



Appeal Decision

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Appeal Ref: APP/Z4310/W/25/3359235

6 Annesley Road, Liverpool L17 9QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Samuel Cunningham against the decision of Liverpool City Council.
 - The application Ref 23DIS/1300 sought approval of details pursuant to condition Nos 3, 6 & 7 of a planning permission, Ref 19F/0889, granted on 28 May 2020.
 - The application was refused by notice dated 29 November 2024.
 - The development proposed is to erect a 2 storey detached dwellinghouse.
 - The details for which approval is sought are: Land Contamination (Condition 3) and Railway Safeguarding (Conditions 6 & 7).
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Decision

1. The appeal is dismissed insofar as it relates to condition 3.
2. The appeal is allowed insofar as it relates to conditions 6 and 7, and the details submitted pursuant to conditions 6 and 7 attached to planning permission 19F/0089 granted on 28 May 2020 are approved.

Preliminary Matters

3. It was not necessary to undertake a site visit in order to make my assessment of this appeal.
4. The appellant has provided details of correspondence with Network Rail with regard to conditions 6 & 7. On the basis of that correspondence, the Council considers that the two conditions can be discharged. I find no reason to take a different view and therefore have confined my consideration of this appeal to matters relating to condition 3.

Main Issue

5. It is not open for me to consider the wording of condition 3, the nature of its requirements or the reasons why it was imposed on the planning permission including any reference to planning policies. The appellant could have applied under section 73 of the Town and Country Planning Act 1990 (as amended) to have deleted or varied the wording of the condition if they considered that the condition as imposed fails to meet with the tests set out in paragraph 57 of the National Planning Policy Framework.
6. All I am able to consider is whether the information provided meets with the requirements of the condition in order that it can be discharged. That is the main issue in this appeal.

Reasons

7. Condition 3 sets out three, staged, requirements in order to address the matter of whether the land on the appeal site is contaminated. These move from a) which is the approval of an investigation and assessment methodology prior to any site investigations, to b) the carrying out of the investigation and assessment and then finally, if required, on to c) which is the submission of a detailed remediation scheme.
8. No investigation and site methodology has been submitted for approval to meet the requirements of part a). Instead, it would appear that the appellant arranged for an investigation to be carried out and then submitted this to the Council with the view of discharging the condition. However, such an approach does not meet the requirements of part a) of condition 3 and therefore I am unable to discharge this element of the condition.
9. Part b) of condition 3 requires that the investigations and assessments shall be carried out in accordance with current Government and Environment Agency recommendations. Had the required details been submitted for approval under part a), the Council would have been able to advise as to what those current recommendations are. As it stands, their Contaminated Land section advise that they consider these to be Land Contamination Risk Management (LCRM) Environment Agency 2020 and BS10175:2011+A1:2013, Investigation of Potentially Contaminated Sites.
10. The Site Investigation (SI) provided is brief. The appellant does not suggest that it follows the recommendations of the aforementioned Government and Environment Agency guidance nor is there any substantive evidence before me to demonstrate that it does. Furthermore, it relies upon the sampling of soil from 4 trial pits to conclude that the soils on the site do not pose a risk to human health in terms of their chemical makeup. However, the condition requires consideration of other aspects including, for example, flammable or toxic gas.
11. Condition 3 also requires consideration not only of the potential risks to human health but in terms of several other identified risk areas. The SI does not assess these. Taking all of these considerations together, the SI does not meet the requirements of part b) of condition 3 and this element of the condition cannot be discharged either. It follows that it cannot be established based on the information I have before me whether a detailed remediation scheme would be needed to satisfy part c) of condition 3.

Other Matters

12. The appellant highlights the statutory duties of the Council in terms of land contamination and that other local planning authorities take different approaches in how they address this matter. My attention is also drawn to the time taken by the Council to consider the discharge of condition application, the association that the discharge of condition 3 has with a potential fallback position and to the fact that separate developments have been approved on adjoining land. However, none of these matters have a bearing on whether or not the submissions meet with the specific requirements of condition 3.

Conclusion

13. For the reasons given above, the appeal should be allowed in part and dismissed in part.

Graham Wright

INSPECTOR