



Appeal Decision

Site visit made on 23 December 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2021

Appeal Ref: APP/B2355/W/20/3259940

Land adjacent to the Hollies, Alden Road, Helmshore, Rossendale

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr N Pearson against the decision of Rossendale Borough Council.
 - The application Ref 2020/0257, dated 16 June 2020, sought approval of details pursuant to conditions Nos 3, 6, 7, 8 and 13 of a planning permission Ref 2019/0421, granted on 17 February 2020.
 - The application, in so far as it related to conditions Nos 6, 7 and 8, was refused by notice dated 17 September 2020.
 - The development proposed is the erection of a detached dwelling.
 - The details for which approval is sought are: the drainage system; the management and maintenance of the drainage system; and the site investigation report.
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Decision

1. The appeal is allowed and conditions nos. 6, 7 and 8 imposed on planning permission 2019/0421 for a single detached dwelling on land adjacent to the Hollies, Alden Road, Helmshore, Rossendale dated 17 February 2020 are discharged in accordance with the terms of the application reference 2020/0257, dated 16 June 2020.

Application for costs

2. Mr Pearson and the Council have made applications for costs against each other. These applications are subject to two separate Decisions.

Preliminary Matter

3. For the avoidance of doubt, this appeal concerns conditions nos. 6, 7 and 8 of the planning permission dated 17 February 2020. The decision dated 17 September 2020 concerning conditions nos. 3 and 13 is not affected by this appeal.

Main Issues

4. The main issues are:
 - The effect of foul water and surface water drainage on the health of occupants and neighbours and the integrity of the local environment; and

- The effect of any ground contamination on the health of occupants and neighbours and the integrity of the local environment.

Reasons

Foul and Surface Water Drainage

5. Planning permission was granted for the erection of a single detached dwelling on a large, triangular shaped site adjacent to a house called 'The Hollies' in Helmsore in February 2020. The permission included some pre-commencement and pre-occupation conditions.
6. Condition No 6 of that permission prohibits commencement of construction until such time as the Appellant has secured foul water drainage to the public sewer. Furthermore, the Appellant is also required to submit and have approved by the Council proposals for dealing with surface water in a way consistent with the hierarchy of options set out in the National Planning Policy Guidance (NPPG).
7. Condition No 7 prohibits occupation of the completed development until such time as the Appellant has had details of an appropriate management and maintenance plan for the drainage systems for the lifetime of the development approved by the Council.
8. The initial proposal to dispose of foul water via the public sewer was abandoned after the relevant body, United Utilities, objected due to concerns about flooding. Accordingly, the Appellant amended its plan and proposed disposal of foul water into a septic buried beneath the site. Disposal by such means is perfectly conventional and entirely acceptable.
9. The Appellant proposes to deal with surface water drainage by way of a rain harvesting system. A brochure showing rainwater harvesting systems for domestic applications manufactured by Kingspan Klargester, was provided to the Council by the Appellant 8 August 2020.
10. The information provided was not site specific but showed in principle how such a system could be implemented and maintained for the lifetime of the development. Such means are consistent with the hierarchy of surface water drainage options set out in the NPPG. The septic tank is to be buried within the grounds of the site which is controlled by the Appellant.
11. For the above reasons the information provided by the Appellant is adequate to meet the requirements imposed by Conditions 6 and 7 to secure the safe disposal of waste and surface water and so ensure the health of the occupants and neighbours and the integrity of the local environment.

Contaminants

12. Condition 8 of the permission prohibits commencement of construction until such time as the Appellant has had a site investigation and a risk assessment of any contaminants found approved by the Council. The preliminary risk assessment should include a conceptual model and a walk over survey of the site, together with a remediation strategy where contaminants constituting an unacceptable risk are found.

13. A Land Contamination Risk Assessment ('the report') prepared in June 2020 by Castledine & Co. Environmental Consultants was submitted to the Council. The report was prepared in accordance with industry standards (see Section 4.0 'Scope'). It includes a conceptual site model setting out a hypothesis of the nature of the contamination together with a plausible source-pathway-receptor linkage at section 8 of the report. However, the data is derived from a desk-based study rather than a walk over survey.
14. The report concluded that there was only a low to moderate risk of there being any contaminants in the site. A plan showed those areas of the triangular site which would potentially need remediating and those that would not.
15. It is for the Council to determine whether the risk is consistent with what is described in the guidance to the contaminated land regime under Part IIA of the Environmental Protection Act 1990 as being the normal level of contaminants having regard to the area's geology. As part of the report the Appellant provided a remediation strategy to be implemented in a reasonable worst-case scenario.
16. The Council provided no robust evidence to suggest that the level of risk is unacceptable. Matters concerning the cost of possible soil removal are not relevant.
17. For the above reasons the information provided by the Appellant is, subject to conditions, adequate to meet the requirements imposed by Condition 8 to secure the identification and safe disposal of contaminated land and so ensure the health of the occupants and neighbours and the integrity of the local environment.

Conditions and Conclusion

18. In the interests of human and environmental safety a condition is included requiring that the development be implemented in accordance with the recommendations contained within the Castledine & Co. Environmental Consultants' report of June 2020. Furthermore, again to ensure the protection of human and environmental health, in the event that any contaminants become evident during the implementation phase the developer will be required to inform the Council immediately and to prepare a risk assessment within 1 month.
19. For the above reasons the appeal should be allowed and conditions 6, 7 and 8 are discharged.

William Walton

INSPECTOR

SCHEDULE OF CONDITIONS

1. Condition 8 of this planning permission is discharged subject to the implementation of the Recommendations as contained within Contamination Assessment of the Castledine & Co Environmental Consultants' report dated June 2020.
2. If during any works on site land contamination is found, caused or suspected the developer shall notify the Local Planning Authority immediately. Within one month of such notification a Risk Assessment, together with a scheme of any remediation and a timetable for implementation, shall be prepared and submitted to the Local Planning Authority for its approval. The development shall thereafter be carried out in accordance with the agreed details and prior to first occupation of the dwelling a verification report demonstrating that the approved remediation measures have been carried out in accordance with the approved details shall be submitted to and approved by the Local Planning Authority.

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