely the erection of a dwellinghouse, the appeal on ground (f) must fail.

Overall Conclusion

31. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeals A and B

32. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR