

Item No.	Application No. and Parish	Statutory Target Date	Proposal, Location, Applicant
(3)	23/00584/OUT Hungerford	8 th May 2023 ¹	<p>S73A Application for Variation of a Condition 13 (contamination remediation) following Grant of Planning Permission 15/01355/OUTD - S73A - Variation of Conditions 4, 6, 7, 8, 10, 11, 13, 14, 15, 18 and Condition 20 of approved application 12/01584/OUTD - Residential development for two (2) detached houses with garages.</p> <p>Harefield House and The Gables</p> <p>Upper Eddington</p> <p>Hungerford</p> <p>NHBC</p>
¹ Extension of time agreed with applicant until 28 th June 2023			

The application can be viewed on the Council's website at the following link:
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=23/00584/OUT>

Recommendation Summary: To **DELEGATE** to the Development Control Manager to **GRANT APPROVAL**

Ward Member(s): Councillor Dennis Benneyworth
Councillor Denise Gaines
Councillor Tony Vickers

Reason for Committee Determination: Called in by Ward Member

Committee Site Visit: 15th June 2023

Contact Officer Details

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1. Introduction

- 1.1 This application seeks a Section 73A application to vary condition 13 (contamination remediation) of the planning permission 15/01355/OUTD, which granted outline planning permission for two detached houses with garages, and the two houses are now known as Harefield House and The Gables. The development has been completed, without complying with condition 13 which required:

“The development hereby approved must be completed taking into account the notes at Section 13 of the Phase 1 and 2 Environmental Investigation Report (reference 3761/15) prepared by Terramech Investigations Ltd dated 18 March 2016. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must then be undertaken and submitted for approval in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme no dwelling shall be occupied until a verification report has been submitted to and approved in writing by the local planning authority.”

- 1.2 The development has been completed without the decontamination and remediation works which were identified in the approved report taking place.
- 1.3 The site is situated to the rear of properties at 14-19 Upper Eddington and between Hamblin Meadow and Waram Close. There are two storey dwellings to the north and west of the site and bungalows to the south. The site is within the North Wessex Downs Area of Outstanding Natural Beauty (AONB).
- 1.4 This application is seeking variation of that condition so that the development can be regularised and to allow for remediation works for the land contamination on the site to be undertaken in approved manner. A Remedial Method Statement and Discovery Strategy has been submitted which sets out the remediation strategy for dealing with the contamination which has been found on site, an implementation plan, and a verification process once the works have been completed, and the report also sets out the working practices on site.

2. Planning History

- 2.1 The table below outlines the relevant planning history of the application site.

Application	Proposal	Decision / Date
97/51041/OUT	Proposed residential development for two dwellings	Approved 20/01/1998
00/01052/RENEW	Renewal of Planning Application 151041 for proposed residential development for two dwellings	Approved 30/01/2001
00/10255/OUT	Renewal of Planning Application 151041 for proposed residential development for two dwellings	Approved 06/02/2001

06/00255/OUT	Renewal of Planning Application 151041 for proposed residential development for two dwellings	Approved 27/03/2006
09/00420/OUTD	Residential development for two (2) detached houses with garages	Approved 08/05/2009
12/01584/OUTD	Residential development for two (2) detached houses with garages.	Approved 30/08/2012
14/00753/REM	Approval of Reserved Matters following outline planning permission 12/01584/OUTD - Matters to be considered: access, appearance, landscaping, layout and scale.	Approved 16/07/2014
15/00653/COND1	Approval of details reserved by Condition 3: Arboricultural Method Statement of planning permission 14/00753/REM: Approval of Reserved Matters following outline planning permission 12/01584/OUTD - Matters to be considered: access, appearance, landscaping, layout and scale.	Refused 18/05/2015 Appeal dismissed 28/07/216
15/00778/COND1	Application for approval of details reserved by Conditions 4 - Surfacing, 6 - Visibility Splays, 7 - Parking, 8 - Temporary Parking, 10 – Materials, 11 - Fencing and enclosures, 13 - Landscape, 14 - Spoil, 15 - Floor Levels, 18 – Tree Protection, 20 - Dust of Planning Permission 12/01584/OUTD: Residential development for two (2) detached houses with garages.	Refused 18/05/2015 Appeal Split decisions 28/07/2016
15/01355/OUTD	S73A - Variation of Conditions 4, 6, 7, 8, 10, 11,13, 14, 15, 18 and Condition 20 of approved application 12/01584/OUTD Residential development for two (2) detached houses with garages.	Refused 09/09/2015 Appeal Allowed 28/07/2016
15/03024/OUTD	Section 73A - Application to vary condition (21) cont land of planning permission 12/01584/OUTD	Approved 17/05/2016

3. Procedural Matters

- 3.1 Given the nature and scale of this development, it is not considered to fall within the description of any development listed in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, EIA screening is not required.

- 3.2 Site notice displayed on 22nd March 2022 at the site; the deadline for representations expired on 12th April 2023.
- 3.3 CIL considerations will be made outside of the consideration of this planning application.
4. Statutory and non-statutory consultation

Statutory and non-statutory consultation

- 4.1 The table below summarises the consultation responses received during the consideration of the application. The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report.

Hungerford Town Council:	No response received
WBC Environmental Health:	<p>The remediation proposals for the gardens, soft landscaping, patios, drainage and driveways are sufficient in order to break or remove the potential pollutant linkages.</p> <p>Once complete a detailed validation and verification report will be required in order to demonstrate that all remediation specifications have been completed in full along with any additional contamination that was discovered as part of the remediation works.</p>

Public representations

- 4.2 Representations have been received from 8 contributors, 0 of which support, and 7 of which object to the proposal, and 1 is impartial.
- 4.3 The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report. In summary, the following issues/points have been raised:
- 4.4 The impartial comments
- Concerned about the boundary and garden adjoining the site
 - Damage has occurred to fences and ground alterations
 - Want privacy maintained to the garden
- 4.5 The objections
- Raised concern about the numbering on the condition to be varied
 - It appeared that the conditions were discharged as the properties were registered for Council Tax, solicitors searches indicated no problems and the properties were sold
 - The council appeared to be satisfied with the discharge of contaminated land issues, until April 2019, when Environmental Health queried if remedial works had taken place, and soil transfer tickets were provided
 - Other areas of unacceptable lead contamination have been discovered which have not been notified to the Council by NHBC and are missing from the RSK RMS report

- Concerned about lead contamination below the driveway to The Gables, and spreading into neighbouring properties through porous gabion walls
- An alternative scope of costed remedial works has been produced for The Gables
- Incorrect red line
- Set out detailed errors and omissions from the RSK report
- Concern about damage to property
- Alterations to ground levels when house were built
- Concern about drainage onto land from the site
- Want to be assured than height and privacy to garden will be maintained
- Disappointed that WBC and Building control did not hold developer to account
- Parking for construction vehicles, equipment/materials storage, noise disturbance, privacy and security during works. Mess and contamination to road and cars whilst work is taking place over 12 month period. A Construction Management Statement should be provided
- Concerned about impact on works on the integrity of the gabion wall and fencing along the boundary
- Concern about airborne pollution risks
- Proposals do not go far enough to mitigate the effects on local residents

5. Planning Policy

5.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The following policies of the statutory development plan are relevant to the consideration of this application.

- Policies ADPP1, ADPP5, CS1, CS4, CS5, CS13, CS14, CS16, CS17, CS18, CS19 of the West Berkshire Core Strategy 2006-2026 (WBCS).
- Policies C1, P1 of the Housing Site Allocations Development Plan Document 2006-2026 (HSA DPD).
- Policies OVS5, OVS6, TRANS1 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007).

5.2 The following material considerations are relevant to the consideration of this application:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- North Wessex Downs AONB Management Plan 2014-19
- WBC Quality Design SPD (2006)

6. Appraisal

6.1 The main issues for consideration in this application is:

- Whether the proposal provides a satisfactory remediation scheme for the site

Principle of development

6.2 The principle of two dwellings on the site was established through the granting of outline planning permission in 2012, and this followed a series of planning permissions and renewal of planning permission which dated back to 1998. The 2012 planning

permission was varied following an application and appeal. The application is proposing remediation works which are required for the site to deal with the contamination found within the soil. The application is therefore considered in accordance with the following matters.

Proposed Remediation Scheme

- 6.3 Policy OVS5 seeks to prevent pollution of the environment, and requires proposals to have regard (amongst other things) to the need to ensure adequate storage and disposal of waste on site. The NPPF paragraph 183 says that planning decision should ensure that the site is suitable for its proposed use taking into account any risks from contamination and proposals for mitigation including land remediation. It goes on to say that after remediation, land should not be capable of being determined as contaminated land (under Part 11A of the Environment Protection Act 1990). It goes on to say in paragraph 184 that where a site is affected by contamination issues responsibility for securing a safe development rests with the developer/landowner.
- 6.4 The application has been submitted with a Remedial Statement Strategy and Discovery Strategy, prepared by RSK Geosciences. This has built upon the previous surveys and strategies prepared by Terramech and submitted alongside the previous applications. The RSK Geosciences report concludes that the contaminated soil was not removed from the site, that no break layers have been identified in the soil, and that the geotextile membrane that was recommended has not been laid. The proposed remediation is to remove the garden soil to a depth of 0.6m below ground level, and the soil beneath the driveways is also removed. These soils are to be stockpiled on a geotextile membrane, tested and disposed of to a suitable licensed landfill or treatment facility. The site will then be restored with the laying of a geotextile membrane across the garden and landscape areas at a level of 0.6 metres below ground level, in the garden and landscaped area, with a depth of 0.9 metres for tree pits. There will then be certified soil laid over these areas. Certified imported stone/soil will be imported beneath the driveway and drainage. All certifications of soils and stones will be checked by the Environmental Consultant. There will also be in-situ testing of the soil.
- 6.5 The Environmental Health officer has considered the details of the remediation scheme which has been submitted. The remediation proposal for the gardens, soft landscaping, patios, drainage and driveways are considered to be sufficient in order to break or remove the potential pollutant linkages. Once this work has been carried out, a detailed validation and verification report will be required in order to demonstrate that all remediation specifications have been completed in full along with any additional contamination that was discovered as part of the remediation works. The remediation statement sets out what the steps are to ensure that the correct verification measures are provided at the appropriate stages. The condition requires the submission of a verification report, and this can be included within the revised conditions. The Environmental Health Officer has not raised any objections to the remediation scheme, and verification measures which have been identified, and is satisfied that these remediation proposals for the gardens, soft landscaping, patios, drainage and driveways are sufficient to remove the contamination and provide satisfactory remediation works to ensure that the potential pollutant linkages are broken or removed.
- 6.6 There have been concerns raised about the potential disturbance to surrounding residents whilst the remediation works take place. The original permission was subject to a construction method statement condition, and it is appropriate to re-impose that condition to minimise the disturbance to the neighbouring properties, and to control contractor's vehicles, and hours of work.

Other Matters

- 6.7 The representations from neighbours have also referred to concerns about damage to adjacent property, and changes to ground levels when the houses were built, and privacy levels. The re-instated ground will need to be to the same levels as shown on the approved plans, so that the development accords with the original planning permission. Any damage to boundaries and neighbouring property during the remediation works is a private legal matter between the relevant parties. All approved boundary treatment will need to be re-instated if they are removed whilst the works are taking place.

7. Planning Balance and Conclusion

- 7.1 The application is setting out a remediation scheme to deal with the land contamination which was not removed in accordance with the original permission on the site. The remediation scheme, and measures for remediation, and identification of unforeseen contamination are considered to be acceptable, and with these measures in place the detail are considered to accord with policy OVS5 of the Saved Policies and also with the advice contained within the NPPF. Whilst it is regrettable that the appropriate remediation work did not take place in accordance with the original planning permission, this application provides the opportunity to provide the appropriate remediation works and rectify the breach of planning control. The detail are considered to be accord with the relevant development plan policies.

8. Full Recommendation

- 8.1 To delegate to the Development Control Manager to GRANT PLANNING PERMISSION subject to the conditions listed below.

Conditions

1.	Commencement of development The approved remediation works shall commence within twelve months from the date of this permission. Reason: To ensure an efficient resolution to the breach of the planning conditions for the development
2.	Approved plans The development hereby approved shall be completed in accordance with the following approved plans: i) Location plan ii) 1248-1 site survey iii) 0803-14-04 proposed site plan iv) 1506-115 finished floor levels v) 15061-513 plot 1 plans and elevations vi) 15061-510 plot 2 plans and elevations vii) 0803-14-03 proposed garage plans and elevations viii) 1506-104 access surfacing ix) 1506-106 visibility splays x) 1506-107a vehicle parking xi) 1506-113b landscaping xii) 1506-114 section to 3 Waram Close

	<p>xiii) 1506-116 section to Linden Lea xiv) 1506-128 sections</p> <p>Reason: For the avoidance of doubt and in the interest of proper planning.</p>
3	<p>Visibility Splays</p> <p>The visibility splays shown on drawing no 1506/106 shall be kept free of all obstructions to visibility to a height of 0.6m above carriageway level.</p> <p>Reason: To ensure there is adequate visibility at the access, in the interests of highway safety. This condition is applied in accordance with the National Planning Policy Framework, and Policy CS13 of the West Berkshire Core Strategy 2006-2026.</p>
4.	<p>Vehicle Parking Spaces</p> <p>The parking and turning spaces show on drawing no 1506/107a shall be kept available for parking (of private motor vehicles and/or light goods vehicles) at all times.</p> <p>Reason: To provide a satisfactory level of off-street parking spaces in the interests of highway safety. This condition is applied in accordance with the National Planning Policy Framework, Policy CS13 of the West Berkshire Core Strategy 2006-2026 and Policy P1 of the Housing Site Allocations DPD (2006-2026)</p>
5.	<p>Permitted Development Restrictions – windows</p> <p>Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no windows/dormer windows other than ground floor windows in the south-west elevation of the dwelling on the western side of the site (Plot 1); and on the north-east and south-east elevations of the dwelling on the eastern side of the site (Plot 2).</p> <p>Reason: To ensure adequate levels of privacy and to prevent overlooking to neighbouring dwellings. This condition is applied in accordance with the National Planning Policy Framework, Policy CS14 of the West Berkshire Core Strategy 2006-2026 and the Quality Design Supplementary Planning Document.</p>
6.	<p>Boundary Treatments</p> <p>The fencing and other means of enclosure shown on drawing nos 1506/113b, 1506/114, 1506/116 and 1506/128 shall be permanently retained.</p> <p>Reason: To ensure adequate screening of the site in the interests of visual and neighbouring amenity. This condition is applied in accordance with the National Planning Policy Framework, Policy CS14 of the West Berkshire Core Strategy 2006-2026 and the Quality Design Supplementary Planning Document.</p>
7.	<p>Landscaping</p> <p>Within three months of the completion of the remediation works the hard landscaping shown on drawing no 1506/113b has been reinstated in full. Within the first planting season following the completion of the remediation works the soft landscaping shall be implemented in full in accordance with drawing no 1506/113b. Any trees, shrubs or plants that die or become seriously damaged within five years</p>

	<p>of the completion of the approval of the approved landscaping scheme shall be replaced in the next planting season by plants of the same size and species.</p> <p>Reason: Landscaping is an integral element of achieving high quality design. This condition is applied in accordance with the National Planning Policy Framework, Policies CS14 and CS19 of the West Berkshire Core Strategy (2006-2026), and the Quality Design SPD.</p>
8.	<p>Ground levels</p> <p>The development shall be completed in accordance with the details shown on drawing nos 1506/114; 1506/115, 1506/116 and 1506/128.</p> <p>Reason: Reason: To ensure a satisfactory relationship between the proposed development and the adjacent land. This condition is applied in accordance with the NPPF, Policies ADPP5, CS14 and CS19 of the West Berkshire Core Strategy (2006-2026), and the Quality Design SPD (June 2006).</p>
9.	<p>Gates</p> <p>Any gates to be provided as accesses where vehicles will enter or leave the site shall open away from the adjoining highway and shall be set back a distance of at least 5 metres from the edge of the highway.</p> <p>Reason: To ensure that vehicles can be driven off the highway before the gates are opened, in the interest of road safety. This condition is applied in accordance with the National Planning Policy Framework, and Policy CS13 of the West Berkshire Core Strategy 2006-2026.</p>
10.	<p>Use of garages</p> <p>The garages shall be used solely for purposes incidental to the use of the dwellings hereby approved. No trade, business or commercial enterprise of any kind whatsoever shall be carried on, in or from the garages.</p> <p>Reason: To safeguard the amenities if adjoin land users and occupiers and in the interests of highway safety. This condition is applied in accordance with the National Planning Policy Framework, and Policies CS13 and CS14 of the West Berkshire Core Strategy 2006-2026.</p>
11.	<p>Hours of Work</p> <p>No remediation works shall take place outside 0730-1800 hours Mondays to Fridays; 0830 to 1300 hours on Saturdays; nor at any time on Sundays or Bank Holidays.</p> <p>Reason: To safeguard the amenities of adjoining land uses and occupiers. This condition is applied in accordance with the National Planning Policy Framework, and Policy CS14 of the West Berkshire Core Strategy 2006-2026.</p>
12.	<p>Remediation Works</p> <p>The remediation works hereby approved must be completed in accordance with the Remedial Method Statement and Discovery Strategy dated September 2022 reference 305164 R02(01) by RSK Geosciences received on 9th March 2023. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority, and be dealt with in accordance with the</p>

	<p>procedures outlined in the approved Remedial Method Statement and Discovery Strategy. Following completion of measures identified in the approved remediation scheme no dwelling shall be occupied until a verification report has been submitted to and approved in writing by the local planning authority.</p> <p>Reason: To ensure that risks from land contamination to the existing and future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors. In accordance with Policy OVS.5 of the West Berkshire District Local Plan 1991-2006 Saved Policies 2007 and the National Planning Policy Framework.</p>
13.	<p>Obscure glazing</p> <p>The window at the first floor level in the north-west elevation of Plot 1 shall be fitted with obscure glass before the dwelling is occupied. The obscure glazing shall be retained thereafter.</p> <p>Reason: To prevent overlooking of adjacent properties, in the interests of safeguarding the privacy of the neighbouring occupants. This condition is applied in accordance with the National Planning Policy Framework, Policy CS14 of the West Berkshire Core Strategy (2006-2026), Quality Design SPD (2006) and House Extensions SPG (July 2004).</p>
14	<p>Construction Method Statement</p> <p>No remediation works shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the demolition and construction works shall incorporate and be undertaken in accordance with the approved CMS. The CMS shall include measures for:</p> <ul style="list-style-type: none"> (a) A site set-up plan during the works; (b) Parking of vehicles of site operatives and visitors; (c) Loading and unloading of plant and materials; (d) Storage of plant and materials used in the remediation works; (e) Temporary access arrangements to the site, and any temporary hard-standing; (f) Wheel washing facilities; (g) Parking of vehicles of residents on Harefield House and the Gables; <p>Reason: To safeguard the amenity of adjoining land uses and occupiers, and in the interests of highway safety. This condition is applied in accordance with the National Planning Policy Framework, Policies CS13 and CS14 of the West Berkshire Core Strategy 2006-2026, and Policies OVS.5, OVS.6 and TRANS.1 of the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007). A pre-commencement condition is required because the CMS must be adhered to during all demolition and construction operations.</p>

Informatives

1.	<p>Proactive</p> <p>This decision has been made in a positive way to foster the delivery of sustainable development having regard to Development Plan policies and available guidance to secure high quality appropriate development. In this application whilst there has been a need to balance conflicting considerations, the local planning authority has secured and accepted what is considered to be a development which improves the economic, social and environmental conditions of the area.</p>
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