



Appeal Decision

Site visit made on 5 June 2024

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Appeal Ref: APP/B2355/W/23/3336170

**Dearden Wood Campsite, Michael Wife Lane, Ramsbottom,
Lancashire BL0 0QX**

- 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 Mark Law against the decision of Rossendale Borough Council.
- The application Ref 2023/0425, dated 1 September 2023, was approved on 27 October 2023 and planning permission was granted subject to conditions.
- The development permitted is a change of use of land to residential garden curtilage.
- The conditions in dispute are numbers 2 and 3 which state that:

2. Within 6 months of planning approval being granted a Site Investigation report shall be submitted to and approved in writing by the local planning authority. The investigation shall address the nature, degree and distribution of potential contamination in the soils 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. Should unacceptable risks be identified the applicant shall also submit and agree with the local planning authority in writing a contaminated land remediation strategy (including verification plan). Work on site 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. If remediation work is required, a verification report which validates that all remedial works undertaken on site were completed in accordance with those agreed with the local planning authority shall, within 12 months of planning approval, be submitted to and approved in writing by the local planning authority.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking or re-enacting that order, no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class A, Class AA, Class B or Class E of Part 1, Schedule 2 of the Order shall be carried out within the curtilage of the dwellinghouse, unless formal planning permission has first been obtained from the local planning authority for such development.

- The reasons given for the conditions are:

2. To mitigate risks associated with land contamination and prevent pollution.

3. To ensure control is retained by the local planning authority over further development on the site having regard to the setting of the building and in the interests of protecting the rural setting of the countryside.

Application for Costs

1. An application for costs was made by Mr Mark Law against Rossendale Borough Council and is the subject of a separate decision.

Decision

2. The appeal is allowed and the planning permission Ref 2023/0425, for change of use of land to residential garden curtilage at Dearden Wood Campsite, Michael Wife Lane, Ramsbottom, Lancashire, granted on 27 October 2023 by Rossendale Borough Council, is varied by deleting conditions 2 and 3 and substituting for them, condition 2 below.
 2. Within 6 months of the date of this appeal decision a Site Investigation report, relating to land within the red line but to the rear of the dwelling, shall be submitted to and approved in writing by the local planning authority. The investigation shall address the nature, degree and distribution of potential contamination in the soils 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. Should unacceptable risks be identified the applicant shall also submit and agree with the local planning authority in writing a contaminated land remediation strategy (including verification plan). Work on site 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. If remediation work is required, a verification report which validates that all remedial works undertaken on site were completed in accordance with those agreed with the local planning authority shall, within 12 months of this appeal decision, be submitted to and approved in writing by the local planning authority.

Main Issues

2. The main issues are whether the use could result in risks to human health, groundwater and the wider environment; and the effect on the character and appearance of the area.

Reasons

3. Permission has been granted for the use of this land as residential curtilage. This was granted subject to conditions. The appeal relates to two of those conditions. Condition 2 requires a site investigation with regard to contamination; and condition 3 takes away permitted development rights.

Condition 2 – Site investigation report

4. During the application, the council's Senior Environmental Health Officer advised that historic maps revealed that the site was previously a nursery which would be a potential source of localised soil contamination and that there had been an arson event which would also be a potential contamination source. Other environmental checks did not reveal anything else of significant concern. The officer advised that a residential use is particularly sensitive to any contamination that may be present and that testing of the soils in the garden should take place to ensure it would be suitable for use.

5. The appellant suggests that the North West Water's use of the site as a nursery would have been a low-level use that would not typically be associated with the leaching of harmful chemicals or other materials into the ground, particularly as this would be harmful to the vegetation grown at the former nursery and so would have been strictly avoided. The appellant advises that the arson and anti-social behaviour at the site mainly concerned the building rather than the associated land. It was infrequent and it is highly unlikely to have resulted in harmful, permanent, ground contamination. It is also advised that the site was used as a girl guides camp but there are no records of any adverse effects on human health.
6. The appellant suggests that there is no evidence as to what any contamination may be, how it may have come about from such an innocuous use or why this would be a hazard to human health. This, however, is why a site investigation report has been sought. The council are taking a cautious approach but this is based on historic data with regard to a past use. Although the appellant believes there to have been no such issue caused by the previous use, this is speculation. The residential users would be sensitive to any such contamination and the council's approach appears to be reasonable and necessary to ensure risks are avoided.
7. The period for submitting the site investigation report is six months. My understanding from the appellant is that the use commenced without formal consent. This therefore is the first opportunity for this matter to be considered be the council. Normally, such a condition would require such an investigation before first use. It would not be unreasonable to prevent its use until the investigation is complete but as the appellant is aware of the concerns, the six month timescale appears to be reasonable. The appellant is also concerned about the timescale involved should unacceptable risks be identified by the site investigation. The condition requires that works required by a contaminated land remediation strategy be completed, reported on and agreed before the end of 12 months from the planning decision. Again, this is work that would normally be required to be completed before a residential use takes place for obvious reasons. I do not therefore consider this period to be unreasonable.
8. Overall, no evidence has been provided to demonstrate that the site has not been contaminated by previous activity. The lack of evidence of adverse impacts reported from its use is not determinative of whether parts of it are contaminated and could result in harm to human health, groundwater or the wider environment. Whilst specialists would be required to carry out the site investigation, this is not an overly onerous requirement. I therefore find that the condition is necessary and meets the six tests set out in the *National Planning Policy Framework 2023*.
9. I have allowed the appeal as the condition needs to be amended so that the timescales relate to this decision rather than the application approval. I have also specified that the site investigation relate only to the land to the rear of the dwelling to avoid any doubts.

Condition 3 – Permitted development rights

10. Condition 3 removes all rights set out in Class A, Class AA, Class B and Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted

Development) (England) Order 2015 (as amended). *Planning Practice Guidance* advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

11. The dwelling and land to its front and side, benefit from a lawful development certificate. Imposing a condition in relation to the entire site, when elements of it are already lawful and have such rights, when the circumstances of the lawful element would not materially change other than to be supported by more outside space, is unreasonable. The now approved garden area to the rear was not lawful and therefore it would not be unreasonable to impose conditions on that land if satisfying the six tests for conditions. However, the broad exclusion of all matters within the classes listed fails to have regard to the *Guidance*.
12. The council describe the reason for removing permitted development rights as being necessary as the cumulative visual impact of development that could be undertaken through householder permitted development rights such as enlargements to the dwelling and outbuildings erected within the site would be substantial and would fail to conserve the natural and rural character of the site in this countryside area. Correspondence from the council suggests as an example, that part of their concern related to the potential for an eight metres deep rear extension and a large garden building being built. I found the site to be well contained within the woodland. The public track adjacent is at a low level below the site and has landscaping along its outer edge. I was unable to find clear views of the site from beyond this track and any views from across the adjacent fields would be partly screened. Any buildings would be set against the backdrop of the woodland. This is not a large property or garden and normal domestic adjuncts such as garden buildings and extensions that would normally be permitted development, would have a limited wider impact.
13. Given the lawfulness of the dwelling and its approved surrounds, it would not be reasonable to remove permitted development rights that are already present. Class B development involving the enlargement of a dwellinghouse consisting of an addition or alteration to its roof would not therefore be reasonable as approving a larger garden provides no justification for applying greater restrictions. Similarly, Class AA development rights, which relate to increasing the height of the dwelling, were already available and the larger garden provides no justification for greater controls.
14. Restrictions under Class A and Class E could be reasonable as they could relate to the new area of lawful garden. However, alterations allowed under Class A could only be reasonable if they related to rear extensions into the land that is now permitted as curtilage but falls outside the original lawful development certificate red line. However, there is no reason why a rear extension into this area, within the limits set out, would result in harm to the character or appearance of the area and would require special controls. I am not therefore persuaded that Class A permitted development rights should be removed. Class E rights for buildings incidental to the enjoyment of a dwellinghouse would similarly only be reasonable within the extended curtilage. This class potentially

allows for a relatively large garden building(s) but would similarly be unlikely to be harmful to the wider area and I find no justification for such additional controls.

15. Overall, the council has failed to set out clear justification for restricting permitted development rights and has sought to apply blanket coverage of all potential alterations within the specified classes. I am not satisfied it was entitled to remove rights that accrued as a result of it acquiring a lawful development certificate but, in any event, I find no specific reason why normal rights should be removed in these particular circumstances.

Conclusions

16. In conclusion, I have found condition 2 to be necessary and to meet the tests set out in the *Framework*. I have allowed the appeal as the condition needs to be modified to have a timetable that corresponds to this decision rather than the original approval. I have also clarified the area to be investigated to avoid any doubt. With regard to condition 3, I have found no reasons for the removal of permitted development rights and the council have put forward no clarification beyond the detail in their delegated report. I have therefore deleted that condition. My decision results in a variation of the permission. Condition 1 remains unaltered and condition 2 is amended. Condition 3 is deleted.

Peter Eggleton

INSPECTOR