Planning Inspectorate

Appeal Decision

Site visit made on 26 August 2026

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 10 September 2026

Appeal Ref: APP/F9498/X/25/3360778
Marshwood, Exton, Dulverton, Somerset, TA22 9LD

- 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 Mr and Mrs Ross and Charlotte Norman against the decision of Exmoor National Park Authority.
- The application ref 6/15/24/002, dated 26 June 2024, was refused by notice dated 16 September 2024.
- 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 a dwelling (Use Class C3) that is free from the encumbrance of the planning conditions attached to planning permission reference 6/15/08/102 (the planning permission).

Decision

1. The appeal is dismissed.

Reasons

2. A planning application was made in May 2008 for "Erection of mobile log home adjacent to existing agricultural farmstead. To be erected on an area of waste land beside buildings. Home to provide accommodation for agricultural worker on site for the farm business." The application was apparently accompanied by a site and location plan, farm map, elevation drawings, floor plan, site levels cross section drawing, photographs of the site, photographs of a log cabin and an agricultural appraisal.

3. The type of building shown on the drawings was an interlocking logs kit building to be erected on foundations or a base, so clearly not mobile. Prior to the application being made the site had been cleared, and in December 2008, while the application was under consideration by the National Park Authority (NPA), works commenced for the erection of a kit-based log cabin of a different design to that shown on the application plans. Kits for the log cabin and a garage of similar construction were delivered to the site and both were erected and apparently substantially completed by April 2010. Some timber decking was added in early 2011. The kit for the dwelling was a different design to that shown on the application plans.

4. Planning permission was subsequently granted on the May 2008 application in July 2011[1]. The approved development was described as "New agricultural workers dwelling (log home adjacent to existing agricultural farmstead). Amplified by letter 10.9.08. Amended by email dated 23.9.08. (Full)". The permission was subject to 14 conditions. Among these were condition 5 which stated: "*The*

[1] Council Ref. 6/15/08/102

occupation of the unit of accommodation hereby permitted shall be limited to a person solely or mainly working, or last working, in the locality in agriculture (as defined in Section 336 (1) of the Town and Country Planning Act 1990), or in forestry, or a widow or widower of such a person, and to any resident dependants." The May 2008 application did not include a garage, but in July 2012 permission[2] was granted for "Proposed wood cabin style garage. Retrospective. Amended by blue line plan received on 8 July 2012 and amplified by email dated 5 July 2012."

5. Planning conditions attached to the July 2011 permission, requiring approval of details of timber staining, eaves details, landscaping, hard surfacing materials and roofing materials, were subsequently discharged, and a section 106 agreement, binding the dwelling to the land, was executed, though this was discharged by the NPA in September 2015.

6. There are, however, differences between what is shown on the approved plans and what was actually built. The appellant's case is that the "as built" development was constructed so materially different to what was approved that it was not in fact implementation of the 2011 permission. Consequently, it is argued, that the dwellinghouse had been built without planning permission but became lawful through immunity from enforcement action four years after it was substantially completed in 2010. It is argued that since it is not an implementation of the 2011 planning permission, any conditions imposed on that permission, most importantly condition 5, the agricultural occupancy condition, do not bite.

7. They rely upon the judgement in *Handoll,*[3] which confirmed that if a development has been carried out other than in accordance with the planning permission granted, it is unauthorised, and on the judgement in *Sage*[4], which established that if a building operation is not carried out in accordance with the permission, the whole operation is unlawful. They do acknowledge, however, that if a landowner alters development in an immaterial way, it does not necessarily follow that the development must be treated as unauthorised[5]. It is also well established, however, that it is necessary to consider not only the differences between the works and the plans, but also the significance of the differences. Similarities and the degree of compliance with the plans, and with the planning permission read as a whole, are also relevant.

8. Among the differences pointed out by the appellant is the alignment of the access road and the eastern boundary. It has emerged from overlay of the application plans and Ordnance Survey that a portion of the access and the eastern boundary fall outside of the red line shown on the application plan. I consider the mis-alignment to be so minimal as to be entirely immaterial. That it was not evident from the NPAs initial map overlay exercise is informative, and there are no planning consequences whatsoever. Furthermore, it seems to me that the topography meant that it would have been impractical to construct the entire access within the application red line, the site of the dwelling being well below the level of the public highway with a relatively steep incline between, such that the misalignment was no more than a response to the physical constraints of the site rather than a conscious decision to breach the site envelope. With greater care in the preparation of the hand drawn site plan this, and indeed the boundary

[2] Council Ref. 6/15/12/103
[3] Handoll and Suddick v Warner & Goodman & Street & East Lindsay DC [1994] EWCA Civ 42
[4] Sage v Maidstone BC [2003] UKHL 22; [2003]
[5] Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30

alignment, would likely have been avoided, but they are entirely immaterial in planning terms.

9. There is also a shift in the siting of the dwelling itself by comparison to the application plan. This has been established by professional survey aligned to the national grid, with a high degree of consistency with geo-tagged aerial photography. There is a very minor change in orientation, but it seems that the shift in the position of the dwelling is of the order of about 6.6m measured diagonally between the southwestern corners of the approved drawing and the as-built survey, which I estimate to be a shift of the siting of about 4m to the north-east and 4.9m to the southeast. The proposed and as-built siting overlap by just under 27%. In many circumstances these discrepancies would be considered material, and indeed lesser deviations from approved plans have been found to be so in appeal decisions that I have been referred to. However, in the context of the site and its surroundings, I consider the shift to be immaterial. It is further away from the farmyard and buildings to the west, but still sits within the, admittedly misaligned, plot in a manner broadly similar to that shown on the approved plan. Again, I consider that there are no consequences of any importance in planning terms, and the departure from the approved plans would have been difficult to perceive without resort to accurate survey.

10. The as-built dwelling is also larger than that indicated in the application plans, no doubt because a different model of cabin was chosen, but I consider that the dimensional differences would not be noticeable to even an experienced observer without recourse to measurement, and the accommodation provided is almost identical, an important consideration when considering applications for dwellings for agricultural workers. Minor window and door differences are also immaterial in planning terms, particularly so given the very limited, if any, visibility from the public realm.

11. The building is on a block and masonry base that it is claimed raises the building higher than indicated on the plans. It is possible that goes no further than a breach of condition 4, which states: *The unit of accommodation hereby permitted shall be constructed form (sic) the levels shown on the submitted plans unless agreed otherwise in writing by the local Planning Authority*. But having said that, the application plans labelled “Existing Site Levels”, “Proposed Site Levels” and the referable “Proposed Site and Location Plan”, to which the condition presumably refers, do not in fact show any datum, and appear to be no more than approximate land section sketches, albeit to scale so far as the building is concerned. Beyond a photograph of the base of the dwelling during construction, nothing has been provided to demonstrate that the condition has in fact been breached. In any case, the position of the dwelling in a low-lying position in an undulating landscape means that there are no impacts in planning terms of the purported deviation from the application plans, if there is one, either in terms of character and appearance or amenity. Similarly the addition of a small glazed porch and decking does not alter the character of the building in any material way.

12. Overall, looking at the approved scheme as a whole, I consider that what has been built is so similar in spatial terms, in scale, design, appearance and overall character that I am satisfied, as a matter of fact and degree, that it accords with the 2011 permission, and is in fact the implementation of that permission. While there are departures from the approved plans, individually or cumulatively they have no significance in planning terms.

13. Much has been made of the garage building which it is claimed was built at the same time and therefore part of the same building operation. Since that garage was granted planning permission retrospectively, I consider the fact that it was erected in the same operation to be irrelevant. The ability to gain planning permission retrospectively is a means of regularising development that is unauthorised, which is exactly what had occurred.

14. As suggested by the NPA, had there been any notion on the part of the developer that what was being built was not authorised such that they would seek to rely upon the immunity provisions of section 171B of the Act, the discharge of conditions would have been strong grounds for a conclusion of deliberate deception. That in turn would have disapplied the section 171B immunity provisions. However, I have no doubt that the developer was proceeding, until recently at least, on the basis that the development was authorised, as indeed I consider it was.

15. I find therefore that the NPA decision to refuse to grant the LDC was well founded. The dwelling accords with the 2011 planning permission and remains subject to the occupancy condition. Accordingly, the appeal must fail and I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Dignan

INSPECTOR