



Appeal Decisions

Site visit made on 7 February 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Appeal A Ref: APP/B2355/W/22/3307508

Land at Highfield Park, Haslingden, Lancashire, Rossendale BB4 4BH

- 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 Studley Developments Ltd against the decision of Rossendale Borough Council.
 - The application Ref 2022/0374, dated 21 July 2022, sought approval of details pursuant to condition No 18 of a planning permission Ref 2019/0343 granted on 2 October 2019.
 - The application was refused by notice dated 7 September 2022.
 - The development proposed is the erection of 2 no. detached dwellings with associated parking and landscaping.
 - The details for which approval is sought is condition 18 which states that: Development shall not commence until a scheme for the drainage of surface water from the developed site has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be based on the hierarchy of drainage options set out in the National Planning Practice Guidance, shall include evidence of an assessment of the site conditions, and must be designed in accordance with the requirements of the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards. The approved drainage works shall be completed in accordance with the approved details before the dwellings hereby approved are first occupied and shall thereafter be satisfactorily retained at all times.
 - The reason given for this condition is: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution, in accordance with the requirements of Policies 19 and 24 of the Council's Core Strategy DPD (2011) and Section 14 of the National Planning Policy Framework.
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Appeal B Ref: APP/B2355/W/22/3307521

Land at Highfield Park, Haslingden, Lancashire, Rossendale BB4 4BH

- 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 Studley Developments Ltd against the decision of Rossendale Borough Council.
- The application Ref 2022/0287, dated 28 May 2022, sought approval of details pursuant to conditions Nos 3 and 15 of a planning permission Ref 2019/0343 granted on 2 October 2019.
- The application was partially approved (condition 3) and partially refused (condition 15) by notice dated 25 August 2022.
- The development proposed is the erection of 2 no. detached dwellings with associated parking and landscaping.
- The details for which approval is sought is Condition 15 which states that: Prior to the commencement of development the site shall be fully assessed (by a suitably qualified and experienced person/organisation) to establish the stability of the site and the surrounding land. A report of the assessment which either;

1. Demonstrates that the development will have no adverse impact on land stability and that the ground is sufficiently stable and capable of supporting the development; or
 2. Identifies the potential impacts of the development and includes the construction/mitigation measures necessary to ensure that the development will not impact on the stability of either the site or the surrounding land, shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The development thereafter shall be carried out in accordance with the approved details.
- The reason given for this condition is: In the interests of land stability of the site and to ensure that the development does not adversely impact on the surrounding area/neighbours, in accordance with the requirements of Policy 24 of the Council's adopted Core Strategy DPD (2011).
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Appeal C Ref: APP/B2355/W/22/3307592

Land at Highfield Park, Haslingden, Lancashire, Rossendale BB4 4BH

- 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 Studley Developments Ltd against the decision of Rossendale Borough Council.
 - The application Ref 2022/0320, dated 22 June 2022, sought approval of details pursuant to conditions Nos 12 and 13 of a planning permission Ref 2019/0343 granted on 2 October 2019.
 - The application was refused by notice dated 2 September 2022.
 - The development proposed is the erection of 2 no. detached dwellings with associated parking and landscaping.
 - The details for which approval is sought is:
Condition 12 which states that: Notwithstanding any information submitted with this application, no development shall take place until an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority. The submitted report shall include:-
 - i) An updated Preliminary Risk Assessment report (Phase1) including a conceptual model and site walk over survey;
 - ii) Where potential risks are identified by the Preliminary Risk Assessment, a Phase 2 Site Investigation report shall also be submitted to and approved in writing by the local planning authority prior to commencement of development. The investigation shall address the nature, degree and distribution of land contamination on site and shall include an identification and assessment of the risk to receptors focusing primarily on risks to human health, groundwater and the wider environment; and
 - iii) Should unacceptable risks be identified the applicant shall also submit and agree with the local planning authority in writing a contaminated land remediation strategy prior to commencement of development. The development shall thereafter be carried out in full accordance with the duly approved remediation strategy or such varied remediation strategy as may be agreed in writing with the local planning authority.
Condition 13 which states that: Prior to the commencement of development, on-site gas monitoring and a gas risk assessment of the site shall be carried out, submitted to and approved in writing by the local planning authority in order to determine the most appropriate gas protection measures to be incorporated in the scheme. The development shall be carried out in accordance with the approved measures.
 - The reason given for these conditions are: In the interests of mitigating hazards associated with ground gas, in accordance with the requirements of Policy 24 of the Council's adopted Core Strategy DPD (2011) and Section 15 of the National Planning Policy Framework.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.

Applications for costs

4. In respect of Appeals A and B, applications for costs were made by Studley Developments Ltd, the appellant, against Rossendale Borough Council and also by the Council against the appellant. These applications are the subject of separate Decisions.

Preliminary Matters

5. The appellant has provided additional information with each Appeal that was not before the Council when it made its decisions. However, Annex M of the Procedural Guide to Planning Appeals – England advises that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the Council, and which has been subject to consultation.
6. In each case it is not clear from the evidence before me that the relevant consultee has had the opportunity to consider and comment on the additional information provided. Consequently, having regard to the Wheatcroft¹ Principles, the acceptance of such additional information at this stage would potentially prejudice the interests of other parties. As such, in reaching my decisions, I have not had regard to the additional provided with the appeals comprising the updated Drainage Impact Assessment (Appeal A), building control reports (Appeals B and C), and an Additional Soil Chemical Quality Assessment (Appeal C). I have therefore determined Appeal A, B and C based only on the information that was before the Council.
7. The appellant is seeking approval for the details submitted in respect of several conditions. It is beyond my jurisdiction to consider the lawfulness of the implementation of the original planning permission or the fresh planning application that has been submitted to the Council.
8. Since the Council's decisions the Rossendale Local Plan (LP) has been adopted. Policies 19 and 24 of the Core Strategy Development Plan Document have been replaced by Policies ENV1 and ENV9 of the LP. I have considered the appeals accordingly.

Background and Main Issues

9. Planning permission was granted by the Council on 2 October 2019 (Ref 2019/0343) for the erection of 2 no. detached dwellings with associated parking and landscaping. The permission is subject to several conditions

¹ *Bernard Wheatcroft Ltd v SSE*

requiring additional details to be approved by the Council. It appears from the evidence that details in relation to some of those conditions have been approved since the permissions were granted.

10. Having regard to the reasons for the imposition of the condition, I consider that the main issues are:

- Whether the submitted drainage strategy would provide a suitable means for surface water disposal, having regard to the hierarchy of drainage options set out in Planning Practice Guidance (PPG) and to satisfy the requirements of condition 18 (Appeal A);
- Whether sufficient detail has been submitted to establish the stability of the site and surrounding land and to satisfy the requirements of condition 15 (Appeal B); and
- Whether adequate investigation and risk assessment has been undertaken to ensure that the health and safety of future occupiers of the development would be adequately protected and to satisfy the requirements of conditions 12 and 13 (Appeal C).

Reasons

Appeal A

11. Condition 18 requires a scheme for the drainage of surface water from the site based on the hierarchy of drainage options set out in the PPG and designed in accordance with the requirements of the Non-Statutory Technical Standards for Sustainable Drainage systems (March 2015). The PPG² states that where possible, preference should be given to solutions that allow surface water to be discharged according to a hierarchy of drainage options that starts with draining into the ground (infiltration).
12. The information before the Council when it made its decision, set out in the submitted Drainage Impact Assessment (DIA), showed sufficient results and that some of the borehole logs were primarily sand. This suggested that infiltration is a viable surface water drainage option. Without additional commentary and explanation to demonstrate otherwise, the case has not been made to rule out infiltration as an appropriate drainage method and, accordingly, to conclude that the wording of the condition had been met. Therefore, even though I note that the falling head tests were attached, as an appendix, the DIA before the Council when it made its decision did not satisfy the requirements of the condition as worded, as concluded by United Utilities in its consultation response.
13. Consequently, based on the information submitted as part of the application, I conclude that the submitted drainage strategy would not provide a suitable means for surface water disposal having regard to the hierarchy of drainage options set out in the PPG. The requirements of condition 18 have therefore not been satisfied. Furthermore, there would be conflict with LP Policies ENV1 and ENV9 which expect new development to implement Sustainable Drainage Systems and address flood risk. There is also conflict with the National Planning Policy Framework (the Framework), which requires that development should be made safe for its lifetime without increasing flood risk elsewhere.

² Paragraph: 056 Reference ID:7-056-20220825

Appeal B

14. In this case there is no dispute that the information provided with the planning application demonstrates that the construction of the completed dwelling and the retaining wall on that plot is appropriate, including the piled foundation design. Such information, however, does not constitute an assessment of the stability of the site and the surrounding land. It therefore does not demonstrate, without doubt, that further works are not necessary to ensure the stability of the entire site and surrounding land. Even though the Council's structural engineer stated that he had no adverse comments regarding the stability of the site as a whole it remains that the condition, as worded, has not been satisfied by the information that has been provided.
15. Accordingly, it has not been demonstrated that sufficient detail has been submitted to establish the stability of the site and surrounding land. The requirements of condition 15 have therefore not been satisfied. As such, there is conflict with LP Policy ENV1 which requires that development ensures that land stability is addressed through appropriate investigation, remediation and mitigation measures.

Appeal C

16. The Geo-environmental Investigation Report (GIR) submitted with the application indicates that environmental testing has been undertaken on five soil samples taken from the site. However, such samples were not taken from positions across the entire site and, notably, none were taken from the part of the site nearest to the boundary of a known former landfill site or from the made ground known to be within the appeal site. Therefore, whilst the part of the site where the permitted dwellings are sited have been assessed, areas where there is a greater risk of contamination and are to be used for residential purposes have not.
17. Furthermore, whilst gas monitoring was undertaken on 4 occasions, it was over a short 3-week period in May 2022. Notwithstanding the comments of the appellant to the contrary, undertaking monitoring only during late spring is unlikely to represent the drops in pressure sustained in winter months and cover an appropriate range of atmospheric conditions.
18. There is the potential for significant consequences to human health if sufficient investigation is not undertaken and appropriate mitigation is not identified. The proximity of a former landfill site and existence of made ground within the site provides a sound reason to adopt a precautionary approach that includes more exhaustive and conclusive monitoring and assessment than set out in the GIR submitted with the application.
19. My attention has been drawn to a housing development near to the appeal site, located on the former landfill site. However, no evidence has been presented as to what regime was in place, when that planning permission was granted, regarding the assessment and mitigation of risk posed by contaminated land and gas. I am therefore unable to make comparisons to the appeal before me. Overall, I am not persuaded that the sampling or the gas monitoring that was undertaken and informed the GIR submitted with the application was adequate.

20. I acknowledge that a gas protection membrane has been fitted. However, in the absence of sufficient assessment of the risk posed by gas, it has not been demonstrated that it would be effective in addressing such risk.
21. Accordingly, adequate investigation and risk assessment has not been undertaken to ensure that the health and safety of future occupiers of the development would be adequately protected. The requirements of conditions 12 and 13 therefore have not been satisfied. As such, there is conflict with LP Policy ENV1 which requires that development ensures that contaminated land is addressed through appropriate investigation, remediation and mitigation measures. It would also be contrary to the guidance within the National Planning Policy Framework, that decisions should ensure that a site is suitable for its proposed use taking account of any risks arising from contamination.

Other Matters

22. The appellant has raised concerns with the Council's handling of the planning application, however, that is not relevant to my findings on the planning merits of the scheme based on the information that was available at the time that the Council made its decisions.

Conclusion

23. For the reasons given above and having regard to all matters raised, I conclude that Appeals A, B and C should be dismissed.

Elaine Moulton

INSPECTOR