
Appeal Decision

Site visit made on 8 November 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/J9497/X/22/3298085

**Home Park Farm, Road from Bovey Cross to Peeps Place,
North Bovey TQ13 8RA**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs John and Carolyn Maule against the decision of Dartmoor National Park Authority ('NPA').
 - The application Ref 401/21, dated 13 July 2021, was refused by notice dated 4 March 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is erection of a residential dwelling without an agricultural tie.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A representative of the NPA was unable to attend the site visit. I undertook this as an Access Required Site Visit and subsequently asked the NPA whether it had any objection to this. It confirmed that it did not by email, so the decision has been reached on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a certificate was well founded. This turns on whether the bungalow was built in accordance with the terms of planning permission 5/7/0559/05/3D ('the permission').

Reasons

4. The then local planning authority, Devon County Council, granted the permission for the erection of farmhouse and garage on 9 May 1980. This permission was subject to seven conditions, lettered a-g. Amongst these, condition (c), the 'agricultural occupancy' condition, reads

"The dwelling hereby permitted shall be occupied only by persons employed or lastly employed full-time locally in agriculture or forestry work, as defined by Section 290 of the Town and Country Planning Act, 1971, and the dependents of such persons aforesaid"

The reason for the condition reads

“To ensure that the dwelling is occupied by persons connected with agriculture or forestry, as the site is located in the open country where residential development would not normally be permitted”.

5. In essence, the Appellants’ case is that the development that has been undertaken on the site does not accord with what was permitted. Therefore, they say, four years after the substantial completion of the development, it would be immune from enforcement action. As such, the occupancy restriction in condition (c) would not bite. If their case is made, it is axiomatic that the terms of the other conditions would not apply either. It is for the Appellants to make their case on the balance of probability.
6. Home Park Farm lies in the open countryside. It consists of a detached two-storey dwelling with a detached garage that sits within a generous garden.
7. Guidance on assessing whether a development complies with the terms of a planning permission is found in the *Handoll*¹ case. What has to be considered is whether the differences between what was approved and what was built are so significant as to be material. Each case differs’ and has to be assessed individually on a fact and degree basis.
8. The drawings from application 5/7/0559/05/3D that both parties refer to are not of particularly good quality. It is, however, possible to make out the development that was approved.
9. Using these drawings, the Appellants set out the differences between the approved development and that which has occurred. These are: that the garden area serving the dwelling is significantly larger than the site that was defined on the approved drawings; the orientation of the dwelling that has been built differs from that which was approved; a detached garage has been erected in an incorrect position; and differences in the dwelling’s fenestration.
10. The garden area serving Home Park Farm is considerably larger than that approved. There are notable additional areas at its south-eastern end, close to neighbouring farm buildings, and at its north-western end where a driveway leading to the public highway runs. However, the Appellants cannot be precise on whether the enlarged area was ‘created from day 1’ or whether the garden area was added to thereafter. Thus, they are unable to demonstrate precisely and unambiguously that the breach in these areas was simply one of later unauthorised changes of use from agricultural land to domestic garden, which would not have a bearing on whether the dwelling is unauthorised.
11. The Appellants have overlain the siting of the approved dwelling on an Ordnance Survey base plan. This shows that what has been built has a slightly different orientation. The NPA say they undertook a similar analysis and largely agree with what the Appellants say regarding siting.
12. Condition (b) attached to the permission states that ‘The proposed dwelling shall be sited in accordance with the applicant’s revised plan submitted in March 1980’. The reason for this simply reads ‘To define the permission’. Notwithstanding the condition, and following the approach in *Handoll*, there is a degree of flexibility in whether what is built is allowed by the permission.

¹ *Handoll and Others v Warner Goodman and Streat and Others* (1995) 25 EG 157 JPL 930

13. Here, the difference in the siting of the dwelling is minimal. There is a minor difference between the approved and built orientation of the farmhouse, but the majority of what has been built 'overlays' the footprint of the approved dwelling. The difference between the two is not material.
14. The planning permission allowed for the erection of a detached garage, close to the north boundary of the site. A detached garage has been built, in a position close to the dwelling. The difference between the two positions is said to be 20.5m.
15. There is no reference to the garage in condition (b), nor does the permission have a similar condition that applies to it. This suggests that the Council did not attach the same importance to its position as it did the farmhouse. Although it has clearly been built some way from the siting shown on the approved plan, the garage is well within the approved site area. Again, on the basis of the facts before me, I find that the difference is not material.
16. Three windows in the building are different to those that were shown on the approved plans. These differences are described by the Appellants as 'minor' and 'slight'. I agree; they are not material changes.
17. From the evidence before me, I find that the differences between the approved scheme and the development that has been undertaken are not material. This is the case whether the differences are assessed individually or cumulatively. The development that was undertaken could have been held to have fallen within the terms of section 96A of the Act, had it been relevant at that time. The assessment to be made under its provisions is, again, whether the changes are material.
18. Overall, I find that, as a matter of fact and degree taking into account the evidence before me, on the balance of probability what has been built accords with what was approved under the terms of planning permission 5/7/0559/05/3D. It follows that the agricultural occupancy condition attached to that permission remains in force.
19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of residential dwelling without an agricultural tie was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Curnow

Inspector