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# Appeal Decision

Site visit made on 23 January 2024

**by R Morgan BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 February 2024**

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**Appeal Ref: APP/R0660/W/23/3328480**

**Ollerton Nursery, Chelford Road, Ollerton, Cheshire WA16 8RJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval of details required by a condition of a planning permission.
  - The appeal is made by Brighthouse Homes against Cheshire East Council.
  - The application Ref 23/1126M, dated 21 March 2023, sought approval of details pursuant to condition No. 16 of planning permission ref 20/1472M granted on 7 January 2021.
  - The development proposed is redevelopment of former Garden Centre to 10 No. dwellings (including 2 affordable units) with associated landscaping, together with conversion of existing site building to office use.
  - The details for which approval is sought is verification report (Ollerton Nursery Letter Report, Earth Environmental and Geotechnical, dated 7 June 2022).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The application form refers to the removal of condition 16 of planning permission 20/1472M, but from the information provided it is evident that the application sought to discharge the condition. I have treated the appeal on that basis.
3. The appeal stems from the failure of the Council to make a decision on the application within the appropriate timescales. The Council has not indicated what its decision would have been, nor has it provided any statement of case. The only information provided by the Council which is relevant to the main matter in this appeal is in the form of a consultation response from the Environmental Health Officer, dated 20 April 2023. This recommends that the application to discharge condition 16 be refused, on the basis of insufficient information to adequately assess the impact of the proposed development with regard to land contamination. In the absence of any other technical evidence from the Council, I have determined this appeal on the basis of the response from the Environmental Health Officer.
4. The Council has not drawn my attention to any relevant policies in the development plan that the application may be in conflict with.

## Background

5. In January 2021, conditional planning permission was granted for the redevelopment of the Ollerton Nursery site for residential use. The

- development now appears to be largely complete, with some of the houses occupied.
6. To ensure the site was suitable for its intended residential use, permission 20/1472M was granted subject to conditions 15 and 16, which relate to contamination. Pre-commencement condition 15 requires the submission and written approval of a Phase I Preliminary Risk Assessment (PRA), and, if found to be necessary, a Phase II PRA and Remediation Strategy. Condition 16 follows on from this and requires that, prior to occupation of the development, a verification report be prepared, submitted and approved in writing in accordance with the approved remediation strategy. Condition 16 also requires the submission and approval of a report to verify that any soil or soil forming materials brought to site for use in garden or soft landscaping had been tested for contamination and found to be suitable for use prior to importation.
  7. To meet the requirements of condition 15, a Phase I Geo-Environmental Site Assessment was undertaken for the site by E3P in August 2019, followed by a Phase II Assessment in October 2020. A detailed Remediation and Enabling Works Strategy was prepared by E3P in March 2021 (REWS). The Phase I and II PRAs, together with the REWS, were submitted to the Council for approval as part of application 21/0576D.
  8. The Council's decision letter on application 21/0576D (13 May 2021) confirmed that the REWS was acceptable, and pre-commencement condition 15 was discharged in accordance with the submitted information. The letter highlighted various elements of work which still needed to take place, including supplementary sampling of the soils in some parts of the site. It also stated that any changes to the remedial strategy would need to be submitted for formal approval prior to further works taking place.
  9. Subsequent geotechnical work was undertaken by a different contractor, Earth Environmental and Geotechnical (EE). They undertook additional sampling at the site, and also reviewed the approach suggested by E3P. In light of their analysis, EE produced a revised remediation strategy (May 2021), which recommended less extensive works than those proposed by E3P. From the information provided, it appears that EE's revised remedial strategy was submitted to the Council in June 2021. However, no formal response or approval was provided, and the development on site was undertaken in accordance with the revised EE remediation strategy.
  10. Part a) of condition 16 requires that a verification report be prepared in accordance with the approved remediation strategy, but the verification report submitted as part of this appeal has been prepared in accordance with the revised remediation strategy prepared by EE, rather than the approved REWS.
  11. The Council has provided no indication as to whether it considers the revised remediation strategy to be acceptable. Given the progress which has already taken place on site, I have taken account of the approach set out in the revised remediation strategy undertaken by EE, as well as the approved REWS.
  12. I have determined this appeal on the basis of the information submitted to the Council in the application to discharge the requirements of condition 16. The extent to which any prior amendment to the REWS remediation scheme, as previously approved by the Council pursuant to condition 15, may also be

necessary is a matter for consideration by the parties and is not a matter before me.

### **Main Issue**

13. The main issue is whether the submitted details are sufficient to satisfy the requirements of condition 16 of planning permission 20/1472M.

### **Reasons**

14. As part of their investigations, E3P undertook an assessment for ground gas, and identified that infilled ponds could be a potential source of ground gas. In light of their analysis, the approved REWS recommends that gas protection measures be provided for all the new dwellings, in the form of reinforced floor slabs and gas resistant membranes.
15. EE have reviewed E3P's gas monitoring data in light of guidance contained in technical paper 'Risk and Reliability in Gas Protection', (Card et al, 2019), which postdates the CIRIA C665 guidance used by E3P. On the basis of their analysis, EE concluded that no gas protection measures were required for the houses, which have now been built.
16. The EE remedial strategy provides a detailed explanation for the change in approach, based on the theory that the elevated levels of carbon dioxide detected in the gas monitoring derives from microbial respiration rather than methane oxidation, and as such would not pose a risk to the development. The Council has not identified any specific concerns in this regard, and based on the information before me, the approach taken to gas protection appears reasonable and proportionate.
17. The intrusive ground investigations undertaken by E3P found made ground deposits on part of the site, with elevated levels of a range of contaminants including metals and hydrocarbon compounds detected in three isolated areas on the site (hotspots). These substances, at the levels found, have the potential to cause risk to future users, through direct contact with soil or consumption of home grown vegetables. Accordingly, the REWS concluded that the made ground soils would be unsuitable for re-use in the upper 600mm of private gardens, and would need to be removed from these areas.
18. The revised remediation strategy subsequently undertaken by EE includes a review and re-appraisal of the detailed findings of the E3P assessments. The EE report notes that 14 soil samples were retrieved by E3P, but that elevated levels of contaminants were found in three locations only. Of these, hotspots TP102 and TP207 are located within the garden area of plot 10, and TP202 within the central landscaped area. Because soil contamination was absent elsewhere on site, the EE remediation strategy suggests that it would be unnecessary to place a clean cover system within all residential garden areas. Instead, the approach focused on the areas identified as being affected.
19. In May 2021, additional soil sampling to ascertain the extent of the affected area was undertaken by EE. Eighteen trial pits were dug, 2m and 5m from the previously identified contamination hotspots. No concentrations of contaminants were found which exceeded the relevant screening criteria for residential end use with plant uptake. However, given the E3P findings, the EE remediation strategy recommended that the impacted soils in the garden area of plot 10 and in the central landscaped area be capped with soils that had

been validated as being clean, in accordance with a specification set out on page 9-10 of the EE report. Given the results of additional soil sampling on site, the approach set out in the revised remediation strategy seems proportionate.

20. The submitted verification report (EE, 7 June 2022) provides details of chemical testing of soil which was used as part of the clean cover system for Plot 10 and the central landscaped area. In relation to the substances tested for, the samples indicate that soil does not contain elevated levels of contaminants. I have no reason to doubt the conclusions of the chemical analysis provided.
21. The verification information provided suggests that the soil conditions in the locations sampled are suitable for the intended use. However, the submitted report lacks a clear explanation as to the remedial works undertaken, and there are contradictions in the information provided. The verification report refers to analysis of stockpiled imported soils, but in response to comments made by the Parish Council, the appellant's final comments state that soil did not need to be imported. It is therefore unclear whether soil used for capping was imported or derived from the site itself.
22. Furthermore, no information has been provided to confirm whether the remedial works undertaken at the site required any contaminated material to be moved, either on- or off-site. Such additional detail, set out in the manner proposed in section 7 of the EE remedial strategy, is needed to provide a clear understanding of the remedial works which have taken place, to confirm that the site as a whole is suitable for residential use.
23. In addition to recommendations for soil contamination and gas protection, the approved RESW also refers to the need for invasive plant species to be removed from the site, with a report following completion to ensure there is no future risk for the proposed development. However, this issue is not referred to in the EE remediation strategy, and the verification report contains no information about any work which may or may not have taken place to ensure that the site is free of invasive species.
24. Notwithstanding my concerns regarding the extent to which the EE scheme may require formal approval by the Council pursuant to the requirements of condition 15, for the reasons set out above, I find that further information about the remedial work on soil contamination is required to satisfy condition 16, as well as details of work taken to control invasive species. In the absence of this information, I am unable to discharge the condition.

## **Conclusion**

25. For the reasons set out above, condition 16 has not been discharged. The appeal is therefore dismissed.

*R Morgan*

INSPECTOR