



---

## Appeal Decision

Site visit made on 4 December 2025

by **G Dring BA (Hons) MA MRTPI MAUDE**

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> December 2025

---

**Appeal Ref: APP/E2205/W/25/3374446**

**Andrews Garage, Plain Road, Smeeth, Ashford, Kent TN25 6RA**

- 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 Colin Kicks against the decision of Ashford Borough Council.
- The application Ref OTH/2023/1917 sought approval of details pursuant to condition No 4 (parts 1 and 3) of planning permission Ref 18/01454/AS, granted on 7 January 2020.
- The application was refused by notice dated 10 April 2025.
- The development proposed is demolition of Andrews Garage and the construction of 5 houses with associated parking, revised vehicular access and car barn.
- The details for which approval is sought are parts 1 and 3 of the following condition:

*Condition 4: The development hereby permitted shall not be begun until a scheme to deal with contamination of land and/or groundwater has been submitted and approved by the Local Planning Authority and until the measures approved in that scheme have been implemented. The investigation report shall be conducted and presented in accordance with the guidance in LCRM "Land and Contamination: Risk Management" (and CLR11 "Model Procedures for the Management of Contaminated Land" where relevant) published by the Environment Agency. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement specifically and in writing:*

- 1. A desk-top study carried out by a competent person to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site. The requirements of the Local Planning Authority shall be fully established before the desk-top study is commenced and it shall conform to any such requirement. Two full copies of the desk-top study and a non-technical summary shall be submitted to the Local Planning Authority without delay upon completion.*
  - 2. A site investigation shall be carried out by a competent person to fully and effectively characterise the nature and extent of any land and/or groundwater contamination, and its implications. The site investigation shall not be commenced until:*
    - i) A desk-top study has been completed, satisfying the requirements of paragraph (1) above.*
    - ii) The requirements of the Local Planning Authority for site investigations have been fully established, and*
    - iii) The extent and methodology have been agreed in writing with the Local Planning Authority. Two full copies of a report on the completed site investigation shall be submitted to the Local Planning Authority without delay upon completion.*
  - 3. A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be agreed in writing with the Local Planning Authority prior to commencement, and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority by a competent person. No deviation shall be made from this scheme without the express written agreement of the Local Planning Authority. Two full copies of a full completion report confirming the objectives, methods, results and conclusions of all remediation works shall be submitted to the Local Planning Authority.*
-

## **Decision**

1. The appeal is dismissed.

## **Preliminary Matter**

2. I have taken the site address above from the appeal form rather than the planning application form as it more clearly identifies the location of the site.

## **Background and Main Issue**

3. Planning permission (Council Ref: 18/01454/AS) was granted in January 2020 for five dwellings on the appeal site. This permission was subject to a number of planning conditions including condition 4 which required a scheme to deal with contamination of land and/or groundwater to be submitted and approved by the Local Planning Authority (LPA) and the measures approved in that scheme to be implemented before the development began. At my site visit I noted that five dwellings had been constructed on the appeal site.
4. The main issue in this case is whether the details submitted are sufficient to discharge parts 1 and 3 of condition 4 attached to planning permission Ref 18/01454/AS in relation to contamination.

## **Reasons**

5. The appeal site was previously in use as a garage. Ensuring that proper consideration has been given to and that appropriate remediation is carried out, is fundamental to ensuring that there would not be any unacceptable effects on the future occupants, the public or the environment more generally. The Council identify that in this case, this was of heightened importance, due to the site being in an area of major ground water vulnerability.
6. Condition 4 imposed on planning permission 18/01454/AS (the condition) requires that an investigation report is carried out in accordance with the guidance in 'Land and Contamination: Risk Management' (and CLR11 'Model Procedures for the Management of Contaminated Land' where relevant) published by the Environment Agency (EA) and it includes three component parts. The reason for the condition was identified by the Council as being 'to control pollution of land or water in the interests of the environment and public safety'.
7. The three parts of the condition include the production of a desk-top study, a site investigation and a written method statement for the remediation of land and/or groundwater contamination. This final step also requires that the full completion report confirming the objectives, methods, results and conclusions of all remediation works shall be submitted to the LPA.
8. The Council has confirmed that the second part of the condition (the site investigation) was appropriately discharged on 3 September 2020 but the first and third parts were not discharged at the same time. The EA provided a response to the application raising concerns about the detail submitted. Whilst the EA do not refer specifically to the term 'objection', they do identify that they do not consider the information provided to sufficiently overcome the risks at the site and they clearly state that they do not recommend the discharge of the condition.

9. The appellant asserts that a Phase 1 Preliminary Risk Assessment (PRA) was submitted to the Council with the planning application 18/01454/AS. The comments provided by the Council's Environmental Protection Officer (EPO) on the 18 October 2018 does suggest that this information was reviewed and accepted by the Council with the EPO identifying that the submitted PRA satisfied the first part of the standard condition 'E023'. A further email from the EPO on the 26 June 2020 also confirms that in their view, part 1 of the condition had been approved/discharged. I do not have the standard wording of 'E023' before me, but it does appear that the standard condition was not amended to remove the requirement for a desk-top study even though that step had already been carried out prior to the planning permission being issued.
10. Whilst I note that the first part of the condition was not discharged by the LPA formally through the application process, neither the Council nor the EA have raised any concerns about the contents of the PRA. I have not found any unacceptable deficiencies with it either and therefore I find that the submitted PRA was and is sufficient for the purposes of discharging part 1 of the condition.
11. With regard to part 3, the condition requires a written method statement for the remediation of land and/or groundwater contamination affecting the site to be agreed in writing with the LPA prior to commencement and that all requirements are implemented and completed to the satisfaction of the LPA by a competent person. It states that no deviation shall be made from this scheme without express written agreement of the LPA and that two full copies of a full completion report confirming the objectives, methods, results and conclusions of all remediation works shall be submitted to the LPA.
12. The appellant asserts that the Method Statement/ Risk Assessment (MS/RA) was submitted to the Council on the 26 June 2020 and formed a written method statement. It states that following the excavation of 550mm across the site, the ground levels would be then made up of approximately 350mm depth of as-dug material from the foundation and service trenches, followed by 200mm of imported top soil. The appellant has confirmed that the ground levels were made up following that method, that the 'as-dug' material was sourced from areas of the site where no contamination was found and that the topsoil was imported onto site, sourced from Moores Turf and Topsoil Ltd of Romney Marsh.
13. The submitted Generic Risk Assessment (GRA) confirmed that as part of the site investigation, samples were taken at various depths. The appellant has clarified that the samples were taken after the site had been excavated by 550mm and therefore sampling was carried out at or below the reduced site level. The results set out in the GRA identified that the site is largely free from contamination with only a single location (BH105) showing elevated concentrations of lead and Speciated Poly Aromatic Hydrocarbons above the Suitable for Use Levels for a residential end use with plant uptake. It also identified asbestos fibres in one of the samples from the same location, but it is concluded that at <0.001%, the level of asbestos does not present a hazard to human health.
14. The GRA also stated that 'the development however is such that the site will be raised by about 550mm as a minimum, which will include 350mm of "clean" sub-soil type material and at least 200mm of soil suitable for cultivation. This would provide a suitable barrier against all forms of human exposure. This would mean that the risks to future users of the residential property would be judged to be

negligible. The local authority may need to see verification that site levels have indeed been increased as proposed and that imported soils are suitable for use for a residential setting.' The remediation approach set out in the submitted MS/RA appears therefore to be consistent with the findings of the GRA completed at the site investigation stage.

15. Whilst the EA have raised concerns stating that the current sample report is not considered acceptable there is no further explanation or detail identifying what further information is required by the EA in terms of sampling in this case. From the evidence before me, it appears that the samples were taken below the excavated level of the site, in line with the request by the EA and as such I am satisfied that this element of the sample report is acceptable.
16. However, the appellant has confirmed that whilst some of the excavated concrete was retained on the appeal site, being crushed and used underneath the road that serves the development, the other excavated material was deposited in two stockpiles on an area to the rear of the appeal site called the Piggeries. The results of the laboratory chemical analysis set out in the GRA identifies that some of the stockpiled materials contained higher concentrations of contaminants than in the samples taken from the ground on the appeal site. However, whilst results of the testing of the stockpiles are provided in the GRA, the data is not explained in any detail and no explanation is provided as to the potential risks from this source.
17. The appellant has confirmed that none of the material deposited at the Piggeries has been re-used in the new development. It is stated that the hardcore on stockpile 2 has been crushed and used to repair the access track to the rear of the appeal site, being laid on a polythene membrane and covered in a hard surface. A letter dated 23 November 2023 suggests the soil from stockpile 1 will be used at a later date at the Piggeries for planting beds.
18. The information provided states that stockpile 1 is stored on an area of concrete within a roofless building. The EA have raised concerns that the deposited waste/made ground at the Piggeries may leach into underlying soils and that testing to establish the possibility of leaching of contaminants has not been carried out. I note that no samples are provided in the area around where the stockpiles are or were located, however, I also note that the Council's EPO does not request such information and only refers to the need for confirmation about the location and future use of the area. Whilst the EA also refer to 'waste assessment criteria', there is no further explanation or detail to understand what is being requested in this regard.
19. However, there is also no evidence before me as to how the transfer of waste from the appeal site to the Piggeries was carried out or whether it met the requirements of waste management legislation. The appellant asserts that this is covered by other legislative requirements. Nevertheless, it is important to ensure that any material removed from a site that is contaminated is moved and disposed of in a safe way as part of the remediation of a site and this does form part of the overall remediation process and is commonly addressed in planning conditions. Moving contaminated material elsewhere without following correct procedures can lead to moving the issue to another area, and would not constitute proper remediation in my view. The information is therefore not sufficient in this regard.

20. In conclusion, because of the lack of evidence regarding the transfer of waste and the lack of information about the possible impact of the stockpiles, I find that insufficient evidence has been provided to meet the requirement of part 3 of the condition which requires a full completion report confirming the objectives, methods, results and conclusions of all remediation works to be submitted to the LPA. The information provided is therefore not sufficient to ensure that pollution of the land or water is controlled in the interests of the environment and public safety.

### **Other Matter**

21. The Council state that the condition is not capable of being discharged because it was a pre-commencement requirement and the development has been carried out in breach of a condition precedent. Both parties refer to case law<sup>1</sup> in this regard. However, when considering whether the condition should be discharged based on its merits, I have found above that it should not be, based on the evidence before me. As such, there is no need for me to consider the procedural point about the condition being a pre-commencement condition in the specific circumstances of this case.
22. I am referred by the Council to an appeal decision<sup>2</sup> elsewhere, where procedural matters were taken into account in relation to the timing of an application for discharge of condition and whether the subsequent appeal was valid. It has been some time since that decision was made, and it related to a case where the development had not commenced, and the Council failed to make a decision on the application to discharge the conditions. Whilst there are some similarities between the two cases, there are also differences. Therefore, this example does not lead me to take a different approach in the consideration of the appeal before me now.

### **Conclusion**

23. In conclusion, whilst I find the information submitted is adequate to discharge part 1 of the condition, I do not find it is sufficient to discharge part 3 of the condition. Therefore, condition 4 as a whole cannot be discharged. For the reasons given above, the appeal is dismissed.

*G Dring*

INSPECTOR

---

<sup>1</sup> R (Hart Aggregates Ltd) v Hartlepool Borough Council [2005] EWHC 840 (Admin) and R (Hammerton) v London Underground Limited [2002] EWHC 2307 (Admin) per Ouseley J at [127]

<sup>2</sup> APP/J1535/W/21/3268028