



Appeal Decision

Site visit made on 28 July 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th November 2020

Appeal Ref: APP/N4720/W/20/3251953

Timbertops, Forsythia Avenue, East Ardsley, Wakefield WF3 2HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Richard Beverage of Cherry Tree Developments Limited against the decision of Leeds City Council.
- The application Ref: 20/00527/COND, dated 25 November 2019, sought approval of details pursuant to condition No. 13 of a planning permission Ref: 13/04128/OT, granted on 6 May 2014.
- The application was refused by notice dated 23 March 2020.
- The development proposed is 8 houses.
- The details for which approval is sought are: *Development shall not commence until a Phase I Desk Study has been submitted to, and approved in writing by, the Local Planning Authority and: (a) Where the approved Phase I Desk Study indicates that intrusive investigation is necessary, development shall not commence until a Phase II Site Investigation Report has been submitted to, and approved in writing by, the Local Planning Authority, (b) Where remediation measures are shown to be necessary in the Phase I/Phase II Reports and/or where soil or soil forming material is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the Local Planning Authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.*

Decision

1. The appeal is allowed, and I approve the details submitted pursuant to condition No. 13, attached to planning permission Ref: 13/04128/OT granted on 6 May 2014, in accordance with the application Ref: 20/00527/COND, dated 25 November 2019.

Background and Main Issues

2. Outline planning permission for the development of eight houses on the appeal site was granted by the Council on 6 May 2014. This permission was subject to 19 conditions. Condition 13, which is the subject of this appeal, concerned addressing potential contamination on the site, if this was identified through either a desk based study and/or intrusive site investigation, and requires the submission of a remediation statement if remediation measures are shown to be necessary and/or where soil or soil forming material is being imported on to the site.
3. The reason given for attaching the condition is: 'To ensure that the presence of contamination is identified, risks assessed and proposed remediation works are

agreed in order to make the site suitable for use in accordance with national and Leeds City Council's planning guidance.'

4. I have noted that a previous submission to discharge several conditions attached to the outline permission, and which included details to discharge Condition 13, was approved with the exception of the details in respect of this condition¹.
5. Therefore, the main issue in the appeal is whether the measures proposed in the submitted details would render the site suitable for the intended use.

Reasons

6. From the evidence the appeal site the site was predominantly open fields until approximately 1921. It was then used periodically as allotments until around 1950, and it remained undeveloped until 1969 after which it may have been used as a smallholding/farm prior to the construction of a single, detached, residential dwelling house in around 1992. This house was subsequently demolished a number of years ago. At the time of my site visit the ground slab of this building was visible above ground level. The sequence of land uses set out above is not in dispute.
7. From the Council's decision notice the principal matter in dispute is in relation to potential contamination of topsoil currently on the site and the verification that topsoil imported onto the site for the purposes of forming garden areas is free from contamination. Matters in respect of radon gas and potential ingress of ground gas arising from former underground mine workings or landfill sites are not in dispute and, from the technical evidence before me, I have no reason to reach a different conclusion on this matter.
8. The application to discharge the condition was supported by two reports, produced following intrusive ground investigations, and a Remediation Method Statement. Whilst I have not been provided with a copy of the desk based assessment submitted with the original outline application, from the submitted evidence of both parties, this concluded that significant contamination being present was considered unlikely. However, due to the previous use of the site as allotments and for a dwelling house, it was considered possible that there was some potential for the presence of contaminants in the soil. It is not argued by the Council that the site meets the statutory definition of contaminated land set out in Part 2A of the Environmental Protection Act 1990 (the EPA).
9. The submitted Remediation Method Statement (RMS) sets out that a full topsoil strip would be carried out at the site in order to carry out the construction work, and on completion, a smaller quantity of topsoil would be imported to create the gardens for each new house. Due to the small size of the site, topsoil cannot be stockpiled on the site and would be removed and disposed of. It is normal practice for a site of this scale and for the type of development proposed for all topsoil to be removed.
10. It is common ground that the removal of the topsoil level would remove any links between any potential contaminants and the receptors. Whilst the Council suggest that the topsoil stripping is technically a remediation strategy, there is nothing in the evidence that indicates that the appeal site is so contaminated that it requires remediation as defined in the EPA. Whilst it would have the effect of removing any potential links to receptors, the works for topsoil stripping set out

¹ Reference: 19/02162/COND

in the Remediation Statement are little different from normal site preparation works.

11. The evidence shows that the current topsoil cover is between 300 and 450mm. When I visited the site the trial pits that are referenced in the reports were still open and the depth of topsoil cited in the reports is consistent with what I saw in the trial pits. Once the built elements of the site are completed, it is proposed to create the garden areas of the new houses with 450mm of imported, clean, topsoil. This would be consistent with the previous depth of topsoil cover. Although the Council suggest that 500mm of topsoil is required, there is no substantive evidence from the Council to explain why 500mm would be acceptable but 450mm would not be.
12. Similarly, I noted during the site visit that there is a clear colour differentiation between the topsoil and subsoils in the trial pits and the evidence indicates that these soils are notably different in constitution. Consequently, during any soil stripping operations, it would be apparent when the subsoil level had been reached. From the information in the Remediation Method Statement and other supporting documentation, there is no indication that residual topsoil would remain on site following the site preparation works. The Council have raised concerns about the extent of testing of the current soils, however, the evidence indicates that the tests carried out were those for the materials most commonly associated with the longest enduring previous use of the site for agricultural/allotment purposes. There may potentially be materials arising from the demolition of the previous dwelling, nonetheless, it is common ground that the removal of the current topsoil would remove these. Whilst small traces of topsoil may remain following the stripping of the site, there is nothing that would indicate that materials with the potential to cause significant harm would remain in meaningful concentrations.
13. The submitted Remediation Method Statement sets out that the guidelines in the Yorkshire and Lincolnshire Pollution Advisory Group - Verification Requirements for Cover Systems will be followed for topsoil re-instatement. Although the Council have stated that they have queries regarding the testing frequency of imported topsoils and the screening criteria for these and whether they conform to the guidelines, I have not been provided with a copy of the Yorkshire and Lincolnshire Pollution Advisory Group - Verification Requirements for Cover Systems document referred to.
14. This notwithstanding, the Remediation Method Statement states that any soil imported to site will be certified as clean by the provider and subsequently tested on site for contaminant concentrations. The proposed sampling frequency of 1 per landscaped garden area or one sample per 50m³ would yield a minimum of 8 samples. In the absence of any evidence to the contrary, I consider that this is an adequate and proportionate level of sampling given the size of the site, the size of the garden areas shown on the site layout plan, and the fact that certified clean soils would be used.
15. The condition requires the provision of verification reports following the works and it is stated in the Remediation Method Statement that the verification report will detailing the works carried out and the monitoring undertaken, which would be expected to include sampling of imported soils and testing for the contaminants identified in the good practice guidelines. Consequently, compliance with the

good practice guidance is a matter that can be addressed through the subsequent verification reports.

16. From the evidence before me, I am satisfied that the appeal site has been appropriately investigated and that suitable works, which are proportionate to the size of the site, and the potential level and nature of the risk identified, are proposed to ensure that, post-development, the site would not be contaminated. Therefore, the site would be suitable for the proposed end use as required by the National Planning Policy Framework, Policy Land 1 of the Leeds Natural Resources and Waste Local Plan 2013, and Saved Policy GP5 of the Leeds Unitary Development Plan Review 2006.
17. I therefore conclude that the measures proposed in the submitted details would render the site suitable for the intended use.

Conclusion

18. For the above reasons I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR