



IMPORTANT

THIS COMMUNICATION AFFECTS YOUR PROPERTY

ENFORCEMENT NOTICE

OPERATIONAL DEVELOPMENT

14 Oakdale Avenue, Swimbridge, Barnstaple, North Devon, EX32 0QW (Land Registry Title No DN291348).

**TOWN AND COUNTRY PLANNING ACT 1990
(As amended by the Planning and Compensation Act
1991) ("The Act")**

**ISSUED BY: North Devon District Council
("the Council")**

LEGAL FILE NO: LS/DH/14154
PLANNING FILE NO: 9291

1. **THIS IS A FORMAL NOTICE**, which is issued by the Council because it appears to it that there has been a breach of planning control, under Section 171A (1)(a) of the Act, at the land described below. The Council considers it expedient to issue this notice, having regard to the provisions of the development plan and to other material considerations.

2. **THE LAND AFFECTED**

14 Oakdale Avenue, Swimbridge, Barnstaple, North Devon, EX32 0QW (Land Registry Title No. DN291348) as shown edged red on the enclosed Location Plan.

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without Planning Permission and within the last 4 years, the creation of a vehicular access onto a classified road.

4. **REASONS FOR ISSUING THIS NOTICE**

This Enforcement Notice has been issued to remedy the alleged breach of planning control. The Council considers it expedient to issue the notice for the following reasons:

The Council in discussion with the owner of 14 Oakdale Avenue allowed for the retention of an unauthorised vehicular access to facilitate the erection of two extensions to the rear of the property. In October 2014 the owner advised that the works would be completed by the end of March 2015 and it was agreed that the access could be retained until then. On the 8th April 2015, the owner advised that the works would be completed by the end of August 2015.

A PCN was served on the 19th November 2015 and the owner responded by stating that there has been an existing pedestrian access in place in excess of 4 years and that he does not believe planning permission is required to widen an existing access as this can be undertaken under permitted development rights.

Regardless of whether there is an existing pedestrian access in place, formal planning permission is required to widen the access, to a vehicle access. This is because these works constitute engineering operations to a classified highway. Section 336 of the 1990 Act states that the formation, laying out or material widening of an access on to a highway is an engineering operation and, where this is to a classified road, it is excluded from the permitted development rights order Class B, Part 2, Schedule 2 of the GPDO 1995.

Planning application 62592 for the vehicle access and a double garage received 13th February 2017 was refused on 4th April 2017 and the subsequent appeal dismissed on 9th November 2017 on the grounds that the opening up of a residential access onto the C482 has a materially harmful effect on the character and appearance of this part of the area. It follows that that proposed development is in conflict with Policies DVS1 and ENV1 of the North Devon Local Plan, which amongst other things, seeks development that does not conflict with the design principles including character, continuity and enclosure and protects the beauty of the countryside.

5. WHEN YOU ARE REQUIRED TO ACT

The Council requires that the steps specified in paragraph 6 below be undertaken within 3 months from the date when this notices takes effect

6. WHAT YOU ARE REQUIRED TO DO

1. Re-instate the hedge bank to its former condition effectively closing the vehicular access on to the classified road.

7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 6th September 2018 ("the effective date") unless an appeal is made against it beforehand.

Dated: 6th August 2018

Signed:
Solicitor, Head of Corporate & Community

On behalf of: North Devon District Council,
Lynton House
Commercial Road
Barnstaple
Devon,
EX31 1DG

*** Specific date, not less than 28 clear days after date of service.

GUIDANCE NOTES FOR YOUR INFORMATION

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the effective date. The attached Planning Inspectorate Guidance Sheet provides details of where you can obtain further information on the appeal process. Read it carefully. Please note that the fee payable for a Ground A appeal is £412 (£206 x 2)

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on the effective date and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period[s] specified in the notice. Failure to comply with an Enforcement Notice, which has taken effect, can result in prosecution and/or remedial action by the Council.



Lynton House, Commercial Road,
Barnstaple, EX31 1EA

Enforcement 9291
14 Oakdale Avenue, Swimbridge EX32 0QW

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**TOWN AND COUNTRY PLANNING ACT 1990
REFUSAL PERMISSION FOR DEVELOPMENT**

XL PLANNING LTD
1A FORE STREET
CULLOMPTON
EX151JW

APPLICATION No.: 62592

**DATE REGISTERED: 13-FEB-17
DECISION DATE: 04-APR-17**

The North Devon District Council in pursuance of powers under the above mentioned Act hereby refuse to grant planning permission for

**ERECTION OF ATTACHED GARAGE & RETROSPECIVE WIDENING OF
PEDESTRIAN ACCESS TO CREATE A VEHICULAR ACCESS AT 14 OAKDALE
AVENUE SWIMBRIDGE BARNSTAPLE**

For the following reasons:

1. The proposed triple garage and associated widening of pedestrian access to provide required vehicular access to these garages would result in harm to the appearance and character of what is presently an unspoilt and attractive rural highway. The proposal would introduce the only non-agricultural vehicular access along an extended attractive frontage and in doing so would set a precedent for the further incremental erosion of what is considered to be an important and identifiable local feature. The Local Planning Authority would reasonably expect vehicular access to the property and any further extensions to the property to be provided off Oakdale Avenue which has been designed to adequately serve the application site and all other properties within the residential estate. The development now proposed would be contrary to that original planned layout and to the design principles set out in the NPPF (Requiring Good Design) and Policies Policy DVS1 and Policy ENV1 of the adopted North Devon Local Plan.

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council works in a positive and pro-active way with Applicants and looks for solutions to enable the grant of planning permission. This has included consideration of all supporting documents and planning policy. However in this case the proposal is not sustainable development for the reasons set out and the Council was unable to identify a way of securing a development that improves the economic, social and environmental conditions of the area.

INFORMATIVE NOTE:
POLICIES AND PROPOSALS RELEVANT TO THE DECISION

Development Plan
North Devon Local Plan 2006:
DVS1A: Sustainable Development
DVS1: Design
DVS2: Landscape
DVS3: Amenity
ENV1: Development in the Countryside
TRA8: Residential Parking.
TRA6: General Highway Considerations

End of Decision.

Please remove any site notice relating to this application from your property as the decision has now been made.



Appeal Decision

Site visit made on 24 October 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9TH November 2017

Appeal Ref: APP/X1118/D/17/3178794

14 Oakdale Avenue, Swimbridge EX32 0QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Bull against the decision of North Devon District Council.
 - The application Ref 62592, dated 13 February 2017, was refused by notice dated 4 April 2017.
 - The development proposed is the retention of an access and the erection of a new double garage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details before me that the development comprises a triple garage and the formation of a vehicular access. The Council dealt with it on this basis and so shall I.
3. I noted on my site visit that a portion of the boundary hedge and bank has been removed to form the vehicular access and that the dwelling is in the process of being extended and renovated. The works to construct the garage do not appear to have been initiated.
4. There is dispute between the parties as to whether the vehicular access requires planning permission. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.

Main Issue

5. The main issue is the effect of the development on the character and appearance of the area.

Reasons

6. The appeal dwelling is a bungalow that is on the edge of a development of bungalows that forms a small estate adjacent to fields and paddocks. The dwelling is in close proximity to the junction of Station Hill and a road to the rear of the dwelling shown as C482 on the submitted plans. The small estate of dwellings is formed of 2 no through roads and a central area of landscaped

open space. All vehicular accesses to these dwellings appear to be served off these 2 no through roads. As such the estate is mainly inward looking and the rear gardens of the dwellings bound the fields/paddocks and the C482.

7. On the opposite side of the C482 is a mature landscaped verge adjacent to the A361 which is in a cutting at a much lower level to the verge. The boundaries of the rear gardens alongside the C482 are predominantly formed by a bank with hedges along it. As such, the sense of enclosure provided by the vegetation and bank is an important and attractive part of the rural character and appearance of this part of the surrounding area.
8. The proposal would involve the construction of a triple garage and the retention of the vehicular access. Moreover, a large area in front of the new garage would be given over to hard surfacing for parking and turning and works would be required to create the required visibility splays. The garage would be seen against the backdrop of the existing dwellings and its design and materials would be sympathetic to the adjacent estate. The Council have raised no objection to this part of the proposal and I have no reason to disagree with this.
9. The existing hedge is not protected under the Hedgerows Regulations (1997) as it marks the boundary of a private garden. As such all of the hedge on the appeal site could be removed without the approval of the Council under those regulations. Nevertheless, it is likely that any future occupants would wish to have some form of boundary treatment to prevent overlooking of the garden area and to ensure security of their property given its close proximity to the C482 and Station Hill. Consequently, even though the form of the boundary treatment may alter the sense of enclosure would be retained.
10. I note that the Highway Authority is satisfied that the required visibility splay and a safe and convenient access can be provided on the site. A suitably worded condition could be utilised to landscape the boundary at the rear of the required visibility splay. Nonetheless, the vehicular access has punched a significant hole through the hedge and bank. This has reduced the sense of enclosure and the continuity of the frontage to the C482. Moreover, it would be further eroded by the works to provide highway visibility as any landscaping would be set back from the highway. The proposal would also introduce urbanising features such as hard surfacing and open up views of the dwelling and its garages further altering the character and appearance of the area at this point.
11. Overall I consider that the opening up of a residential access onto the C482 has and would have a materially harmful effect on the character and appearance of this part of the area. It follows that the proposed development would conflict with saved Policies DVS1 and ENV1 of the North Devon Local Plan, which amongst other things, seeks development that does not conflict with the design principles including character, continuity and enclosure and protects the beauty of the countryside. Accordingly, the appeal is dismissed.

D. Boffin

INSPECTOR