



Appeal Decision

Site visit made on 27 October 2023

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 02 January 2024

Appeal Ref: APP/Q1153/W/22/3309071

The Old Mill, Mill Road, Okehampton, Devon EX20 1PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by the Trustees of Okehampton Skills and Sports Trust against the decision of West Devon Borough Council ('WDBC').
- The application ref. 1861/21/CAC, dated 17 May 2021, was refused by notice dated 21 April 2022.
- The development proposed is described on the application form as 'demolition of redundant stone ware house buildings'.

Decision

1. The appeal is dismissed insofar as it relates to buildings A, B and C annotated on plan '662 – 10'. The appeal is allowed insofar as it relates to building D as annotated on the foregoing plan, and in that respect alone planning permission is granted for demolition in accordance with the terms of application ref. 1861/21/CAC, dated 17 May 2021, subject to the conditions below.

Preliminary matters

Heritage context

2. There are 4 adjoining buildings at the appeal site proposed for demolition ('the buildings'). On plan '662 – 10', running alphabetically east to west, they are referred to as buildings A to D. I will return to their historic significance. The appellant does not, however, expressly dispute their characterisation by WDBC and Historic England as non-designated heritage assets ('NDHA').¹ The appellant's Written Scheme of Investigation ('WSI') describes them as 'non-designated buildings'.
3. The only element of the buildings proposed to be retained is a modest section of wall abutting the grade II listed chimney.² That is to avoid adverse structural implications elsewhere, the chimney would be untouched. The appeal site falls within the Okehampton Conservation Area ('OCA'). Just beyond the slightly larger landholding of which the appeal site is part, a landholding which extends to the East Okement River, is a grade II listed footbridge.³ 'Town Mill,' also grade II listed, falls nearby across Mill Road.⁴ Amongst other subsurface features, a medieval culvert or tailrace passes beneath the site connecting the leat which once powered Town Mill with the East Okement.

¹ Albeit I am told that their listing was not endorsed by Historic England, they are nonetheless of the view that they should be assessed as NDHA 'as a minimum'.

² List entry 1105867.

³ List entry 1105868.

⁴ List entry 1105861.

Statutory provisions

4. Falling within the OCA, the need for planning permission stems from section 196D of the Town and Country Planning Act 1990 as amended ('TCPA1990'), in particular via the Enterprise and Regulatory Reform Act 2013. Previously the need for Conservation Area Consent ('CAC') applied. CAC is referred to in the 2023 appeal decision here.⁵ The previous Inspector's reasoning was that the appellant had not shown, on the balance of probabilities, that CAC ref. 1173/2001/OKE provided for the demolition of additional buildings at the appeal site (beyond those already demolished). By consequence the appeal against WDBC's refusal to grant a Certificate of Lawful Development under section 195 of the TCPA1990 to that effect was dismissed. Unlike here, the planning merits of a scheme are not relevant in the context of an appeal under section 195.
5. Given the historic significance of the appeal site and its surroundings, I have approached the appeal in the context of sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 'LBCA 1990'). Those provisions, in summary, require that I have special regard to the desirability of preserving (listed) buildings or their settings, and that I pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
6. Each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise.⁶ In this instance the development plan includes policies of the Plymouth and South West Devon Joint Local Plan 2014 – 2034 (adopted by WDBC on 26 March 2019, the 'JLP'). I have also had regard to various other material considerations including the National Planning Policy Framework ('NPPF'),⁷ the Planning Practice Guidance ('PPG'), and to the Supplementary Planning Document associated with the JLP (adopted by WDBC on 9 June 2020).

Policy context

7. JLP policy DEV21 sets out how development will need to 'sustain the local character and distinctiveness of the area by conserving and where appropriate enhancing its historic environment, both designated and non-designated heritage assets and their settings, according to their national and local significance'. Aligned with NPPF paragraphs 205, 207 and 208, part 2 of policy DEV21 sets out how 'great weight' should be given to the conservation of designated heritage assets, with any harm balanced relative to any public benefits. Part 3 of JLP policy DEV21, again in common with NPPF paragraph 209, sets out how a balanced judgement will be required in respect of development which adversely affects NDHA.
8. Criterion (ii) to part 2 of policy DEV21 sets out how justification in respect of any harm to designated heritage assets must include a demonstration that 'all reasonable efforts' have been taken to sustain an existing use, find new ones, or to mitigate the extent of any harm. NPPF paragraph 210 sets out that the loss of the whole or part of a heritage asset should not be permitted 'without

⁵ Ref. APP/Q1153/X/22/3306005.

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

⁷ The current version of which was published on 19 December 2023.

taking all reasonable steps to ensure the new development will proceed after the loss has occurred'. That is the crux of the matter here; there is no 'new' development proposed, only demolition.

9. NPPF paragraph 210 chimes with the International Commission on Monuments and Sites context to domestic statute and policy. Article 5 of the 1964 Venice Charter sets out how conservation is facilitated by making use of heritage assets 'for some socially useful purpose'. The PPG says similar.⁸ More broadly, and in the context of meeting the challenge of climate change, NPPF paragraph 157 also encourages the reuse of existing resources, including the conversion of existing buildings.

Planning background

10. I understand that the appellant purchased the site in 2018 from, and following a legal challenge to, WDBC. This appeal follows not only a previous section 195 appeal. There is reference to a proposal being advanced for a hotel at some point, albeit that appears to have faltered on account of the contractual stipulations associated with the foregoing land transfer.
11. This scheme also follows an application made in 2022, but withdrawn, for the 'demolition of gable wall and immediate buttressing walls and removal of steel roof sheets/ unsupported timber'.⁹ Permission was refused in 2022 also for the redevelopment of the site as a car park.¹⁰ An application made in 2019 for 18 dwellings was withdrawn.¹¹ An application for the demolition of existing buildings in 2019 also appears to have been withdrawn.¹²
12. Withdrawn applications leave little trace as to relevant circumstances. However the number of schemes proposed here since 2018 points to some persisting mismatch of expectations between the main parties. The unfortunate consequence of that is that buildings on site remain vacant and deteriorating.
13. Planning permission was, however, granted in 2021 for a bat roost.¹³ The appellant states that was as an enabler to other development to come (in much the same manner as the current proposal). However there is no indication that other development was proposed at that juncture, and ecological mitigation might serve various schemes.
14. In 2001 WDBC was the landowner and applicant in respect of 3 linked permissions or consents at the appeal site.¹⁴ In short, they enabled the demolition of certain buildings then present, the construction of a new pedestrian and cycle route, and the removal of structural inserts in the chimney along with making good its stonework.¹⁵

⁸ PPG Reference ID: 19a-002-20190723.

⁹ Ref. 1439/22/FUL.

¹⁰ Ref. 3796/22/FUL.

¹¹ Ref. 3735/19/FUL and 3736/19/LBC.

¹² Ref. 2343/19/DCA.

¹³ Ref. 3815/21/FUL, albeit a listed building consent application for similar was withdrawn (ref. 3816/21/LBC).

¹⁴ Ref. 1172/2001/OKE, 1173/2001/OKE and 1174/2001/OKE. There is also reference to historic CAC applications in the evidence before me, ref. CAC/3/22/2484/1990/3923/20/ and CAC/3/22/2377/1993/3923/025/.

¹⁵ The latter potentially partially explaining why the chimney is in better condition than surrounding buildings.

Main issue

15. Against the context above, the main issue is the effect of the proposal on historic integrity.

Reasons

Special interest and significance

16. The site is an irregular parcel of land in Okehampton that has been largely left to its own devices for many years. Okehampton itself is set between and astride the East and West Okement Rivers running off Dartmoor. The confluence of the two is a relatively short distance away, beyond Fore Street around the town centre. Mill Road spurs southwards off Fore Street, initially following the rough line of the East Okement. It curves around the appeal site before crossing the River and returning towards the town centre, ending at the junction with Castle Road, St. James' Street and George Street.
17. That junction, and more broadly the area around Fore Street between the Rivers, represents the historic nucleus of the town around which the larger part of the OCA is focussed.¹⁶ Reflecting the incremental historic evolution of Okehampton, the OCA is extensive and irregular. It extends beyond Fore Street to the north, and also southwards of the appeal site almost as far as the route of the Dartmoor Line. The latter was operational in conjunction with London and South Western Railway's station nearby opened in 1871.
18. The appellant's heritage evidence comprises principally three documents, the WSI, a Heritage Statement of 2010 (the 'HS2010'), which draws on work undertaken around 2001 by Exeter Archaeology. There is also a further a revised Heritage Statement of 2021 ('HS2021'). Drawing upon that evidence, the buildings and chimney on site represent a particular phase in the broader and deeper history of the town, physically and socio-economically. Physically the chimney is of local rubblestone with dressed quoins, square at its base, tapering as it rises. The HS2010 sets out that the chimney is described in local oral tradition as being built in 1865 '101 feet high, built of ordinary river stones. It cost £1 a foot to build'.¹⁷
19. The chimney operated as part of what is described in the list entry as a 'manure and vitriol works', established by William Wood around the time the railway came to Okehampton and demand for food production increased with urbanisation. That involved the grinding of animal bone and its processing with sulphuric acid, likely freighted in by train and piped to the site, to release phosphate to be used as fertiliser. Neither the chimney, nor site management, were always successful at mitigating nuisance resulting from that process.
20. The chimney therefore operated in conjunction with buildings on site. Although the former is listed and the latter not, their significance is intertwined. The Association for Industrial Archaeology explain that Pevsner, or the relevant Pevsner Architectural Guide, refers to an 'industrial miscellany' at Mill Road. The HS2010 points out how the 4 remaining buildings on site were part of 14 structures present in 2001, the fertiliser works having expanded through the early twentieth century. Given their proximity to the chimney, the heart of the

¹⁶ The OCA also encompassing a distinct area centred around the grade II* listed Church of All Saints.

¹⁷ Referencing Hambling, 2010.

operation, buildings B and C in particular are likely some of the earliest buildings associated with the works.

21. Physically the buildings were constructed for functional purposes, to provide for storage, manoeuvring and processing of materials. They are of local rubblestone under pitched roofs, common materials and understated design as features elsewhere in the OCA. Although I was not able to inspect the buildings internally, photographs in the appellant's Structural Inspection ('SI') show internal walls lime-washed or painted and, on occasion, spanned by substantial historic beams.
22. By modern standards, all buildings are relatively modest for industrial purposes. That attests to the practical limitations of historic construction. That is particularly so of buildings B and C closest to the stack, the gable ends of which are set hard up against the carriageway of Mill Road to the south. Building A, to the east of building B and set down relative to the rising landform there along Mill Road, is orientated the same way. Buildings A, B and C have substantial openings in their south-facing elevations, consistent with their historic design to allow for the movement of materials and people.
23. There is a notable distinction with building D which, as with building A, is larger than buildings B and C. The gable end of building D faces instead west, towards the pedestrian and cycle path created pursuant to WDBC implementing permission ref. 1172/2001/OKE (now closed on account of public safety, to which I will return). Building D appears to have been of poorer initial construction than buildings A to C, is likely slightly later in origin, and also appears to have been subject to greater incremental alteration over time.
24. Only two comparatively modest windows at building D face Mill Road, neither of which have brick surround detailing as is present at buildings A, B and C. Internally building D features cast iron columns, which are not present elsewhere. Although cast iron was employed in construction around the mid-eighteenth century, its use is more widespread later. The use of cast iron columns at building D may account for why the stonework appears more haphazard than at the other buildings, in that the structural soundness of the building may have relied to some extent on the columns rather than principally in the massing of walls. The appellant's SI also refers to 'defective mortar' at the base of block D, an observation which is not specifically noted in respect of buildings A to C, reinforcing the above reasoning.
25. All buildings on site have been subject to various alterations over time and have deteriorated as a result of being vacant for many years. Nevertheless the condition of building D also diverges from that of buildings A, B and C. Purlins and trusses at building D appear 'modern,' as opposed to historic timbers present elsewhere.¹⁸ There are cross-headed tie bars visible at the southern elevation, close to the gable end of building D. Those were in all likelihood installed at some indeterminate time as an attempt to halt decline (as was a brick buttress to the north). However, through corrosion and metal expansion, which is also present at cast iron columns, they may have hastened it.

¹⁸ SI, photograph 15.

26. The pedestrian and cycle path beside the south-facing gable end of building D leads to the grade II listed footbridge, a simple elliptical ashlar bridge with railings. The footbridge in turn heads towards the town centre, the list entry noting that it was probably built in connection with the fertiliser works. Architecturally, and in respect of its function relatively to less intensive earlier historic uses at the site, it appears coterminous.
27. Grade II listed Town Mill to the east, unsurprisingly, traces its origins further back still. The list entry indicates that the building as it now stands, I understand converted to flats in 1986, likely dates from the early nineteenth century. As set out in the HS2010 the 1840 Tithe map of the area shows a more rural, or less developed, surrounding context at that juncture. However the list entry also notes that around then 3 mills operated at Okehampton, and that Town Mill falls 'probably on a medieval site'. The name Town Mill is therefore potentially misleading. Nonetheless medieval or earlier evidence of circumstances hereabouts becomes increasingly conjectural.
28. I understand that Town Mill was also purchased by William Wood, evidently a significant individual in the social history of the town, and was operational until around 1955. The fertiliser works were still in operation in 1913, documented by virtue of an accidental spillage which adversely affected the River and its ecology. Notwithstanding partial earlier site clearance there is potential for historic significance to be embodied in the site, including that associated with its industrialisation, in addition to the medieval tailrace.
29. The site has been derelict for many years and has become overgrown and subject to vandalism. Buildings on site, representing one phase of the layered evolution of Okehampton, have deteriorated and have been variously subject to incremental alterations over time which have, in many instances, reduced historic integrity. On account of previous demolition the site also does not possess the historic coherence or legibility that it once must have.
30. Whilst those factors serve to qualify the heritage value of the site to some degree, it remains legible as an historic industrial facility. That is chiefly appreciable on account of the materials, craftsmanship and form embodied in buildings A through C and their location in conjunction with the listed chimney (and, to a lesser extent, building D). Arguably almost any building, structure or human intervention in the land has some level of significance in physically reflecting the past in the present; there is a continuum of significance, rather than abrupt distinction as to whether buildings represent NDHA, notwithstanding my reasoning in paragraph 2 of this decision.
31. Those characteristics in turn attest to wider socio-economic trends including industrialisation and urbanisation. The site, its former use, and its associations are part of the historic warp and weft of Okehampton (even if, at times, in a negative sense). The chimney and buildings remain a visible and authentic legacy to the above. By consequence the site and its buildings also contribute positively towards the historic character and appearance of the OCA and to the setting of nearby listed buildings (noting that there are separate provisions to require the proper maintenance of land).¹⁹ Insofar as relevant to this appeal,

¹⁹ Including section 215 of the TCPA1990.

the special interest and significance of the chimney, buildings at the appeal site and in its surroundings stems from the foregoing.

The proposal

32. As noted in paragraphs 3, 8 and 13 above, the proposal is to demolish buildings A through D. That is notwithstanding that certain evidence is reproduced from earlier proposals, or relates to the practicalities of demolition management as opposed to their planning implications.²⁰

The effect of the proposal

33. Following on from my reasoning above, the proposal would undoubtedly result in harm. Any significance embodied in the buildings, physically and in connection with their surroundings, would be lost. There would be no remaining coherence of the historic industrial miscellany that was once the fertiliser complex. The scheme would adversely affect the surrounding context in which the chimney is experienced, understood and appreciated. That is also true of the footbridge to lesser extent, and the Town Mill to lesser extent still.
34. There is no force in the argument that demolition would either preserve or better reveal the chimney. That would, I accept, be the case visually from a handful of vantage points. However significance encompasses far more than being able to see the fabric of the chimney, which is already widely visible on account of its height. The scheme would therefore also be detrimental to the character and appearance of the OCA, notwithstanding that the OCA covers an extensive area with a rich historic overlay. The proposal would consequently conflict with the clear expectations of statute along the overarching approach set out via JLP policy DEV21 and NPPF paragraph 205.

Consideration

35. It is for the decision-taker, having identified harm, to judge the magnitude thereof. Collectively, including for the reasons given in paragraphs 18 and 29 of this decision, the harm to designated heritage assets may fairly be described as 'less than substantial' within the terminology of the NPPF. Similarly as reasoned in paragraph 34 above, there is no force in the appellant's position that 'the precedent of harm to the heritage asset has already been set'. In my view that suggests the opposite, placing instead greater importance on maintaining that significance and coherence which remains.
36. If NPPF paragraphs 207 and 208 were to apply to NDHA, it would be logical to ascribe the resultant harm in that respect as substantial, in that any significance those buildings possess in themselves would be entirely vitiated. Nonetheless part 3 to JLP policy DEV21 and NPPF paragraph 209 set out how the effect of an application on the significance of NDHA should be taken into account, with a balanced judgement required in that respect. With that in mind the demolition of all buildings on site, if considered collectively, would carry considerable weight against the proposal.
37. For various reasons set out above, however, building D possesses lesser significance than buildings A, B and C. The effect of demolishing building D alone would be modest. That course of action would result in lesser harm to the

²⁰ The Construction Phase Plan and a Method Statement.

site, its coherence, significance and contribution to its surroundings. Nevertheless even demolishing building D alone would entail harm directly and indirectly, which would still fall within the NPPF bracket of less than substantial harm (albeit towards the lower end of the spectrum of harm, if that is a useful concept to apply). Recognising that heritage assets are irreplaceable resources, NPPF paragraph 206 sets out how any harm, not just that which is substantial, should require 'clear and convincing justification'.²¹ I now turn to the public benefits of the scheme in that context.

Planning balance

38. English Heritage explain that NPPF paragraph 210, as referred to above, is to 'avoid the unjustifiable loss of heritage assets without a guarantee of new development which may provide counter-balancing public benefits, or which could demonstrate the preservation or enhancement of the Conservation Area'. Albeit it is not expressly explained in that manner in the NPPF or PPG, that is a logical premise. Logically also the demolition of buildings without a firm prospect of alternative development may lead to a site being derelict for some time, and may make more difficult the process of accurately assessing any future scheme relative to what has been lost.
39. However public benefits, or other benefits, may theoretically arise from the loss of a heritage asset in itself. For example if that is urgently necessary for public safety or health.²² Certain assets may also not be capable of being viably repurposed.²³ That is with the caveat that NPPF paragraph 202 sets out that where there is evidence of 'deliberate neglect', the deteriorated state of the asset should not be taken into account. I address that matter first and thereafter the appellant's three principal arguments in favour of the scheme, namely that the buildings are unsound and dangerous, that the site is heavily contaminated, and that there is no viable prospect of either a resumed use or of redevelopment.

Deliberate neglect

40. The buildings have been vacant now for over two decades. As noted in the SI they have progressively deteriorated by consequence. They have also been subject to various interventions detrimental to historic integrity. As noted above there appears to be some persisting mismatch of expectation between appellant and WDBC regarding potentially acceptable proposals for redevelopment.
41. However there is nothing to indicate that incremental alterations to the buildings over many years reflect anything other than practical responses to changing circumstances. Many may not have needed any form of authorisation. There has been some attempt to shore up the gable end of building D, evidently well-intentioned, albeit now failed. Whilst the site has become overgrown and subject to vandalism, openings in buildings have been boarded up and the site was secured at the time of my visit. Setting aside their outcome, there have also been various redevelopment schemes advanced in

²¹ Reflecting the judgement in *South Lakeland District Council v Secretary of State for the Environment and Another* [1992] 2 AC 141; *R (Barnwell Manor Wind Energy Ltd) v East Northamptonshire DC* [2014] EWCA Civ. 137 referenced by WDBC.

²² The terminology is used in section 196D(4)(a) of the LBCA 1990, a defence for a person accused of an offence for failing to obtain planning permission for demolition of unlisted etc. buildings in conservation areas.

²³ Alluded to in PPG Reference ID: 18a-015-20190723.

recent years, including the construction of a bat roost. By consequence, and with reference to the PPG,²⁴ there is no substantive evidence of deliberate neglect in this instance.

Structural condition

42. The SI notes that cracking and deformation of walls is present throughout the buildings. In part that has arisen by virtue of unchecked plant growth, and also in part simply on account of the lack of routine maintenance. The buildings, being workaday, may not have initially been constructed with longevity in mind. There is also extensive rot in respect of structural timbers, particularly at junctions with walls and where there has been water ingress. The SI therefore rationally concludes that the extent of work necessary to render the buildings structurally sound is 'beyond economic repair'.
43. However many sites vacant for over two decades will display similar, if not worse, structural issues. The SI also notes that certain cracking is limited on account of the flexible, soft nature of older mortars. Walls of significant mass with lime mortar commonly display cracks and deformation whilst still serving the structural function for which they were designed. There is nothing to indicate, as a whole, that all elements of the buildings on site are at imminent risk of structural failure or unsalvageable subject to sensitive intervention.
44. There is no evidence in the SI or elsewhere of what any remedial costs to render the buildings sound might be. There is similarly no evidence before me as to whether elements of the buildings might be capable of being incorporated into whatever scheme may come forward here, such that the harmful implications of redevelopment could be lessened. The finding of beyond economic repair is a very different concept to works being urgently necessary for safety or health, or approaching that threshold. It is a legitimate function of planning to appropriately preserve and manage historic buildings, many of which might be considered beyond economic repair in current circumstances.
45. As with significance there is again, however, a clear differentiation between building D and others. In respect of building D the SI indicates, consistent with my observations, that defects are 'extensive enough to warrant the complete removal and rebuilding of all walls...'. The gable-end is visibly leaning and bowed, with substantial cracks. As noted above there are fundamental structural issues given the condition of tie-bars, columns and the nature of its construction. In that respect the HS2021 reproduces observations of the Devon Building Control Partnership, who indicate that the west-facing gable may not have 'another winter like we have just had left in it'. The pedestrian and cycle path next to building D has, consequently, been closed for some time.²⁵ Therefore whilst the evidence before me is insufficient to demonstrate that buildings A, B or C are dangerously unsound, that is conversely the case in respect of building D.

Contamination

46. The Geotechnical investigation and contamination assessment report ('GICA') notes that the site is heavily contaminated. There are, in particular, recordings

²⁴ Reference ID: 18a-014-20190723.

²⁵ I understand that a dangerous building notice has only not been served on the basis of discussion between WDBC, DBCP and the appellant and in lieu of their intention to progress planning applications on site.

of elevated levels of mercury, lead and total petroleum hydrocarbons, contaminants potentially harmful to human health. However the GICA also notes that many contaminants have moved through the soil into the groundwater, as would be commensurate with historic industrial uses and a history of vacancy.

47. Whilst the GICA recommends remedial measures, those relate to groundworks and to any future use of the site. In that context there is no robust substantiation before me of how demolition, in itself, would have a significant effect in terms of remediating any contamination. As in respect of powers to require proper maintenance of land, there are also separate provisions to address contamination.²⁶

Viability

48. Aside from heritage implications there are various factors here that will inherently qualify the viability of any redevelopment scheme. Those include contamination, the site falling next to the East Okement and in large part being vulnerable to flooding, and the presence of bat roosts.²⁷ The appellant draws my attention to residual appraisals undertaken for WDBC in 2018. They predict a negative return for the redevelopment of the site from a residential use, as a hotel, or as a car park (noting that they omit various factors, notably any profit to a developer).
49. Setting aside that comparable schemes have nonetheless been advanced here since 2018, those appraisals are high level and now more than 5 years old. They address a select few schemes, whereas a residual appraisal may be worked backwards to indicate what form of development might be viable. They do not consider incorporating or making some use of buildings or elements of buildings on site, with demolition therein ascribed a cost of £40,000.
50. Moreover, in respect of the scheme before me, it would be entirely reliant on funding. Demolition would be a sunk cost, accepting that would be in place of any ongoing expenditure in securing the site. The evidence before me in respect of viability is therefore insufficient to demonstrate that there is no viable prospect other than the demolition of buildings A to D. The onus is squarely on an applicant to substantiate their case.²⁸

Conclusion

51. For the reasons above neither the public benefits of the scheme, nor any other relevant matters, are collectively sufficient to outweigh the harm that would result from the demolition of all buildings on site.
52. However there would be substantial public benefits resulting from the demolition of building D alone as set out in paragraph 45 of this decision. Those justify allowing the qualified extent of harm that would result from that element of the scheme alone with reference to the relevant provisions of JLP policy DEV21 and NPPF paragraphs 206 to 210.

²⁶ The Environmental Protection Act 1990 as amended.

²⁷ The latter referenced in the appellant's Ecological Impact Assessment, section 4.3.2.

²⁸ Section 62(3) of the TCPA1990.

53. Section 79(1)(b) of the TCPA 1990 enables me to reverse or vary any part of the decision of the local planning authority. With that in mind extensive cracking at building D is noted in the SI, and was also evident at my site visit in its southern elevation where it joins building C. As noted above it appears of differential construction, and partial demolition was proposed via a previous application.²⁹ There is therefore nothing to indicate, subject to securing suitably sensitive working methods via condition, that the demolition of building D could not be undertaken independently of buildings A to C.
54. Consequently, and having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed insofar as it relates to buildings A, B and C, but allowed insofar as it relates to building D alone subject to the conditions below.

Conditions

55. In addition to requiring commencement within the relevant statutory period via condition 1, I have imposed condition 2 specifying compliance with relevant elements of the supporting plans for clarity and in order to ensure that the proposal is implemented as assessed above.³⁰ Following my reasoning in paragraphs 37, 45 and 53 above, I have also imposed condition 3 requiring that the demolition of building D hereby permitted safeguards the existing integrity of any relevant buildings and structures (whether above or below ground). To secure adherence to NPPF paragraph 211 regarding recording of historic interest, condition 4 is also necessary.
56. I have imposed conditions 5 and 6 to ensure that the effects of the scheme to ecology are adequately mitigated and managed with reference to the statutory duty on me,³¹ and for compliance with JLP policy DEV26 and NPPF paragraph 186.a). As the appellant's Ecological Impact Assessment is now over two years old, the approach in condition 5 should make provision for further necessary subsequent studies. Notwithstanding that, and advice in Government Circular 06/2005,³² a bat house on site was permitted via planning permission ref. 3815/21/FUL and condition 6 provides safeguards in respect of the protection of bats.³³
57. With reference to JLP policy DEV32, NPPF paragraph 157, and to ensure that the resultant state of the site pursuant to the demolition of building D would be acceptable in terms of character and appearance, condition 7 is also necessary. I have had regard to 'Mitigation measure' M5 of the Plymouth and South West Devon Climate Emergency Planning Statement, November 2022 referenced in correspondence by the Council of 14 December 2022. In short M5 accords priority to the reuse (and retrofitting) of buildings, an objective shared with NPPF paragraph 157 as above. However M5 relates squarely to 'demolition and rebuild' and appears logically premised on an extant existing use. There is nothing to suggest that carbon calculations for any replacement scheme could

²⁹ Ref. 1439/22/FUL

³⁰ Condition 2 need not require adherence to other documentation including the appellant's Construction Phase Plan as WDBC have suggested; other relevant documentation is referenced in relation to other conditions, and the latter relates to the requirements of the Construction (Design and Management) Regulations 2015 (a separate regime).

³¹ Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended).

³² Biodiversity and Geological Conservation, notably paragraph 99.

³³ Noting separate provisions exist for the protection of ecology under the Wildlife and Countryside Act 1981 as amended.

not be arrived at taking account of any entailed in demolition (in much the same manner as any other scenario).

58. In contrast to the position in that correspondence regarding material salvaging, WDBC earlier proposed a condition in that regard (agreed to by the appellant via correspondence of 12 December 2023).³⁴ Legislative provision to impose conditions is broad, and with reference to its function under NPPF paragraph 157, and indeed M5 as above, such a condition would be appropriate.
59. In the foregoing correspondence WDBC also requested that the appeal be dealt with via hearing, diverging from their earlier position that the written representations procedure would be suitable. Nevertheless, the evidence before me in conjunction with my site visit observations is an entirely suitable basis upon which to reach a decision.
60. Albeit that the site has been subject to detailed contamination assessment, and demolition poses limited risks in that respect given the pathway that contaminants have taken over time, as a precautionary approach I have moreover imposed condition 8. That is to ensure that any unexpected contamination during demolition is appropriately addressed.
61. Conditions 3, 6 and 7 must necessarily apply before any development is undertaken; any works in respect of building D have the potential to adversely affect the structural integrity of others if undertaken insensitively or bat roosts, and appropriate working practices will need to be established initially to enable the salvage of materials and to inform site management and maintenance. In the eventuality that certain conditions have already been discharged by virtue of work undertaken to date, which may notably be the case in respect of condition 6, that is a matter for the main parties to address as necessary.
62. In imposing conditions I have had regard to relevant statute, the NPPF and PPG to ensure that all are necessary, relevant to planning and to the development to be permitted, enforceable, precise and otherwise reasonable. With that in mind I have amalgamated certain conditions advanced by WDBC, and amended the wording of some to ensure that they are appropriate, without altering their fundamental aims.

Tom Bristow
INSPECTOR

³⁴ Suggested condition 8 appended to WDBC's statement of case.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with approved plans '662 – 01' and '662 – 10' only insofar as related to 'Building D' as annotated on the latter approved plan, and furthermore only insofar as related to elements of that building which are not also elements of 'Building C'.
- 3) No development hereby permitted shall take place until a demolition management strategy ('DMS') has been submitted to, and agreed in writing by, the local planning authority. The DMS shall include details of the methodology by which demolition is to be undertaken, its phasing, supervision, and of measures to safeguard the existing integrity of any buildings, structures other than Building D on approved plan '662 – 10' (including any subsurface structures or services including the culvert or tailrace running through the site as referenced in the Heritage Statement prepared by Context One Archaeological Services Ltd., document ref. C1/DBA/10/OMO, dated December 2010). The agreed DMS shall be adhered to throughout the undertaking of any development hereby permitted.
- 4) The development hereby permitted shall be undertaken in accordance with the approach set out in the 'Written Scheme of Investigation for historic building recording and an archaeological watching brief' prepared by AC Archaeology, document ref. ACD/2552/1/0, dated July 2021.
- 5) The development hereby permitted shall be undertaken in accordance with the approach set out in section 6 of the Ecological Impact Assessment prepared by Lakeway Ecology, document ref. 21-052-EcIA-CT, dated 10 October 2021, including in respect of any lighting to be used during undertaking the development hereby permitted or otherwise, as updated by any necessary subsequent studies or details pursuant to condition 6.
- 6) No development hereby permitted shall take place until (i) a permanent bat roosting structure has been provided and made available for use in accordance with planning permission ref. 3815/21/FUL, and either (ii) the local planning authority has been provided with a licence issued by Natural England pursuant to Regulation 55 of the Conservation of Habitats and Species Regulations 2017 (as amended) authorising works on site to go ahead, or (iii) the local planning authority has been provided with a statement in writing from Natural England to the effect that they do not consider that the specified development will require a licence.
- 7) No development hereby permitted shall take place until a material salvaging and site maintenance scheme ('MSSMS') has been submitted to, and agreed in writing by, the local planning authority. The MSSMS shall include details of (i) how any materials resulting from demolition will be treated, salvaged and stored, and of (ii) how any materials resulting from demolition stored on site and the condition of the site will be maintained so as not to adversely affect the condition of the site or its surroundings. The agreed MSSMS shall be adhered to throughout the undertaking of any development hereby permitted and thereafter.

- 8) Any contamination that is encountered in undertaking the development hereby permitted which was not previously identified via the Phase 2 Geotechnical Investigation and Contamination Assessment Report, ref. SR/TN/DT/1037/GICAR, dated December 2010, shall be reported immediately to the local planning authority. Development at the affected part of the site shall be suspended and a risk assessment shall be carried out, submitted to, and agreed in writing by the local planning authority. Where unacceptable risks are identified, remediation and verification schemes shall be submitted to, and agreed in writing by, the local planning authority. The agreed schemes shall be carried out before the development hereby permitted in respect of the affected part of the site resumes, or as part of undertaking that development.