

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/22/3299388

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/21/0223, dated 5 August 2021, sought approval of details pursuant to condition Nos 4 and 9 of a planning permission Ref DC/20/1294, granted on 22 February 2021.
 - The application was refused by notice dated 30 November 2021.
 - 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 (4) and hard & soft landscaping (9).
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Decision

1. The appeal is allowed and the details submitted pursuant to condition Nos 4 and 9 attached to planning permission Ref DC/20/1294, granted on 22 February 2021, in accordance with the application dated 5 August 2021, Ref DISC/21/0223, are approved.

Preliminary Matter

2. There is some duplication between this appeal and one lodged by the Appellant at a later date (ref APP/Z3825/W/22/3310852). 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 Issues

4. The main issues are the effect of the proposal on a) risk to humans, controlled waters or the wider environment via contamination and b) the character and appearance of the locality.
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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 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/21/0223) of the Appellant's conditions clearance submissions relating to contamination and landscape matters.

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 the need for a further desk-based assessment of the potential risks from ground gases and, following removal of the concrete hardstanding, that further testing of soils to determine whether any elevated levels of heavy metals, hydrocarbons etc are present should be presented. The Council added that this further testing should include areas where soakaways are present.
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. The report is comprehensive and I found the 'no remedial measures required' conclusions of the CI for soil and for land-borne gas to be well-evidenced and compelling. 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 November 2021 determination. Having carefully considered the matter I do not share the view of the Council as set out in paragraph 7 above. As an aside I would say that I have no reason to disbelieve the Appellant's statements that there were no soakaways or made ground on this site and this adds to my convictions on this case.

11. 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.
12. In terms of the development plan, Policies 24 and 33 of the Horsham District Planning Framework (2015) (DPF) 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.

Landscape

13. The Council confirms within the relevant 'Delegated Applications – Assessment Sheet' that details provided on soft landscape and tree related matters are satisfactory. The concern relates to what is deemed to be a lack of sufficient detail in respect of the hard landscaping. The Appellant originally set out that there would be block paving (free draining to garden) and tarmac to the driveway and for the terrace solid construction with a finish to occupier's choice but also free draining to garden. This was then amplified via a pre-determination email dated 26 November 2021 which explained that drives and roadside parking areas would be tarmac edged with granite setts. Patios and paths would be either sandstone-coloured concrete slabs, actual sandstone or Horsham stone with slab size to be confirmed not least due to difficult supply times.
14. The condition calls for details of all hard surfacing materials and finishes. I suspect that it is a standard condition and I fully understand why the Council might take this approach. However, in this instance it would have been open to Council to use a light touch for the application of this condition, to be pragmatic, and to be proportional. In my opinion that would have been a stance which could have been taken.
15. This is a scheme for only 2 dwellings of good design bringing with it aesthetic gains by replacing an incongruously developed mixed commercial and residential site. Virtually no members of the public will pass the site in any proximity and be able to make a judgement on the selection of hard landscape at this site or be visually offended. The precise selection of the driveway finish, paving or the terraces' hard surfacing at ground level really would make no noticeable difference to the character and appearance of this immediate enclave or the wider locality and need not be micro-managed.
16. Again, while I note commentary on the questions of interpretation, validity and potential of a deemed discharge I will not examine this any further given my finding on the planning merits of this main issue. I would say that from my reading of the papers and consideration of time-frames the case for a deemed

discharge would seem tenuous; and I have approved the application material as it stood in any event.

17. Policy 33 of the DPF is pertinent. Amongst other matters, it calls for proposals to embody good quality landscaping and suitable materials to deliver development sympathetic to its environs. Given the above I conclude that there would be no conflict with this policy.

Overall conclusion

18. 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 and that the character and appearance of the locality would be protected. Accordingly, the appeal is allowed.

D Cramond

INSPECTOR