

HAVANT BOROUGH COUNCIL

Town & Country Planning Act 1990

Consultation on Planning Application

MEMORANDUM

From:	Environmental Health	To:	Development Control
Our Ref:	CONS/23/03500	Your Ref:	APP/22/00492
EH Case Officer Extn:	44 6677	Date:	15 April 2024
DC Case Officer:	Ms Josephine Lacey		
DC Case Officer Extn:	4 317		
Application Number:	APP/22/00492		
Site Address:	31A North Street, Emsworth, PO107DA		
Proposed Development:	Approved Development: Construction of 6 No. Dwellings (2No.1bed, 3No.2bed 1No.3bed) with associated out buildings and parking, with minor amendments of design and siting - Revision of APP/19/00854.(23.11.22) Request to discharge condition 2 (05.07.23). [Reconsultation following receipt of further details]		

Observations / Comments:

These comments follow a review of some further verification work undertaken by the applicant, and an initial review of those submissions by Environmental Health, with comments informally returned by email on 21/03/2024.

Summary of recent submissions

The submitted sample results have demonstrated that the chemical quality of imported soils as placed were within specification and suitable for use, resolving the uncertainty with material balance & source quality.

The submissions have not demonstrated the absence of retained made soils adjacent to the northern plots (pictured in prior verification reporting), and did not target this material for sampling. Consequently, the results do not characterise the retained made soil (previously determined by limited sampling to be probably unsuitable for retention in a private rear garden), and for this reason, a robust quantitative risk assessment based upon the relative proportions of the characterised soils (~70% clean imported, ~30% retained made-) could not be undertaken as insufficient samples were available to support a statistical approach, even if the applicant had commissioned a specialist geo-environmental practitioner to attempt a risk assessment.

Summary of Informal Environmental Health Comments (by Email 21/03/2024)

The comments highlight the above summary of recent submissions, and highlight sections of previous comments (our ref: CONS/23/03500, 26/01/2024), particularly in relation to the policy context – which remained valid following a *prima facie* review of the submissions.

In summary, given the current conceptual site model ('CSM' i.e. given our working assumptions about the character of the soils present within the garden areas, their lateral & vertical distribution, and reasonable use to which future residents might make of the gardens over the lifetime of the

development-) it was felt that relying too heavily upon the minimum standard established under the NPPF (that new development should not be at risk of becoming statutorily contaminated land in future, as a result of the development-) would fail to adequately protect future occupants.

A summary was provided of the elements of the remedial strategy which the Council can agree are complete, and a detailed list of options for resolving outstanding concerns was provided.

Reaching a determination of this application

As works on site have departed from the previously agreed remediation strategy, we are reliant upon the 'unless otherwise agreed in writing by the Local Planning Authority' clause of condition 2. The options outlined in the prior formal comments outlined ways in which Environmental Health believed that the applicant could demonstrate that the policy aims to which c.2 relates could be agreed to be sufficiently met.

As was noted in the 21/03/24 comments, the January CONS/23/03500 comments remain largely valid following the recent submissions, for the reasons given above.

The third point of Option 4) (CONS/23/03500) provides that a favourable risk assessment which demonstrates sufficiency of the implemented risk-reduction measures would be sufficient to support discharge of c.2. Whilst this would ordinarily be expected to be provided by the applicant, it could be undertaken by the Local Authority, based upon information provided by the applicant.

In the interests of resolving the impasse with this site, I have undertaken a review of all prior submissions with a view to undertaking an indicative risk assessment which would support the Council's view on the necessity for- and proportionality of- requiring further physical risk-reduction work specific plots.

It was not possible to undertake a robust risk assessment due to the current CSM & the number of available samples. To support a statistical assessment, I have generated a series of simulated samples using the known results to define a theoretical population without an assumed probability distribution. This allows us to test the principles in a way which is inferior to having real-world results, but superior to relying upon simple rules-of-thumb based upon a very limited dataset. Care was taken to avoid any extreme / unlikely samples, and a minimum 10 samples of 20 determinand results were used for each assessment, distributed 6/14 (Made-Soils/Imported-Topsoil populations). All samples, and Average of samples were also assessments were also used for some determinands to assist in balancing unclear decisions.

The results were not as decisive as I had hoped, but I think on balance do provide sufficient information to make a determination on this application. A brief summary of results & conclusions is presented below for clarity (GAC = 'generic assessment criteria, a screening value for risk assessment purposes);

- **Potable Supply Pipes;**
 - **C5-C10** No risk assessment undertaken. It has been agreed that sufficient ancillary information had already been provided to consider that the protected pipe runs have probably been adequately implemented (see CONS/23/03500).
- **Phytotoxicity;**
 - **Pb** No risk assessment undertaken. Phytotoxicity GAC exceeds that for Human Health; considered against Human Health Only.
 - **Zn** Phytotoxicity GAC is lower than that for Human Health. The mean of 3 of 10 simulated samples exceeded the GAC, and failed to meet planning standards at 80% evidence in all (10/10) assessments. Aggregated samples failed to meet planning samples, but averaged sample achieved an acceptable result. Testing against an enforcement scenario found sufficient evidence in 2 of 10

- assessments. I have however decided that this is not material for the following reasons i) enforcement against a phytotoxic contaminant would probably be regarded as disproportionate where the standard falls well below tolerable Human exposures, ii) the soil spec in the remediation strategy included a value for Zn that exceeds the phytotoxicity standard, iii) sufficient evidence was only found under the enforcement scenario at the upper confidence limit, and on the balance of probabilities only, iv) the proportionate decision would be to regard phytotoxicity as an amenity issue, and given the CSM (made soils probably <50% soft landscaped), the issue will be limited in the near-term/as built. Sensitivity testing was not undertaken, given i) – iv).
- **Hg** Phytotoxicity GAC is lower than that for Human Health. Sample mean from real samples exceeds phytotoxicity GAC. 3 of 10 simulated samples failed to meet planning standards at 80% evidence (acceptable in 7 of 10). Sensitivity testing showed that there would be insufficient evidence to support enforcement for Hg under the current CSM (notwithstanding proportionality arguments - see Zn, above).
 - **Human Health;**
 - **BaP** Not assessed – real samples were marginal on evidence level under a planning scenario, use worst-case PAH congener as indicator of risk.
 - **BbF** As BaP
 - **DahA** Assessed as worst-case PAH congener, to represent risk from this group. The planning standard was met in all assessments at 80% evidence level (9/10 at 95% evidence). Sensitivity testing did not result in a substantial reversal under the planning scenario, and under an enforcement scenario the evidence failed to exceed 10% in any assessment, against the upper confidence limit (a conservative benchmark). Conclude that DahA levels are unlikely to be enforceable. Planning standards have probably been met.
 - **Pb** Planning standards were failed at an 80% evidence level in approximately half of the assessments, including those based upon the aggregated and averaged samples (an unfavourable result in 7/12 assessments). Assessment against an enforcement scenario returned an unfavourable result on the balance of probabilities (evidence >51%) in just one assessment, with the remaining 9 returning insufficient evidence to support a statutory determination. Sensitivity testing was undertaken under both scenario's, failing to result in a substantial reversal of the results – planning standards were not universally failed, and evidence to support enforcement action was only met in 3/10 assessments. It is concluded that any apparently enforceable scenario might be easily challenged by increasing the number of available samples – i.e. that on balance of probabilities, the true average soil exposure is more-likely-than-not to fall within tolerable exposure levels.

It is considered that the above-summarised exercise shows that the development of the northern block (plots 1-3, 16c-16e, N3-N1) demonstrably fails to meet the standard sought by the planning condition; i.e. to demonstrate with a high degree of confidence that the site *is suitable for use*, and that an argument could be made that the submissions fail to meet the aims of NPPF 2023 189 c).

Both weigh in favour of further physical mitigation work, however;

- the applicant has provided sufficient evidence to support an *indicative* risk assessment, which based upon conservative assumptions shows that, on balance, the minimum standard outlined under 189 b) has been met 'as built'. I.e. the site *cannot be shown* to be (likely to be-) *unsuitable for use*. Whilst the assessment undertaken by Environmental Health was indicative only, and would be insufficient to support an enforcement case – it is nevertheless informative and I am comfortable in concluding that the balance favours 'suitability' over 'unsuitability'.

Accounting for the applicant's arguments about the inherent likelihood of future residents further exposing the made soils through removal of temporary hard cover (patio slabs), and that the generic risk assessment assumed the absence of hard cover; I think that this is sufficient to recommend that the Council agree the risk reduction measures implemented at the site as being sufficient to regularise the development against condition 2, as an 'acceptable, albeit lower standard-' alternative risk mitigation works.

Recommendation

That the Council approve discharge of condition 2 on the basis of the recent submissions.

Mr. Jonathan Driver
Environmental Control Officer