



Appeal Decision

Site visit made on 26 July 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/D0840/X/24/3341280

Maders Reservoir, South Hill, Callington, Cornwall, PL17 7LL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ada Green Landscape Gardener against the decision of Cornwall Council.
 - The application ref PA23/08540, dated 20 October 2023, was refused by notice dated 21 December 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the proposed extension of an existing B8 storage unit.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, I should explain that the planning merits of any use or operations are not relevant and therefore not an issue for me to consider in the context of an appeal under s195 which relates to an application for an LDC. My decision rests on the facts of the case and on planning law and judicial authority.
3. Although I attempted to make a site visit, access was severely restricted due to flooding on the unsurfaced lane. However, as the appeal is dependent upon the interpretation of Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (GPDO), a site visit is not essential.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

5. The Council has set out the full text of Class H of the GPDO and draws attention to the many references to 'building,' but do not accept that a subterranean water reservoir can correctly be described as a building but is a structure. The Council relies on an Inspector's comments in an appeal decision refusing the conversion of a reservoir tank to form tourist accommodation at Crackington Haven in which he found 'that the construction of a water tank,

which is then covered in earth, cannot be properly described as being a building.¹

6. Section 336(1) defines 'building' as 'any structure or erection, and part of a building, as so defined, but does not include plant or machinery comprised in a building'. The GDPO also provides an interpretation of 'building' as including any structure or erection. Notwithstanding the Inspector's views in the Crackington Haven decision, it is clear that the distinction made by the Council that the reservoir is not a building for planning purposes was misdirected.
7. The appellant helpfully draws attention to caselaw which assists the conclusion in this case that the reservoir should be regarded as a building.
8. A water storage reservoir is within Use Class B8 and the appellant refers to the Land Use Gazetteer which confirms that the use of a water storage tank is a B8 use.
9. Detailed scaled sections, plans and elevations have been submitted by the appellant.
10. Class H permits the erection, extension or alteration of an industrial building or warehouse subject to a number of limitations and conditions. Paragraph H.1 indicates the floorspace and height limitations. H.1(b) (iii) indicates that development is not permitted if the gross floor space of the original building would be exceeded more than 50% or 1000 square metres, whichever is the lesser. It is not clear from the submitted plans what is the gross floor space of the building for an accurate assessment to be made.
11. Paragraph H.1(c)(ii) indicates that development is not permitted if the height of any part of the new building erected would exceed the height of the highest building within the curtilage of the premises or 15 metres, whichever is the lower. In this case, the height of the existing building must be the roof covering over the reservoir and the proposed building height would be above this.
12. It also appears that part of the development would be within 5 metres of any boundary of the curtilage of the building which would be contrary to paragraph H.1(e).
13. In an LDC appeal where legal issues are involved the onus rests squarely with the appellant to demonstrate the lawfulness of the proposal on the balance of probability. In this case the proposed development would not satisfy the limitations of the GPDO in respect the permitted development and express planning permission would therefore be necessary.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed extension of an existing B8 storage unit 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).

P N Jarratt

INSPECTOR

¹ Paragraph 9 APP/D0840/W/18/3202614