



Appeal Decision

Site visit made on 10 October 2023

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/A2525/W/23/3315993

Teagans Close, Spalding, Lincolnshire PE11 1JJ

- 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 J P Browne against the decision of South Holland District Council.
 - The application Ref H16-1092-22, dated 8 November 2022, sought approval of details pursuant to condition No 7 iii of a planning permission Ref H16-0221-15, granted on 9 July 2015.
 - The application was refused by notice dated 18 January 2023.
 - The development proposed is the demolition of the existing dwelling and the erection of 8 dwellings.
 - The details for which approval is sought are: Two full copies of a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification 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 to demonstrate that the required remediation has been fully met.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning permission for the demolition of the existing dwelling and the erection of 8 dwellings, to which condition seven is attached, has been carried out. The reason given for the appeal on the application form is that permission was refused to vary or remove a condition. However, it is clear from the planning application form and appeal statement that the reason for the appeal is that the Council refused to approve a matter required by condition 7. As a result, I have determined the appeal on this basis.

Main Issue

3. The main issue in this appeal is whether the submitted details demonstrate that the remediation required on the appeal site by condition 7 has been achieved.

Reasons

4. In compliance with condition 7 i and ii, Phase I and Phase II Geo-Environmental Assessments were completed and submitted to the local planning authority. These assessments identified levels of lead within the soil which if not addressed could pose an unacceptable risk to the health of future occupiers. In such situations potential routes of exposure include children

indirectly ingesting soil off their hands as a result of playing in the garden, and the consumption of homegrown vegetables or fruit. As a result, a capping system in the form of hardstanding was recommended for the site together with the importation of clean top soil for the garden areas. The Council accepted these recommendations. The dwellings were subsequently built and have been occupied since 2017.

5. The application that has resulted in this appeal seeks approval of a closure report required by condition 7 iii. The report has been written by consultants appointed by the appellant. Its purpose is to assess whether the remediation required to address contamination on the site has been successfully completed.
6. Although the 'Hand Auger Location Plan' in the submitted report shows soft landscaping to the front of the dwellings on the appeal site, I saw that these areas had been capped with hardstanding. As a result, the only notable areas where soil is present at the surface within Teagans Close is within the dwellings' rear gardens. In relation to gardens, the report confirms that top soil in excess of the 155mm cover required is in place. However, no delivery notes were available to confirm that the topsoil had been imported and no records of testing of the material at source or prior to delivery had been provided to verify that lead levels were no higher than the limit required.
7. As part of the report a single sample of topsoil was taken from each of the 8 gardens. All of the samples revealed concentrations of lead 3 to 23 times higher than the 20mg/kg limit that the Council states was specified for the top soil. This assertion has not been challenged by the appellant. On the basis of the submitted report, it appears that this limit was set in order that the topsoil would have a diluting effect on the levels of lead in the soil below. In the context of the original risk assessment, the report also advised that the levels of benzo(a)pyrene found in a sample from one garden, and asbestos level present in a sample from a different garden, could potentially pose an unacceptable risk to residents.
8. Visually, there were no indications that the top soil from which the contaminated samples were taken was different to the top soil in other gardens. As such, the report considered that the soils within the garden areas, including from the two gardens where concerning levels of benzopyrene and asbestos were present, should all be considered to be from one source.
9. To establish whether the results included statistical outliers further detailed sampling would be necessary. This, however, was beyond the scope of the report. In the absence of the further detailed sampling, and the widespread presence of topsoil with more than 20mg/kg lead, I therefore find that the submitted evidence indicates that the remediation to the rear gardens of all eight dwellings has not been successfully carried out.
10. Part 2A of the Environmental Protection Act 1990 is available to deal with contaminated land in relation to existing buildings such as the dwellings on Teagans Close. The less stringent standards in Part 2A would mean that the levels of contamination found could be considered to be acceptable as they do not pose a significant possibility of significant harm. However, as Planning Practice Guidance¹ makes clear, Part 2A must focus on land that cannot be dealt with by any other means. Given that condition 7 was attached to the

¹ Planning Practice Guidance, Paragraph:002 Reference ID: 33-002-20190722

planning permission for this residential development to address concerns about the potential for contamination, it is therefore appropriate that this issue is resolved through the planning process.

11. Policies 2 and 3 of the South East Lincolnshire Local Plan ('Local Plan') seek to ensure acceptable levels of amenity in relation to new development and policy 30 of the Local Plan advises that land should be suitable for the proposed use. This is consistent with the National Planning Policy Framework ('the Framework') which in relation to new development seeks to ensure a high standard of amenity and that following remediation a site is suitable for its purpose. This is a higher standard than that applied by Part 2A and one, which for the reasons given above, the remediation scheme that has been carried out does not meet.
12. Accordingly, I conclude that the submitted information demonstrates that levels of contamination are likely to be present within the gardens of the dwellings on the appeal site which mean that, contrary to policies 2, 3 and 30 of the Local Plan and the Framework, they are unsuitable for residential use. As a result, without appropriate remediation the living conditions of the residents of these properties with regard to the protection of their health will be of a lower standard than it is reasonable to expect.

Other Matters

13. The replacement of topsoil in the gardens of the development would cause upheaval to the residents and would be inconvenient. However, as residents spend most of their time at home indoors and the work would be external, the adverse effect on living conditions would be manageable, especially as the disturbance would be short lived. The benefits of protecting the long term health and amenity of residents and complying with local and national planning policy outweigh the inconvenience and upheaval that would be caused.

Conclusion

14. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector