

Appeal Decision

Site visit made on 2 March 2023

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2023

Appeal Ref: APP/Z3825/W/22/3310852

Tea Caddy Cottages, Worthing Road, West Grinstead, RH13 8LG

- 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 conditions of a planning permission.
 - The appeal is made by Mr Henry Pannell against the decision of Horsham District Council.
 - The application Ref DISC/22/0131, dated 24 May 2022, sought approval of details pursuant to condition No 4 of a planning permission Ref DC/20/1294, granted on 22 February 2021.
 - The application was refused by notice dated 14 July 2022.
 - The development proposed is the demolition of existing commercial building and C3 dwellinghouse and erection of 2No. C3 dwellings.
 - The details for which approval is sought are, in summary, an intrusive site investigation scheme relating to risk assessment of contamination and details of any requisite remediation.
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Decision

1. The appeal is allowed and the details submitted pursuant to condition No 4 attached to planning permission Ref DC/20/1294, granted on 22 February 2021, in accordance with the application dated 24 May 2022, Ref DISC/22/0131, are approved.

Preliminary Matter

2. There is some duplication between this appeal and one lodged by the Appellant at an earlier date (ref APP/Z3825/W/22/3299388). I had a joint site visit. However, for the ease of readers, I have not combined my decisions.

Costs

3. An application for costs has been made by the Appellant against the Council. This application is the subject of a separate decision.

Main Issue

4. The main issue is the effect of the proposal on risk to humans, controlled waters or the wider environment via contamination.

Reasons

5. The appeal site lies in the countryside and was previously occupied by a small dwelling and larger commercial building, both now demolished. The site lies to the east of the A24, is about 840sqm, and falls from west to east. Rough ground lies to the rear with marshy ground beyond the eastern boundary of the
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site and a line of mature trees beyond this. The site is accessed via a spur road off of the east side of the A24. Surroundings include fields and open countryside, some commercial uses nearby and sporadic buildings generally, including cottages approximately around 36m to the south and about 130m north of the site.

6. The over-arching proposal (DC/20/1294) is to clear the site and erect 2 dwellings. As set out above this case relates to the Council's refusal (DISC/22/0131) of the Appellant's conditions clearance submission relating to contamination.

Contamination

7. The Council's position is that the Appellant did not provide sufficient information to discharge the planning condition (No 4) dealing with assessment of risk associated with contamination at the site. The Council refused the discharge request because it felt that following removal of the buildings and concrete hardstanding there would be a need for further testing of soils to determine whether any contaminants are present. The Council explains its position in the 'Delegated Applications – Assessment Sheet' and subsequent appeal papers including the Environmental Health Memorandum (EHM) of 7 February 2023, all of which I have carefully considered.
8. As a pre-cursor to the main Phase II study undertaken by the Appellant there was a Groundsure Report which concluded that there are unlikely to be significant environmental liabilities associated with the site an end use of residential. Nevertheless, it was noted that minor issues would require further consideration and assessment and an intrusive site investigation, together with laboratory contamination testing was thus recommended.
9. There thus followed a Phase II, Intrusive, Contamination Investigation (CI) dated May 2021. This report was designed to obtain information on the sub-soil conditions at this site, together with laboratory contamination testing and land-borne gas monitoring. Four boreholes were drilled across the site to depths of between 2.80m and 3.20m below existing ground level. I note that one was drilled from *within* the existing workshop building and others externally.
10. There was subsequently a 6 May 2022 detailed Gas Monitoring letter (GML) by consultancy Risk Management which set out findings from six site visits during February – April 2022 in addition to 3 in 2021. During each visit the barometric pressure was recorded together with the level of Carbon Dioxide, Oxygen and Methane whilst gas flow measurements were also taken and the depth to groundwater recorded.
11. The CI report is comprehensive and I found the 'no remedial measures required' conclusions for soil and for land-borne gas to be well-evidenced and compelling. The GML clearly explains how, for additional re-assurance on and mitigation to having a 'low' risk environment its gas remedial measures can be embodied in the ground floor slab construction. I note that in the EHM the Council now expresses that it is satisfied that the risks from ground gases have been adequately assessed.
12. The EHM indicates that the Council is now only concerned with the risk from organic/inorganic contamination in areas on the site that were covered in

buildings and concrete. However, in my opinion, in this particular case, from what I have read and seen on the site, the requested additional investigative work called for by the Council would be excessive and unnecessary. My conclusion is that the condition in question could have been discharged with the information to hand to the Council at the time of its July 2022 determination. Having carefully considered the matter I do not share the view of the Council as set out in paragraph 7 above.

13. I should add that although this contamination condition is labelled as a 'Pre-Commencement Condition' it may not be read that way given the flexibility it embodies to allow for, if the applicant wished, demolition and removal of existing buildings and any concrete hardstanding. However, this point need not be examined in detail given that all buildings on the site have now been demolished, and I have cleared the details provided with the consequent discharge of this condition in any event. I appreciate that there are differing views over the interpretation and full validity of the condition in question but there is no necessity for me to consider this any further as part of my decision on the planning merits of the Appellant's case on this main issue.
14. In terms of the development plan, Policies 24 and 33 of the Horsham District Planning Framework (2015) are relevant. Taken together, and amongst other matters, they seek to ensure that any development is appropriate given ground conditions, addresses land contamination, protects environmental quality across the spectrum, and avoids unacceptable harm to future users of a site. In all the circumstances I conclude that there would be no conflict with these policies.

Overall conclusion

15. For the reasons given above I conclude that the appeal proposal would not lead to unacceptable adverse risks to humans, controlled waters or the wider environment via contamination. Accordingly, the appeal is allowed.

D Cramond

INSPECTOR