

Case Name: *Laing, R (On the Application Of) v The Cornwall Council* [2024] EWHC 120 (Admin) (26 January 2024)

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Commentary:

This was a successful application for judicial review of the Council's decision to discharge a condition. The condition required the submission and approval of a landscape and ecological management plan ("LEMP"). The condition included the following wording: *"For the avoidance of doubt the LEMP shall comply with the recommendations, mitigation and enhancement measures contained within the Preliminary Ecological Appraisal Report"*.

The Council had, contrary to its usual practice on applications of this type, prepared a full officer's report. This was apparently due to the contentious history of the site, with both the outline planning permission and reserved matters approval being granted at appeal. Unfortunately, commentary in the officer's report was to be the Council's undoing in this case. The officer had referred to *R (Cathie) v Cheshire West and Chester Borough Council* [2022] EWHC 2148 and drawn from that case that the proper test for discharging a condition is whether the application is satisfactory, which is to be distinguished from ideal, and further that a condition should not be read in such a way that it would impose unreasonable requirements. HHJ Jarman KC found this to be an inaccurate summary of the law. Cathie had turned on its own particular facts and the judge in that case had noted the same.

In the instant case, the judge found that the test for discharging a condition is reliant on the proper interpretation of the condition. The Council had not turned its mind to the critical question: whether the LEMP complied with the recommendations of the Preliminary Ecological Appraisal Report. If it had been prepared in compliance, a 23m section of hedge to be lost would have been replaced with a new hedge of 46m in length. By contrast, the LEMP proposed only a 25m length of new hedge. Though the Court found that there was some space for planning judgment in determining whether the proposed replacement hedge would be "around double" the length of the hedge to be lost (wording from a Supplementary Planning Document referred to in the Preliminary Ecological Appraisal Report), the Council had not exercised this judgment. Accordingly, the decision was quashed and returned to the Council for re-determination.

Of some interest is the discussion as to whether reasons are required for a decision to discharge a condition. The parties had agreed that where reasons were given (as in this case, in the officer's report) and those reasons revealed that there had been an error of law, the decision would be vulnerable to judicial review on the basis of that error. They disagreed, however, as to whether there is a general requirement to give reasons on decisions of this type. HHJ Judge Jarman KC concluded (albeit obiter) that there was no

such duty. Decision makers will wish to consider carefully whether and when reasons should be given as a matter of good administration.

Case summary prepared by Aline Hyde