



Appeal Decision

Site visit made on 30 March 2022

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2022

Appeal Ref: APP/D2510/W/21/3278902

The Workshop, 28 St. John Street, Wainfleet All Saints PE24 4DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Angelo Menga against the decision of East Lindsey District Council.
 - The application Ref S/194/00586/21, dated 19 March 2021, was approved on 22 June 2021 and planning permission was granted subject to conditions.
 - The development permitted is change of use, conversion of and alterations to existing workshop and stores to provide 2no. dwellings and to include raising of the roof height.
 - The conditions in dispute are Nos 3, 4 and 5 which state that:
 - 3 The development hereby permitted shall not be commenced until further investigation has been carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed taking into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of works.
 - 4 Where the risk assessment identifies any unacceptable risk or risks, a detailed remediation strategy to deal with land contamination and/or pollution of controlled waters affecting the site shall be submitted and approved by the Local Planning Authority. No works, other than investigative works, shall be carried out on the site prior to receipt of written approval of the remediation strategy by the Local Planning Authority. Remediation of the site shall be carried out in accordance with the approved remediation strategy. No deviation shall be made from this scheme.
 - 5 On completion of remediation, two copies of a validation report shall be submitted to the Local Planning Authority. The report shall provide validation and certification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report.
 - The reasons given for the conditions are:
 - 3 To ensure potential risks arising from previous site uses have been fully assessed in accordance with Paragraph 178 of the National Planning Policy Framework.
 - 4 To ensure adequate and appropriate remediation of the site in accordance with Paragraph 178 of the National Planning Policy Framework.
 - 5 To ensure that the remediation strategy has adequately mitigated against the contamination in accordance with paragraph 178 of the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Background and Main issue

2. The Council has granted planning permission for the change of use, conversion of and alterations to existing workshop and stores to provide 2no. dwellings and to include raising of the roof height at the appeal property. The planning permission was granted subject to a number of conditions requiring the investigation of any land contamination and, if contamination is found, the implementation of an appropriate remediation strategy.
3. The appellant has confirmed that they dispute the imposition of conditions 3, 4 and 5 due to the lack of excavation required to implement the permission and the previous use of the appeal site.
4. On that basis the main issue is whether or not the disputed conditions are necessary and reasonable having regard to the previous uses of the appeal site and the proposed use.

Reasons

5. The planning statement states the appeal site was noted on maps as being a blacksmiths workshop in 1905 and from 1961 as a chapel of rest, builder's yard, joinery workshop and stonemasons's premises. The site is currently used for storage, office and workshop space for an online retail business.
6. The Council's Environmental Health Officer (EHO) reports that the appeal site is listed as a builder's yard and workshop. Under the Environmental Protection Act 1990 Part 2a, all brownfield sites undergo prioritisation. The subject site is present on the Council's prioritisation list, which means that for a change of use to a residential use, a phase 1 contaminated land report is required.
7. The National Planning Policy Framework (the Framework) states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. There is a large period of time in the history of the site for which no use is recorded. In this instance it is not known what may be present underground such as underground storage tanks, asbestos and general contamination associated with historical land use. The EHO states that a common occurrence, on these type of sites, is the presence of tanks and asbestos.
8. A residential use is a sensitive end user such that risks to the health of people residing in the building on a permanent basis and using land around it for ancillary purposes could be more significant than they are to people using the building as an office. Consequently, given the previous use of the site and its unknown history, based on the evidence before me, the risks need to be investigated and evaluated by a standard methodology such as a desk top study and site investigation to clarify what the risk may be and if it is acceptable or any remediation measures may be required. Paragraph 183c of the Framework states that adequate site investigation, prepared by a competent person should be available to inform assessments.
9. I acknowledge that planning permission was granted previously for the erection of three houses, including considerable excavation and no conditions regarding contaminated land were imposed at that time. However, that permission was granted in 2012, some time ago, prior to the latest iteration of the Framework.

10. The appellant states that there will be no ground disturbance as part of the proposal. However, even if that is the case, there is no guarantee that there would be no disturbance in the future when occupied as a residential use. Furthermore, I have assessed the proposal based on the submitted site location plan, in the knowledge that the buildings to the rear would remain as existing and are outside of the appeal site.
11. For the reasons above, I conclude that without knowing the extent of any contamination or clear mitigation proposals to overcome it, the residential use of the site could be harmful to the prospective occupants of the building. I therefore find that the disputed conditions Nos 3, 4 and 5 are necessary and reasonable having regard to the previous use of the appeal site in order to ensure the safety of the end user.

Other matters

12. I note that according to the appellant there was no mention of contamination issues during the pre-application process. Also, that the appellant considers that there was no time to discuss the imposition of the conditions prior to the determination of the planning application. However, these are matters that do not go to the heart of the planning issues in the consideration of the necessity of the conditions on the planning permission.

Conclusion

13. For the reasons given, I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR