
Appeal Decision

Site visit made on 27 August 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/A0665/W/24/3337620

Whimbrel House, Chorlton Lane, Cuddington, Malpas SY14 7EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Ms K Purcell c/o Maple Construction against the decision of Cheshire West and Chester Council.
- The application Ref is 23/02902/FUL.
- The development proposed is described as 'Proposed cess pool.'

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Whimbrel House is one of eleven properties granted permission under reference 15/00496/FUL. Condition 12 of the permission required the submission of a scheme for foul and surface water drainage. This condition was discharged in a discharge of condition application¹ which amongst other things, included proposals for a package treatment plant and a surface water attenuation tank.
3. From the information before me, it appears that this scheme was part implemented, with the package treatment plant installed but not the attenuation tank. Enforcement action was taken² as the drainage scheme was not constructed in accordance with the approved plans. A subsequent application submitted in 2021³ for a septic tank was dismissed by the Local Planning Authority (LPA) due to its impact on previously approved drainage measures, surface water flood risk and impact on local water quality. An application to amend the drainage scheme for the site with an attenuation tank in the rear garden was submitted in 2022⁴, but is currently pending due to further information being requested by the LPA.
4. The appeal scheme proposes a cesspool to be installed in the rear garden of Whimbrel House. The main issue is whether this proposed method of foul drainage is acceptable.

¹ Ref: 16/05527/DIS

² Ref: 16/00412/EBCNC

³ Ref: 21/00955/FUL

⁴ Ref: 22/03620/S73

Reasons

5. The Council highlight that a cesspool is an unsustainable form of foul drainage and that it has not been demonstrated that a more sustainable form of foul drainage is not feasible for the site. As such they considered it would fail to provide sustainable water infrastructure, contrary to Policy ENV1 of the Cheshire West and Chester Local Plan Part 1 Strategic Policies (2015) (LP1) and Policy DM43 of Cheshire West and Chester Local Plan Part 2 (LP2). The Council also refer to other guidance. I turn to these matters in other considerations.
6. I have reviewed the Policies cited by the Council. Policy ENV1 is related to flood risk and water management. With regards to the appeal scheme, it sets out that proposals should demonstrate that there is adequate wastewater infrastructure to serve the development or adequate provision can be made available. Policy DM43 states that development proposals will be supported where the wastewater infrastructure exists or can be provided in time to serve the development.
7. There is nothing in the policies or the supporting text that specifically requires sustainable wastewater infrastructure, what types of foul drainage systems may be appropriate or adequate and nothing that outlines that the form of drainage proposed would be unacceptable. Consequently, the proposal would not come into conflict with Policy ENV1 of the LP1 or Policy DM43 of LP2.
8. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise.
9. The Government's planning advice on the use of non-mains foul drainage is contained within the National Planning Practice Guidance (NPPG). This sets out that were a connection to a public sewage treatment plant is not feasible, a package sewage treatment plan or septic tank can be considered in accordance with Approved Document H of the Building Regulations 2010.
10. The Environment Agency Guidance for Local Authorities on Non-Mains Drainage (EAG) explains how Approved Document H outlines a hierarchy of non-mains alternative solutions where connection to a public sewer is not reasonable. The hierarchy is a package sewage treatment plant followed by a septic tank and then a cesspool but only where no other solution is possible. This is because a cesspool has no outlet and so requires frequent removal of raw sewage by road tankers. It is thus deemed to be the least sustainable option for sewage disposal.
11. In this case, the appellant has not set out the feasibility of alternative options. The site has a history of drainage-related applications, as briefly outlined in the background section of this report. Based on the foul drainage hierarchy as set out in the EAG, the approved drainage scheme¹ which includes a package treatment plant, appears to represent a more sustainable foul drainage option than the cesspool that is being proposed.
12. The appellant has stated that delivering a suitable drainage layout for the dwelling is problematic. However, I have not been provided with any

information as to why this is the case and why a more sustainable drainage scheme cannot be implemented.

13. I note that the cesspool would not impact on the character of the area and that cesspools are not necessarily an unusual feature of rural areas. However, notwithstanding this, no information has been provided as to why other options are not possible.

Conclusion

14. In this case I have found no conflict with the relevant policies of the development plan, but the other considerations are important material considerations to which I attach significant weight.
15. The scheme would represent a foul drainage solution that is at the bottom of the non-mains waste water hierarchy. It does not represent a sustainable form of foul drainage and no justification has been provided as to why a cesspool has to be used over other preferred methods in the non-mains hierarchy. Consequently, I cannot be certain that there would be other more sustainable forms of drainage that would be viable. It therefore leads me to the conclusion that the proposed method of foul drainage is not acceptable based on the other considerations, and the appeal should be dismissed.
16. The proposed development would not conflict with the development plan but the material other considerations in this case indicate that a decision should be made contrary to the development plan. For this reason, the appeal is dismissed.

T Bennett

INSPECTOR