



Appeal Decision

Site visit made on 6 June 2023

by C Butcher BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2023

Appeal Ref: APP/D1265/W/22/3307909

21 Albion Way, Verwood BH31 7LS

- 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 Matt Vining against the decision of Dorset Council.
- The application Ref P/HOU/2022/00445, dated 19 January 2022, was approved on 21 July 2022 and planning permission was granted subject to conditions.
- The development permitted is erection of single storey back extension.
- The condition in dispute is No. 4 which states that: Prior to the commencement of development a management plan shall be submitted to the Local Planning Authority to detail the appropriate management of underlying contamination at the site. This plan must ensure that actions of remediation undertaken during prior development are not compromised. This may include but not be limited to the integrity of a prior capping system, whilst ensuring that any new foundations are appropriate to create adequate footings for new construction. The management plan shall include the following actions and reporting, which must be carried out by appropriately qualified consultant(s) and each matter must be additionally approved in writing by the local planning authority prior to occupation: a) A tiered investigation must be undertaken concerning the development footprint and underlying potential contamination. A report must be produced detailing any investigative works and sampling on site, together with the results of any laboratory analysis. The reporting shall include a detailed human health and environmental risk assessment and is to be in accordance with technical guidance such as CLR11 and BS10175. b) When so indicated as a requirement through risk assessment to ensure the development is rendered suitable for purpose, a remediation scheme detailing how any necessary remediation will be undertaken must be prepared. c) Following the implementation of a remediation scheme a remediation verification report, including details of validation, is to be submitted to the Authority for review and acceptance. d) If, during the works, contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed, reported upon and, if necessary, made subject to additional actions of remediation to be approved by the local planning authority.
- The Council did not provide a reason for imposing the condition on the decision notice.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The proposed development, a single storey rear extension, was approved by the Council in July 2022. Given the history of the wider site, the Council considered it necessary to impose a condition to require the preparation of a management plan in relation to contamination. While the decision notice does not include a reason for imposing the condition, the justification is set out within the Council's statement. The appellant has argued that the condition is not necessary. As such, the main issue is whether the condition is necessary, having regard to the management of any on-site contamination.

Reasons

3. The Council's statement sets out that the appeal site is located on a former industrial site known as 'Lessers', and that remediation work was undertaken prior to housing being constructed in order to minimise the risk of dangerous chemicals being disturbed. A risk assessment produced by Argyll Environmental Limited, dated September 2019, concluded that the overall risk associated with the site is very low. However, as part of the Council's consideration of the application, the Environmental Health team were consulted. In addition, the Council has also provided comments from their retained consultants, WPA Environmental, in relation to the proposed development. The comments identify that any invasive ground works on the appeal site, such as those proposed, could risk breaching the capping layer that was inserted as part of the previous remediation works, and that any breach could risk disturbance of harmful chemicals.
4. As such, it was recommended that a condition be imposed to require, prior to commencement of development, the preparation of a management plan to ensure that previous remediation works are not compromised. The condition sets out the information that the management plan should cover. This includes an assessment of potential contamination on site, any required remediation works, and the implementation of such works. It also sets out what must happen should contamination be encountered during construction.
5. The appellant has suggested that previous works to the property, including a side extension and conservatory were not subject to a similar condition and that no contamination was found on site. They have also provided evidence to set out that similar development proposals nearby have also not been subject to the same requirement. However, while I don't have full details of those schemes before me, the fact that such a condition was not imposed previously does not mean that it is not necessary in this instance, or indeed for similar schemes in future. While a property search has been undertaken, this doesn't sufficiently mitigate the risk identified.
6. There are trees in the area, including very close to the appeal site, the roots of which could have breached the capping layer. However, this is a natural occurrence which is difficult to mitigate against. Where building works are proposed, greater control and caution can be exercised.
7. Appendix A to the appellant's statement sets out the work that was undertaken to remediate the site. Even if it were the case that most of the contamination was located away from the appeal site, remediation work was still considered necessary across the whole site. In this instance, the purpose of the condition is to ensure that the remediation work that took place is not compromised.
8. Having had regard to all of the evidence before me, I am satisfied that it is prudent to take a precautionary approach in this instance, and that the preparation of a management plan would greatly reduce the risk of any harm being caused by the invasive ground works that are proposed. Having considered the tests set out in paragraph 56 of the National Planning Policy Framework, I therefore conclude that the condition is necessary, having regard to the management of any on-site contamination.

Conclusion

9. For the reasons given above I conclude that the appeal should be dismissed.

C Butcher

INSPECTOR