



Appeal Decision

Site visit made on 27 July 2021

by C Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2021

Appeal Ref: APP/F9498/W/20/3257957

The Dairy, Middle Dean Farm, Road from Coulsworthy Crook to Dean, Parracombe EX31 4PJ

- 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 Mrs Virginia Kingshotte against the decision of Exmoor National Park Authority.
 - The application Ref 62/62/20/001, dated 12 January 2020, was refused by notice dated 9 March 2020.
 - The development proposed is described as "retention of timber cabin for use as ancillary accommodation to main dwelling".
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Decision

1. The appeal is allowed and planning permission is granted for a development described as "retention of timber cabin for use as ancillary accommodation to main dwelling" at The Dairy, Middle Dean Farm, Road from Coulsworthy Crook to Dean, Parracombe EX31 4PJ, in accordance with the terms of the application, Ref 62/62/20/001, dated 12 January 2020, subject to the conditions set out in the Schedule at the end of this Decision.

Procedural Matters

2. The description of the development in the heading above is taken from the Appeal Form rather than the Application Form.
3. A revised version of the National Planning Policy Framework was published on 20 July 2021. Although the main parties have not been given an opportunity to comment on the revised document, the changes introduced are of limited relevance to the Council's reasons for refusal. Therefore, no party's interests are prejudiced by me determining the appeal on the basis of the information that has been submitted to date.
4. The Council has indicated that it wishes to withdraw the second reason for refusal listed on the Decision Notice (regarding building materials). I have therefore determined the appeal solely on the basis of the first reason for refusal, which concerns ancillary use of the building.
5. The planning application was made retrospectively. The building has already been constructed and has been brought into use.

Main Issue

6. The main issue is whether the building is ancillary to the host dwelling.

Reasons

7. The appeal relates to a small building (described as a cabin) within the grounds of The Dairy, a residential barn conversion situated in the countryside close to a working farm. I saw on my visit that the cabin is situated to the north of main dwelling and is surrounded by a high close-board fence. As the cabin contains a bedroom, bathroom, living room and kitchen facilities and appears to have connections to water and electricity, it clearly provides accommodation which is capable of being occupied independently.
8. However, the judge in the case of *Uttlesford DC v SSE & White*¹ found that even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling- it would instead be a matter of fact and degree. Therefore, while there is little dispute that cabin in the current appeal is capable of being occupied as an independent unit of accommodation, it is necessary to consider whether it would also be capable of being occupied as an annexe.
9. The Dairy and the cabin both share the same access, which is separated from the farm track behind a gated entrance. When visiting the site, this gives the impression of entering a single property rather than two individual units. Although it would be possible to park a car outside the cabin at the top of the driveway leading down to the main residence, it would still be necessary to pass through the gated entrance to The Dairy to reach this point.
10. As the cabin is situated within the private garden of the main residence, it seems to me that there is a physical relationship between the two buildings even though they are separated from each other. However, this relationship is diminished by the high fence which currently surrounds the cabin and acts a barrier, cutting it off from the garden. The appellant informs me that they are willing to remove this fence and, if this were secured by planning condition, the garden would become shared amenity space. It seems to be that this would further strengthen the functional relationship between the two buildings.
11. I understand that the cabin has the same water and electricity meter as the main dwelling, which is another indication that the occupiers of the cabin are likely to have a close association with the occupiers of the main dwelling. Although both buildings have held separate Council Tax records, I accept that this was likely down to a precautionary approach on behalf of the appellant given the uncertain status of the cabin. Taken as a whole, the above considerations lead me to conclude that the cabin is capable of be occupied as an annexe to the main dwelling.
12. My attention has been drawn to the fact that The Dairy has been rented out as a holiday let while the cabin has been separately occupied by either the appellant or the appellant's son. Indeed, the appellant has indicated that that this arrangement is likely to carry on until September 2021. I am informed that this is the result of financial difficulties caused by the current Covid-19 pandemic and the intention is for the appellant and her son to live together on property. I have little reason to question this.

¹ *Uttlesford DC v SSE & White* [1992] JPL 171

13. But in any event, a planning permission to retain the cabin as an annexe would run with the land, irrespective of the circumstances of the intended occupiers. Even though the cabin could be used as a separate dwelling, the proposal before me in this appeal is for a residential annexe. If planning permission was granted and the cabin was not used as proposed, or there was a material change of use in the future to create a separate dwelling, then a separate grant of planning permission would be required and the cabin would be at risk of enforcement action if such permission were not granted.
14. In determining this appeal, I have considered the various planning decisions which the Council has referred to in its appeal statement. While I accept the general principles that have been applied in these decisions, I am not aware of the full circumstances of each case or the development plan policies that were applicable in those locations at the time. As such, I do not consider that a convincing precedent has been established which would lead me to reach a different conclusion in the current appeal.
15. I have also taken account of the recent enforcement appeal for the site. In paragraphs 2-9 of the Appeal Decisions², it is noted (among other things) that a fenced garden area had been created around the cabin and, in addition, the main dwelling had been let as holiday accommodation. This cast doubt in the Inspector's mind as to how the appeal building would have been ancillary to the main dwelling. He states there is little before him to demonstrate, on the balance of probabilities, that there is not a physical and functional separation between the appeal building and The Dairy.
16. However, the Inspector made these comments with regard to ground (b) of the enforcement appeal. The issue being determined under that procedure was strictly limited to whether there had been a breach of planning control, namely the erection of a dwelling on the land (not an annexe as in the current appeal). In such enforcement appeals, the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach had not occurred as a matter of fact at the time that the enforcement notice was issued. While the appellant attempted to argue that the cabin was not a dwelling but an annexe, the evidence put forward to support this was sufficient to pass this test.
17. The current appeal is made under a different procedure and, unlike in the enforcement appeal, planning permission is being sought for an annexe. Consequently, I am able to take into account matters which the enforcement Inspector was not and, for instance, it would be possible for me to impose planning conditions to make the development acceptable. I have determined the current appeal on its individual merits and on the particular evidence submitted in this case.
18. For the reasons outlined above, I therefore conclude that, subject to conditions, the building would be ancillary to the host dwelling. Hence there would be no conflict with Policies GP1, HC-S1, HC-S2 and HC-D8 of the Exmoor National Park Local Plan 2011-2013 which, collectively, seek to control the location of new housing development.
19. As the property has already been constructed, I have not included the standard time limit condition. However, in the interests of clarity, there is a condition requiring compliance with the plans. In order to make the development

² Appeal Decisions APP/F9498/C/20/3255394 and APP/F9498/C/20/3255395

acceptable in planning terms, I have also imposed conditions requiring the removal of the fencing surrounding the cabin and there is also a condition requiring the cabin to be occupied as ancillary accommodation only. This is to ensure that the cabin cannot be used as a separate dwelling in defiance of Local Plan policies which seek to control the construction of new dwellings in countryside locations such as this.

20. I therefore conclude that the appeal should be allowed.

C Cresswell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Elevations (sides) Elevation (north) Elevation (south), Block Plan, Floor Plan.
- 2) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as The Dairy.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications) the fencing which separates the building hereby permitted from the garden of The Dairy shall be permanently removed within 3 months from the date of this Decision. Thereafter, no other fences, walls, screening or similar boundary features shall be installed between the building and The Dairy unless approved in writing by the local planning authority.