

**Report to Committee to Modify a Planning Permission under Section 97 of the Town and Country Planning Act 1990 for the planning consent WP/14/00330/OUT, WP/16/00388/VOC and WP/19/00184/VOC**

**Site Address:** Redundant Buildings at, Bumpers Lane, Portland DT5 1HY

**1. Background to the report:**

1.1 Outline planning consent WP/14/00330/OUT was granted on 24 June 2015, on the above site for the demolition of existing redundant industrial buildings and erection of residential dwellings (approx. 64). Conditions 4, 5 and 6 of that permission read as follows:

*4. Before the commencement of development, a further investigation and risk assessment shall be completed in accordance with a scheme to be submitted to and approved by the Local Planning Authority to assess the nature and extent of any contamination on the site. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved by the Local Planning Authority prior to the commencement of development. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to human health, property (existing or proposed, including buildings, crops, livestock, pets, woodland and service lines and pipes), adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.*

*Reason: 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, having regard to the National Planning Policy Framework March 2012.*

*5. Before the commencement of development, 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 shall be submitted to and approved in writing by 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 in relation to the intended use of the land after remediation.*

*Reason: 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, having regard to the National Planning Policy Framework March 2012.*

*6. Before the commencement of development, the approved remediation scheme shall be carried out 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.*

*Following completion of measures identified in the approved remediation scheme, a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.*

*Reason: 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, having regard to the National Planning Policy Framework March 2012.*

1.2 A variation of condition (VOC) application WP/16/00388/VOC of the outline permission was approved to allow the demolition of the redundant buildings before the submission of details of reserved matters. Following the grant of the VOC a reserved matters application was submitted WP/17/00017/RES for the erection of 71 dwellings. A further variation of condition application WP/19/00184/VOC has been submitted and whilst it has a resolution to approve the planning permission has not yet been completed as the S106 agreement is yet to be completed.

## **2. Section 97**

2.1 Section 97 of the Town and Country Planning Act 1990 sets out that:

*(1) If it appears to the local planning authority that it is expedient to revoke or modify –*

- (a) any permission (including permission in principle) to develop land granted on an application made under this Part, or*
- (b) any permission in principle granted by a development order,*

*The authority may by order revoke or modify the permission to such extent as they consider expedient.*

### **3. Proposed Modification**

3.1 A compliance with condition application WP/18/00364/CWC was submitted to request confirmation of compliance which included conditions 5 and 6 as set out above. As part of the application WPA Contaminated Land Consultants were consulted on the submitted information. As part of an initial response WPA set out and agreed with the Developer that the property deeds and information packs *should prohibit future extensions and/or significant structural alteration of dwellings and/or significant modification of private gardens and soft landscaped areas within the development, which could compromise the various capping systems and remediation works undertaken across the site.* This was carried out and the covenants in the deeds checked by the Council's Legal team.

3.2 Concerns were raised though whether this would be enough to ensure that all future buyers of the properties were aware of the risks of future works which would disturb the ground below the buildings, gardens and soft landscaping areas and the capping systems which have been agreed with WPA and implemented by the developer. WPA confirmed that the site is a sensitive site and future owners of new properties should not be able to undertake works which would compromise the various capping systems across the site, as to do so runs the potential risk of releasing asbestos fibres into dwellings and gardens (including vegetables grown on them) These can be particularly dangerous to young children and vulnerable persons. WPA therefore confirmed that it was essential that PD rights in relation to works that would require foundations are removed for the properties. This would prevent accidental disturbance of the capping systems without the prior input and control of the Local Planning Authority and its experts in respect of contaminated land and would provide protection to public health and the environment.

3.3 In any event the Council could not enforce covenants in land transfers between developers and house purchasers and in future the developer may have no interest in enforcing such covenants.

3.4 The Council's legal team advise however that:

- a. Removal of permitted development (PD) rights would have to be done through an Article 4 Direction. The proper use of such directions is to protect the visual amenity of the area.
- b. In any event an Article 4 Direction removing PD rights will not protect against works which are not sufficient to constitute development
- c. The proper means of control is either through a planning condition or s106 obligation. As owners must join in to s106 obligations, and some plots

have been sold, a Section 106 obligation is not a practical proposition leaving only the planning condition option.

- d. This could be done by an application by the developer under s73 of the Act, but having sold properties based on the existing planning conditions he is unwilling to entertain this.

3.4 Given the above the only way in which the Council can impose controls against breaching the protective measures is to modify the planning permission under Section 97 of the Town and Country Planning Act 1990. The modification would include the following new condition:

*No groundworks shall take place at a depth more than 1.0m below ground level of all buildings of the development or at a depth more than 0.60m below ground level for all private gardens, all privately owned external areas and all other areas of soft landscaping and groundworks shall not compromise the high visibility membrane present 1.0m below ground level of all buildings and 0.60m below ground level for all private garden areas, all privately owned external areas and all other areas of soft landscaping. For the avoidance of doubt this restriction shall apply to any works permitted pursuant to Article 3 of the Town and Country Planning (General Permitted Development Order) (England) Order 2015 as amended or any Order which replaces the same.*

*REASON: To protect the health of the persons living at the properties.*

3.5 The Section 97 procedure requires confirmation (after hearing any objections) by the Secretary of State. Given that the object is to protect humans against the health effects of land contamination it is hoped that the Secretary of State would confirm the order under section 97. However, there is obviously no guarantee of this.

3.6 The developer and affected owners could also claim compensation for the loss of value of their properties, however:

- a. they have already given private covenants to similar effect, and
- b. they can still develop their properties provided they do not breach the condition

3.7 It is hoped that the compensation (if any) would be limited.

#### **4. Conclusion**

4.1 Despite the possible costs of making the Order (including a public hearing/inquiry) and the possibility of compensation officers consider that protecting the health of future residents of the site is the paramount

consideration. To achieve this in a way enforceable by the Council, the planning permission needs to be modified to restrict ground works that can be undertaken.

4.2 It is also considered that including this modification on the permission will help to flag up the issue of safety and contaminated land on any land charges searches undertaken on purchases of the properties both now and in the future.

4.3 The modification is not considered to be to the detriment of the developer as the modification mirrors the restrictions already imposed in the deeds of the properties by the developer.

## **5. Recommendation**

5.1 That Members agree to the modifying of the outline planning permission WP/14/00330/OUT and WP/16/00388/VOC and to include the condition in respect of WP/19/00184/VOC by imposing the following new condition on such permissions:

*No groundworks shall take place at a depth more than 1.0m below ground level of all buildings of the development or at a depth more than 0.60m below ground level for all private gardens, all privately owned external areas and all other areas of soft landscaping and groundworks shall not compromise the high visibility membrane present 1.0m below ground level of all buildings and 0.60m below ground level for all private garden areas, all privately owned external areas and all other areas of soft landscaping. For the avoidance of doubt this restriction shall apply to any works permitted pursuant to Article 3 of the Town and Country Planning (General Permitted Development Order) (England) Order 2015 as amended or any Order which replaces the same.*

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