
Appeal Decision

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2021

Appeal Ref: APP/B2355/W/20/3259882

Height End Farm, Bacup Old Road, Bacup, Lancashire OL13 8RF

- 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 Ms. C. Egan against the decision of Rossendale Borough Council.
 - The application Ref 2020/0329, dated 25 July 2020, was refused by notice dated 22 September 2020.
 - The development proposed is the erection of a log cabin for use as a holiday let.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission for the erection of a log cabin for use as a holiday let was recently granted by the Council, in accordance with application ref. 2020/0207. The permission is subject to a number of conditions, including no. 5, which requires the submission and written approval of a Phase 2 Site Investigation Report prior to development taking place. Should any unacceptable risks be subsequently found, condition 5 goes on to require the submission and approval of a contaminated land remediation strategy. Condition 6 requires verification that any remediation works undertaken on the site were completed in accordance with the approved strategy.
3. The appeal proposal seeks planning permission for an identical scheme excluding conditions 5 and 6. Additional information has been submitted to support the appellant's case, and two alternative conditions are proposed. The principle of the scheme is not at issue, and the only matter to be considered is whether the information provided, together with the proposed mitigation measures, are sufficient to address any potential risk arising from previous mining activities in the area. Given these circumstances, a site visit would not have assisted me in determining the appeal and I have not carried one out. Both parties were notified of my intention to proceed on this basis.

Main Issue

4. The main issue is whether the proposed holiday accommodation would be safe for future occupiers.

Reasons

5. The Coal Authority has confirmed that the appeal site is within an area of former opencast coal workings. A desk top Coal Mining Risk Assessment, prepared by Worms Eye and submitted with the application, suggests that the

Lower Foot coal seam below the site has been extracted to a depth of at least 5 metres. The unlicensed works appear to have taken place in the mid twentieth century, possibly during wartime. From reading the Worms Eye report it is apparent that there is some uncertainty about the underlying geology, for which the available information appears contradictory. There also appears to be a lack of clear or detailed records about the extent and precise location of past workings.

6. The Worms Eye report suggests that the shallow coal below the site has been extracted by opencast methods, so does not pose a gas risk to the development. In addition, information from the Coal Authority confirms that there is no record of any mine gas emissions requiring action. However, this does not necessarily mean that mine gas is not present. The Council has provided a guidance note on Mine Gas and Planning, compiled for the Greater Manchester Contaminated Land Officers Group, which contains guidance from the Coal Authority. This states that wherever coal resources or coal mine features exist at shallow depth or at the surface, there is the potential for mine gases to exist. Having regard to the Worms Eye report, the risk of mine gas may be low, but it cannot be discounted, particularly given the lack of detailed information about past coal workings in the area.
7. The Worms Eye report suggests that the former opencast workings were subsequently backfilled, probably with excavated rock. The composition of the backfill is not known, and the study has identified the potential for landfill gases to be generated within this material, which could present a risk for a sealed habitable dwelling. In addition, the Council's contaminated land consultant is concerned that the backfill material could itself include contaminants. No specific evidence for this has been provided, but given the uncontrolled nature of the activity and the time period during which it is likely to have taken place, there is a reasonable chance of contamination being present.
8. It is clear from the evidence provided that there is a strong likelihood of past mining activity below the site, but uncertainties remain over the extent, precise location and depth of extraction, as well as the nature of any subsequent backfilling. The potential exists for mine gas, landfill gas or other contaminants to be present, but without further detailed on site investigations, the extent or composition of any gases which may be present below the site is unknown. Such gases could cause a risk to the health of future occupants of the proposed timber cabin, even with the proposed restriction on occupation by any one person or group to no more than six weeks per year.
9. The building would be a lightweight structure and its foundations would require minimal excavation, but some disturbance of the ground would be inevitable, including from boreholes recommended to ascertain the stability of the backfill. Without additional information, the likely impact of such disturbance on any gases or contamination, including the effect on gas pathways to the surface, is unknown.
10. The timber cabin would be constructed on raised plinths, sitting on pads on a layer of consolidated sub base. The resultant void underneath the building would provide passive ventilation. This may help prevent a dangerous build-up of gases, but it relies on the void being kept permanently open. If at any time in the future the void were to be sealed or blocked, perhaps by future owners

- of the proposed accommodation who did not fully appreciate its importance, there could be a risk to the health of occupants. I acknowledge that this risk may be low, but it is a serious risk which cannot be overlooked.
11. To address these concerns, the appellant has suggested an additional condition, requiring that the void be kept free and open at all times. Enforcement of such a condition would rely on someone who was aware of the condition, and the reason for its imposition, noticing the breach and informing the Council. Such a scenario is by no means guaranteed in this fairly remote location, even if the site could be seen from a nearby footpath. In light of this, there are doubts over the Council's ability to enforce the condition and ensure that it is effective.
 12. The incorporation of a gas membrane beneath the sub base has been suggested as a way of providing additional protection, but I note the comments of the Council's contaminated land specialist that this is not a recognised gas protection solution, and could be susceptible to damage or breach.
 13. There is uncertainty about the past mining activities below the site, and the presence or otherwise of any gases or other contaminants. There are also valid concerns over the adequacy of the proposed mitigation measures. In light of these matters, and having regard to the nature of the proposed use for holiday accommodation, further detailed investigations, as required by conditions 5 and 6, are justified. I appreciate that there is a cost involved, but the works are necessary to ensure the safety of future occupiers, and could be undertaken at the same time as intrusive investigations to determine the stability of the ground.
 14. In coming to this view, I have had regard to advice in paragraph 178 of the National Planning Policy Framework (the Framework), regarding the need to ensure that a site is suitable for its proposed use, and the importance of adequate site investigation information to inform assessments.
 15. The appellant does not agree to the pre-commencement conditions and has instead suggested a condition requiring that the Council be notified should any contamination be caused, found or suspected during works on site. However, given the risks associated with potential gases and contaminants at the site, and my findings about the proposed mitigation measures, such a solution would not be satisfactory, and would not accord with national planning guidance.
 16. I note reference to another recent appeal decision where the Inspector found that conditions relating to contaminated land were unnecessary. However, in the case before me, there is evidence that past opencast mining activity with subsequent backfilling is likely to have occurred. As a result, there is a reasonable possibility of the site being affected by contamination. The imposition of appropriate conditions to ensure that the site is safe for the proposed use is reasonable and necessary.
 17. The appellant has made reference to Part 2A of the Environmental Protection Act, but that refers to a separate pollution control regime which has a different function and is not directly applicable here.
 18. I conclude that the disputed conditions are necessary and reasonable to ensure that the holiday accommodation would be safe for future occupiers, and that

the proposed alternative conditions would not provide a satisfactory alternative. The scheme would not, therefore, comply with the requirements of Policy 24 of the Rossendale Core Strategy 2011, which requires that proposals identify and adequately address any issues of contamination or land instability. There would be further conflict with the requirements contained in Framework paragraph 178 regarding ground conditions.

Conclusion

19. The proposal would conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

R Morgan

INSPECTOR