DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H16-1094-20**	**Applicant:**	**Mr P Browne**
Proposal:	Details of Verification Report (Condition 7 (iii) of H16-0221-15) - re-submission of H16-1128-19.		
Location:	49 Hawthorn Bank Spalding		
Terminal Date:	29th January 2021		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019	
02	Development Management
03	Design of New Development
28	The Natural Environment
30	Pollution

National Guidance

National Planning Policy Framework 2019

NPPF 2019

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

Details of Verification Report (Condition 7 (iii) of H16-0221-15) - re-submission of H16-1128-19. Condition 7 deals with contamination of land or pollution of controlled waters.

Site Description

As host application.

History

H16-1128-19. Details of verification report (Condition 7 (iii) of H16-0221-15 - Demolish existing dwelling and erect 8 dwellings). REFUSED 19-02-20.

H16-0337-17. 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. 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. Demolish existing dwelling and erect 8 dwellings - Re-submission of H16-0599-10. Approved 30-07-12.

Consultation Responses

SHDC Environmental Protection

The applicant has submitted the same report again. My view, as set out by the consultant in their original report, is that site did not have lead hotspots, but that the soil was all one population and that the remediation they proposed in the garden areas was required.

SHDC Environmental Protection response to H16-1128-19

The phase II site investigation report (22/08/2017) concluded that the elevated lead concentrations in TP3 & TP5 did not represent a hotspot or outlier, and were statistically part of the same population which represented the topsoil across the site. Those concentrations of lead were considered to have the potential to pose an unacceptable risk to future users.

Looking at the original trial pit logs, there does not seem to be any significant differences in the soil descriptions across the site, which supports the reported conclusion that there was not a hotspot.

The report recommended cover system of either importing 155mm of soil or placing hardstanding across the whole site.

No new information has been presented which alters the conclusion of the phase II report.

Therefore, I can see no reason as to why the original report recommendation of 155mm topsoil as a capping system should not be applied in the domestic garden areas. I am therefore unable to recommend discharge of the land contamination condition at the current time.

It is worth noting that the 155mm thickness was based on an imported soil lead concentration of 20mg/kg, which is below the local background concentration of 33-99mg/kg lead.

Planning Considerations

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

The details and measures set out in the submitted documents are still considered to be inadequate for the purposes of discharging this condition. The views of the EHO have been set out above and taken in to account.

Conclusion

Refuse. Inadequate detail has been submitted to discharge this condition. There have been no change in circumstances or policy since the decision issued on the previous submission referenced H16-1128-19. Clarification has been sought from the agent but this has not been forthcoming.

Planning Balance

The proposal has not been submitted with sufficient information to discharge this condition. Taking into consideration this factor, the proposal is considered to be contrary to Policies 2, 3 and 30 of the South East Lincolnshire Local Plan (2019) and the provisions of the National Planning Policy Framework (2019).
The are no significant factors in this case that mitigate the proposal and outweigh factors against the proposal and the policies referred to above.

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.