



Appeal Decision

Site visit made on 18 March 2025

By G Powys Jones MSc FRTPi

an Inspector appointed by the Secretary of State

Decision date: 2 April 2025

Appeal Ref: APP/U3935/D/24/3357680

36 Gold View, Swindon, SN5 8ZG

- 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 Mr Ross Johnson against the decision of Swindon Borough Council.
 - The application Ref is S/HOU/24/1208/BURGE.
 - The development is the erection of a single storey rear extension.
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Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. The appeal property, a relative modern detached dwelling, forms part of a large residential estate originally granted outline planning permission in 1994. The site was historically used for refuse disposal/landfill and investigations carried out at the time indicated the presence of landfill gases.
3. Conditions imposed on the original permission included a requirement for mitigation measures to be taken prior to development, and for permitted development rights for extensions to be removed, to ensure that any future extensions to dwellings were designed and built taking account of the possible presence of landfill gases. There is no indication before me that these conditions were challenged at the time.
4. In 2023 the appellant applied for planning permission for a single storey extension at the rear¹. This was permitted subject to conditions which included condition 3, which provides:
 - i) No development shall commence until there has been submitted to and approved in writing by the local planning authority full details of proposed building construction techniques to be incorporated into the development to prevent the ingress of landfill gas.*
 - ii) The development shall not be constructed other than in full accordance with the so-approved details*
 - iii) The developer shall demonstrate to the satisfaction of the Local Planning Authority that the agreed measures have been completed before the approved development is first occupied.*

¹ Ref S/HOU/23/1550

5. The reason for the imposition of the condition was:

In the interests of the safety of future occupants of the development.

6. The condition was not legally challenged at the time, and no application under s73 of the Act² was submitted, or an appeal made, to seek to carry out the development permitted without complying with the condition.
7. The appellant carried out the development without complying with condition 3. I saw that the extension was a tasteful addition to the property as were the external works, which included a patio, play area and landscaping.
8. The appeal follows a refusal by the Council to permit the latest application, which in effect, sought the retention of the extension without complying with the provisions of condition 3 imposed on the previous permission.

Main Issue.

9. This is whether the possible risks from contamination, including the presence of landfill gas, associated with the historical use of the site have been adequately addressed.

Reasons

10. The appellant maintains that condition 3 was '*illegally*' imposed on the 2023 permission since in his view, and having regard to his interpretation of government guidance, issues in relation to land contamination are covered in part C of the Building Regulations 2010. Reference is also made to '*The Use of Conditions*' published as part of *Planning Practice Guidance* (PPG) by central government, and on this basis, the appellant considers that condition 3 was neither necessary nor relevant to planning. It is principally on this basis that the appellant thought fit not to discharge condition 3 before building the extension. Having received a final certificate for the extension under the Building Regulations, the appellant made the application to the Council to regularize the development.
11. Central government also published PPG guidance in respect of '*Land Affected by Contamination*' which makes it plain that planning has a role to play in issues relating to contaminated land. It provides:
- To ensure a site is suitable for its new use and to prevent unacceptable risk from pollution, the implications of contamination for development should be considered through the planning process to the extent that it is not addressed by other regimes.*
12. The PPG also provides cross references to the *National Planning Policy Framework* which provides guidance in relation to government policy on contaminated land.
13. On this basis, there is no doubt in my mind that the issue of land contamination is a material consideration in the determination of planning applications in certain circumstances, and the condition imposed on the 2023 permission is not unusual in my experience when issues of land contamination are involved. It is true that other statutory regimes may also have an involvement, but in this case, I have no reason

² Town and Country Planning Act 1990 (as amended)

to conclude that the Council, as Local Planning Authority, should have no involvement as the appellant appears to suggest.

14. Having received a Final Certificate under the Building Regulations for the works, the appellant considers that planning has no further role to play in the matter. Additionally, the appellant says:

To be absolutely clear, the applicant and the builders and the Building Inspector were all aware of condition 3 applied to previous Planning approval and potential for methane land gas and were all hunting for evidence.

However due to nature and makeup of ground being excavated, Building Control were confident that this land had never previously been disturbed / excavated and contained absolutely nothing that could ferment.

15. Whilst this serves as anecdotal evidence attracting some weight, there is nothing substantive before me in writing from any person qualified to do so, including the Building Approval firm who issued the final certificate, to indicate that any account has been taken of the possible presence and testing for landfill gases.
16. In dealing with this application the Council took advice from its Contaminated Land Officer. For the reasons set out in his consultation responses, he advocated the adoption of a precautionary approach. Having regard to the circumstances of this case, I share his view for the same reasons – that is, to safeguard the safety of the current and future occupants of the property from the possible harmful effects of landfill gases, if present. Furthermore, a successful appeal could encourage others on the surrounding estate to undertake extensions of their own without adequate testing and precautions.
17. I therefore conclude that contrary to the provisions of Policy EN9 of the Swindon Borough Local Plan (BLP), the possible risks from contamination, including the presence of landfill gas, associated with the historical use of the site have not been adequately addressed. I note the appellant's view of this policy, but it is an adopted statutory development plan policy, having been subjected to public scrutiny. I am lawfully obliged to take it into account and to determine the appeal in accordance with its provisions, unless the material considerations indicate otherwise, which they do not.
18. Accordingly, the appeal is dismissed.

G Powys Jones

INSPECTOR