



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 09/11/20

gan Richard Duggan, BSc (Hons)
DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30th November 2020

Appeal Decision

Site visit made on 09/11/20

by Richard Duggan, BSc (Hons) DipTP
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30th November 2020

Appeal Ref: APP/T6850/A/20/3250261

Site address: The Old Drill Hall, Cabin At, U1843 From Junction with Bridge Street to the Drill Hall, Rhayader, LD6 5AG

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Carter against the decision of Powys County Council.
 - The application Ref: 19/0483/FUL dated 22 February 2019, was approved on 4 September 2019 and planning permission was granted subject to conditions.
 - The development permitted is demolition and replacement of a 2-bedroom existing residential dwelling with a new 3-bedroom house.
 - The conditions in dispute are Nos. 3, 4, 5 and 6 which are included in the schedule attached to this decision.
 - The reasons given for the conditions are included in the schedule attached to this decision.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are whether the disputed conditions are reasonable and necessary, having regard to Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management' (The Circular).

Reasons

3. Conditions 3 to 6 relate to the submission of a scheme to deal with any contamination found on the site, any remediation measures that may be required and any long-term monitoring and maintenance of the proposed remediation measures. The Council has imposed the conditions as the historical records held by the Council's Contamination Land Officer show that the appeal site is situated on land indicated as being a gas works and tannery and, therefore, potentially hazardous contamination may exist on the land.
4. As part of the planning application and appeal the Appellant has submitted a Phase 1 Site Investigation¹ which is a desk-based report to assess the potential risks to

¹ Phase 1 Site Investigation by Wesson Environmental, dated June 2019

human, controlled water receptors and to the wider environment arising from past and present land use, and naturally occurring features present at or near the site. I have also noted the references made to the GeoWater reports for the development of the nearby Old Drill Hall and their relevance to the appeal site.

5. The Appellant's desk-based report concludes that the former land uses that are of concern to the Council did not occur on the appeal site and the likelihood of contaminants occurring is considered to be low. The report also provides a 'preliminary conceptual model' in which all source/pathways for contaminants are considered 'low likelihood' or 'unlikely' to occur and concludes in all cases that the risks are considered negligible. Notwithstanding these conclusions, the Appellant himself acknowledges that the desk-based report indicates that there is still a possibility of contaminants occurring on the site as no desk study can be 100% certain that a site is free of potential contaminants².
6. Having assessed the evidence before me I share the Council's concerns that there continues to be potential for waste deposits from the gas works within the appeal site, and that the site could be part of a broader potentially high-risk site.
7. In my experience of housing development sites in areas which have historical links to older potentially hazardous industries, even if the sites are not directly linked to those uses as is the case with the appeal site, the imposition of conditions relating to contamination is good practice to protect the health of future occupiers of houses. Whilst the Appellant's report is enough to satisfy preliminary investigations of the site, a full site investigation, including a remediation strategy and a long term monitoring scheme should any contamination be found, is required in order to satisfy that the proposed development would not pose risks to human health in the future.
8. Without any substantiated evidence to prove otherwise I am content that a precautionary approach is appropriate in this case and the conditions are entirely justified in the circumstances and meet all the six tests of the Circular 016/2014. I consider that the conditions are necessary and reasonable and should be retained.

Conclusions

9. I conclude for the reasons I have set out above that conditions 3, 4, 5 and 6 are reasonable and necessary and remain as imposed on the planning permission. The undisputed conditions on the planning permission also remain in force.
10. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive, resilient, healthier and equal communities.

Richard Duggan

INSPECTOR

² Appellant's comments on Local Planning Authority and interested parties statements

Schedule to Appeal Ref: APP/T6850/A/20/3250261

Condition 3:

No development shall take place until a site investigation of the nature and extent of contamination has been carried out, by a suitably qualified competent person, in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. A written report of the findings of the site investigation shall be made available to the local planning authority before any development begins. The written report should include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. The report is subject to the written approval of the local planning authority.

Condition 4:

Submission of Remediation Scheme - 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 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 and The Contaminated Land (Wales) Regulations 2006, as amended by The Contaminated Land (Wales) (Amendment) Regulations 2012, in relation to the intended use of the land after remediation. The detailed remediation scheme should not be submitted until written approval for Condition 2 has been received from the local planning authority. All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WPGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

Condition 5:

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. If during the course of development any contamination is found that has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures before the development is occupied. Following completion of the 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. The verification report contents must be agreed with the local planning authority before commencement of the remediation scheme. All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the WPGA document 'Development of Land Affected by Contamination: A Guide for Developers' (2012).

Condition 6:

Long Term Monitoring and Maintenance - A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of duration to be agreed in writing with the local planning authority and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority. Within six months following the completion of the measures identified in that scheme and the achievement of the remediation objectives, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

The reasons given for the conditions *3, 4, 5 and 6* are:

To ensure that risks from land contamination 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 in accordance with policy DM10 of the Powys Local Development Plan (2018).