

UTT/12/5588/DOC - (Takeley)

(Referred to Committee by Cllr Jones. Reason: to ensure that the decision is made in an open & transparent way)

PROPOSAL: To discharge condition 12 of UTT/1360/12/FUL

LOCATION: Land Adjacent To Cranwellian, The Street, Takeley

APPLICANT: Mr T Jones

AGENT: Hayhurst Town Planning Services, Ltd

GRID REFERENCE: TL 534-213

EXPIRY DATE: 19 December 2012.

CASE OFFICER: Mrs M Jones

1.0 NOTATION

- 1.1 Outside Development Limits. Countryside Protection zone. Within 500m SSSI. Within 57-66dB(A)leq. Within 6km Stansted Airport. Public Right of Way adjacent to site. Adjacent to Ancient woodland, Historic Landscape, Historic Parks and Gardens, National Nature Reserve, County Wildlife site and Important Woodland.

2.0 DESCRIPTION OF SITE

- 2.1 The site is situated on the southern side of the B1256 opposite junction with Bury Lodge Lane in a rural location.
The size of the rectangular plot of land is 0.38 hectares. It is enclosed by close boarded timber fencing to the rear, mature hedging to the west and trees/shrubs to the south. The eastern boundary has post and rail fencing. Immediately adjacent at the rear is the Flich Way and Hatfield Forest .To the west are three detached cottages and to the east is a detached house (owned by the applicant). Access to the site is via a gated access to the front of Cranwellian House. To the east of Cranwellian are a stable building and beyond the boundary is a public right of way forming an access lane from the B1256 to the Flich Way and Hatfield Forest.

3.0 PROPOSAL

- 3.1 Application to discharge conditions 12 attached to UTT/1360/12/FUL

4.0 APPLICANTS CASE

- 4.1 Attached to this application is a Waste Assessment Report prepared by Mott MacDonald Limited for the Environment Agency. The report was written in July 2008 on the basis of a survey undertaken in April 2008
The Environment Agency has been made aware of allegations about the importation of unlicensed material to the above site. The purpose of the investigation was to assess the nature of any such material.
On the basis of the investigation Sonia Williams of the District Council wrote to the applicant on 13th April 2011 stating:

"This matter has now been discussed by representatives from both the Planning and Legal Departments of the Council and it is their considered opinion that there has been no general raising of the land levels. Following receipt of a copy of the survey report carried out by the Environment Agency, it is also considered that the fill used on the land does not pose a significant possibility of significant harm" " I can confirm that no further action will now be taken regarding this matter and I am closing my file" On the basis of the report and the Council's response to it I request that condition 12 be discharged and that no further remediation work be required.

5.0 RELEVANT SITE HISTORY

- 5.1 UTT/1360/12/FUL - The proposal has been revised and is now for change of use of land for the stationing of 8 caravans(reduced from 12) for occupation by members of the applicant's extended gypsy family, construction of hardstanding, access road, fences, alteration to existing access and associated hard and soft landscaping.
UTT/1906/08/FUL Erection of stable block and new entrance gates and railings - Conditional Approval - 2009
UTT/1274/99/FUL Erection of replacement dwelling and detached double garage - Conditional Approval - 2000
UTT/0008/05/REN Erection of replacement dwelling and detached double garage - Conditional Approval 2005
DUN/0096/51 Caravan site Refused 1951
DUN/0204/56 Construction of new access - Refused 1956
DUN/0060/52 Proposed bungalow - Conditional Approval - 1952
DUN/0319/72 Formation of new vehicular access - Conditional Approval - 1972
DUN/0146/69 Addition of playroom - Approved - 1969

6.0 POLICIES

6.1 National Policies

- National Planning Policy Framework
- Planning Policy For Travellers Sites
- Designing Gypsy and Traveller Sites – Good Practice Guide

6.2 East of England Plan 2006

- Policy H3 - Provision for Gypsies and Travellers

6.3 Essex Replacement Structure Plan 2001

- None relevant

6.4 Uttlesford District Local Plan 2005

- Policy ENV14 contaminated Land

7.0 PARISH COUNCIL COMMENTS

- 7.1 UTT/12/5588/DOC application to discharge Condition 12 (Remedial Scheme) relating to UTT/1360/12/FUL

Takeley Parish Council (TPC) objects most strongly and would expect the Development Control Committee to uphold the conditions attached to approved

planning application UTT/1360/12/FUL. Conditions should not be discharged until independent and expert evidence is provided as specified in the conditions of the planning approval.

Condition 12 (Remedial Scheme)

- The applicant has submitted a Mott MacDonald report published in 2008 which clearly highlights significant contamination issues. TPC requests that UDC accept this report which resulted in the Environment Agency serving a Section 59 Notice on the applicant to remove the waste buried on the site (EA Case Officer - Mr. Peter Kirton).
- The EA report says 'the analytical results confirmed that various amounts of inert and hazardous materials had been deposited in the land at Cranwellian'. Please make reference to the Environment Agency website incident no. 540823 dated 24th Oct. 2007 which clearly highlights the 'significant impact to land' from pollutants.
- The Section 59 Notice was ignored by the applicant (Mr. Jones) and the waste remains on site.
- The evidence shows the land is contaminated (including waste hazardous to health).
- It also shows that blocking up the water course on site in 2007 and substituting soakaways for the proposed development may well cause noxious materials to contaminate other land.
- The evidence submitted thus far is incomplete and does not address the full remit of condition 12 as per Decision Notice UTT/1360/12/FUL.
- The applicant needs to disclose exactly what materials he buried on site, where he buried them, and when. Until this is dealt with a sufficient expert report cannot be commissioned.
- As Roger Harborough, UDC (22/10/12) has acknowledged ' the Environment Agency has made it clear that the responsibility for making sure that there is no risk to human health of occupiers from contaminated land rests with the Council'.
- TPC would expect UDC to seek technical advice/clarification from EA Case Officer, Peter Kirton, to ensure the protection of the health and safety of proposed occupants and neighbours of the property through remediation of the contaminated site; thus removing any potential future risk.
- In the Planning officers advice to the applicant it was stated that an application for one mobile home or a single dwelling would be unlikely to attain planning approval. Why is it then acceptable for a group 'travellers' to reside on the site? Surely this policy discriminates against traveller's whose health and well being is of equal importance as anyone else.

8.0 CONSULTATIONS

Environment Agency

- 8.1 In our letter of 6 August 2012 to planning application UTT/1360/12/FUL we recommended that a condition for surface water drainage was appended to any permission granted: this relates to condition 11. Whilst condition 12 (contamination) is not subject to this particular discharge of conditions application it is necessary to have consideration to the past activities on site to ensure that an appropriate surface water drainage scheme is designed to minimize risk to the water environment.

We have considered the information in respect of condition 11 as this is the only planning condition we recommended.

History & Site Drainage

The drainage ditch to the West of 'Hawthorns' was previously removed by Mr Jones which caused drainage problems in and around the area of the ditch and much of the land between there and the adjacent property of 'Hawthorns'. When the original 'Cranwellian' was burnt down, most of the remains were buried in the grounds near the neighbouring property 'Hawthorns'. A new house was rebuilt where the former dwelling was located.

Mr Jones then started taking consignments of waste from local hauliers. This was predominantly clays from construction and demolition work, although road planning were also imported. These materials were used to raise the profile of the land to the East of the new house. However the nature of the materials imported failed to improve the drainage characteristics of the land.

This area has now been grassed over, but drainage problems still persist. It is imperative that given the stability of the ground – especially where the house was buried, as well as its propensity to become a quagmire, that any hard surfacing applied has a deep substructure. Anything less is likely to promote fissures and cracks in the newly laid surface and any seepage into the ground below, exacerbate these problems. Similarly, this is also one of the reasons why soakaways must not be considered for this site, notwithstanding the possibility of them mobilising contaminants buried in the ground.

Environmental Health

- 8.2 I cannot discharge the condition based on the information provided. This report, although in draft form, actually identifies that there is land contamination on the site.
- 8.3 A new site investigation, by a competent company that deals with potential/actual land contamination needs to be carried out and any recommendations implemented.

9.0 REPRESENTATIONS

Three letters of representation have been received relating to this application.

1. Application to Discharge Condition 12 (Remediation Scheme) relating to UTT/1360/12/FUL

The details of this condition have not been met. There has been no full, remedial scheme submitted. This condition is extensive and was put in place to ensure that the ground was in a satisfactory condition for habitation. Were the case, the Planning Committee would not have applied this condition in the first place. Furthermore, to the untrained eye, the report is confusing and difficult to understand. I suspect that those making the decision will find it very difficult to interpret the technical details. Remedial work should be insisted upon to remove waste and debris from the site.

2. Application to Discharge Condition 12 (Remediation Scheme) relating to UTT/1360/12/FUL

The details of the condition have not been fully met. The conditions are extensive and the only submission to fulfil this condition so far, has been a soil report that does not fully meet the requirements of the condition. Furthermore this report is confusing to the lay person who does not have experience in reading such reports, as I suspect those making the decision will be. No fully detailed remediation scheme has been submitted, again meaning a fully considered decision cannot be made by the Council.

3. This speaks for itself, the applicant has submitted a document confirming waste is on the land but does not appear to have submitted the required documentation with regard to the remedial action needed to discharge this condition. This application should be rejected until the remedial action documentation is submitted.

10.0 APPRAISAL

The issues to consider in the determination of the application are whether sufficient information has been submitted to discharge the following condition which were attached to planning application UTT/1360/12/FUL

Unless otherwise agreed by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1 to 5 of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until condition 4 has been complied with in relation to that contamination.

1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be 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 are subject to the approval in writing of 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".

2. Submission of Remediation Scheme

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 must be prepared, and is subject to the approval in writing

of 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.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

REASON: Representations received indicate that the site may be contaminated as such a Preliminary contaminated land survey is required in accordance with Uttlesford Local Plan ENV14

The applicant has stated that they received a letter from the council stating "

"This matter has now been discussed by representatives from both the Planning and Legal Departments of the Council and it is their considered opinion that there has been no general raising of the land levels. Following receipt of a copy of the survey report carried out by the Environment Agency, it is also considered that the fill used on the land does not pose a significant possibility of significant harm" " I can confirm that no further action will now be taken regarding this matter and I am closing my file" On the basis of the report and the Council's response to it I request that condition 12 be discharged and that no further remediation work be required.

This decision was made in response at a time when there was no proposed use for the site. However, this condition relates to the siting of eight caravans and therefore the request by Environmental Health Department to refuse discharge of this condition is not considered to be unreasonable as there will be people living on the site. The responsibility for making sure that there is no risk to human health of occupiers from contaminated land rests with the Council'

The Environment Agency's comments will be dealt with when considering discharge of condition 11 under a separate application.

7.0 CONCLUSION

The following is a summary of the main reasons for the recommendation:

- Condition 12 cannot be discharged
- REASON: Environmental Health Officers have refused to discharge the condition. They state that the report submitted, although in draft form, actually identifies that there is land contamination on the site and therefore a new site investigation needs to take place, with a detailed remediation scheme and its implementation before the condition can be discharged.

RECOMMENDATION – REFUSAL REASONS

- Condition 12 cannot be discharged
- REASON: The information submitted with the application is insufficient to meet the requirements of the condition 12 of UTT/ 1360/12/FUL in accordance with Uttlesford Local Plan Policy ENV14.