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## Appeal Decision

Site visit made on 12 April 2021

**by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 April 2021**

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**Appeal Ref: APP/X1118/W/20/3265090**

**Oakford Lea, Oakford Villas, North Molton EX36 3HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Graham White against the decision of North Devon District Council.
- The application Ref 71409, dated 6 April 2020, was approved on 27 October 2020 and planning permission was granted subject to conditions.
- The development permitted is the erection of a dwelling.
- The conditions in dispute are Nos 7, 12, 13, 14 and 15 which state that:
  - (7) *Provision, implementation and maintenance of detailed landscape proposals.*
    - (i) *No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.*
    - (ii) *Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); implementation and management programme.*
  - (12) *Before the development hereby permitted commences on the site, a soil survey of the site shall be undertaken and the results provided to the Local Planning Authority. The survey shall be taken at such points and to such depth as the Local Planning Authority may stipulate. A scheme for decontamination of the site shall be submitted to and approved by the Local Planning Authority in writing and the scheme as approved shall be fully implemented and completed before any residential unit hereby permitted is first occupied.*
  - (13) *Prior to the installation of internal lighting on the western elevation, details of the lighting to be installed shall be submitted to and agreed in writing with the Local Planning Authority. For the avoidance of doubt this must be designed following the Institute of Lighting Professionals (ILP 2018) and the Bat Conservation Trust guidance and supported by evidence from a qualified ecologist of the suitability of the scheme to protect the wildlife habitat. For avoidance of doubt, an appropriate ecological assessment and lighting strategy shall be submitted that demonstrates compliance with lux limits and buffers (in accordance with Guidance Note 08/18 'Bats and artificial lighting in the UK' produced by the Institute of Lighting Professionals and the Bat Conservation Trust). For avoidance of doubt the proposed internal lighting shall be designed and modelled to minimise the light spill on the western boundary hedge, to achieve the relevant SLL lighting Guides/British Standards for internal design illuminance and to comply with BCT – Guidance Note 08/18 and Artificial Lighting in the UK.*

*(14) Prior to the installation of any external lighting, details of the lighting to be installed shall be submitted to and agreed in writing with the Local Planning Authority. For the avoidance of doubt this must be designed following the Institute of Lighting Professionals (ILP 2018) and the Bat Conservation Trust guidance and supported by evidence from a qualified ecologist of the suitability of the scheme to protect the wildlife habitat.*

*(15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order) express planning permission shall be obtained for any development within class(es) A-G of Part 1 and class(es) A-C of Part 2 of Schedule Two of the Order.*

- The reasons given for the conditions are:

*(7) This is a pre-commencement condition that has been imposed to ensure that landscaping works are agreed and implemented as insufficient information has been submitted with the application. This will ensure that the development is assimilated into the landscape and to safeguard the appearance and character of the area in accordance with Policies ST04, ST14, DM04 and DM08A of the North Devon and Torridge Local Plan.*

*(12) In the interest of human health in accordance with Policy DM02 of the North Devon and Torridge Local Plan.*

*(13) Insufficient information has been submitted. Further information is required In the interests of safeguarding protected species and their habitats in accordance with Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017), Paragraph 170 of the National Planning Policy Framework and Policies ST14 and DM08 of the North Devon and Torridge Local Plan.*

*(14) In the interests of safeguarding protected species and their habitats in accordance with Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017), Paragraph 170 of the National Planning Policy Framework and Policies ST14 and DM08 of the North Devon and Torridge Local Plan.*

*(15) To allow the Local Planning Authority to consider the impact of future development on the appearance and character of the development in the area and in accordance with the requirements of Policy DM04 of the North Devon and Torridge Local Plan.*

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## **Decision**

1. The appeal is allowed and the planning permission Ref: 71409 for the erection of a dwelling at Oakford Lea, Oakford Villas, North Molton EX36 3HN granted on 27 October 2020 by North Devon District Council, is varied by deleting Conditions 12 and 15 and substituting Conditions 12 and 15 with the following substitute conditions:

12) Should any unexpected contamination of soil or groundwater be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing any such unexpected contamination, within that sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.

15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order) express planning permission shall be obtained for any development within class(es) A, B, C, E a) and F of Part 1 and class(es) A and B of Part 2 of Schedule Two of the Order.

## **Background and Main Issue**

2. Planning permission was granted on 27 October 2020 for the erection of a dwelling at the appeal site subject to a number of conditions (the Permission). The Appellant maintains that the disputed conditions as described in the banner heading above, are not reasonable or necessary and should be removed from the Permission.
3. In light of the above and the submissions before me, the main issue in this appeal is whether the disputed conditions are necessary and reasonable in the interests of safeguarding the character and appearance of the surrounding area, in the interests of the living conditions of future residents and in the interests of safeguarding protected species and their habitats.

## **Reasons**

4. The appeal site comprises land located at the periphery of North Molton. There is residential development to the east and north of the site, with the land to the west of the site comprising more open agricultural land. As noted above, the Appellant disputes a number of conditions applied to the Permission and I shall consider each in turn below.
5. Condition 12 of the Permission concerns land contamination. The Appellant has put it to me that this condition is unreasonable and unnecessary given that it is maintained that the site has not been previously used for industrial activity or has been previously developed.
6. Whilst the Appellant's submissions are noted, the Council have considered that the condition would need to be modified in order to better reflect the guidance. In this respect, I would concur that a pre-commencement condition requiring soil surveys and that a scheme for decontamination of the site be approved by the Council, would be unreasonable where there is no evidence of known contamination.
7. Nonetheless, and in respect of the Appellant's submissions on this matter, a condition which stipulates that the Council must be contacted in the event that unexpected contamination is discovered, is reasonable and necessary in the interests of the living conditions of future residents. Planning Practice Guidance<sup>1</sup> (the PPG) indicates that land contamination may not just arise in terms of former industrial use and, therefore, given the location of the site and the evidence before me, I consider that an unexpected land contamination condition is both reasonable and necessary in order to ensure that the proposal complies with Policy DM02 of the North Devon and Torridge Local Plan 2011-2031 (the Local Plan). Accordingly, I have therefore varied the Permission in this respect.
8. Condition 15 of the Permission concerns the removal of certain permitted development rights. In this respect, and following the submission of the appeal, the Council have put it to me that the relevant condition should be varied so as to precisely define which rights have been limited or withdrawn.
9. While I acknowledge the Appellant's submissions, by reason of the appeal site's position at a sensitive location, as described above, and given the scale, height and spread of the proposed new dwelling and its potential impact on protected

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<sup>1</sup> Planning Practice Guidance Reference ID: 33-003-20190722

species, in my view it would be reasonable and necessary that enlargements to the dwelling, roof alterations and additions, additional buildings and hard surfaces incidental to the use of the dwelling, gates and fences and the means of access would require separate planning approval. It is noted that the PPG provides that the removal of such rights may not meet the test of reasonableness. However, in this instance given the potential significant adverse effect with regards to the character and appearance of this sensitive area and by reason of the potential significant adverse effect on protected species, the removal of certain rights would be necessary and reasonable.

10. I would concur with the Council's submissions that certain rights pertaining to the erection of a porch, the provision of a container used for domestic heating purposes, the installation alteration or replacement of a chimney and the painting of the exterior of buildings, should not be removed by such a condition. I have therefore modified the relevant condition in respect of the above.
11. Notwithstanding the above matters and modifications, the Appellant also maintains that it would be unnecessary and unreasonable to include a condition which requires that details of hard and soft landscaping works are submitted to and approved by the Council prior to commencement of development. It has been put to me by the Appellant that that condition should be removed as the plans submitted with the application provide sufficient detail and that such a condition only applies to substantially scaled commercial development.
12. In this respect, from observations made on my site visit it is apparent that the appeal site is situated in a sensitive location which marks the transition between the urban form of North Molton and the expansive countryside beyond. Whilst the details provided on plans and reports are noted, in my view there is insufficient information relating to how landscaping matters would ensure that the proposal would integrate well within its surroundings whilst not adversely affecting the character and appearance of the more open countryside west of the site.
13. In this regard, I therefore find that the application of a condition which requires details of landscaping measures be approved by the Council is necessary and would be reasonable as a pre-commencement condition to ensure that the proposed development would not have a harmful effect on the character and appearance of the surrounding area.
14. In light of the above, such a landscaping condition would be necessary in order for the proposed development to comply with the aims and provisions of Policies ST04, ST14, DM04 and DM08A of the Local Plan which, amongst other things, requires that development conserves and enhances North Devon's local distinctiveness taking into account and respecting the sensitivity and capacity of the landscape.
15. Conditions 13 and 14 of the Permission requires that details of internal and external lighting be submitted to the Council for approval prior to its installation. The Council have put it to me that these conditions are necessary and reasonable in the interests of safeguarding protected species and their habitats. The Appellant maintains that such conditions are not reasonable as lighting would be minor in nature, subject to concealment and would have minimal impact on bats.

16. The evidence before me indicates that an ecological appraisal was submitted in support of the original planning application. That ecological appraisal concluded that in order to minimise impacts on bat activity resulting from increased light levels, the provision of lighting at the site should be in accordance with the recommendations provided by the Institute of Lighting Professionals and the Bat Conservation Trust. Whilst the Appellant's submissions are noted, there does not appear to be any plans or specific details before me which demonstrates how the proposed development would accord with the abovementioned recommendations.
17. Consequently, without sufficient information and details regarding lighting, the proposed development has the potential to adversely affect the foraging and commuting patterns of bats. Accordingly, conditions which require that details be submitted to and approved by the Council are necessary and reasonable to ensure that the development complies with the provisions of the National Planning Policy Framework and Policies SP14 and DM08 of the Local Plan which, amongst other things requires that development conserves protected species and their habitats.

### **Other Matters**

18. Further to the above, the Appellant has also raised concerns that the Council did not conduct further site visits at their request and that if such visits had occurred then many of the above matters could have been resolved at that time. While I sympathise with the Appellant and the desire to have further visits, it is apparent from the submissions before me that the Council had made a site visit and that without the additional information required in support of the application, further site visits would have been unlikely to have resolved all of the above matters in dispute. In any event, I have determined this appeal based on the merits of the proposal and on the observations made on my site visit.

### **Conclusions**

19. For the reasons given above, I conclude that the appeal is allowed, and planning permission varied as set out in the decision above.

*A Spencer-Peet*

INSPECTOR