



Appeal Decision

Site visit made on 1 February 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/N4205/W/21/3286019

54 Jethro Street, Tonge Fold, Bolton, Lancashire BL2 2PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr & Mrs Jesani against the decision of Bolton Metropolitan Borough Council.
- The application Ref 11727/21, dated 6 July 2021, was approved on 31 August 2021 and planning permission was granted subject to conditions.
- The development permitted is the erection of a single storey extension at rear.
- The condition in dispute is No 2 which states that:
'No development shall commence unless and until:
 - i) A contaminated land Preliminary Risk Assessment report to assess the actual/potential contamination and/or ground gas/landfill gas risks at the site shall be submitted to, and approved in writing by, the Local Planning Authority;*
 - ii) Where actual/potential contamination and/or ground gas/landfill gas risks have been identified, an agreed detailed site investigation and suitable risk assessment shall be submitted to, and approved in writing by the Local Planning Authority;*
 - iii) Where remediation/protection measures is/are required, a detailed Remediation Strategy shall be submitted to, and approved in writing by, the Local Planning Authority.'*
- The reason given for the condition is: *'To secure the satisfactory development of the site in terms of human health, controlled waters, ground gas and the wider environment and pursuant to National Planning Policy Framework Section 11 - Conserving and enhancing the natural environment and following LCRM guidelines.'*

Decision

1. The appeal is allowed and planning permission for the erection of a single storey extension at rear of 54 Jethro Street, Tonge Fold, Bolton, Lancashire BL2 2PL granted on 31 August 2021 by Bolton Metropolitan Borough Council, is varied, by deleting condition 2.

Preliminary Matters

2. The first names of the applicants provided in the planning application forms are handwritten and unclear. I have therefore taken the appellants' names from the appeal form and used them in the banner heading above.

Background and Main Issue

3. Planning permission was granted for a single storey rear extension to the appeal property subject to a condition requiring a preliminary risk assessment into actual or potential contamination on the site to be undertaken prior to commencement of any development; and for any necessary detailed site investigation and remediation strategy to be submitted to the Local Planning Authority for its approval.

4. The main issue is therefore whether the condition is necessary and reasonable having regard to the risk of harm to human health and controlled waters arising from the development with particular regard to contaminated land and ground gas.

Reasons

5. The relevant condition appears to have been attached to the planning permission on the advice of a technical consultee within the Council who stated that the appeal property lies within a known landfill site (Hypatia Street landfill site). Whilst evidence has been submitted to confirm that the appellant agreed to this pre-commencement condition at the planning application stage, there is little further explanation of the Council's reasoning for attaching this condition before me.
6. I am mindful that the proposal is for an extension to a domestic property in an established built-up residential area. It is also uncontested that the residential development, of which the appeal property is a part of, was granted permission in 2006 (Ref: 74998/06) subject to a planning condition similar to that which is the subject of this appeal. In the absence of any evidence to the contrary I have no substantive reason to conclude that this condition was not satisfied.
7. Moreover, I have not been provided with any evidence to show why potential ground gas and/or landfill gas could not be adequately mitigated through other legislative regimes, such as Building Regulations, and that a specific planning condition would be necessary in this case.
8. The National Planning Policy Framework (the Framework) also states that responsibility for securing a safe development rests with the developer and/or landowner where a site is affected by contamination. Based on the evidence before me, I therefore find, having regard to the tests set out in paragraph 56 of the Framework, that condition 2 is not necessary nor reasonable in order to safeguard against the risk of harm to human health and controlled waters from contaminated land and ground gas.
9. As such, there would be no conflict with Policy CG4 of Bolton's Core Strategy Development Plan Document 2011. Amongst other matters, this seeks to ensure that development is compatible with surrounding land uses and occupiers, including by the protection of amenity.
10. I shall therefore allow the appeal and vary the original permission by deleting the disputed condition.

Mark Caine

INSPECTOR