

Case Name: *Backland v Monmouthshire County Council* [2021] EWHC 2185 (Admin) (03 August 2021)

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Commentary:

This was a successful challenge to Monmouthshire County Council's decision to grant planning permission for the demolition of an existing bungalow with outbuildings and the erection of two detached two-storey dwellings in Wales.

Condition 7 of the permission provided that the development should be carried out in accordance with the agreed scheme of foul drainage, which showed drainage fields as being within 10-15 meters from the nearest point of the proposed dwellings. The officer's report to the planning committee recommending the grant of permission noted that the Council's building control inspectors had indicated that the drainage proposals met the relevant Building Regulation requirements and that the drainage fields were required to be at least 10 metres from a building.

The claimant, a nearby resident, argued that the officer's report was substantially misleading since there was guidance that suggests that such drainage fields should be at least 15 meters from a building, so the proposed drainage fields would be required to be some 5 metres further away from the proposed buildings.

Allowing the claim and quashing the permission, the court found that the committee was indeed significantly misled by the officer's report. The focus of the Building Regulations was on whether the proposal would be prejudicial to human health, but in the planning context there is also a need to treat the risk of nuisance on both current and future occupiers as a material consideration in the determination of a planning application. The court noted that the report only dealt with visual amenity, and so it considered that the adequacy of the proposed sewage disposal and the guidance as to the minimum distance of 15 metres from the drainage fields to any building were not properly considered by the committee.

Case summary prepared by Safiyah Islam