

# DCL/23/05

**Application No:** 22/1767/FH/CON

**Location of Site:** Land Adjoining Church and Dwight, Caesars Way, Folkestone

**Development:** Approval of details pursuant to conditions:  
14.1, 14.2, 14.3 (in part) (Contamination Desk Top Study)  
of planning permission 13/0024/SH as amended by  
21/1110/FH/NMA.

**Applicant:** Folkestone and Hythe District Council

**Agent:** Mr Saul Disbury, John F Hunt, 7 Canterbury Innovation Centre,  
University Road, Canterbury, CT2 7FG

**Officer Contact:** Alex Stafford

## SUMMARY

This report considers whether approval should be given for the submitted details in pursuance of the condition set out above. The submitted information details how the scheme is to comply with these conditions, and this report sets out advice from technical consultees who have confirmed that the submitted details are acceptable and as such the application can be approved.

## RECOMMENDATION (22/1767/FH/CON – Condition 14.1, 14.2 & 14.3 (in part))

**That the conditions submission be approved in accordance with the details and documents provided. That the informatives included at the end of the report be attached to the approval, and authorisation is given to the Chief Planning Officer to amend the wording of these/include additional informatives as he feels is appropriate.**

## 1. INTRODUCTION

1.1. These applications are reported to the Planning Committee because the Council is the applicant and has a substantial interest in the site.

## 2. SITE AND SURROUNDINGS

2.1. The application site is located within the settlement boundary of Folkestone/Cheriton, approximately 3km to the northwest of Folkestone Town Centre. The site which is approximately 4.35ha in size is located to the west of Caesars Way and Shearway Business Park and to the south of the M20.

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- 2.2. The site is accessed to the east via an unmade access off Caesars Way. Located immediately to the south are the residential areas of Elventon Close, Charles Crescent and Stockham Court which are predominantly two storey in height and to the west is the Harcourt Primary School and its associated playing fields.
- 2.3. The site is currently vacant scrub land with areas of hardstanding. Historically it has been used for industrial purposes, including a clay pit, brick works and a former concrete batching plant.
- 2.4. The majority of the site is flat, however the land undulates and drops away towards the motorway in the north east corner. The site is also slightly elevated and rises above the residential area to the south by approximately 2m.
- 2.5. Forming part of the wider area of Shearway Business Park, this is the last area to be developed for employment land uses and is identified within the Local Plan as employment land.
- 2.1. A site location plan is attached to this report as **Appendix 1**.

## 3. PROPOSAL

- 3.1 Approval is sought for details pursuant to condition 14.1, 14.2 & 14.3 (in part) (Contamination Desk Top Study), of outline planning application Y13/0024/SH. The wording of condition 14 was amended under application 21/1110/FH/NMA.
- 3.2 The wording of the condition that the application seek to discharge is as follows:

*14.1. Prior to the commencement of any residential or employment aspects (excluding the access road) of development, a desk top study shall be undertaken and submitted to and approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.*

*14.2. If the desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site.*

*14.3. If investigation and risk assessment shows that remediation is necessary, 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 prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated*

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*land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.*

3.3 The condition contains a further requirement (14.4) relating to a verification report confirming that the remediation works etc have been completed. This application does not seek to provide such details and only relates to parts 1-3 as set out above.

3.4 The following reports were submitted by the applicant in support of the proposals:

## Geo-Environmental Site Assessment

This report seeks to identify any land contamination and/or geotechnical constraints to the proposed development, and to identify the need for any additional investigation or remediation works to demonstrate that the site is suitable for its proposed use. It includes site investigation findings, and a geoenvironmental and geotechnical assessment of the site, in order to inform the remedial method statement.

## Remedial Method Statement

This report sets out the procedures to be adopted to remediate significant pollutant linkages arising from ground contamination, and how they will be verified, and includes pre development and development related measures, together with a verification programme and plan. This is an interim report, prepared pending further ground gas monitoring.

## **4. RELEVANT PLANNING HISTORY**

4.1 The relevant planning history for the site is as follows:

|             |  |                           |
|-------------|--|---------------------------|
| Y13/0024/SH | Outline application (matters relating to access only) for a mixed-use development of commercial/office units (660 sqm) and industrial/storage units (5,142 sqm) (class B1, B8) as well as 77 residential dwellings together with associated car parking, open space, landscaping, pedestrian link and reconfiguration of vehicular access off Caesars Way. | Permitted                 |
| Y16/0403/SH | Reserved Matters application for the erection of 77 dwellinghouses, construction of estate road and provision of open space, landscaping and parking being details pursuant to outline planning permission Y13/0024/SH (details relating to appearance, layout and scale).   | Reserved matters approved |

|                |  |           |
|----------------|--|-----------|
| Y17/0888/SH    | Reserved matters application for the erection of 49 industrial units (4562 sqm) and 2 office blocks (1240 sqm), together with the construction of the industrial estate road and parking and turning areas and landscaping throughout the site being details pursuant to outline planning permission Y13/0024/SH (details relating to appearance, layout, scale and landscaping).  | Approved  |
| 21/0269/FH/CON | Extension of the implementation time until 1st May 2021 under section 93A of the Town & Country Planning Act 1990 (as amended) of outline planning permission Y13/0024/SH (Outline application (matters relating to access only) for a mixed use development of commercial/office units (660 sqm) and industrial/storage units (5,142 sqm) (class B1, B8) as well as 77 residential dwellings together with associated car parking, open space, landscaping, pedestrian link and reconfiguration of vehicular access off Caesars Way). | Permitted |
| 21/1110/FH/NMA | Non material minor amendment to the wording of conditions 5, 7, 14, 18, 19, 20, 22, 23 and 28  | Approved  |

## 5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

### Consultees

**Geo - environmental Consultant:** No objections comments are summarised below:

Recommend the discharge of condition 14.1 and 14.2 in full. Whilst the Remedial Method Statement is considered acceptable, part 14.3 cannot be discharged in full prior to approval of the site-specific gas protection design report and verification plan.

It is considered acceptable for the pre-development phase to commence with partial discharge of Condition 14.3. However, the development phase and full discharge of part 14.3 will only be permitted to proceed upon approval of the gas protection design report.

## Residents Comments

- 5.2 Local residents are not formally consulted on applications to discharge conditions pursuant to planning approvals because these types of applications relate to technical details only. No comments have been received.

## Ward Member

- 5.3 No comments received from the Ward Members. At the time of writing this report, none of the Ward Members are members of the Planning and Licensing Committee.
- 5.4 Consultation responses are available in full on the planning file on the Council's website:

[Search Planning Applications](#)

## **6. RELEVANT PLANNING POLICY**

- 6.1 None. This application relates to the assessment and approval, or refusal, of technical details relating to the approved development at the site. It is not an application for planning permission, where regard must be had to development plan policies and other material considerations. Paragraphs 7.1 and 7.2 below set this out in greater detail.

## **7. APPRAISAL**

- 7.1 Members should be clear that this is not an application for planning permission. As such, the merits of the approved scheme are not being revisited here. This application seeks approval of technical details relating to the approved scheme and Members' decision must be based wholly on the merits or otherwise of the submitted details, having regard to the expert opinion provided in relation to these details by the Council's consultees.
- 7.2 Unless there is evidence to demonstrate that the information submitted is incorrect, or that the comments of consultees are incorrect, Members should be wary of reaching a different conclusion. Without sufficient evidence, any decision contrary to the expert advice provided by consultees is challengeable and could be the subject of an award of costs against the Council.
- 7.3 This is a standalone application, and as such the details being considered here just relate to specific details and not to any other part of the wider development.
- 7.4 Condition 14 is set out in 4 parts and relates to pre development measures (i.e. prior to the construction of the residential and commercial elements of the scheme.
- 7.5 Part 14.1 requires the submission of a desk top study to be completed and submitted for approval by the LPA. The objective of this study is to determine if there are any land contamination and/or geotechnical constraints to the development and to identify if there is any need for additional investigative or remediation works to be undertaken to

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ensure that the development is suitable for its intended use. Part 14.2 requires that if the desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken, and a written report of the findings submitted for approval by the LPA.

- 7.6 The next part of the condition, part 14.3 requires that in the event that the investigation and risk assessment identifies that remediation is necessary, a detailed remediation strategy is submitted and approved by the LPA. This is to ensure that the site can be maintained in a safe condition suitable for its end use.
- 7.7 The Council's Geo-technical consultant has commented on the technical information submitted pursuant to parts 14.1, 14.2 & 14.3 of the condition and has concluded that the information submitted is acceptable to discharge parts 14.1 & 14.2 in full. The Council's consultant has also advised that the remediation strategy is considered acceptable, however, part 14.3 cannot be discharged in full prior to submission and approval of the required site-specific gas protection design report and verification plan.
- 7.8 In line with this advice, I recommend that condition 14 parts 14.1 & 14.2 are discharged in full and that part 14.3 is discharged in part (relating to the remediation strategy) enabling the pre-development works to proceed. The applicant will therefore be required to submit for approval the gas protection design report prior to the commencement of the development phase.
- 7.9 Part 14.4 of condition 14 can only be addressed once remedial works have been undertaken and does not form part of this application submission.

## 8. CONCLUSION

- 8.1 It is considered that the submitted details are acceptable and that the conditions detail applications should be approved.

## 9. BACKGROUND DOCUMENTS

- 9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

## 10. RECOMMENDATION 22/1767/FH/CON (Condition 14.1, 14.2 & 14.3 (in part))

**That approval be granted in accordance with the documents and details submitted with the application.**

### Informative:

1. This approval of this condition details application is given on the basis of the following information:

Geo-Environmental Site Assessment, Biggins Wood, Caesars Way, Folkestone, Hythe, Kent CT19 4AH. RSK Geosciences Reference 52387 R01 (02), dated March 2023;

Letter re: Geo-Environmental Site Assessment, Biggins Wood RSK Geosciences Reference 52530 L01 (01), dated 9th March 2023; and

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Remedial Method Statement, Biggins Wood, Folkestone, Kent. IDOM Merebrook Reference RMS-17436-22-175, Rev E, dated March 2023.

2. Please note that this approval relates to the part discharge of condition 14.3. (remediation strategy). A further submission of the gas protection design report is required to be submitted to and approved by the LPA prior to the commencement of the development phase in order for condition 14.3 to be discharged in full.

## **Appendix 1 – Site Location Plan**