
Appeal Decision

Site visit made on 5 July 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2022

Appeal Ref: APP/X0360/W/22/3291775

Lord Harris Court, Mole Road, Sindlesham RG41 5EA

- 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 Ed Knott (c/o RMBI) against the decision of Wokingham Borough Council.
 - The application Ref 212164, dated 21 June 2021, was approved on 9 September 2021 and planning permission was granted subject to conditions.
 - The development permitted is the installation of a non-return valve and 24-hour storage cesspit to store effluent.
 - The condition in dispute is No 3 which states that: *The development hereby permitted shall be removed and the land restored to its former condition on or before 6 months of occupation of the Care Home granted planning permission under Local Planning Authority Reference: 190233 in accordance with a scheme of work that shall have first been submitted to and approved in writing by the local planning authority.*
 - The reason given for the condition is: *The type of development is not one that the local planning authority is prepared to approve other than for a limited period, having regard to the proposed means of disposal of effluent. Permission is only given because it is a back up to the disposal of effluent via the foul drainage system. Relevant policy: Core Strategy policies CP1 and CP3 and Managing Development Delivery Local Plan Policy CC10.*
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Decision

1. The appeal is allowed, and planning permission Ref 212164 for the installation of a non-return valve and 24-hour storage cesspit to store effluent granted on 9 September 2021 by Wokingham Borough Council, is varied by deleting condition 3.

Preliminary Matters

2. At the time of my site visit, a cesspit was installed on site and a manhole cover was visible within the area of site edged red. Notwithstanding what has been carried out on site, as permission is sought for the permanent retention, I have referred to it as if the development is proposed in this appeal.

Background and Main Issues

3. The application was submitted seeking planning permission for a non-return valve and 24-hour storage cesspit. The cesspit and non-return valve are proposed as an emergency back up to prevent flooding of the site with effluent, which is occurring during blockages of the mains sewer. The application was approved, but for a temporary period. The condition requires the cesspit to be removed, and the land restored to its former condition on, or before 6 months of occupation of the care home and the assisted living apartments granted planning permission, reference 190233.

4. It is not disputed that at this time the existing care home remains in place and is currently occupied, and the assisted apartments have been erected on site but are not occupied. It has been stated that a phasing plan connecting the existing care home, and the construction site, to the mains sewer has been agreed as part of phase 1 and the partial discharge of condition 7 of the 2019 consent.¹
5. For the avoidance of doubt, I have had regard to the information provided as evidence on the history to the site, however, I have not been provided with the details of the foul drainage phasing plan approved as part of the condition discharge. Also, whether the foul drainage phasing plan has been implemented in accordance with the agreed details is not something I can consider as part of this appeal.
6. The Council indicate that a permanent cesspit is worse than the approved drainage details. For reasons associated with the living conditions of neighbouring occupants and risks to highway and pedestrian safety, it was necessary and reasonable to impose the condition requiring the removal of the cesspit following occupation of the care home development approved in 2019.
7. In view of the above, and the evidence before me, the main issue is whether condition 3 is reasonable or necessary to safeguard the living conditions of neighbouring occupants and in the interests of highway and pedestrian safety.

Reasons

Living Conditions

8. From what I saw on site, the care home is adjacent to residential dwellings at Mayfields, a masonic hall and a park. The tank would be approximately 40m from the nearest residential garden, and 50m to the rear of the nearest dwellings on Mayfields.
9. With respect to odour, the submissions indicate that the cesspit is sealed, and any odours from the cesspit are most noticeable when it is being emptied by a tanker. The cesspit takes approximately 2-3 hours to be emptied via the tanker. This would occur 6 times annually.
10. I acknowledge that during the emptying of the cesspit there would be odours that have the potential to affect the living conditions of the nearest neighbouring occupiers. However, due to the distance of the cesspit from the nearest residential properties, and the infrequent number of times it needs to be emptied annually, the use of the proposed development would not be significantly harmful to the living conditions of the neighbours with respect to odours.
11. The Council's Environmental Health Officer (EHO) did not object to the proposal on the grounds of the odour from the back-up system. But the consultation response does suggest a temporary permission should be given to encourage a longer-term solution to the capacity or blockage issues.
12. However, in this case a condition granting temporary consent for the reasons set out by the EHO is not considered to be reasonable or necessary. Firstly, the mains sewer is outside the control of the appellant and any upgrading or

¹ Discharge of Condition application references: 192857 and 210533

improvements would need to be carried out by the statutory undertaker. The occupation of the second phase of the development is also already controlled by condition 7 of the original 2019 permission. This prevents occupation of the completed development until the Council discharge the details for the disposal of foul water from the site to the main system. In this respect, it is not necessary to duplicate control over this matter.

13. I do appreciate that it not typical to grant consent for the installation of a cesspit in a built-up location, and other means of foul disposal should only be allowed when connection to the mains sewer is not feasible. However, in this case, the cesspit is proposed as an emergency back-up, and there is no suggestion that it will be used or has the capacity to be used regularly as an alternative to the mains sewer. There is also no substantive evidence before me to indicate that following the occupation of the site, the use of the cesspit is likely to intensify and result in any greater harm to living conditions than proposed in this instance.
14. As such, I am not persuaded that the removal of the cesspit following the occupation of the care home is necessary or reasonable to mitigate odours from the proposed development and protect the living conditions of neighbouring occupants. The proposed development would be compliant with Policies CP1 and CP3 of the Wokingham Core Strategy Development Plan 2010 (CS), in its absence, which require provision of adequate drainage, and ensures that developments are of a high quality of design without the detriment to the amenities of the adjoining land users.
15. I note that Policy CC10 of the Wokingham Managing Development Delivery Local Plan (LP) has been cited, however, this policy relates to the sustainable disposal of surface water drainage rather than foul water. There is no indication that the development proposals have caused adverse impacts to the public sewerage network by the discharging surface water to the public sewer. As such, it is not relevant to this issue.

Highway and Pedestrian Safety

16. The proposed cesspit would be in the garden area associated with the apartments under construction. It would be close to the access road to the site and the junction with Mole Road. To empty the cesspit the appellant would arrange for a tanker, which would park on the private access road. The private access road is shared by a Masonic Hall. As indicated previously, the tanker would take 2-3 hours to empty the cesspit, and this would occur 6 times annually.
17. The Council do not appear to consider the proposed parking of the tanker, and emptying of the cesspit, to be a safe arrangement. In particular, the location of the tanker on the access road would result in very limited visibility for vehicles entering and leaving the site, forcing them to head into oncoming traffic. The suction hose would also block off a pavement on one side of the access road, impeding access for pedestrians.
18. I have had regard to the Council's concerns, and there would clearly be some effects to the free flow of traffic into and out of the site when the tanker is parked emptying the cesspit. However, the tanker would be parked on a private access road, set back from the junction. The setback would ensure that there would be sufficient visibility and space for vehicles to pass, as well as enter and

exit the site onto Mole Road in a safe manner. The access road has pedestrian footways either side, ensuring pedestrians would be able to access the site on foot. Furthermore, due to the low number of visits required annually, the number of vehicle and pedestrian conflicts that may arise would be low.

19. I have had regard to the proposed condition set out by the appellant, requiring the tanker to be in specific location on the access road when emptying the cesspit. However, given the infrequencies of the visits and the level of risk to highway safety, it is not necessary to make the development acceptable. Furthermore, the land is outside of the identified application site, and there is no plan defining other land owned by the appellant. As such, the condition would not be enforceable.
20. Accordingly, condition 3 is unreasonable and unnecessary in the interests of highway safety. The proposed development would therefore be compliant with the aims and objectives of Policies CP1 and CP3 of the CS. In regard to this matter, these policies seek to ensure that proposed developments are accessible, safe, secure and adaptable schemes.

Other Matters

21. I have no compelling evidence before me to show the approved 2019 consent has been carried out incorrectly, or that the foul drainage works resulted in blockages. The Council has the authority to investigate any breach of planning control but this not something I can consider as part of this appeal. Aside from highway safety and odour issues, there is limited evidence before me to indicate that the proposed cesspit would be emptied more regularly or that it would have any other unacceptable environmental impacts on the site or its surroundings.
22. The issue of impact on property values has also been raised. Although I understand the concerns, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property. I can therefore afford it only very limited weight.

Conditions

23. As I have concluded that the proposed development would be acceptable without the condition, it would be necessary to delete condition 3 of the permission. The remaining conditions were not in contention and remain unaltered.

Conclusion

24. For the reasons given above, I find that the disputed condition is not reasonable or necessary to safeguard the living conditions of neighbouring occupants and in the interests of highway safety. I conclude that the appeal should be allowed in the terms set out above.

M. P. Howell

INSPECTOR