

Town & Country Planning Act 1990 (as amended)
Planning (Listed Building & Conservation Area) Act 1990 (as amended)

Refusal of details reserved by condition

Applicant

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Agent (if used)

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Part 1 – Particulars of the application/development

Proposal: Discharge of condition 13 (Ground Conditions) associated with planning permission 123295/FO/2019

Location: Former Workshop , Arkady Industrial Estate, Briscoe Lane, Manchester, M40 2XG

Date of application: 5 November 2021

Application number: CDN/21/0821

Part 2 – Particulars of decision

Manchester City Council gives notice that the detail(s) referred to in Part 1 are **Refused** in accordance with the information set out below.

Condition 13 (Ground Conditions)

The following documents have been reviewed:

Mini Soil Surveys logs and soil data, 2 March 2020

Geological and Mining Appraisal, Arkady Industrial Estate, Sub Surface, Report No. 6921A, April 2020.

Ground Investigation Report, Arkady Industrial Estate, Sub Surface, Report No. 6921C, March 2021

Ground Investigation Report, Arkady Industrial Estate, Sub Surface, Report No. 6921F, October 2021

The following comments are made:

-11 mini boreholes in 2020 and 10 mini boreholes in 2021 to a maximum depth of 4.0m bgl.

- Made ground encountered across the site, the base where proven varied between 0.15m bgl and 4.00m bgl.
- Made ground generally comprised gravel sized fragments of stone, brick, slag, clinker and concrete. Organic content or odours were noted in M4, M5, M7 and M9.
- No groundwater was encountered, but the boreholes were only open for a short time. One round of groundwater level monitoring has been undertaken in 2020 and a total of seven rounds by the October 2021 report.
- Gas monitoring response zones, 4 in clay and 4 across clay and made ground. No response zones have specifically targeted the made ground and the source of the gas would not be able to be determined for the cross strata response zones. Seven rounds of monitoring have been undertaken.
- Samples have been taken for VOCs. Confirmation is required that these were done in accordance with BS10176.
- Due to foam being used to put out a recent fire samples were analysed for a suite of Perfluoro Alkyl analysis.
- Soil chemical results have been compared to criteria for a commercial/industrial end use.
- No exceedances were found in the soil samples.
- Three samples of groundwater were taken and analysed, the following elevations were found; sulphate, cadmium, chromium, copper, molybdenum, nickel, lead, selenium, zinc, PFOA, linear PFOS and Branched PFOS. EQS values for cadmium, chromium, copper, lead, nickel and zinc are based on bioavailable component and may falsely indicate an exceedance of the EQS. The values are below the UK DWS so the exceedances have been concluded to be of no concern.
- Further action will be required regarding PFOS/PFOA (see below).
- Gas monitoring found no methane and carbon dioxide up to 2.6%v/v and the site has been classed as CS1 and no gas protection measures are required. Although the responses zones were not ideal, there was very little gas detected. Cross strata response zones should be avoided going forward.

In summary, no specific issues have been identified with regards to soil contamination or ground gas, a watching brief should be undertaken during all ground works and waste transfer notes should be retained for the validation report as per the condition wording.

The Environment Agency have provided the following with regards to the elevated PFOS/PFOA in the ground water and further action is required before part a) of the condition can be discharged:

-PFAS (or per and polyfluoroalkyl substances) is a generic term that covers a diverse range of compounds that cannot be successfully grouped together in terms of how they behave in the environment or once they find their way into humans. What is known is that they can pose a chronic and long term risk to the environment and human health and should be addressed where they are found to be present.

PFOS and PFOA are the most common of these substances and are considered persistent organic pollutants. PFOA is already defined as a hazardous substance with PFOS likely to follow in the very near future. Where there contaminants of concern are identified in groundwater and/or soils then extra measures in terms of correct testing methods, adequate sampling regimes and specific risk assessments are needed to ensure the right information is collected; in the right way and testing using the correct and approved methodologies.

-Risk assessments need to be specific and reflect the difficulties that these contaminants of concern pose. The environmental and human health impacts of PFAS compounds is an emerging issue, with publicly available chemical information being extensive, but unfortunately not decisive as too unacceptable or tolerable dose concentrations. In the first instance, it is strongly recommended that you contact an appropriately approved and accredited professional laboratory service to discuss the matter and second, it is recommended that you contact the relevant regulatory agency to discuss possible ways forwards (including remediation).

The EA have advised that they should make use of their chargeable service to obtain further advice on dealing with PFOS/PFOA, they can contact the EA using SPPlanning.RFH@environment-agency.gov.uk

Until such time that the additional information listed above is submitted and agreed, condition 13 cannot be discharged.

Date: 23 February 2022

Signed: 

Julie Roscoe
Director of Planning, Building Control & Licensing

Manchester City Council, P O Box 532, Town Hall, Manchester M60 2LA

Notes

1. This decision relates only to that required under the Town and Country Planning Act 1990 (as amended) or Planning (Listed Building & Conservation Area) Act 1990 (as amended) does not include any consent or approval under any other enactment, byelaw, order or regulation.

2. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, they may appeal to the Secretary of State in accordance with Section 78(1) of the Town and Country Planning Act 1990 or sections 20 and 21 of the Planning (Listed Building & Conservation Area) Act 1990 within six months of the date of the notice of the decision. However, if an enforcement notice has been served for the same or very similar development within the previous 2 years, the time limit is:

- 28 days from the date of the LPA decision if the enforcement notice was served before the decision was made yet not longer than 2 years before the application was made.
- 28 days from the date the enforcement notice was served if served on or after the date the decision was made (unless this extends the appeal period beyond 6 months).

The Planning Inspectorate have introduced an online appeals service that can be used to make appeals online. This service is available through the gov.uk website – www.gov.uk/appeal-planning-inspectorate. The Inspectorate will publish details of your appeal on the internet.

Alternatively, appeals can be made on a form which is obtainable from Planning Inspectorate, Customer Support Unit, Room 3/15, Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 or by telephone 0117 372 6372.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but they will not normally be prepared to exercise this power unless there are special circumstances that excuse the delay in giving notice of appeal.

3. The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 70(1) and 72(1) of the Act.

4. If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that they can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase their interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990

5. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to them. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.