

Fiona Goode

From: Driver, Jonathan <Jonathan.Driver@havant.gov.uk>
Sent: 29 April 2020 22:04
To: Fiona Goode; Haywood, Daphney
Cc: Kieran McGuire (Linden Homes); Gavin Roberts; Stephen Clark (Linden Homes); James Brewer
Subject: RE: APP/13/00804 - Woodcroft Farm c11 (Contamination)

Good Evening Fiona,

In principle, I would support the suggested spatially defined partial discharge of condition 11 – it is entirely reasonable to limit the effect of the condition to those areas where anthropogenic deposits are present.

I would suggest that the spatial scope should probably be expanded beyond plot boundaries suggested, principally as the statistical assessment concluded that (broadly) it would be appropriate to regard made soils as a homogenous unit, and as the outstanding uncertainties relate to the contribution of those made soils to the pollutant loading of the abstracted aquifer (and not solely to the protection of human health within plot boundaries).

An additional reason to expand the scope might be that whilst trial holes around buildings in the north of the farmyard have not identified an appreciable depth of made soils, no information is available from within the building footprints. As I understand it, at least one building is coincident with an equipped play area. Whilst additional investigation is not likely to be needed to account for this risk, it may still be appropriate to regard this area as one where the principals of the cover system should apply (as a result of the risk that asbestos containing material [ACM] may be present).

I am aware that our planning service has agreed discharge based upon an area indicated on plan, so I don't imagine that there would be a procedural issue in making a spatially defined determination.

I would also agree your interpretation of the outstanding issues. Taking each in turn;

Controlled Waters;

- The latest work had narrower scope than expected, and did not seek to characterise leachability of contaminants from made soils, where contaminants exceed domestic human exposure GAC
- TP215 results indicate >LOD BaP & Pyrene within chalk at 1.2m below the made soils. The same sample also identified concentrations of C12-C16, C16-C21 & C21-C35 Aliphatic hydrocarbons in excess of their theoretical solubility limits, and Aromatic C21-35 at roughly saturation concentrations. Increasing competency of chalk is anticipated with depth, and similarly a corresponding decrease in attenuation potential. This is considered a 'red flag' for mobile hydrocarbon contamination which may be related to a hotspot (buried source, or limited deposit of made soils of 'different' character), or it might be related to a pathway for contaminants generally leachable from made soils more generally.
- Given that the made soils (in the farmyard area) are to be considered as a homogenous unit – this makes necessary a confirmation that either;
 - Made soils are not capable of leaching contaminants in significant concentrations, or,
 - that the low permeability functional aquitard is present and is sufficiently impermeable (or provides sufficient attenuation) as to make negligible the risk arising from contaminants which are known (or are assumed to be capable of-) leaching in significant concentrations from Made soils.
- A nearby site is also progressing through a condition discharge process for contamination, with that site having a very similar risk profile. Neither the Environment Agency nor Portsmouth Water Company took a particularly

risk-tolerant view on that site, despite having available a leach profile through the weathered surface of the chalk aquifer which demonstrated effective attenuation. It is relevant that there was a reluctance to apply the principle ('increasing attenuation with depth' at a single location-) to the site as a whole. The logical inference is that the EA view is that it is unreliable to assume that any aquitard or demonstrated is necessarily continuous, or that attenuation rates universally apply to the site as a whole (note, the site in question is smaller than the Farm Yard area of the Woodcroft Farm development).

- In respect of this site, neither leachability- nor attenuation- rates have been demonstrated. The RMS nevertheless relies on either assumed attenuation, assumed aquitard, or both.
- The question of leachability is relevant to both material to be left in situ (under a cover system, to limit human exposures), and to the MMP as material is only eligible if it is-, or can be made-, suitable for use. In this case – I would interpret leachable contaminants (and if present, their likely fate) to be a key component of 'suitability' in relation to the MMP.
- I would be content for consideration of leachability to account for estimated 95th percentile leach rates. Given the sensitivity of the receiving environment however, I would expect attenuation to be considered on a 'worst result' basis. The Environment Agency / Portsmouth Water might take a different view at their discretion.
- I would be happy to discuss the scope of any further phases of investigation in order to maximise the chance of the result facilitating a decisive outcome. This is particularly important as the nearby site to which I refer has been subject to a protracted assessment process and has nevertheless necessitated a decision which accounts for a significant degree of residual uncertainty arising directly from SI design (despite several successive phases). It would benefit all interested parties if a similar outcome can be avoided. It is not my role to direct or dictate the design, but I do not regard it to be a conflict either to agree elements in advance of fieldwork as being 'likely to address outstanding concerns', or to make recommendations or suggestions which would be expected to improve the likelihood of concerns being addressed.

Materials Management Plan;

- It is now my understanding Materials Management Plan's are not routinely subject to Agency Approval, with audits carried out only in the event of complaint, or in limited numbers at random for general verification of the delegated scheme.
- This reduces the risk of Agency rejection of the plan, but does not affect either the requirement of the QP to demonstrate no objection from regulators, or to confirm suitability of use (accounting for the sensitivity of the geological setting of the site and it's groundwater protection status).
- As I've indicated previously para. 183 of the NPPF directs the LPA to assume that the process will proceed satisfactorily, and not to duplicate the controls through the planning system. In this sense, it is not a requirement to submit the MMP as an integral part of c.11. It is expected however that the verification requirements of the MMP will be documented in full as part of the verification report required under c.12, demonstrating that the material deposited is suitable (does not represent either a human health or controlled waters risk).
- In respect of suitability of use – I note the sections added to the v4.0 version of the GE16943-RSVP-FY document referring to the NHBC's view of deposit of ACM beneath the footprint of new dwellings. I am not familiar with the specific basis for this concern (or any threshold of presence / quantification by mass ratio etc.), but would assume that it is due to risk of disturbance by householders & tradespersons. Given this, it may be helpful to confirm that it is acceptable to the NHBC to place asbestos containing made soils under an MMP within garden areas under the proposed cover system. Again, this is a matter of 'suitability', and may be addressed as part of the verification (for the MMP, and under c.12).
- As additional comments;
 - I note that text at section 4.2 refers to *"...soils won from reduced dig areas are to be relocated to garden plots where they can be accommodated below the soil cover system..."* where the phrase 'can be accommodated' is not strictly equivalent to 'is required'. This is purely an MMP issue, I am simply highlighting that care is required to ensure that the operation is not perceived to be 'disposal'.
 - Section 5.1 retains text from v2.0 which refers to placement of soils known to be impacted with ACM within(beneath) building footprints. This is incompatible with reference to the NHBC position.

- Section 4.2 refers to the plausible pollutant linkage for direct contact being severed and so the risk of harm to end users from exposure to the contaminants being removed (and so impacted shallow soils could remain in these areas), as well as deposition of asbestos impacted soils beneath house footprints not being acceptable to the NHBC. It appears to me that the basis for the NHBC objection to *placement* of ACM containing soils beneath buildings is directly relevant to the acceptability of *retention* of ACM containing soils in the same location. I have previously raised concerns in this regard – and would consider this risk to be particular to ACM due to the potential for acute & severe impact from limited exposure. *It would be helpful to provide clarity on this issue.*
- I am unclear on the basis for volume estimates shown on Figure 7, noting that the placement requirement is >1200 cu.m, and excavation requirement ~450 cu.m. I assume the basis for the figures is material excavated, and ‘placed’, and does not estimate volumes left in situ, undisturbed. Fig 7 indicates that the placement requirement refers to the volume below the soil cover system – and so it is assumed that it is to comprise contamination-impacted soils. *It would be helpful if you could confirm the origin of those soils, as it would appear that they are not to be won from within the phase 2B area.*

I respect of consultation - I would of course support your request for formal consultation with the EA. It may be helpful to clarify however that I consider my role as a non-statutory consultee to legitimately include controlled waters issues (specifically in relation to contamination), for reason that controlled waters remain relevant receptors for contaminants under an enforcement scenario, as the NPPF refers to Part 2A as a minimum standard, and as the Statutory Guidance to Part 2A directs Local Authorities to make use of the planning system to address potential contamination issues.

Whilst I would have significant regard to the opinion of the Agency, and it is ideal (and typical-) for Environmental Health and the Agency to agree on controlled waters risk assessments – Environmental Health will not always defer to the position of the Agency. It is acknowledged that the planning service is the decision-maker, and will need to take a balanced view in the event that conflicting advice is received from different consultees.

My apologies for the length of the response. I trust however that the above is acceptable in respect of the approach to addressing the outstanding concerns, and a sufficient clarification of the perceived outstanding issues. I am happy to discuss any queries arising – please don’t hesitate to contact me on the details at the foot of this email. I will liaise with Daphney in respect of defining a spatially defined condition discharge. I have added James Brewer to the circulation list at his request.

Best Regards,

Jonathan Driver
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