

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-1092-22 **Applicant:** Mr J P Browne
Proposal: Details of Verification Report (Condition 7 (iii) of H16-0221-15)
Location: 1-8 Teagans Close Spalding
Terminal Date: 4th January 2023

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02 Development Management
03 Design of New Development
30 Pollution

National Guidance

National Planning Policy Framework 2021

Section 15 - Conserving and enhancing the natural environment

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

Details of verification report (Condition 7 (iii) of H16-0221-15 - Demolish existing dwelling and erect 8 dwellings) Condition 7 relates to the submission scheme to deal with contamination of land or pollution of controlled waters.

Site description

Site is comprised of a series of 8 dwellings located on the former site of a nursery. The land is situated between Hawthorn Bank and Bellfield Close. Properties 1, 2 and 3, located to the north of the site, comprises a small row of terraced housing. Properties 7 and 8, to the south, are semi-detached two storey dwellings. The remaining properties are bungalows. Each dwelling has a garden plot to the rear. The area leading to the properties is covered with concrete paving. No communal grass areas are present.

History

H16-1128-19. Condition Compliance. Details of verification report (Condition 7 (iii) of H16-0221-15 - Demolish existing dwelling and erect 8 dwellings). Refused 14-1-20.

H16-0337-17. Condition Compliance. Details of Conditions 2, 4, 5, 6, 7i, ii & iii, 8, 9, 10 & 11 of H16-0221-15 and Conditions 2, 3, 4 and 5 of H16-1023-13. Approved. 20-10-17.

H16-0221-15. Section 73 Modification. Demolish existing dwelling and erect 8 dwellings - approved under H16-0101-11. Removal of Condition 4 relating to affordable housing. Approved 09-07-15.

H16-0101-11. Outline. Demolish existing dwelling and erect 8 dwellings - Re-submission of H16-0599-10. Approved 30-07-12.

H16-0599-10. Outline. Demolish existing dwelling and erect 8 dwellings. Refused 03-12-10

Consultation Responses

SHDC Environmental Protection

"I have reviewed the EPS limited letter dated 18th May 2022 ref. UK19.4699b - Topsoil Verification - Hawthorne Bank, Spalding and accompanying test data.

EPS have concluded that the verification has failed and that the data suggest that the soils are not suitable for retention in a residential garden.

EPS make some comments regarding the differing regimes that are used to assess land contamination. To be clear, the Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government document 'Guidance Land affected by contamination' revised in 2019, Paragraph: 002 Reference ID: 33-002-20190722 makes it clear that Part 2A of the Environmental Protection Act 1990 must focus on land that cannot be dealt with via any other means, including planning. This site is being dealt with under the planning regime, and therefore planning standards apply.

EPS state that in their opinion the site would not fit the requirements of the definition contaminated land, however through the planning process, land must a) after remediation must not be capable of being determined as contaminated land and b) be suitable for use. Category 4 has been identified as suitable for use. "

Planning Considerations

The relevant consultee has raised objections to the proposal, citing that the report shows the soil has unacceptable levels of pollutants for use in a residential garden.

Conclusion

The recommendation is for delegated refusal.

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.