



Appeal Decision

Site visit made on 3 January 2023

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/Z5060/W/22/3306140

231 Wood Lane, Dagenham RM8 3JU

- 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 Mohamed Bharadia against the decision of London Borough of Barking and Dagenham Council.
 - The application Ref 22/00777/AOD, dated 10 May 2022, sought approval of details pursuant to condition No.5 of a planning permission Ref 21/01332/FULL, granted on 2 September 2021.
 - The application was refused by notice dated 3 August 2022.
 - The development proposed was the construction of a 2 storey, 1x bedroom dwellinghouse including a single storey front and rear extension; and the construction of a front porch to the host dwelling and demolition of rear conservatory.
 - The details for which approval is sought are:
 - (a) an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
 - (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; archaeological sites and ancient monuments; and
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Land Contamination Risk Management (LCRM)'; and
 - (b) a detailed remediation scheme, to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical h, has been prepared and submitted to the Local Planning Authority for approval in writing. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
 - (c) The approved remediation scheme must be carried out in accordance with its terms prior to commencement of the development, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.
- Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out

must be produced and is subject to the approval in writing of the Local Planning Authority. The report shall include results of sampling and monitoring carried out to demonstrate that the site remediation criteria have been met.

The requirements of (b) and (c) are sequential to (a), as such, only if contamination is found in (a) will the requirements of (b) and (c) be relevant.

(d) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a), and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Decision

1. The appeal is dismissed and approval of the details is refused, namely the contamination details submitted in pursuance of condition 5 attached to planning permission Ref 21/01332/FULL dated 2 September 2021.

Main Issue

2. The main issue is whether the details submitted are sufficient to discharge condition 5 attached to planning permission Ref 21/01332/FULL in relation to contamination.

Reasons

3. Planning permission was granted for a new dwelling on the appeal site subject to a condition which in section (a) requires an investigation and risk assessment to assess the nature and extent of any contamination on the site. This goes on to state that the investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. This is to include firstly (i) a survey of the extent, scale and nature of the contamination, secondly (ii) an assessment of the potential risks to human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; archaeological sites and ancient monuments; and lastly (iii) an appraisal of remedial options, and a proposal of the preferred options. The condition also states that this must be conducted in accordance with DEFRA and the Environment Agency's 'Land Contamination Risk Management (LCRM)'.
4. In order to discharge condition 5, the appellant has submitted a residential search report conducted by Groundsure. This desk study states that no significant concerns have been identified as a result of the contaminated land searches. This is based on an assessment of the risks posed by key environmental information which could lead to the property being designated as 'contaminated land' as defined under Part 2A of the Environmental Protections Act 1990, with a list of the data searched in the report provided.
5. The submitted desk study could be considered to form a survey of the extent, scale and nature of the contamination on the appeal site, as required by section (a)(i) of the condition. However, it does not include an assessment of the potential risks required by section (a)(ii) relating specifically to human health; property (existing or proposed); adjoining land; groundwaters and

surface waters; ecological systems; archaeological sites and ancient monuments. Furthermore, the report does not indicate whether or how the study was conducted in accordance with the LCRM document, as required by the condition.

6. The condition does not explicitly state that the investigation must include the history of the site, information on how each and every part of the site has been used in the past and any potential contamination that may be associated with the site, or that the risk assessment must be conducted in accordance with BS 10175:2014 and CLR11 (as amended). However, these may be factors which relate to the application of the LCRM document. Therefore, whilst there may be a minimal risk of any potential contamination on the appeal site and no evidence of any potentially contaminating prior use of the area where the development is to be located, I cannot conclude that the details submitted sufficiently meet what is required by the condition.
7. The requirements of the condition in sections (a)(iii), (b) and (c) are only necessary if contamination is found when undertaking the investigation and risk assessment required by section (a). Therefore, if no contamination is found then it is not necessary to comply with these sections of the condition.
8. However, for the reasons above, I conclude that the details submitted are insufficient to discharge condition 5 attached to planning permission Ref 21/01332/FULL in relation to land contamination.

Other Matters

9. It is noted that the appeal site may have only ever been used for residential purposes and that the appellant considers that condition 5 of planning permission Ref 21/01332/FULL is unreasonable and unnecessary. However, the application relates solely to the approval of details reserved by condition. Therefore, the appeal before me is not one against the condition itself and whether the condition is necessary does not form part of my considerations.
10. A number of appeal decisions for sites in the surrounding area have been brought to my attention where it has been found that a condition relating to contamination is not necessary. However, as this is not a matter for my consideration, these decisions are not relevant to the appeal before me.

Conclusion

11. For the reasons set out above and having regard to all other matters raised, the appeal is dismissed.

E Grierson

INSPECTOR