



Appeal Decision

Hearing held on 17 July 2024

Site visit made on 17 July 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st of October 2024

Appeal Ref: APP/H5390/W/24/3340599

6 Grove Mews, London W6 7HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for an approval of details required by conditions of a planning permission Ref 2022/0376/FUL.
 - The appeal is made by NTA Planning LLP against the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2023/01258/DET sought approval of details pursuant to condition Nos.3,4,5,11,12,13,14,15 and 16 of a planning permission Ref 2022/03706/FUL granted on 2 May 2023.
 - The development proposed is demolition of the existing building, erection of a replacement part two, and part three storey single family dwellinghouse together with roof terrace at second floor level to the front elevation and 3 no. solar panels at roof level.
 - The details for which approval is sought are conditions: No.3 building contract; No.4 demolition logistics plan; No.5 construction logistics plan; No.11 preliminary risk assessment report; No.12 site investigation scheme; No.13 quantitative risk assessment report; No.14 remediation method statement; No.15 remediation verification report; and No.16 onward long-term monitoring methodology report.
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Decision

1. The appeal is allowed, and the details submitted pursuant to condition Nos.3, 4, 5 and 11 attached to planning permission Ref 2022/0376/FUL granted on 2 May 2023, in accordance with application Ref 2023/01258/DET, are approved. Condition Nos.12, 13, 14, 15 and 16 are also discharged insofar as there is no need to approve any such details.

Application for Costs

2. An application for costs was made by NTA Planning LLP against the Council of the London Borough of Hammersmith & Fulham. It is the subject of a separate Decision.

Preliminary Matters

3. The development granted planning permission in Ref 2022/0376/FUL has been carried out. The dwellinghouse was internally decorated, fitted out and partially furnished but not occupied.
4. The appellant considers that at least condition Nos.12 to 16 should not have been attached to the planning permission. However, no appeal was lodged against their imposition or to carry out the development without complying

with them or seeking modification of them. These matters are not within the scope of my decision (or my costs decision).

Background and Main Issue

5. The Council would have approved the appellant's building contract, demolition logistics plan and construction logistics plan under condition Nos.3, 4 and 5 had it still been able to. I have no reason to find otherwise.
6. The appellant's preliminary risk assessment is a non-intrusive site investigation about potential land contamination on or near the site. This desktop study, informed by site walkover, was prepared by a competent person and submitted to the Council for approval under condition No.11 (the PRA)¹. The application also sought to discharge condition Nos.12 and 13 (site investigation scheme and quantitative risk assessment), Nos.14 and 15 (remediation method statement and verification report) and No.16 (monitoring methodology report). No details were submitted for these conditions because the appellant considers the PRA shows that it is not necessary to do so.
7. The main issue in this case is whether the PRA should be approved and condition No.11 discharged, including having regard to the reason given for it.

Reasons

8. The site was originally undeveloped land. By 1896 it was a two-storey, mid-terrace mews outbuilding behind houses fronting Hammersmith Grove, likely used as stables, garages or for staff accommodation. Latterly, residential use of it included a garage and workshop with small rear garden. It had become dilapidated but was otherwise similar to the rest of the buildings along one side of the lane in Grove Mews, now also mostly dwellings. A swathe of land opposite the site, on the east side of the lane, has been for many years, and still is, occupied by industrial or commercial uses. The Council consider this land to be Part 2A potentially contaminated land². There has also been some similar, but more limited, intermittent historic use of some buildings in Grove Mews including at Nos.2, 3, 4, 9, 10 and 11. There is no evidence this included the site or that it was beyond a nominal level, ancillary or incidental to previous domestic use of the original building on it.
9. In the hearing the Council explained that it no longer considered the site to be Part 2A potentially contaminated land. It is, though, common ground that the industrial or commercial uses outlined above are potential sources of land contamination, so there is good reason to believe the site or land near it may be contaminated. The site has been developed with the dwellinghouse which is agreed to be a sensitive use. The Council also no longer had any concerns with the technical scope or content of the PRA. As well as these sources of potential land contamination, the PRA has identified the most relevant potential pathways and potential pollution linkages to the relevant receptor and use in this case; namely, the health of occupants of the dwellinghouse in the operational phase of the development.
10. The appellant considers the PRA demonstrates, amongst other things, that the probability of land contamination at the site from hazardous gas/vapours in soil is unlikely and a mild severity consequence. In addition, that mobile

¹ IDOM Phase 1 Environmental Assessment (Desk Study) Rev C January 2024, Ref DS-22577-23-183

² Environmental Protection Act 1990 (as amended)

hydrocarbons from adjacent land is unlikely and a medium severity consequence. As a result, an acceptable, very low risk and low risk of land contamination respectively and that on this basis, intrusive site investigation, such as field trials, is not necessary.

11. In the hearing the Council clarified that these findings and conclusions were now essentially the matters in dispute, but sufficient to warrant that the PRA should not be approved. The Council proffered that hazardous gas/vapours in soil and mobile hydrocarbons from adjacent land were both at least low likelihood and medium severity; so either way, results in a moderate risk. While the Council also suggested that intrusive site investigation is required because it is the only way to be certain; ie, that it is necessary to categorically establish actual presence or absence of land contamination, the main parties agree that a moderate risk would trigger intrusive site investigation. The Council's environmental officer at the hearing is a competent person, with judgement informed by professional training and experience, but accepted that the Council has no site specific technical evidence of its own about the site to support either this likelihood and severity or, therefore, this risk.
12. However, even at the likelihood and severity suggested by the Council, a moderate risk outcome is not certain; a less than moderate, low risk outcome is still possible³. Although the Council did not insist on a pre-requisite of 'no risk' before development could be permitted, low risk would not require intrusive site investigation.
13. The Council has previously approved an intrusive site investigation for residential development at No.10 Grove Mews⁴. This property had been used historically as an oil merchant, which at the time also included No.9 and No.11. It faces the same potentially contaminated land on the east side of the lane as the site and is in broadly the same proximity to it. There was no evidence of significant adverse ground conditions or visual or olfactory evidence of contamination during the fieldwork, including ground gas. Nor that adjacent land had affected that site by migration via permeable strata. No.10 and No.9 are, respectively, four and three properties away from the site in the same terrace of buildings and between the closest edges, about 18m and 12m distant. This is the most relevant site specific objective evidence in this appeal.
14. Nonetheless, the Council opined that ground conditions could change abruptly and, if so, could be material to the likelihood or severity of potential contamination from hazardous gas/vapours in soil or mobile hydrocarbons. But the PRA does not indicate any significant or sudden fluctuation in general ground conditions in Grove Mews or in the immediate area, including the potentially contaminated land opposite the site.
15. Planning Practice Guidance (PPG)⁵ confirms that contamination is more likely to arise in former industrial areas and could affect the amenity of a site and its future occupants. It also sets out that only a 'specific investigation' can establish whether land contamination is present. But that is not the same as that intrusive site investigation is mandatory or that actual absence or presence of land contamination must be determined in every case – other recognised information can be used to establish likelihood of contamination.

³ PRA 'risk assessment matrix', Table 9, page 16

⁴ Ref 2018/01219/DET - Ground Investigation Report (ref: R6164/GI) by Socotec, dated April 2018.

⁵ Land affected by contamination

The aim is to ensure that potential land contamination is dealt with adequately to establish that a site is suitable for its proposed use and does not pose an unacceptable risk from pollution; if so, in this appeal approval of details should not be refused. This is borne out by the PPG flowchart. It succinctly distils a staged approach to how contamination should be dealt with in the planning decision-making process, as distinct from other legislative or regulatory purposes that both main parties have also referred me to.

16. This PPG informs the National Planning Policy Framework (NPPF). The NPPF includes that development should not be put at unacceptable risk from, or be adversely affected by, unacceptable levels of soil or air pollution. It also sets out that a site should be suitable for its proposed use taking account of ground conditions and any risk arising from contamination, with such assessments informed by adequate site investigation. It has not been suggested that the NPPF is materially different, so no longer consistent in these regards, to previous national planning policy that informed Policy CC9 of the Hammersmith & Fulham Local Plan February 2018 (LP) or chapter 13 on contamination in the Council's Planning Guidance Supplementary Planning Document February 2018.
17. Taking account of all the above, I am satisfied that the PRA is a sufficient, adequate and proportionate specific site investigation, including that it has described the nature and extent of potential land contamination and taken account of ground conditions at the site and nearby. Even at the likelihood and severity suggested by the Council, there is no credible objective evidence of more than a low risk of contamination in this case, so no compelling reason to sustain a moderate risk instead. In these circumstances, there is no sufficiently justified reason why a watching brief for unexpected land contamination during construction works, as recommended in the PRA, would not have been an appropriate safeguard and notwithstanding therefore the Council's alleged deficiencies in this case of such a measure. I am also satisfied that this initial assessment clearly demonstrates that the site is suitable for residential use (dwellinghouse and small rear paved patio garden) with no unacceptable risk of adverse effect on future occupants.
18. It follows that I also consider the PRA has 'established' the nature and extent of the contamination insofar as it is reasonably necessary to do so in this case, including on plain reading and meaning of the first bold paragraph of LP Policy CC9. This part of this policy does not require a more 'precautionary' approach, as was suggested by the Council at the hearing, than the level of precaution already built into it – ie site assessment by preliminary risk assessment which is clearly an expected outcome within the anticipated scope of this policy. On this basis, the second bold paragraph of this policy is not engaged in this appeal and the PRA complies with this policy overall. Accordingly, there is no substance to the Council's insistence for an intrusive site investigation to categorically establish actual presence or absence of contamination. Nor is there a need or justification for such more detailed investigation to clarify any matters before approval of the PRA to discharge condition No.11 can be given.
19. Notwithstanding the unequivocal 'no development shall commence until' wording of condition Nos.12 to 16, the Council agreed at the hearing that approval of a preliminary risk assessment describing a low or very low risk of contamination would negate the need for details to be approved by all these conditions. I agree and moreover these circumstances are met in this appeal, which I have determined on its individual planning merits.

Conclusion

20. For the reasons set out above, I find that the PRA should be approved and condition No.11 discharged, including having regard to the reason given for it. The details for condition Nos.3, 4 and 5 should also be approved and these conditions discharged. Condition Nos.12, 13, 14, 15 and 16 are effectively redundant in this case. There is no need to consider details in respect of these conditions any further so they should be discharged to that effect.

21. The appeal is therefore successful.

Robin Buchanan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

- Dr Lisa Horsley BSc (Hons), PhD, CSci, FGS
Associate Director, IDOM – contaminated land consultant
- Mr Mandip Singh Sahota BA (Hons), DipTP, MRTPI
Partner, NTA Planning LLP – planning consultant and appellant
- Mr Andrew Gillick Dip, BSc, MSc, MBS
Director, Platinum Land - developer

FOR THE COUNCIL:

- Mr Alasdair Carlin MRES, EnvSci
Senior Environmental Quality Officer - land contamination team
- Mr Neil Egerton BA (Hons)
Team Leader – north team
- Mr Paul Curtis MA (Hons)
Planning Officer – north team (observing)

DOCUMENTS

- At my request, a copy of Table 6.5 comparison of consequence against probability and Table 6.6 description of the classified risks and likely action required, page 82 CIRIA C552 was distributed during the hearing.