



Appeal Decision

Site Visit made on 26 May 2021

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Appeal Ref: APP/C3105/W/21/3266561

28 The Moors, Kidlington, Oxfordshire, OX5 2AJ.

- 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 Christopher Bright (Oxhold Limited) against the decision of Cherwell District Council.
- The application Ref 20/02592/F, dated 21 September 2020, was approved on 8 December 2020 and planning permission was granted subject to conditions.
- The development permitted is Variation of Condition 2 (plans) of 20/01170/F to allow for amendments to the layout of bin and cycle stores, the relocation of the second parking space to Plot 1, amendments to landscaping, alterations to fenestration, and alterations to the externally facing materials of the dwellings.
- The conditions in dispute are No's 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 15, and 16; details of these conditions, together with the reasons for imposing them, are set out in Schedule **A** attached to this decision.

Decision

1. The appeal is allowed and planning permission is granted for Variation of Condition 2 (plans) of 20/01170/F to allow for amendments to the layout of bin and cycle stores, the relocation of the second parking space to Plot 1, amendments to landscaping, alterations to fenestration, and alterations to the externally facing materials at 28 The Moors, Kidlington, Oxfordshire, OX5 2AJ in accordance with the terms of the application, Ref 20/02592/F, dated 21 September 2020, and the plans submitted with it, subject to the conditions set out in Schedule **B** attached to this decision.

Application for costs

2. An application for an award of costs has been made by the appellant against the Council. This is the subject of a separate decision.

Main Issues

3. The main issues are whether the variation of condition No.2 and the new conditions imposed on the planning permission fulfil a clear planning purpose and meet the tests of conditions set out in national guidance together with Regulations governing the imposition of conditions.

Reasons

Background

4. It is apparent from the planning history of the site that permission was sought and granted for the redevelopment of a single bungalow with three detached dwellings under ref. 20/01170/F. The permission was subject to 18 conditions.

The appellant submitted application 20/03067/DISC to discharge specific conditions as well as the application of the current appeal to vary the original permission 20/01170/F in respect of amendments to the layout of the bin and cycle stores, the relocation of the second parking space to plot 1, amendments to landscaping, alterations to fenestration, and alterations to the externally facing roof materials of the dwellings.

5. As described in the bullet points above, application 20/02592/F was permitted, therefore the changes to the approved scheme are now authorised. The main issue is whether the appealed against conditions that were imposed should be retained, deleted, modified or added to.
6. In assessing these I have had regard to the tests of conditions set out in the National Planning Policy Framework (the Framework) and guidance in the national Planning Practice Guidance (PPG). Moreover, specific Regulations¹ govern the use of 'pre-commencement' conditions which indicate that any planning permission granted must have the written agreement of the appellant to the wording of such a condition. The conditions being appealed against will be taken in turn.

Disputed conditions

Condition 2

7. The form and purpose of this condition is necessary as it defines the permission and the plans and documents related to it. However, the plans and documents specified need updating to list all of those now relevant. I will amend and retain this condition.

Condition 3

8. This is a 'pre-commencement' condition but there is no explicit agreement from the appellant for its imposition on this permission. I note that the appellant agreed the condition by email dated 04.08.2020 in relation to permission 20/0117/F but this is not transferable to a different permission. The imposition of the condition therefore conflicts with the Regulations. Notwithstanding this, the details of the condition refers to the need for more details of the access to the site but there is no clear highway justification for this over and above those shown on amended plan No.005 Rev.C and the Transport Statement as now referred to in condition 2 above. I will therefore delete condition 3.

Condition 4

9. This is also a pre-commencement condition with no specific approval from the applicant for this decision and this conflicts with the Regulations. On the planning aspects the first part of the condition requires an additional plan showing two parking spaces for each dwelling plus other minor aspects but the layout plan 005. Rev.C shows the layout of parking spaces so this first part of the condition is not necessary and I will delete it. The second part of the condition requires that the parking spaces are laid out and retained for parking. This requirement is reasonable and necessary in the interests of highway safety and should be kept with amended wording.

¹ The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018.

Condition 5

10. There is no explicit agreement from the applicant to this pre-commencement condition on this decision (although there was under 20/01170/F) so there is conflict with the Regulations. Notwithstanding this, a Construction Environment Management Plan (CEMP) is necessary given the location of the site in a mainly residential area and the CEMP needs to take effect before development commences on site. However, I note that the appellant's document 28 provided a CEMP and the implementation of this is referred to in the amended condition 2 above. This negates the need for condition 5 which can be deleted.

Condition 6

11. This is a pre-commencement condition without applicant agreement. Given the location of the site in a conservation area and in order to maintain the general appearance of the area, it is necessary that the Council and the appellant reach agreement on the external materials of the development. However, the condition can be modified to ensure that some building work is not unreasonably delayed and development can commence up to slab level before the materials are submitted and agreed. The condition will be modified accordingly.

Condition 8

12. As worded this is not a pre-commencement condition. The details sought, prior to the doors and windows being installed are necessary given the sensitivity of the site in a conservation area. I note the appellant's comments about the variation of fenestration locally, but it is still reasonable and necessary to ensure that the details agreed on for this development are appropriate to preserve or enhance the area. However, the wording of the final sentence of the condition should be amended to be read in a positive way and the restriction to retain these works ever after is unnecessary. I will amend the condition accordingly.

Condition 9

13. I do not read this as a pre-commencement condition. The restriction on commencement is on undertaking these specific works concerning boundary enclosure rather than on the commencement of *any* development. Therefore, in principle such a condition can serve a proper planning purpose and be necessary. I note what the appellant says about the existing boundary fences which belong to neighbours and are beyond the control of the appellant but it could still be necessary for the development to be required to provide boundary enclosures within the application site where necessary. Nevertheless, I also note the appellant's submission that drawing 190272 CON11 makes reasonable provision for boundary treatment. Even though this is now referred to in the amended condition 2 above, a specific performance clause is necessary to ensure that the work is carried out and retained thereafter and I will impose an amended version of this condition.

Condition 10

14. This condition deals with landscaping and hard surfacing. I agree that part (b) is not now necessary as permission has been granted under other notifications. Likewise, in respect of part (c) the scheme to be submitted need not refer to

pavements and pedestrian areas as the approved layout plan shows that the accessway is a shared surface. The condition will be amended accordingly.

Condition 12

15. This condition is not necessary to achieve a clear planning purpose including safeguarding the amenities of the area and can be deleted.

Condition 13

16. As worded this is not a pre-commencement condition. The requirement to have the windows/rooflights obscured glazed seems to have been accepted by the appellant as the Council says that such are shown on the specified amended plans. In any event, given the closeness of the new properties to the north and east of the site, the evidence submitted does not show that this fenestration can be installed with no restriction without causing potential overlooking. There is a clear purpose to the condition to require the restriction on glazing and opening and to maintain such restrictions afterwards. The condition should therefore be retained.

Condition 15

17. This condition refers to the implementation of the Bat Roost Assessment, however, this is now referred to in the amended condition 2 and it is not necessary to duplicate this. The condition will be deleted.

Condition 16

18. This condition restricts specific 'permitted development' rights. Guidance in the PPG advises against the blanket imposition of such conditions unless there is clear and specific justification. Moreover, the GPDO² makes provision for development in a conservation Area. In this case I am satisfied that there is site specific justification for the removal of Part 1 Classes A, B, C, D, and E but not other parts of the Order. The condition will be revised accordingly.

Conclusion

19. Some of the conditions imposed on permission 20/02592/F are 'pre-commencement' ones imposed without the specific agreement of the applicant in this case and thus conflict with the Regulations. Moreover, the requirements of these and other conditions would delay the reasonable implementation of the development and are unnecessary to achieve a proper planning purpose. However, it has been demonstrated that other conditions, as described above, do achieve this and should be retained.
20. I conclude that the appeal should be allowed in part and the specific conditions should be deleted or varied accordingly as described above.

David Murray

INSPECTOR

² The Town and Country Planning (General Permitted Development) (England) Order 2015

Schedule A

List of conditions appealed against together with the reasons for them

1. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application form and the following plans and documents: • Drawing Nos. 19272 001, 002, 003, 004 rev b, 005 rev c, 006 rev c, 100, 110 rev c, 111 rev d, 200, 210 rev c, 211 rev d, 300, 1942 01 P2 and 190272 A ST CON7. • Design and Access Statement • Transport Statement prepared by HVJ Transport Ltd dated April 2020 • Drainage Strategy prepared by Flow Drainage Design dated 14 April 2020 • Preliminary Bat Roost Assessment prepared by Chase Ecology Ltd dated 4th September 2019.

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

2. No development shall commence unless and until full details of the means of access between the land and the highway as set out in drawing No.005 Rev C, including, position, layout, construction, drainage and vision splays have been submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in strict accordance with the approved details prior to the first occupation of the development and shall be retained as such thereafter.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

3. Notwithstanding the details submitted, no development shall commence unless and until a plan showing a car parking provision for two spaces for each dwelling to be accommodated within the site to include layout, surface details, and drainage, has been submitted to and approved in writing by the Local Planning Authority. The parking spaces shall be laid out, surfaced, drained and completed in accordance with the approved details prior to the first occupation of the development and shall be retained for the parking of vehicles at all times thereafter.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

4. No development shall commence unless and until a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with approved CEMP.

Reason - To ensure the environment is protected during construction in accordance with saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 6 No development shall commence above slab level until samples of the bricks and tiles to be used externally in the construction of the external walls and roof of the development have been submitted to and approved in writing by the Local Planning Authority. The external walls and roofs of the development shall not be constructed other than in strict accordance with the approved details and samples and shall be retained as such thereafter.

Reason - In the interests of the visual amenity of the locality and to preserve the character and appearance of the Conservation Area and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, and saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

8. Notwithstanding the details submitted, no doors or windows shall be installed unless and until details of the construction, including cross sections, cill, lintel, reveal and colour / finish of the proposed windows and doors, to a scale of not less than 1:10 have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.

Reason - In order to safeguard the visual amenities of the area and to preserve the character and appearance of the Conservation Area in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework 9.

9. Notwithstanding the details submitted, full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of those works. Such approved means of enclosure, in respect of those dwellings which are intended to be screened, shall be erected prior to the first occupation of those dwellings and shall be retained as such thereafter.

Reason : To ensure the satisfactory appearance of the completed development, to safeguard the privacy of the occupants of the existing and proposed dwellings and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

10. Notwithstanding the details submitted, the development shall not be occupied unless and until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include: a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas b) details of the existing trees and hedgerows to be retained as well as those to

be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation, c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps. The development shall be carried out in strict accordance with the hard landscape elements of the approved landscaping scheme prior to the first occupation of the development and shall be retained as such thereafter.

Reason - In the interests of the visual amenities of the area and to preserve the character and appearance of the Conservation Area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework. 11.

11. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

12. Prior to the first occupation of the development hereby approved the appropriate number of refuse bins required in relation to the dwellings shall be provided and shall remain available for use thereafter.

Reason - In the interests of the visual amenities of the area and to preserve the character and appearance of the Conservation Area, and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

13. All windows or rooflights at first floor level or above in the northern and eastern elevations of the dwellings hereby permitted shall be glazed with obscure glass (at least Level 3) only and fixed with a ventilation stay restricting the opening of the window to no more than 30 degrees from the plain of the roof into which the window or rooflight is inserted prior to the first occupation of the development hereby permitted, and shall be permanently maintained as such at all times thereafter.

Reason: To safeguard the living conditions of neighbouring residents and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Section 12 of the National Planning Policy Framework.

15. The development hereby permitted shall be carried out in accordance with the recommendations set out in section 6 of the Preliminary Bat Roost Assessment by Chase Ecology Ltd dated 4th September 2019 unless otherwise agreed in writing by the Local Planning Authority.

Reason - To protect habitats and/or species of importance to nature conservation from significant harm in accordance with the Government's aim to achieve sustainable development as set out in Section 15 of the National Planning Policy Framework.

16. Notwithstanding the provisions of Classes of Part 1 or Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting or amending that order) no enlargement alteration or improvement of any of the dwellinghouses shall be undertaken at any time without the grant of further specific planning permission from the Local Planning Authority.

Reason : Taking into account the density of the site it is considered to be in the public interest to ensure the merits of future proposals can be assessed by the Local Planning Authority so that the amenities of the adjoining occupier(s) are not adversely affected and in the interests of the visual amenities of the area and to preserve the character and appearance of the Conservation Area, in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C28 Application No.: 20/02592/F 5 of 7 and C30 of the Cherwell Local Plan 1996 and Section 12 of the National Planning Policy Framework.

Schedule B – Conditions imposed as a result of the appeal

1. The development to which this permission relates shall be begun not later than the expiration of three years from the date of the original permission ref. 20/01170/F, that is, 21 August 2020.
2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out in accordance with the application form and the following plans and documents:
 - Drawing Nos. 19272 004 rev b, 005 rev c, 006 rev c, 110 rev c, 111 rev d, 210 rev c, 211 rev d, 300, and 190272 A ST CON7
 - Drawing Nos. 190272 - CON3 - Condition 3 - Site Access, 190272 - CON4 - Condition 4 - Parking Arrangement, 190272 - CON4 - Condition 4 - Parking Arrangement, 190272 - CON11 - Condition 11 – Boundaries, 1943-01_P3 Drainage Layout and Details
 - Document 28 The Moors CEMP 23-10-20,
 - Design and Access Statement
 - Transport Statement prepared by HVJ Transport Ltd dated April 2020
 - Drainage Strategy prepared by Flow Drainage Design dated 14 April 2020
 - Preliminary Bat Roost Assessment prepared by Chase Ecology Ltd dated 4th September 2019
3. The parking spaces shall be laid out, surfaced, drained and completed in accordance with the details shown on Drawing No 19272 Con 4 prior to the first occupation of the dwellings approved and shall be retained for the parking of vehicles at all times thereafter.
4. No development shall commence above slab level until samples of the bricks and tiles to be used externally in the construction of the external walls and roof of the development have been submitted to and approved in writing by the Local Planning Authority. The external walls and roofs of the development shall not be constructed other than in accordance with the approved details and samples and shall be retained as such thereafter.
5. The bin/cycle stores shall be sited and completed in accordance with drawing No. 190272 A ST CON7 prior to the first occupation of the dwellings hereby permitted. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.
6. Notwithstanding the details submitted, no doors or windows shall be installed unless and until details of the construction, including cross sections, cill, lintel, reveal and colour / finish of the proposed windows and doors, to a scale of not less than 1:10 have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
7. The means of enclosure along all boundaries and within the site shall be erected in accordance with the details shown on Drawing No. 190272 A ST CON7. Such approved means of enclosure, in respect of those dwellings

- which are intended to be screened, shall be erected prior to the first occupation of those dwellings and shall be retained as such thereafter.
8. Notwithstanding the details submitted, the new dwellings shall not be occupied unless and until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include: a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas b) details of the hard surface areas. The development shall be carried out in accordance with the hard landscape elements of the approved landscaping scheme prior to the first occupation of the development.
 9. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.
 10. All windows or rooflights at first floor level or above in the northern and eastern elevations of the dwellings hereby permitted shall be glazed with obscure glass (at least Level 3) only and fixed with a ventilation stay restricting the opening of the window to no more than 30 degrees from the plane of the roof into which the window or rooflight is inserted prior to the first occupation of the development hereby permitted, and shall be permanently maintained as such at all times thereafter.
 11. The dwellings hereby permitted shall not be occupied until they have been provided with a system of electrical vehicle charging to serve that dwelling.
 12. Notwithstanding the provisions of Classes A, B, C, D or E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting or amending that order) no enlargement alteration or improvement of any of the dwellinghouses shall be undertaken at any time without the grant of further specific planning permission from the Local Planning Authority.