

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H20-0060-24 **Applicant:** Scenic Homes
Proposal: Details of verification report (Condition 6 of H20-0296-23)
Location: Land Adj. Havencombe Chapelgate Sutton St James
Terminal Date: 19th March 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

30 Pollution

31 Climate Change and Renewable and Low Carbon Energy

National Guidance

National Planning Policy Framework 2023

8 Promoting healthy and safe communities

11 Making effective use of land

Representations:

	Object	Support	No Obj.	Comments
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The proposal relates to details associated with a verification report in relation to planning permission granted under reference H20-0296-23.

Condition 5 of that permission required that the development shall be in accordance with the scheme to deal with contamination of land or pollution approved under reference H20-0689-22 approved on 9th December 2022.

Condition 6 required two copies of a verification report to be submitted prior to prior to the occupation of Phase 2 of the development (Plots 13-30) which is where the former piggery element

was situated (as opposed to the former paddock which did not have any contamination). The verification report was based upon the previously approved remediation strategy.

Site Description

The application site is within the Sutton St James settlement boundary as outlined in the adopted South East Lincolnshire Local Plan, 2019 and consists of a former piggery and paddock. There are existing properties adjacent the site to the north on Chapel Gate and to the west on Taylor's Drove. The land directly to the north, which is within the applicant's ownership, consists of two dwellings and a number of agricultural buildings that will continue to be used in association with the existing farm business and as residential.

The former paddock area was bordered by trees and post/wire fencing with field drains to the eastern and southern boundaries. There are also a number of trees on site and a pond. There were a number of buildings and areas of hardstanding associated with the piggery and a further field drain on the western boundary. Building works have commenced on site and some dwellings are well advanced in terms of construction.

The boundaries of the main portion of the site are defined by watercourses, one of which is maintained by the North Level Internal Drainage Board.

The site is located behind established properties, which includes large agricultural buildings, and so has little visual aspect onto Chapelgate.

The site is allocated in the SELLP as Suj012, but is incorrectly referenced to be 2.1 hectares in the Local Plan. The gross site area is 1.73 hectares.

History

H20-0296-23 - Residential development comprising 30 dwellings with associated estate roads, landscaping & open space - approved under H20-0947-21. Modification of Condition 6 to allow for occupation of dwellings on part of site that is not classified as contaminated i.e. Plots 1 to 12 inclusive before verification report is submitted. Approved 9 August 2023.

H20-0689-22 - Details of external materials, contamination, external boxes for gas and electricity, construction management Plan/method statement, estate road phasing and completion plan and foul water drainage works (conditions 3, 5, 9, 11, 13 and 14 of H20-0947-21). Approved 9 December 2022.

H20-0947-21 - Residential development comprising 30 dwellings with associated estate roads, landscaping and open space. Approved 24 May 2022.

H20-0043-18. FULL. Residential development for 27 dwellings including roads. Included S106 to provide four affordable dwellings and an education contribution calculated at that time to be £84,957. Approved 25-02-19.

H20-0284-16. OUTLINE. Residential development- up to 42 dwellings. . Included S106 to provide an education contribution calculated at that time to be £137,367. Approved 06-06-17.

Consultation Responses

Environmental Protection

Response dated 7 February 2024

No objection to the proposed membrane.

Plot by plot release: no objection but there are some tasks, such as the removal of the burial areas which are not plot specific and therefore all actions of that nature will need to be included in the first batch submitted.

Sampling rates for testing the imported topsoil are either set out in the RMS or as per the relevant YALPAG guidelines.

Membrane placement - the letter suggests that unsuitable material has been removed from garden areas and clean fill (Material A) placed. This (Material A) will now be removed, the membrane laid and suitable clean fill will be reinstated to finished levels. I request that any validation report be very

clear on the fate of Material A. As this has been laid directly over the unsuitable soils, there is likely to have been cross contamination. If its proposed to use Material A as the suitable clean fill to make up the final levels, any pre placement sampling and testing would need to give a high degree of confidence in their suitability for use. A similarly high degree of confidence would need to be provided that the material management was adequately supervised, ideally by the independent consultant. I look forward to receipt of the validation reports in due course but am not in a position to recommend discharge of condition 6 at this time.

Response dated 12 March 2024

Request to discharge plots 13-15

I am unable to recommend discharge of these plots at this time as it is not sufficiently clear in the validation letter report exactly what has happened here. Has any soil been removed or is this all land raise? What are finished levels compared with the original levels?

There are no delivery slips for the imported topsoil. Whilst we accept British Sugar Topsoil without further validation testing, we do request delivery notes and test data less than 3 months old at the time of import. The report suggests that 600mm of imported topsoil has been placed - Is this the case? It was previously suggested that 'clean' subsoil from the paddock area was to be used.

I have outstanding questions regarding the subsoil. There is no mention of the no dig layer and it is not sufficiently clear what has happened here relative to the original situation.

There are no delivery notes for the membrane, nor are there any waste transfer notes for removed soil.

Reuse of material from the Paddock site.

Subsoil material from the paddock site was stored on the piggery site without any physical barrier, despite previous assurances it was being stored on hardstanding. Whilst I appreciate the applicant and consultants' honesty and transparency here, the sketch they have supplied which shows there was a sacrificial layer left behind does not include any scale or annotations to suggest how much of a sacrificial layer was left. Nor does it state who supervised the assessment of where the bottom of the stockpile was, or where the material was then moved to.

Further clarification is sought on this matter to ensure there has not been cross contamination.

Significant change to the agreed remediation method statement

The consultants have proposed a significant change to remediation method statement.

Discussion and investigations have been on going at this location since pre 2017, and at all times there has been reference to onsite slurry pits and burial of animal remains. At no time has it been previously suggested that this was 'rumoured'. Elemental GI's December 2022 report (E22108/4/3 rev 2 remedial method Statement for site off Chapelgate Sutton St James) states:

'It is understood from the owner that further animal remains are present at the site but are in similar isolated pockets. These are understood to be mostly present in the southern part of the piggery area, although a horse is understood to have been buried in the southern part of the eastern area.'

We accepted the previous owner's letter stating that the horse had not been buried there, because we felt that if present, a horse was likely to have been buried at significant depth and that the remains were less likely to represent a risk to future users. However, all of the reports written by previous consultants have included references to the burial and slurry pits in association with very high levels of bacteria in the soils. The onsite burial of pigs was common historically at farms and there is no evidence at this stage to suggest that further remains are not present.

In addition, there has been no site investigation in the rear gardens of plots 19-22 (based on shields Wilson drawing no SW21-117-102 rev P1). Given these are the most southern plots, they are potentially at the highest risk (based on the statement regarding burial). Where a robust remedial solution was in place this level of site characterisation was acceptable, however if the applicant wishes to change the remediation method statement they will need to consider if this has any implications on the proposals.

Therefore, I do not consider that the applicant has provided a sufficiently robust proposal to vary the remediation method statement on the basis of the information provided. If they wish for us examine this further, they will need to represent the new proposal in the context of the site's conceptual model and risk assessment previously undertaken.

North Level IDB

No comments

Planning Considerations

Policy 30 of the SELLP states that development proposals where, taking into account of any proposed mitigation measures, they would lead to unacceptable adverse impacts on health and safety of the public and land quality and condition. It states suitable mitigation measures will be refused if impacts cannot be suitably mitigated or avoided, and development proposals on contaminated land, must include an assessment of the extent of contamination and any possible risks. The policy goes on to state that proposals will not be considered favourably unless the land is, or can be made suitable for the proposed use.

The main permission approved under reference H20-0947-21 related to residential development comprising 30 dwellings with associated estate roads, landscaping and open space, which was approved subject to conditions. The subsequent Section 73 application re-imposed the conditions of the earlier approval, taking into account conditions already discharged, with an alteration to allow Plots 1-12 to be released without the need for a verification report to allow earlier occupation because contamination was not evident on those plots. The revised permission still required a verification report based on plots 13-30 in accordance with the following condition as follows:

"6. Prior to the first occupation of Phase 2 of the development (Plots 13-30 as shown on plan SCE/SSJ/Phase Overlay) two copies of a verification report shall be submitted to and approved in writing by the Local Planning Authority.

The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post-remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation objectives and criteria has been fully met.

Note: The applicant is advised that the phased risk assessment required by the Contaminated Land Scheme condition should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 11A.

Reason: To ensure the satisfactory remediation of contaminated land and/or waters. This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019."

The verification report is a document that is produced at the end of the remediation process to establish that the remediation details associated with condition 5 have been adhered to, to ensure that pollution is adequately dealt with. The verification report relates to parts of the site that were contaminated, and is not concerned with parts of the site which were uncontaminated.

The following sections summarise the submitted material:

Details of the Verification Report

A report was submitted by Elemental GI dated 22 January 2024. This comprised of a letter forming a summary note for the development, on the western part of the site on the former piggery area. The summary report reviews the previous reports for the site. The notable conditions that have been observed are:

- no issues relating to ground gas and radon of been identified;
- previous works encountered made ground across the western phase of development, but reported it to be absent across the eastern area;
- the made ground was reported to generally comprise reworked topsoil or reworked sandy silt including some anthropogenic materials and rare animal remains;
- natural soils were encountered as sandy clays which were underlain by softer sandy silt/silty sand soils

- groundwater was encountered in around half the exploratory holes from depths of between 1.00m and 2.00m below existing ground level;
- the conceptual site models developed for the site identified potential pollutant linkages relating to this contamination and to the future site users/structures;
- Contamination was recorded in several locations across the western phase of development, comprising exceedences of pathogenic bacteria, polycyclic aromatic hydrocarbons and asbestos;
- Natural clean soils (topsoil and subsoil) from the clean eastern portion were to be used to restore levels once contaminated material had been removed.

January 2024 site Update

- 40 cubic metres of contaminated soils had been removed.
- Inert materials including crushed concrete had been removed.
- clean soil from the east had been used to reform the levels, including at least 600mm in all rear gardens and all other areas of soft landscaping.
- at the time of the report in January 2024 client was to re-excavate all gardens to a depth of 600mm and place a warning membrane across each garden. A spec sheet for the membrane forms part of this submission.
- gardens will be refilled with clean subsoil. The client has decided that the remaining site-won topsoil materials from the eastern phase are not likely to be a suitable growing media for turf etc. due to their saturation and other factors.
- Elemental have been supplied with copies of the topsoil test certificates which provide an initial indication of the quality of these soils. However, they reiterate the recommendations contained in Section 4.2 of the RMS regarding the selection of imported topsoils and the YALPAG guidance:

"Further testing is therefore necessary for these soils at this stage, which has been discussed separately and which should be identified to the Council (and warranty providers) once suitable/sufficient testing has been completed."

The report goes on to identify forthcoming steps that are required:

- records relating to the removal of materials and replacement, including tip tickets and photographic records
- initial topsoil results show soil is generally suitable but further tests are needed. Will need to include a minimum number of further tests. This should be taken in advance of any importation.
- location of former slurry pits should be identified on site, should be fully removed for off-site disposal. It is understood the contents have already been removed. The report states that validation testing around the excavations should not be necessary as they will be capped regardless. An engineer should attend the site once the excavations are completed to record the completion of works
- Once the imported subsoil and topsoil are brought onto the site, and placed above the membrane, an engineer should visit the site to record the thickness of the materials and the presence of the membrane in accordance with the RMS to seek sign-off from the Council on a plot-by-plot basis.

Letter of 13th February 2024

A further letter from Elemental GI was produced dated 13th February which set out the following:

Burial areas

Burial areas were discussed as a possible feature/risk in the 2017 Phase 1 Report, but were investigated in the Geo-Matters Phase II Report 2021 and no significant or widespread remains were noted other than small pockets/fragments in 5 pits, 1 of their own pits and 4 from a previous investigation. The widespread presence of significant animal remains was therefore not recorded.

There are no obvious animal remains from enabling works and road/sewer excavations. Because original soils in the southern areas shall be covered by clean soils and a capping membrane, the applicant considers no further action is necessary.

Testing of Topsoil

The letter states that 600 cubic metres of soils across the front of rear gardens should have samples taken and sent for analysis. The letter requests approval of this methodology. The detail of the tests shall be forthcoming.

Membrane/Soil Materials

A sacrificial layer of site-won material (from adjacent phase) remains in place beneath the membrane, which is undisturbed following its original deposition. When the materials are temporarily removed they are stored on hardstanding or similar. Contact with the original ground is not possible. A sketch has been provided.

A sacrificial layer of site-won materials forms a blanket on top of the original ground, because this is subsequently covered with a membrane than at least 600mm of clean soils are added, the applicant considers testing is not considered necessary.

Capping Inspections

Elemental will complete the first capping inspections.

Letter of 8th March 2024

- A capping sketch was submitted.
- letter dated 8th March states the following:

Remedial Requirements

-site has undergone topographical modification as part of construction works. Site levels have been raised with imported uncontaminated materials including from adjacent eastern phase. All gardens are to be additionally 'capped' with a defined minimum 600mm of separate subsoil/topsoil materials which are to be placed upon a suitable membrane.

Capping Inspection Works

Engineers from Elemental GI Ltd attended the subject site to inspect the rear gardens of Plots 13-15. Holes were completed under Engineer supervision in these plots as per drawings to confirm thickness of capping soils and to confirm visual quality of soils present. Thicknesses were recorded.

Membrane Inspection

The membrane was exposed and photographed for Plots 13 to 15.

Capping Soils Analysis

Elemental were informed in February 2024 that soils had been selected for placement in plots across the site, but subsequently told that an alternative source/supplier was confirmed by the client. Soils from 'British Sugar' had been selected and placed across the garden areas. They have been sent testing certificates from these soils, a selection were enclosed.

Summary and Recommendations

At least 600mm of thickness of visually 'clean' capping soils was present at the inspection points listed above in accordance with the RMS.

Planning Analysis

Environmental Protection offer no objection to the proposed membrane, and no objection to the plot by plot release of each plot. However, it was made clear in their initial response that the burial areas are not plot specific which means their remediation may not be comprehensive if the material had been removed incrementally. It is evident that material has already been removed on the western side and soil from the eastern part of the site has already been used to level the site. It is unclear if testing was undertaken prior to the clean eastern material being moved.

The submitted details confirmed that post importation sampling has not yet taken place. The purpose of a verification report is that details of the post importation sampling should confirm and document the results of the sampling within a closure report. Evidence that this has taken place has not been submitted so cannot form part of the verification report.

Material management has not been systematically and correctly documented by an independent consultant.

A key element of condition 6 requires "post remediation sampling and monitoring results" to be included in a "closure report to demonstrate that the required remediation objectives and criteria has been fully met".

The submitted material consists of a 3 page letter dated 22nd January, a further letter of 13th February which does not include post remediation sampling or monitoring results and a further submission dated 8th March containing further information. The first letter contains a January 'Update' setting out that clean soils from the eastern phase of the development have been used to reform the levels, with a number of future steps, such as the intention to re-excavate the gardens to provide a membrane. There is also a further heading setting out 'Forthcoming steps'. Further submitted material dated the 13th February then discusses the fact that burial areas were only possibly contaminated, and that not further action should be taken. This is not accepted by the Local Planning Authority as it does not comply with the condition. The letter of the 8th March then documents subsequent inspections of plots 13-15, further sketches and information about topsoil, but omits details associated with site investigations for plots 19-22.

The submitted material has been taken into account but fundamentally, it does not demonstrate post remediation sampling and monitoring results in line with the condition, that material handling has been correctly dealt with, nor does it represent a closure report because some actions at the time of the submissions had not been enacted and some elements not recorded in the submission. The nature of the remediation also appears to have been altered from the original conceptual model and remediation strategy.

In Environmental Protection's second response, they confirm they are unable to discharge the details in relation to plots 13-15, as the information is not clear, particularly in terms of if any soil had been removed for these plots and if land had been raised there, and what the finished levels were compared with the original levels. There are no delivery slips for the imported top soil or test data less than 3 months old at the time of import and no delivery note for the membrane. There are no waste transfer notes for the removed soil. There are outstanding questions regarding the subsoil and no mention of the no dig layer.

In terms of the reuse of material from the paddock site, the sketch showing a sacrificial layer does not include a scale or annotations to suggest how much of a sacrificial layer was left, or who supervised the assessment of where the bottom of the stockpile was, or where the material was then moved to.

The consultants have proposed a significant change to the remediation method statement. Since 2017 there have been reference to on site slurry pits and buried animal remains. Whilst it was accepted that the horse had not been buried on site in a previous proposal, and would be less of a risk as a horse is likely to be buried at significant depth, pig burial was common historically on farms such as this, and there is no evidence to suggest that further remains are not present. There has been no site investigation or documentation or submitted details in the gardens of plots 19-22 which are the highest risk of contamination. The applicant has not provided a sufficiently robust proposal to vary the remediation method statement and conceptual model.

As a result, the submitted material does not meet the requirements of the condition and consequently the details cannot be discharged because the submission does not demonstrate, in line with Policy 30, that the development can be made safe for the proposed use and that all potential impacts have been suitably mitigated.

Conclusion

The remediation details have not yet concluded; a sufficient verification report has not been produced at the end of the remediation process to establish that the remediation details associated with contamination conditions have been adhered to. Because the process has not yet concluded the submitted details cannot be discharged. There is evidence that the procedures set out in the remediation strategy have not been adhered to or adequately documented, such as material management on site. This risk of cross contamination has not been fully mitigated which may adversely affect the health and wellbeing of future occupiers of the dwellings. In addition, the removal of the contaminated material was not recorded and documented and included in the verification report. As a result the proposal fails to conform with Policy 30 of the SELLP and the details 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.