DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H01-0779-23**	**Applicant:**	**Ark Property**
Proposal:	Details of scheme to deal with contamination (Condition 13 of H01-0823-19)		
Location:	Land Off Stonegate Cowbit Spalding		
Terminal Date:	30th November 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

30	Pollution
02	Development Management
03	Design of New Development

National Guidance

National Planning Policy Framework 2023

Section 15 - Conserving and enhancing the natural environment

Representations:

	Object	Support	No Obj.	Comments
SHDC INTERNAL	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application is to discharge conditions 13iii of H01-0823-19. This involves details of a remediation strategy for the contaminated of land on the site.

Site Description

The site is located on an overgrown, disused section of railway yard. The site is within the northern tip of the settlement boundary of Cowbit as outlined in the South-East Lincolnshire Local Plan. The immediate area is characterised by a neglected former railway yard. To the south, east, and north are residential areas. To the west is an area of farmland.

Relevant History

H01-0220-23 - Condition Compliance. Details of contamination of land or pollution of controlled waters (Conditions 13(i) & 13(ii) of H01-0823-19). Approved

H01-0230-23 - Condition Compliance. Details of external materials, construction management, storage and disposal of refuse and recycling and boundary treatments (Conditions 6, 12, 14 and 16 of H01-0823-19). Approved 16/05/23.

H01-1162-22 - Condition Compliance. Details of cycle storage - (Condition 2 of H01-0820-22). Approved 20/01/23.

H01-1144-22 - Condition Compliance. Details of external materials, construction management, storage and disposal of refuse and recycling and boundary treatments (Conditions 6, 12, 14 and 16 of H01-0823-19). Refused 20/01/23.

H01-0820-22 - Reserved matters. Erection of five residential dwellings. Approved 4/11/22.

H01-0823-19 - Outline. Erection of five residential dwellings. Approved 21/1/20.

Consultation Responses

Environmental Protection

"I have reviewed the Elemental GI Ltd 'Remedial Method Statement for Land North of Stonegate Cowbit' ref E22203/3/3 dated August 2003 rev 3. I am not able to recommend discharge of condition 13 of H01-0823-19 at the current time. Please pass my comments below to the applicant. Ground gas - The PHASE 2 GEO-ENVIRONMENTAL INVESTIGATION FOR LAND NORTH OF STONEGATE, COWBIT' Ref E22208/2/1 dated January 2023 stated 'At this stage it is considered likely that ground gas protection measure would be recommended to a 'CS2' classification level, subject to regulatory approval and completion of final monitoring visits.' These monitoring visits have not been reported and therefor the ground gas regime cannot be considered adequately characterised. It is not therefore possible to design the ground gas protection measures. In addition, the RMS presented does not contain the usual details expected - there is no classification of the site under BS8485 and the design proposed lacks the necessary details. No membrane has been specified, and whilst appendix 1 does contain some drawings detailing the relationship between the floor slab, membrane, walls etc. they are not referenced in the text, nor does the membrane cross the cavity wall. Proposed cover system - I request further clarification regarding the thickness of the proposed cover system, and the likely effectiveness of the formal barrier. The maximum recorded concentration of Benzo(a)pyrene (at 10 times the selected screening level) would be at just 0.7m depth in the proposed development, with another sample showing roughly 5 times the screening value at 0.65m depth. No details of the formal barrier have been given, other than a 'robust semi-permeable geotextile marker/ break layer'. No details of, for example, tree pits etc have been given, will future residents be restricted on garden use? has consideration been given to a physical 'no dig' barrier? No specification of sampling rates for imported soil has been given"

Planning Considerations

Evaluation

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The adopted South-East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is the development plan for the district, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework, 2023 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Condition 13iii

The submitted details fail to achieve the aims of condition 13iii. The requirements of the condition have not been met and therefore Condition 13iii cannot be discharged. The relevant consultee from

the Environmental Protection department has objected to the proposal stating that insufficient details have been submitted.

Conclusion

Condition 13iii cannot be discharged.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.