



Appeal Decision

Site visit made on 2 October 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

Appeal Ref: APP/Z0116/W/24/3342543

Land adjacent to 90 West Street, St. Philips, Bristol BS2 0BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Jalil of J Investment against the decision of Bristol City Council.
- The application Ref 21/03326/COND sought approval of details pursuant to conditions Nos 2, 4 and 5 of a planning permission Ref 18/06186/F, granted on 6 August 2020.
- The application was refused by notice dated 19 October 2023.
- The development proposed is resubmission of application 17/04953/F - construction of 12no. flats, 2 retail units and addition of one storey to 90 West Street.
- The details for which approval is sought are:
 - 2) *No development shall take place until the applicant/developer has secured the implementation of a programme of archaeological work, in accordance with a Written Scheme of Investigation which has been submitted by the developer and approved in writing by the Local Planning Authority.*
The scheme of investigation shall include an assessment of significance and research questions; and:
 1. *The programme and methodology of site investigation and recording*
 2. *The programme for post investigation assessment*
 3. *Provision to be made for analysis of the site investigation and recording*
 4. *Provision to be made for publication and dissemination of the analysis and records of the site investigation*
 5. *Provision to be made for archive deposition of the analysis and records of the site investigation*
 6. *Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.*
 - 4) *No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, and has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme should be submitted to and be approved in writing by the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:*
 - (i) *a survey of the extent, scale and nature of contamination;*
 - (ii) *an assessment of the potential risks to:*
 - * *human health,*
 - * *property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,*
 - * *adjoining land,*
 - * *groundwaters and surface waters,*
 - * *ecological systems,*

** archaeological sites and ancient monuments;*

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

5) No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared, submitted to and been approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- The reasons for the conditions are as follows:

2) To ensure that archaeological remains and features are recorded prior to their destruction.

4) To ensure that risks from land contamination is understood prior to works on site both during the construction phase to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

5) To ensure that risks from land contamination is understood prior to works on site both during the construction phase to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. An application for planning permission 'for resubmission of application 17/04953/F - construction of 12no. flats, 2 retail units and addition of one storey to 90 West Street' at Land adjacent to 90 West Street was granted, subject to a number of conditions, including pre-commencement conditions, of which three are the subject of this appeal.
3. Condition 2 requires a written scheme of investigation to be submitted to and approved in writing by the local planning authority, to ensure that archaeological remains and features are recorded prior to destruction.
4. Condition 4 requires a scheme of investigation to assess the nature and extent of any contamination on the site, to be submitted to and approved in writing by the local planning authority. Subsequently it requires a written report of the findings of the investigation to be submitted to and approved in writing by the local planning authority. This is to ensure that risks from land contamination are understood prior to works on the site.
5. Condition 5 requires a detailed remediation scheme to be submitted to and approved in writing by the local planning authority. This is to ensure that risks

from land contamination are understood prior to works on the site and that development can be carried out safely.

6. The decision notice does not provide reasons why the Council refused to approve the details which were submitted pursuant to these conditions. No evidence has been submitted by the Council during the course of the appeal which explains why the details submitted are unacceptable.
7. The main issues therefore are:
 - whether the details submitted pursuant to condition 2 make appropriate provision for a written scheme of archaeological investigation;
 - whether the details submitted pursuant to condition 4 make appropriate provision for a scheme to assess the nature and extent of any contamination on the site; and
 - whether the details submitted pursuant to condition 5 make appropriate provision for a detailed remediation scheme.

Reasons

Archaeology

8. The submitted details in respect of condition 2 comprise an Archaeological Evaluation which was prepared pursuant to conditions imposed on an earlier planning permission at the appeal site, details of which I have not been provided with.
9. The evaluation dates from 2006 and therefore is of considerable age, predating the National Planning Policy Framework (the Framework), Planning Practice Guidance (PPG) and the development plan for the area. Whilst the site may not have changed significantly since 2006, I am not convinced that the report has been prepared using up-to-date evidence, or in accordance with current best practice. Therefore, I can attach only little weight to the conclusions of the report.
10. Furthermore, condition 2 requires the submission of a written scheme of investigation, prior to the implementation of a programme of archaeological work. The submitted report does not include a written scheme of investigation with a programme for site investigation and recording or for post investigation analysis. Rather, it provides the results of fieldwork which was carried out in accordance with a brief which was prepared in 2006, details of which I have not been provided with. There is no evidence before me which suggests that the report was prepared in accordance with a written scheme of investigation submitted pursuant to this condition and subsequently agreed in writing by the local planning authority. As such, the submitted information does not fulfil the requirements of condition 2.
11. I therefore conclude that the details submitted pursuant to condition 2 do not make appropriate provision for a written scheme of archaeological investigation.

Contamination

12. The submitted details in respect of condition 4 comprise a Ground Investigation Report. This report was prepared in 2007 and therefore is also of considerable age. It too predates the Framework, PPG and the current development plan. Moreover, it was prepared prior to the publication of the Contaminated Land

Statutory Guidance¹. Consequently, regardless of whether or not the site has changed in the intervening years, I am not convinced that the report has been prepared having regard to up-to-date guidance in respect of contaminated land. Therefore, I give little weight to the findings of this report.

13. Furthermore, condition 4 requires a two-stage process, the first of which is the submission, and approval in writing of a scheme for the investigation and risk assessment. The submitted information includes the results of investigative works at the site, however there is no evidence before me that a scheme for these works was first submitted to and agreed in writing by the local planning authority, pursuant to condition 4.
14. I therefore conclude that the details submitted pursuant to condition 4 do not make appropriate provision for a scheme to assess the nature and extent of any contamination on the site.

Remediation

15. The submitted Ground Investigation Report, concludes that the site falls below the assessment criteria for contamination and that no risk to human health exists. On this basis, no remediation strategy is proposed.
16. However, given my findings above, in respect of the age of the report I am unable to rely on its conclusions. Thus, I am not satisfied that no remediation scheme is required in order to ensure the site is not contaminated.
17. I therefore conclude that the details submitted pursuant to condition 5 do not make appropriate provision for a detailed remediation scheme.

Other Matters

18. I have been provided with correspondence in relation to other applications pursuant to conditions imposed on planning approval ref: 18/06186/F. However, these are outside the scope of this appeal and have not been of relevance to my consideration of the main issues.
19. There is no evidence before me which suggests that the Council sought revised information in respect of these conditions, however this does not alter my findings in respect of the main issues.

Conclusion

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

E Pickernell

INSPECTOR

¹ Environmental Protection Act 1990: Part 2A (Contaminated Land Statutory Guidance), DEFRA (April 2012)