



Appeal Decision

Site Visit made on 6 January 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Appeal Ref: APP/X1118/W/20/3255430

Blackmoor Gate Service Reservoir, Former services reservoir Kentisbury, Nr Blackmoor Gate, Devon EX31 4SJ

- 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 Damian Pope (Valandea Ltd) against the decision of North Devon District Council.
 - The application Ref 70419, dated 29 August 2019, was refused by notice dated 14 January 2020.
 - The development proposed is extension of building and setting out of driveway.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Damian Pope (Valandea Ltd) against North Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details, that the development comprises the extension and conversion of the building to a dwelling, including the provision of a driveway. The Council dealt with the proposal on this basis and so shall I.

Main Issues

4. The main issues are:
 - a) Whether the site is suitable for a dwelling, bearing in mind the settlement policies of the development plan and the accessibility of services;
 - b) The effect of the development on the character and appearance of the landscape; and,
 - c) Whether suitable foul drainage could be provided to serve the development.

Reasons

Settlement policies and accessibility of services

5. The appeal site lies in a rural location, approximately 3 kilometres to the south of Parracombe and 4.75 kilometres to the north of Bratton Fleming. There is a recreation centre, based around converted agricultural buildings, about 375 metres to the southwest, and two clusters of farm buildings a similar distance to the east and west. Apart from these buildings, the site is surrounded by open agricultural fields, and therefore lies in the countryside, well outside any settlement.
6. The site accommodates a disused reservoir, which is approximately 7.6 metres squared, surrounded by scrubby vegetation. The structure is partially underground, with concrete block walls extending about 1½ metres above ground level, and it has a flat roof covered in chippings. Prior approval¹ was granted for the change of use of the building and land within its curtilage to a dwelling on 29 November 2018². This approval has not been implemented, so there is no residential use on the site. Consequently, Policy DM25 of the North Devon and Torridge Local Plan 2011 – 2031 (adopted 2018) (the Local Plan), which relates to extensions to residential dwellings, is not relevant to the proposal.
7. As the building is a reservoir, it has no doors or windows, and is entirely covered by a solid roof. The approval under Class P only permits a change of use. The building operations that would be necessary to implement the change of use, such as the installation of openings, and any other work required to render the building habitable, would need planning permission. The proposal, however, goes far beyond work to convert the existing building. It comprises the construction of an additional storey of accommodation over the entire footprint of the structure. This would more than double the above ground height and volume of the building, so is well beyond the scope of the permitted change of use. Accordingly, I have considered the appeal on the basis that it is for the change of use and extension of the building to create a new dwelling in the countryside.
8. The settlement strategy of the Local Plan directs most new development to northern Devon's Sub-regional Centre, Strategic Centre and Main Towns. Policy ST07 addresses the spatial strategy for the rural area, where Local Centres will be the primary focus for development. In the countryside, beyond villages, development is limited to that which meets local economic and social needs, rural building reuse, and development which is necessarily restricted to a countryside location.
9. There is no evidence to indicate that an open market dwelling in this location would meet any local economic and social needs. Furthermore, it has not been sought to demonstrate that a countryside location is required for the dwelling, for example, to meet the needs of an agricultural business. Consequently, there would be conflict with Policy ST07, unless the proposal was for rural building reuse.

¹ Under the provisions of Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² Under Council Reference 65731

10. The reuse of disused and redundant rural buildings is addressed by Policy DM27 of the Local Plan. Such proposals are supported, subject to certain criteria being met, one of which is that the development can be achieved without significant external alteration, extension or substantive rebuilding. The extension proposed under the development would double the floorspace of the building and substantially increase its height and volume. It would, therefore, involve significant extension, so would not be supported by Policy DM27. Consequently, the development would be contrary to the settlement policies of the development plan.
11. The nearest settlement is Parracombe, which lies 3 kilometres away, and has a very limited range of services. Bratton Fleming, which has a primary school, village shop and post office is about 7 kilometres away by road. There is no evidence to suggest that regular journeys to obtain services at either of these settlements could be made by public transport. The distances involved, and the nature of the roads and topography, is such that walking or cycling would not be attractive alternatives. Higher order services are even more distant, at Barnstaple and Ilfracombe. Access to public transport services to these settlements would not be easily available. Occupants of the dwelling would, therefore, be heavily reliant on private vehicles to access services and facilities.
12. Paragraph 79 of the National Planning Policy Framework (the Framework) advises that planning policies and decisions should avoid the development of isolated homes in the countryside, other than in specified circumstances that do not apply in this case. The physical separation of the site from any recognised settlement, and its remoteness from services, means that the proposed dwelling would be an isolated home in the countryside.
13. Therefore, having regard to the settlement policies of the development plan, and the inaccessibility of services and facilities, the site is not suitable for a dwelling. The proposal is contrary to Policies ST05, ST07 and DM27 of the Local Plan, which seek to reduce the need to travel by car, limit development in the countryside, and set parameters for the reuse of rural buildings. The proposal would also conflict with the Framework's aims to avoid isolated homes in the countryside and to promote sustainable transport.

Character and appearance of the landscape

14. The appeal site lies in attractive open countryside, close to the boundary of Exmoor National Park to the north and east. The North Devon and Torridge Joint Landscape Character Assessment describes the area as Moorland Edge Slopes. The appeal site displays many of the key characteristics of this landscape type, including views to Exmoor; a small, square field pattern with beech hedges on stone-faced banks; moorland influence in vegetation; and a sense of isolation, tranquillity and remoteness. The existing building on the site has a low profile, and the surrounding semi-wild vegetation and roadside boundary hedge, means it has been largely assimilated into the landscape. The current appearance of the site is, therefore, characteristic of the landscape within which it is located.
15. The addition of a full storey above the existing structure would make it a much more prominent feature in the rural landscape. Its increased height would mean that it would be visible, over the eastern boundary hedge, from higher land in a wide arc from the northeast to the southwest, including views out of the National Park. The stark, cuboid building, with a large area of glazing,

would be an incongruous feature in the rolling agricultural landscape that forms the setting of the National Park. Moreover, significant levels of light would escape from the full height windows in the southeast elevation, intruding into its dark night skies. Some attempt has been made to reduce this impact, by angling the windows. However, a condition requiring the provision of automated blackout curtains would be an unreasonable imposition on future occupants, and unlikely to be enforceable. Consequently, light would still be discernible from the National Park to the east.

16. The proposal would also be visible from closer quarters. The increased height and mass of the building would result in it being visible when approaching the site from the road junction to the northeast. From here, it would be seen on the ridge, so would be an intrusive feature on the rural skyline. It would also be a much more obvious feature than the existing structure when viewed from the road directly in front of the site. Furthermore, removal of vegetation to create the driveway, the presence of parked vehicles, and the domestication of the land around the building would further erode the contribution that the site makes to the landscape character of the area.
17. The proposed extension and conversion would not, therefore, have a positive impact on the immediate setting of the building, and would be harmful to the character and appearance of the landscape. Consequently, the proposal would be contrary to Policies ST14, DM08A and DM27 of the Local Plan. These policies seek to protect and enhance the landscape character and distinctiveness of the setting of Exmoor National Park, including its dark skies. It would also conflict with the Framework's aim to ensure that development contributes to and enhances the natural and local environment, by recognising the intrinsic character and beauty of the countryside.

Foul drainage

18. The site lies in an isolated rural location, distant from any mains foul water drains. It is not unusual for dwellings in such locations to be served by non-mains foul drainage solutions. The submitted details indicated that a package treatment plant would be installed, in accordance with the Building Regulations, and the treated effluent would be disposed of into the neighbouring field, where there is an easement to dispose of foul or clean water. Whilst percolation tests have not been provided, there is no evidence to suggest that this would not provide a suitable means of disposal.
19. Even if satisfactory percolation tests could not be demonstrated, no evidence has been provided to cast any doubt on the feasibility of providing a cesspool within the appeal site. Whilst this is the least favoured option in the foul drainage hierarchy, it is, nevertheless, not prohibited by the Flood Drainage Assessment Form. Their use must, however, be fully justified. The absence of foul sewers or suitable percolation tests would provide such justification. The plant could be located so that it would be easily accessible for emptying, and sufficient capacity could be ensured through prior submission and approval of details. Other legislation protects the environment from problems that may arise from poor maintenance.
20. In these circumstances, had I been minded to allow the appeal, it would have been reasonable to impose an appropriately worded planning condition, to ensure that a suitable system of foul drainage was in place, prior to occupation of the dwelling. This would have ensured that the development met the

requirements of Policy DM02 of the Local Plan regarding environmental protection.

Other Considerations

21. Two potential fallback positions have been identified: firstly, the Prior Approval under Class P (the PA); and secondly, a Certificate of Lawfulness of Proposed Use or Development (the CLD) granted on 16 May 2019³ for alterations and extensions to the existing building, including an increase in its height. A second Certificate⁴ also confirms the lawfulness of the proposed creation of a parking and turning area.
22. The PA permits the change of use of the building and the land within its curtilage to a dwelling. Bearing in mind the nature of the building, the change of use could not be implemented without operational development, which would require planning permission. Whilst the PA may confer some expectation that planning permission would be likely for a scheme based around the existing envelope of the building, there can be no such expectation that planning permission for a significant enlargement of the building would be forthcoming. In any event, as no application for operational development has been made, there is currently no fallback position that could be implemented.
23. The appellant has drawn my attention to an appeal decision where an Inspector found Policy ST07 to be irrelevant, as the principle of residential use at the site had already been established through a Prior Approval under Class P. However, unlike the current proposal, in that case the Inspector was considering a scheme that involved minimal changes to the existing building, so was within the scope of the permitted change of use. It therefore carries little weight in my decision.
24. The CLD confirms that, under the provisions of Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), the existing reservoir structure (which has a storage use) could be enlarged. The Council has questioned whether the CLD could be lawfully implemented, but the evidence does not support this view. The CLD has not been revoked, so it remains a fallback position that could be implemented.
25. The scheme covered by the CLD includes a full storey above the existing structure, with a triangular extension on the north eastern side, to the same overall height. The building would have extensive glazing, and would be surrounded by a 2-metre high galvanised steel palisade fence for security purposes. The increased mass, greater extent of glazing, and the materials proposed, would result in the building being more harmful to the landscape than the appeal proposal.
26. The approved drawings do, however, appear to represent an attempt to demonstrate the maximum environmental impact that could be achieved through permitted development, rather than to provide a logical and functional storage building. The amount of glazing proposed is unlikely to be practical, as it would reduce the level of storage that could take place within the building, and would compromise security. The very large and bespoke units of glazing would be expensive to manufacture and install, and would be unlikely to be a

³ Under Council Reference 66473

⁴ Under Council Reference 66066

viable proposition for a storage use, particularly as they would detract from the utility of the building. Furthermore, the shape of the extension, with its acute angled corner, would not be conducive to an efficient storage use. The implementation of the scheme approved under the CLD is, therefore, no more than a theoretical possibility.

27. Nevertheless, the permitted development rights conferred by Schedule 2, Part 7, Class H of the GPDO would still apply. The appellant has indicated that, if the appeal is unsuccessful, they would have to be implemented in some form to make the site financially viable. The extension and alteration of the building for a storage use is, therefore, a real prospect. However, the viability of a storage use would be dependent, in part, on the cost of the extension and alterations, and the functionality of the resultant building. Bearing these factors in mind, it is likely that the exercise of the permitted development rights would result in a much more utilitarian building than proposed under the CLD. Such a building would be unlikely to have a significantly, if any, greater impact on the character and appearance of the area than the proposed residential conversion.

Planning Balance

28. The proposal would conflict with development plan policies relating to the location of residential development and protection of the landscape. Planning law⁵ requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Potential fallback positions could represent such material considerations.
29. For the reasons given above, the PA does not provide an implementable fallback position, and the implementation of the CLD is no more than a theoretical possibility. Consequently, having regard to relevant case law^{6,7}, neither represents a material consideration that would weigh against the policies of the development plan.
30. The potential extension of the building under the permitted development rights conferred by Schedule 2, Part 7, Class H of the GPDO is a real prospect. Therefore, the case law dictates that it is a material consideration. However, a practical storage building resulting from the utilisation of these rights, would be unlikely to have a markedly greater impact on the character and appearance of the area than the appeal scheme. Therefore, this fallback position only carries limited weight in the overall balance. Consequently, it does not outweigh the conflict with development plan policies.

Conclusion

31. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

⁶ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

⁷ Gambone v Secretary of State for Communities and Local Government [2014] EWHC 952 (Admin)