

Appeal Decisions

1. PURPOSE AND RECOMMENDATIONS

Purpose of Report: To inform Members of notified appeals and appeal decisions and to take them into account as a material consideration in the Planning Committee's future decisions.

Recommendations: **It is RECOMMENDED that:**
This report is for Information

Wards: Those covered by the area planning committee

2.0 APPEAL DECISIONS

**Appeal Reference: APP/PCU/MOD/D1265/327867 and
APP/PCU/MOD/D1265/327868**

Planning Reference: P/SEC/2021/05346

**Proposal: Modify a planning permission under Section 97 of the Town
and Country Planning Act 1990 for the planning consent
WP/14/00330/OUT and WP/16/00388/VOC**

Address: Land at Bumpers Lane, Portland

- 2.1 At the meeting of the Southern and Western Planning Committee on 8th October 2020 a report was considered by members regarding a proposal by officers to seek the modification of two existing permissions for the residential development at Bumpers Lane, Portland. The modification proposed was to add a condition to each permission regarding groundworks below a certain depth to prevent the breaching of the protective membrane at the site, without planning permission having first been obtained, in order to address the potential release of contaminants as a result of any such breach. This condition was recommended following advice received from the Council's land contamination consultants, WPA, as a result of their consideration of information regarding remediation of contaminated land which had been submitted in order to comply with a number of pre-existing planning conditions attached to the two permissions in question. Members at the committee meeting in October 2020 resolved that officers should pursue the modification of the planning permissions.

- 2.2 The order to modify the permissions was required to be confirmed or otherwise by the Secretary of State following the hearing of any objections. The sole objector to the orders was Betterment Properties (Weymouth) Ltd, the developer of the estate.
- 2.3 The objection resulted in a hearing by the Planning Inspectorate on 18th January 2022 and on the 7th of December 2022 the decision letter of the Secretary of State for Levelling up, Housing and Communities was received. The Planning Inspector had recommended to the Secretary of State that the modification orders should not be confirmed. The Secretary of State accepted the Inspector's findings and agreed with the Inspector that it would not be expedient to confirm the orders.
- 2.4 The Inspectors main conclusions as set out in the Secretary of State's letter were:
- New conditions cannot apply to the houses that were complete at the time that the orders were made and that a good proportion of the houses on the development had been completed by the time the orders were made.
 - The covenants relating to the site are exceptionally restrictive and appear to be more restrictive than the conditions, except in respect of works within the properties themselves, which are very unlikely.
 - The conditions are not necessary.
 - In terms of enforceability the conditions would be no more effective, and in some regard less so, in preventing potential public health concerns than the covenants already in place.
 - The conditions are unreasonable given the existing covenants.
 - Due regard has been had to the development plan and there has been no breach of Local Plan Policy ENV9.
- 2.5 Whilst the outcome did not go in the favour of the Council, members and officers should be satisfied that, as was their intention, they have done their best to ensure the safety of residents by pursuing the modification of the planning permissions.