



Appeal Decision

Site visit made on 23 July 2019

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2019

Appeal Ref: APP/W0530/W/18/3217802

Yard 2, Gravel Pit Hill, Thriplow SG8 7HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Scott Emmett against the decision of South Cambridgeshire District Council.
- The application Ref S/2658/18/VC, dated 20 June 2018, was refused by notice dated 14 September 2018.
- The application sought planning permission for: *Proposed change of use of land from scrap/breakers yard to provide storage and servicing for plant and machinery (retrospective), including parking, ancillary office and welfare building, workshop, storage tank with bund and associated works* without complying with a condition attached to planning permission Ref S/0217/18/FL, dated 25 May 2018.
- The condition in dispute is No 2 which states that: *The site shall cease to be occupied by the storage and servicing of plant and machinery and the land returned to its former condition within 28 days in the event of failure to meet any one of the requirements set out in (i) to (iv) below:*
- (i) *Within 1 (one) month of the date of this decision a scheme for a remediation strategy associated with the contamination of the site and a scheme of surface water disposal including: 1) a Preliminary Risk Assessment (PRA) including a Conceptual Site Model (CSM) of the site indicating potential sources, pathways and receptors, including those off site. 2) The result of a site investigation based on (1) and detailed risk assessment, including a revised CSM 3) Based on the risk assessment in (2) an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency actions. The plan shall also detail a long term monitoring and maintenance plan. 4. A verification report demonstrating completion of works set out in the remediation strategy in (3). The long term monitoring and maintenance plan in (3) shall be updated and implemented as approved. 5. A scheme for surface water disposal including management and maintenance 6. A written timetable for their provision and implementation the details shall be submitted for the written approval of the Local Planning Authority to meet the needs of the development in accordance with policy NE/8 and NE/9 of the Local Development Framework. (ii) Within 9 months of the date of this decision the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State. (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State. (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable*
- The reason given for the condition is: *In the interests of protecting groundwater from pollution and ensuring suitable details of surface water drainage in accordance with*

policies NE/8 and NE/9 of the adopted Local Development Framework 2007 and paragraphs 109,120 and 121 of the NPPF 2012.

Decision

1. The appeal is allowed and planning permission is granted for proposed change of use of land from scrap/breakers yard to provide storage and servicing for plant and machinery (retrospective), including parking, ancillary office and welfare building, workshop, storage tank with bund and associated works at yard 2, Gravel Pit Hill, Thriplow SG8 7HZ in accordance with application Ref S/2658/18/VC, dated 20 June 2018, without complying with a condition attached to planning permission Ref S/0217/18/FL, subject to the conditions listed in the schedule following this decision.

Procedural Matter

2. Since the original permission the National Planning Policy Framework (the Framework) has been revised and updated. I have referred to the current document in my reasoning.

Background and Main Issue

3. The Council gave retrospective permission for a change of use from a scrap/breakers yard to storage and servicing for plant and machinery, including ancillary buildings and facilities. The site is located above a principal chalk aquifer, and within Source Protection Zone 3. Although at the time of the permission the Environment Agency (EA) was satisfied that the risk of contamination to controlled waters could be remediated, further details were required. To this end Condition 2 was imposed. This required a remediation strategy, including details of surface water drainage, within one month of the granting of permission. The application to remove or vary the condition was made within one month of the date of the permission.
4. The appellant seeks to change the time period within which the strategy is to be submitted from one month to one year. The main issue for this appeal therefore is whether Condition 2 is reasonable and necessary, and whether it meets the other tests for conditions set out in the Framework and the Local Plan.

Reasons

5. The Phase 1 Geo-Environmental Desk Study¹ states that *underlying groundwater must be considered as a potential receptor to site derived contaminants* and states that *groundwater contamination requires further investigation*.
6. I noticed that ground conditions in the yard appear to be at least partly permeable and that containers for chemical cleaning agents and bitumen have taps that discharge directly onto the ground. That there is some ongoing spillage onto the ground from these containers when the taps are in use, was evident at my visit. Surface water and runoff drains to a corner of the site and there was a notable concentration of oily material in the sump at the outfall.
7. Until remediation works are agreed and approved, site operations would continue in their current form and could continue to pose a threat to the chalk

¹ EPS, December 2017

- aquifer. This would be contrary to Policy NE8 of the Development Plan² (DPD) which states that permission will not be given for development which poses an unacceptable risk to the quality of the underlying groundwater from the chalk aquifer, and Policy CC7 of the Local Plan³ which requires development to demonstrate that the quality of groundwater will not be harmed, amongst other considerations. It would also fail to meet the requirements of DPD Policy NE9 regarding the provision of adequate land drainage, and Paragraphs 170 and 178 of the Framework insofar as these are concerned with water pollution and the requirement to show that a site is suitable for its proposed use, taking into account risks arising from contamination.
8. In the light of the above, I conclude that the preparation of a remediation strategy and its submission in a timely manner is reasonable and necessary in order to prevent contamination of the aquifer. I now turn to what would be appropriate and proportionate time scale.
 9. The appellant argues that one month is insufficient time to prepare a full remediation strategy. I have some sympathy with this position, as site investigations may take time and the remediation strategy can only be developed sequentially. Moreover, it is likely that the assessment of remediation would require the involvement of the EA. However, permission was granted for the change of use more than a year ago and detailed design work was started in November 2018.
 10. The desk study appears to include a Preliminary Risk Assessment and Conceptual Site Model and identifies potential sources or contaminants, pathways and receptors. As such, even this document needs to be updated, I can see no reason why this could not be submitted to the Council for approval within one month of the date of this decision.
 11. Given that detailed design work started some eight months ago, the development of the strategy should be well underway. I see no reason why a remediation and verification scheme could not be submitted to the Council within four months of the date of this decision. It is unclear to me why a further year from this appeal decision is needed. I appreciate that the appellant has requested six months in the final statement but given that it is more than a year since the granting of permission, which was in any case retrospective, it seems to me that some urgency is needed.
 12. In addition to the limited timescale, there seems to be a lack of clarity in the wording of condition 2. Consequently, I have found it appropriate to set out the sequence of operations and to set a time limit on each, as noted above.
 13. There is nothing before me to suggest that the other conditions imposed on the permission have been discharged or are no longer reasonable and necessary. Consequently conditions 1 and 3 have been re-imposed. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Other matters

14. The apparent failure of the Council to issue a stop notice or to commence enforcement proceedings is not determinative to my reasoning for this appeal.

² Development Control Policies, July 2007

³ South Cambridgeshire Local Plan, September 2018

15. It is argued that the site's previous use is lawful and that the current use is not more harmful to the aquifer than the previous use. However, I am unclear why a scrap and breakers yard would have the chemical and bitumen storage that I observed at my visit and I give this argument little weight.
16. It is also argued that the appellant requires time to negotiate with the Environment Agency (EA) for amendments to existing permits but this appeal is not particularly concerned with EA permits. In any case, I have allowed the appeal and given a time frame which will, from the granting of permission, amount to significantly more than one year for the submission of the remediation strategy.
17. The appellant's final statement refers to a current application for the discharge of Condition 2 for this planning permission. It is unclear to me how this supports the appellant's argument, but I have determined this appeal on its own merits.

Conclusion

18. The Council has given permission for the site's current use subject to a condition designed to protect the underlying chalk aquifer. Whilst I agree that the condition sets an unrealistic time scale, the appeal to vary this condition was not lodged for some three months after the Council's refusal, which was some six months after the granting of the permission for change of use. I have concluded that the appellant's request for one year to complete the works required would pose an extended and unacceptable risk to the aquifer. However, I am satisfied that a period of four months should be sufficient and finds a balance between the parties.
19. I conclude that a condition that requires the submission of a remediation strategy is both reasonable and necessary, but that an extended time scale for its submission should be allowed. I am satisfied that this would meet the other tests for conditions set out in the Framework and the Local Plan. The appeal is allowed.

A Blicq

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Dwg. Nos: A.49.577 Site Location Plan; 1583/SK03; B14,409A; 00121A (i); 00122A(i); 00123A (i) and 00124B(ii).
- 2) The site shall cease to be occupied by the storage and servicing of plant and machinery and the land returned to its former condition within 28 days in the event of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within one month of the date of this decision an assessment of the risks posed by any contamination and a scheme for surface water disposal, including a Preliminary Risk Assessment (PRA), Conceptual Site Model (CSM) and the identification of potential sources of contaminants, pathways and receptors, including those off site, shall have been submitted to and approved in writing by the local planning authority.
 - (ii) Within four months of the date of this decision a remediation and verification scheme, based on the assessment required in (i) above and associated site investigations, shall be submitted to the local planning authority for their written approval. This is to include:
 - an appraisal of remediation options,
 - identification of preferred options,
 - the proposed remediation objectives and remediation criteria,
 - a description and programme of works to be undertaken, including proposals for surface water drainage,
 - verification plan,
 - arrangements for long term monitoring and maintenance, including for surface water drainage arrangements, and,
 - a timetable for the actions listed above.
 - (iii) The remediation scheme outlined in (ii) above shall have been approved by the local planning authority within nine months of the date of this decision, or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iv) If an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (v) The remediation scheme set out in (ii) above shall be carried out and completed in accordance with the approved timetable and maintained as such thereafter.
- 3) Any contamination not previously identified, including putrescible waste, visual or physical evidence of contamination of fuels/oils, backfill or asbestos containing materials, shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and

approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.