

UTT/13/0831/DOC (Takeley)

(Referred to Committee by Cllr Jones)

- 1 That there is a wider public interest in decisions taken regarding this site
- 2 There is some site history concerning (a) environmental pollution (b) drainage issues (c) previously recorded enforcement notices that have not been satisfactorily resolved
- 3 There is a lack of confidence that matters concerning this site have been fully considered by UDC Planning Committee
- 4 I believe there is a need for a suitably qualified person from UDC to review all the reports relevant to this site since 2005 that have an impact and bearing on public health, the environment and any possible contamination, and for that report to be available prior to any determination by the UDC Planning Committee.

PROPOSAL: To discharge conditions

LOCATION: Land Adjacent To Cranwellian, The Street, Takeley

APPLICANT: Mr T Jones

AGENT: Hayhurst Town Planning Services, Ltd

EXPIRY DATE: 20 May 2013

CASE OFFICER: Mrs M Jones/Mr N Brown

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.
- 2.2 The size of the rectangular plot of land is 0.38 hectares.
- 2.3 It is enclosed by close boarded timber fencing to the rear, mature hedging to the east and trees/shrubs to the south.
- 2.4 The western boundary has post and rail fencing. Immediately adjacent at the rear is the Fritch Way and Hatfield Forest.
- 2.5 To the east are three detached cottages and to the west is a detached house (owned by the applicant). Access to the site is via a gated access to the front of Cranwellian House.
- 2.6 To the west 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 Fritch Way and Hatfield Forest.

3.0 PROPOSAL

- 3.1 Application to discharge conditions 11 (remediation details) attached to UTT/12/5438/FUL

4.0 APPLICANTS CASE

- 4.1 Herts and Essex Site Investigations (HESI) completed the attached Phase 1 Desk Top Study in January 2013. At that stage evidence pointed to a possible need for soil testing and groundwater and vapour risk assessment (see pages 18 and 19 of Phase 1 report).
- 4.2 Following further discussions with HESI it was agreed that they would proceed immediately to carrying out soil sampling at the site to assess whether there is any contamination risk as if this showed there was no risk it could obviate the need for groundwater and vapour risk testing and potentially speed up the process to enable the development to commence sooner.
- 4.3 The Phase 2 Environmental Report submitted with the application details the soil investigation work undertaken and concludes there is no soil contamination risk in place. It further concludes that there is no risk from ground and surface water contamination and no need for land gas assessments. It confirms that no remediation work is required and that the site can be developed in a conventional manner.

5.0 RELEVANT SITE HISTORY

- 5.1 UTT/12/5438/FUL – Variation of condition 4 on approved planning application UTT/1360/12/FUL to read " No more than 8 caravans, as defined in Part I of the Caravan Sites and Control of Development Act 1960 and Section 13 of the Caravan Sites Act 1968 as amended by Statutory Instrument 2006 No.2374: The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006 shall be stationed on the site."
- 5.2 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.
- 5.3 UTT/1906/08/FUL Erection of stable block and new entrance gates and railings - Conditional Approval - 2009
- 5.4 UTT/1274/99/FUL Erection of replacement dwelling and detached double garage - Conditional Approval – 2000
- 5.5 UTT/0008/05/REN Erection of replacement dwelling and detached double garage - Conditional Approval 2005
- 5.6 DUN/0096/51 Caravan site Refused 1951
- 5.7 DUN/0204/56 Construction of new access - Refused 1956
- 5.8 DUN/0060/52 Proposed bungalow - Conditional Approval – 1952
- 5.9 DUN/0319/72 Formation of new vehicular access - Conditional Approval – 1972
- 5.10 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

7.0 PARISH/TOWN COUNCIL COMMENTS

- 7.1 Takeley Parish Council (TPC) would expect the Planning Committee to uphold the conditions attached to approved planning application UTT/12/5438/FUL, and only discharge these conditions as and when independent and expert opinion provides

sufficient evidence to wholly satisfy members that the health and wellbeing of the future residents of this site is adequately protected, and that neighbouring residents will not be harmed by this development.

Condition 11 (Remediation details)

§ 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 may well cause noxious materials to contaminate other land.

§ 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'.

§ The applicant 'expert' report to counter previous evidence of contamination is a largely 'desk based study' that admits 'materials sampled represent only a small proportion of the materials present on the site. It is therefore possible that other conditions prevailing at the site which have not been revealed within the scope of the report have not been taken in to account.'

The evidence submitted by the applicant does not meet the requirements of condition 11 (UTT/12/5438/FUL) and therefore this condition should not be discharged.

8.0 CONSULTATIONS

Environmental Health

8.1 Having considered the reports of the Environment Agency (Mott MacDonald 2008) and the Herts and Essex Site Investigations report (Feb 2013), Environmental Health have the following comments in respect of the application to discharge condition 12 relating to the remediation scheme:

- i. The centre of the site is hardstanding and therefore the pathway to human health is removed. Substances with the potential to affect services have not been detected. No ACM was found in the trial pits which the EA undertook, and the initial tests carried out by H&ESI for gas and vapour were negative.
- ii. The nature of the material and depth makes the risk of gas being detected very low. On this basis it would be difficult to justify the need for further testing.

iii. The play area is located in the part of the site where no elevated levels of contaminants have been found, and I think we can be confident this area is suitable for use.

We therefore accept the conclusions and recommendations of the H&ESI report in that the site is suitable for its consented use in its current condition, whilst retaining the proviso in condition 11 that if unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination until part 3 of the condition has been met.

Natural England

8.2 No further comment

Environment Agency

8.3 We did not recommend a condition with regard to contamination and remediation as part of our comments to the original planning application. We have no specific comments to make regarding the proposed discharge of condition 11; however we do take the opportunity to provide our technical advice on the potential risk to controlled waters which we hope will assist your local authority.

Advice to LPA:

Considering the geology of the area we are satisfied that the groundwater is not at risk from the site contamination. Groundwater is indicated to be more than 30 metres below ground level, and borehole logs from the area show clay is proven to 40 metres below ground level.

The Harps Great Hallingbury borehole log (TL52SW66) does not reach the base of the clay, the depth of which is not confirmed in this area, but could be much deeper. The relative depth of clay to water shows the Chalk is a confined aquifer, so groundwater is exerting an upward pressure on the clay. This thick clay and to a lesser extent, the upward groundwater pressure, will significantly limit downward migration of any contamination leached from the waste.

As we have previously commented we discourage the use of soak ways in land affected by contamination. From the revised drainage layout provided (in connection with condition 10 of the permission) soak ways are no longer proposed. We now consider this to be acceptable from the perspective of pollution prevention (please see our letter referenced AE/2013/116024/01-L01).

Your authority's Environmental Health Officer should be able to advise on the land contamination and any risk to other receptors, such as human health.

We confirm that we have no further comment to make with respect to condition 11 of the planning permission.

9.0 REPRESENTATIONS

9.1 A number of representations have been received by third parties on this matter, these will not be summarised within this report. The representations will be referred to the Environment Agency and UDC Environmental Services and formal summaries and responses will be reported to the meeting

10.0 APPRAISAL

- 10.1 The issues to consider in the determination of the application are whether sufficient information has been submitted to discharge the following condition which was attached to planning application UTT/12/5438/FUL

Condition 11 stated

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 3 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 3 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

- 10.2 The views of the Environment Agency on this matter. The comments are informed by the history and aborted enforcement action taken by the Environment Agency in the past. They have confirmed that adequate measures have been taken on site and appropriate evidence has been provided to prevent pollution.
- 10.3 The Environmental Services Team at UDC have also confirmed that adequate testing has occurred on site to satisfy that human health would be harmed from any contaminants on the site.
- 10.4 Some third parties have raised concerns at the robustness of testing carried on the site on behalf of the applicant. However, the applicant, Environment Agency and Environmental Services at UDC are sufficiently satisfied that testing has been done to an appropriate standard.

11.0 CONCLUSION

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

- Condition 11 can be discharged

RECOMMENDATION – APPROVAL

That the pre development element of Condition 11 be formally discharged
