

HAVANT BOROUGH COUNCIL

Town & Country Planning Act 1990

Consultation on Planning Application

MEMORANDUM

From:	Environmental Health	To:	Development Control
Our Ref:	CONS/24/01353	Your Ref:	APP/23/00377
EH Case Officer Extn:	44 6677	Date:	12 June 2024
DC Case Officer:	Ms Josephine Lacey		
DC Case Officer Extn:	4 317		
Application Number:	APP/23/00377		
Site Address:	25 Mengham Road, Hayling Island, PO119BG		
Proposed Development:	Approved Development: Conversion and partial demolition of existing bakery and offices to 4 No. self-contained flats comprising 1No. 3 bed, 1No. 2 bed & 2No. 1 bed with associated parking and cycle storage.(03.10.23) <i>Request to discharge conditions 5,6 [Contaminated Land], 7,8,9,10 [Verification of Remedial Strategy],11,12,14 and 15 (24.11.23).</i>		

Observations / Comments:

I have reviewed the Apple Environmental Ltd. Environmental Desk Study & Preliminary Risk Assessment ('the desk study')

It would appear that the Author had not taken account of Environmental Health's comments at [REDACTED] or APP/23/00377, or even necessarily the reason for the planning condition being imposed. It is also apparent that the preliminary risk assessment relies upon an assumption that all private amenity spaces are to be concrete hardstands. Future changes to this configuration acknowledged but are dismissed as 'uncertainties and assumptions', which does not specifically address the policy objective.

I'd note that drawing no. 20058-413 04/04/2023 labels these spaces as 'Garden' and not 'Yard' or 'Hardstanding', and shows the spaces coloured green.

I note that the landscape architect had previously raised a policy objection, quoting the HBC design guide, being satisfied upon reconsultation with the provision of 'private amenity spaces' at reconsultation, based upon the above referenced plan. The language of the landscape's consultee is notably ambiguous, and does not seek to specify or secure the form of the amenity space.

The status of these spaces is material to the risk assessment for contamination. The author of the report has used it as a reason to dismiss any physical inspection, whereas Environmental Health justified the contamination conditions with reference to the provision of private amenity gardens – specifically stating at the time that dismissal of risks based solely upon desk-based information is unlikely to be accepted.

This issue has arisen before in connection with other developments, and it is not necessary to revisit the policy context in granular detail here. The primary issue is that the provision (or

otherwise) of a soft-landscaped amenity space is material to routes of exposure, and so to whether a site could be considered to be materially contaminated (or not) for the current occupant, and that policy dictates that the minimum standard is that land is suitable for its proposed use (notably not being limited to its configuration on the day of completion or first occupation-) and that it should not be capable of being determined to be contaminated land. The risk of determinability increases as relevant averaging areas decrease – e.g. the risk that a small garden could be determined based upon the content of limited volume of made ground is not low.

This poses particular problems for proposals such as these, where the specifics of the private amenity spaces have not been directly addressed through the planning process.

There are 2 options – the first is to treat the intended hardstanding area as if it were soft landscaped, and so ensure that any future occupant cannot change the risk status of the land within the scope of the newly consented use; and the second is to address the form of the garden areas as remedial and risk mitigation actions under the provisions of c.6.

It is also worth noting that the authors have implicitly sought to dismiss the other risks identified at determination, based upon very broad assumptions that are not well supported by the factual information presented.

Sources, Pathways & Receptors

The garage associated with the property at no. 23 Mangham. The original building at the location was associated with the planning red-line area (use at the time is unknown). The land appears to have been re-developed in several phases, being known to have been associated with retail sales of petroleum fuels in 1966 and likely for an unspecified prior period. Previous uses of the premises are unknown, and no specific planning records exist which relate to physical developments at number 23, the archive only includes the advertisement applications. It is assumed that potentially contaminating materials could have been stored or handled anywhere within the site, e.g. close to the boundary of the development land.

I would tentatively agree the likelihood of groundwater flow direction given the topography and flow direction of local gravity drainage, but I'd note that topography also slopes to the east, and that the river terrace deposits are locally variable and might impose a local influence on directionality/gradient. The location of any storage for petroleum spirit is assumed to be near the frontage, but it is not uncommon for tanks to be remote from the frontage, and specifically either within or to the rear of the retail building. This is particularly the case with older fuel retail establishments and especially with retail of lamp-kerosine.

I would agree with the report that made ground may be present in garden areas, but would disagree with dismissal of this risk on the basis of an absence of a tangible pathway.

The principal receptors are future occupants, and the primary exposure pathways are via garden soils, via plant uptake, and via the private potable supply pipework.

However, it should be also be noted that indoor inhalation pathways could in principle be relevant for a scheme which includes self-contained ground-floor accommodation, especially in a conversion project where construction may permit more soil:living-space air-exchange than would a new construction, and both the condition & the recommendations were written with a view to providing a basis upon which to dismiss this risk also.

Recommendations

I would agree with the authors that a concrete hardstand would alter the scope of use of the amenity spaces and physically break an exposure pathway; however I feel unable to agree this approach for the reasons given in the consultation response to APP/23/00377 (our Ref:

CONS/23/02440), and because we are now not in a position to secure the specific form of the private amenity spaces (or to remove permitted development rights).

This leads me to recommend refusal of the current application for discharge, and that the applicant seek to address the condition either in line with the recommendations given under CONS/23/002440, or through a precautionary specification of potable supply pipework and by measures to secure the specific form of amenity spaces in the long-term as a remedial/risk mitigation measure under the provisions of c.6.

Advice

Resolving the objection need not be overly complicated. See the appended text from CONS/23/02440 for advice on dismissal of risks (or confirming mitigation requirements) using empirical information from a physical investigation. The recommended scope is expected to be sufficient to address all pathways and should minimise the likelihood of additional requirements arising, assuming favourable descriptions & results.

Alternatively, the applicant should demonstrate that precautionary protections are designed-in. With specific reference to garden areas, this should be done in such a way as to make any future change in risk status of the site a conscious & informed choice so that the planning objective is met irrespective of the actions of future occupants.

Where 100% hard-landscaping is proposed in order to avoid the need for testing of soil & groundwater, the scheme should aim to satisfy the needs of the occupants in the long term (e.g. provide adequate planting opportunities without adding exposure pathways), such that remodelling is discouraged. Where remodelling might still occur (e.g. where materials are not sufficiently robust to discourage it), some form of meaningful caution should be in place to communicate that soil may not be suitable for a conversion to soft landscaping. Usually, the Council would consider that a text-based method should be used – a high-visibility fabric alone would not discourage a DIY conversion of a 100% hard-landscaped space.

A dismissal of risks based upon a physical assessment of soil quality (and/or remediation & risk mitigation appropriate to the physical conditions) would be the Council's preferred approach, as this provides greater surety for future occupants/owners, both in respect of the garden space and in respect of the residential units themselves.

Mr. Jonathan Driver
Environmental Control Officer

Appended: text extract from CONS/23/02440

Extract from CONS/23/02440:

“It is not the Council’s role to dictate the scope of a site investigation, however it is sometimes helpful to outline a scope which would address the principle concerns. Those concerns relate principally to the existence of fuel-derived hydrocarbons (from retail sale of petrol, diesel, and kerosine & lamp oil), but would also include some metals used as fuel additives (Lead), and contaminants associated with the service & repair of vehicles (lubricant-derived hydrocarbons, metals used in decorative & anti-corrosion finishes, solvents). Contaminants may be present in soils, groundwater, or may be detectable as either gas or vapour. The presence of existing structures at the site are a complication, and will hamper access to the site for investigative work.

In order to provide sufficient surety, given the above-referenced context, it is recommended that the intrusive site investigation include;

the advancement of a minimum of 3 window-sample-probes (or windowless sample cores) to depths at least sufficient to reach local groundwater (anticipated to be encountered at less than 2m depth)

collection of groundwater samples from a minimum of two different locations

routine screening of trial holes (or recovered soil cores-) using a photo-ionisation detector (PID, as an indication of the presence of total volatile hydrocarbons).

routine sampling of soils for CLEA metals, TPH-CWG, PAH(16) & Asbestos presence (screen).

scheduling of at least one soil sample for BTEX, MTBE (in addition to above)

routine sampling of groundwater for TPH-CWG & BTEX. Dissolved-phase metals should be included if groundwater is encountered within 1m of current ground levels.

Ideally (as best practice) at least one sample of groundwater scheduled for VOC analysis.

The council will not insist upon the advancement of trial holes within the building footprint in the first instance, but the above recommendations are designed to allow inferences to be made as to whether contaminants are likely to be present within the footprint of the buildings, and to gauge the likely level of risk. Where results are significantly adverse, additional intrusive works (which may include holes within the footprint of buildings-) could be required. Completing some or all trial holes as wells might aid in minimising the extent of further intrusive works by allowing the vapours, gasses and groundwater to be monitored from the original trial holes.”