

Comments on Christie Findlay's representation re Condition 3 on planning permission 23/01202/FLL

Your ref: LRB-2023-58

1 February 2024

Dear Ms Simpson

Thank you for providing Christie Findlay's comments.

They are logical for the general case. Some are not a good fit for my specific case, outlined below. And there are balancing issues that I raised in my original appeal, especially Section 4. Moreover, Christie Findlay's comments raise a number of questions, due perhaps to my ignorance, but I would really like help in getting to the best answers.

I respond to Christie Findlay's points in order of his or her letter.

1. "sources such as underground/above ground fuel storage, asbestos material from former buildings or building supplies or timber treatment products."

I have checked again with Neil Dawson, employee since 2001 of Carmichael's, the yard owners, and now running his own joiner's business in Comrie.

- Storage was in open bays with concrete bases. No asbestos in those bays.
- As noted in my original appeal, fuel and timber treatment products were never stored in the builder's yard: neither above nor below ground.
- Asbestos was never stored there. Had it been, its dust would have blown away (outdoor storage).
- Timber was very rarely stored there. When it was, it was in in very small quantities and never for more than a few days. The main timber storage was an enclosed shed at the main Carmichael's yard, on Monument Road, Comrie.
- What was habitually stored on my land was builder's sand, shap sand, gravel and paving stones.

2. "The change of use to a residential garden also makes the proposal high risk due to the end user being long-term human occupants."

- The area would seem to be high risk only if contaminants were used there. We know they were not.
- People have lived in the current house since at least 1992. Since 1996, when Barclay Carmichael acquired the house, the boundary between the two properties was an ordinary fence that would have afforded no protection from the types of potential contaminants mentioned.

3. "As we do not know the long-term extent that the future garden will be used for, any residential garden ground must comply with soil parameters for 'residential with gardens' end use – the most sensitive soil parameter. This is regardless of whether the garden will be used to grow food for human consumption, be covered with grass, or under gravel."

- This is a good point which I do not wish to contradict. However, the following considerations may contribute usefully to the overall picture:
 - The ground is alluvial. It comprises impacted pebbles and small rocks for a considerable depth. I have dug at least 60 cm and found no change. Surrounding gardens are the same. I have to use a pickaxe to make holes for individual plants. Neighbours wanting a conventional garden have imported topsoil. So have I, for two raised beds contained by dry-stone walling.
Implication: future gardens with conventional usage will with high probability be constructed on, rather than in, the current ground, using brought-in soil.
 - The main garden area is in the northerly part, long listed as residential (see point 2 above).
 - The bulk of the old builder's yard comprises older sheds used for (nontoxic) storage, and 24/7 car parking, mainly by my neighbour's family and carers. These are social benefits.
 - No appreciable changes are envisaged until after my death, which statistics suggest is 10 or more years from now. Allowing Carmichael's two or three years of non-toxic use of the area before I bought the property, that would make 34-35 years of non-toxic use. A list of contaminants that could harm after 35 years would be helpful if the issue is to be pursued.

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4. "Historic planning app 05/00868/FUL (immediately south of this site) was also conditioned due to concerns regarding potential contamination from an underground tank. Unfortunately I cannot find any further information, however, there is also the potential for any leaks or spills from this to have impacted the vicinity."

- There is another garden (and bungalow) between my plot and the former garage site.
- The ground was decontaminated and I am told that the verification report should be in your records. As Findlay notes, purification was a planning condition. It was fulfilled as part of Braemore Estate's successful planning application, 2005-7.
- The site was bought by the Comrie Parish Church circa 2013 / 14 and is still owned by them as St Kessog's Square. Iain Cormack, architect for the Church works, does not have Braemore Estate's verification report, but his records only relate to his current works. He is checking out another possibility but does not expect a response before 2 February 2024, the deadline for my response.
- If you cannot find your copy of the verification study, when we know that it was correctly carried out and there is no requirement to keep documents more than 10 years, is it reasonable to expect me to pay several thousand pounds to repeat the verification process for my land, especially with a desk study? I am told that actually testing the soil could be cheaper. It would certainly seem to be a more worthwhile expenditure to know rather than to guess. However, if you do require sight of the verification report and insist that I find it, then I ask for an extension beyond 2 February.
- In the absence of the actual verification report, I attach two documents that show what was done. **BILL03.xls** is the waste transfer note for removal of fuel tanks and ground decontamination (2005); **20080123130954257.tif** certifies that the tanks were gas free (2007). Keith Marshall at Thomson Bethune Edinburgh, the firm supervising demolition and site clearance, provided both.
- Further, here is what else I have been told. My most authoritative and detailed source is William Frame of Braemore Estates. Hamish Reid, the garage owner, and Denholm Partnership Architects, corroborate the general points while not recalling details like the contractors' names.
 - Mason Evans completed the contamination survey.
 - Chamic carried out the works where contaminated soil was removed, fuel tanks degassed, removed, and backfilled with clean material.
 - The fuel tanks were removed, soil around them removed, concrete from the ground covering removed, roof sheeting with asbestos taken away, and so on (see provided documents).
 - The fuel tanks were not large, they did not leak, and the ground was not badly contaminated. It was a small fuel station; most of its work comprised vehicle repair and service.
 - All the required documentation was sent to PKC at the time, pre and post demolition (2005-7).
- As no major leakage was found, grounds for suspecting current petroleum contamination on my land seem weak, especially given the physical properties of the site and the potential contaminant.
 - The ground is alluvial, and slopes downhill towards the river Earn. i.e. away from my land.
 - Petroleum is a natural substance formed by decomposition of organic matter. Natural degradation times vary with conditions such as the density of the contaminant (low in our case), access to oxygen, and temperature. My reading of scientific publications suggests the range is less than 60 days, up to about 30 years. The latter figure is for major oil spills from tankers. It is very much less for minor spills. 17 years have elapsed in our case.
- The work put into this search has involved 10-11 people in addition to myself: Hamish Reid, the garage owner; Denholms (3); William Frame; Thomson Bethune; Church of Scotland Edinburgh (2 or 3); Church of Scotland Comrie (2: Craig Dobney; Iain Cormack).

5. "Due to the lack of information regarding the former builders yard, a precautionary approach is required to ensure the site is suitable for the proposed use and to safeguard the health of future site users for years to come."

- This is a fair point. However, I ask those making the final decision to do three things:
 - to balance the likelihood of harm from the (almost certainly low) probability of contamination

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against the social benefits of going ahead with the proposed extension, which is neither on nor immediately adjacent to the builder's yard. And to consider the arbitrariness of requiring costly exploration for a small area that has long been lived around with no such requirement.

- I ask you to believe the completely consistent testimony of a large number of people. Put another way, there is no "lack of information". It is just that it is verbal rather than formally documented. Our increasingly-common culture of automatically disbelieving seems unhealthy.
- if you still require the contamination report, then I ask you to offer me guidance in how I might proceed, given all the extenuating circumstances noted in my original appeal. The section below lists my questions, i.e. where I would appreciate help. It may be worth reading the questions below along with those I asked in my original appeal (summarised in its Conclusion, Section 5).

Questions arising from Christie Findlay's report. I would greatly value answers to them.

1. Potential contamination from the disused railway is not mentioned. Has it been dropped?
2. How will a desk study answer the questions Christie Findlay cannot? Would it be more cost-effective to test the soil directly?
3. Government information says "Your local council will decide if a site is contaminated land."
<https://www.mygov.scot/contaminated-land/who-decides-if-land-is-contaminated>
So could you explain why I was directed to a private investigative firm?
4. At what point in this entire process does PKC or SEPA decide how the land should be cleaned up, and who pays for the investigations that lead to this decision?
 - to what extent are my lawyers, or the house vendors, responsible for misinformation? (Section 2 of my original appeal.)
 - I am a Category B person. The Category A person is identifiable.
<https://www.mygov.scot/contaminated-land/who-has-to-clean-up-the-land>
Can you explain to me how you arrange that the polluters pay, and what exactly they pay for? I doubt Mr. Carmichael will welcome the news, and indeed it seems inhumane to hold him responsible, given the very low probability of contamination, and the envisaged use of the land.
5. I do understand that the law allows you to insist on the contamination study. Do I have to do it if I do not do the extension?
6. Can you direct me to an overview of the entire process we are in? I ask because I was not told that the contamination study would be automatically triggered by submitting a planning permission request together with application for change of use of the land. Had my agent and I known that, then we would have had the opportunity to rethink the application. I only found out by sifting through the new environmental laws myself. So naturally I wonder what other unforeseen issues lie ahead. This request pertains to question 1 of the two questions in the Conclusion (Section 5) of my original appeal: "Would a contamination report have been needed had we requested planning permission for only the residential part of the property? Can we do that now? (Section 2, point 4.)" The answer to that question is of course seminal to our current considerations.

ATTACHMENTS re point 4, bullet #5 above:

BILL03.xls

20080123130954257.tif

Yours sincerely,



Sarah Hawkins



Ref	Description	Qty	Unit	Rate	Amount
	<u>EXISTING SITE/BUILDINGS/SERVICES</u> <u>C20 DEMOLITION</u> <u>Demolishing structures; all as Architects drawing 2675/E01 and Mason Evans Partnership Site Investigation Report October 2005</u>				
1/A	Survey Contractor to carry out dilapidation survey of existing buildings and externals, report and prepare method statements prior to commencement of works		Item		£150.00
1/B	Demolishing structures; down to foundation formation level; including removal of associated foundations, removing any finishes as necessary and removing any redundant services including arranging disconnection by others; include for the necessary security protection to the site for the duration of the works; complete Garage and associated rear store building; all debris to be disposed off site; complete; (410m2)		Item		£17,536.00
1/C	extra over for; breaking out concrete floor slab; approximately 400mm thick; all debris to be disposed off site; complete Breakout and remove structures below ground; complete		Item		incl
1/D	Fuel tanks and associated concrete surrounds; include for the degassing, removal and backfilling with suitable granular material of 2 x 14,000 litre below ground active fuel tanks; all debris to be disposed off site; complete		Item		£5,940.00
1/E	Fuel tanks and associated concrete surrounds; include for the degassing, removal and backfilling with suitable granular material of 3 x 18,000 litre below ground active fuel tanks; all debris to be disposed off site; complete		Item		incl
1/F	Fuel tanks and associated concrete surrounds; include for the removal and backfilling with suitable granular material of 5Nr below ground redundant fuel tanks in front courtyard area; previously degassed and filled with pea gravel; all debris to be disposed off site; complete		Item		incl
	<u>Site generally</u> Drainage				
1/G	Contractor to grub up, remove, and dispose of all existing drainage runs, manholes and inspection chambers within the site; include for backfilling with suitable granular material; drain runs to be plugged and sealed at site boundary and markers put in place; complete		Item		£150.00
Page : 03/1		To Collection		£23,776.00	

Ref	Description	Qty	Unit	Rate	Amount
2/A	Contractor to grub up, remove, and dispose of existing petrol interceptors and valve chambers within the site; include for backfilling with suitable granular material; drain runs to be plugged and sealed at site boundary and markers put in place; complete External services		Item		£150.00
2/B	Contractor to grub up, remove, and dispose of all existing incoming services and manholes within the site; include for backfilling with suitable granular material; pipes and cables to be isolated and sealed at site boundary and markers put in place; complete External works		Item		£400.00
2/C	Contractor to break up, remove and dispose of all existing hardstandings; complete (338m2)		Item		£3,870.00
2/D	Contractor to remove and dispose of all existing soft landscaping, stock piled material, kerbs, walls, fences, steps and all other external works items; complete		Item		£600.00
2/E	Contractor to excavate, remove and dispose 300mm thick potentially contaminated material found below areas of soft landscaping; complete (328m2)		Item		£4,305.00
2/F	Contractor to fill areas of soft landscaping with suitable imported granular material to provide capping layer over potentially contaminated ground; complete (328m2)		Item		£1,800.00
2/G	Contractor to provide close boarded Marine Plywood timber hoarding to site boundary including double gate and associated posts; include for all necessary excavations, foundations, backfilling and disposal of surplus excavated material; all to be primed and painted, colour TBC; complete Site clearance		Item		£9,007.00
2/H	Upon completion of demolition works and disposal or arisings, Contractor to remove all general debris from the site and grade ground to suit levels of adjacent areas		Item		incl
Page : 03/2 To Collection				£20,132.00	

[illegible]

WALSH BROTHERS
INDUSTRIAL SERVICES LTD

GAS FREE CERTIFICATE

FIVE TANKS SITUATED WITHIN:

Comrie
Perthshire
On Behalf Of Chamic Demolition

WASTE MANAGEMENT LICENCE NO: WML/E/333
WASTE CARRIERS LICENCE NO: SEA/974743/3
SEPA CONSIGNMENT NOTE: SA0372911
CERTIFICATE NO: WB/DC05/10/01

**This is to certify that the five fuel tanks at the above site were
Tested as Gas Free by Walsh Brothers Industrial Services Ltd on
20th June 2007.**

Signed: Mark Walsh

Position: DIRECTOR

Date: 20.06.2007

CONSIGNOR'S COPY

(Keep for 3 years)



SPECIAL WASTE REGULATIONS 1996

Consignment Note N°

SA 0448579

N° of prenotice (if different)

Sheet

of

A CONSIGNMENT DETAILS

PLEASE TICK IF YOU ARE A TRANSFER STATION ☐

1. The waste described below is to be removed from (name, address)

POSTCODE

2. The waste will be taken to (name, address & postcode)

3. The consignment(s) will be: one single ☐ a succession ☐ carrier's round ☐ other ☐ please specify

4. Expected removal date of first consignment: 20-6-07

last consignment:

5. Name

On behalf of (company, address & postcode)

Signature

7. The waste producer was (if different from 1.)

Date

(name, address)

6.

POSTCODE

B DESCRIPTION OF THE WASTE N° of additional sheets

1. The waste is

2. Six-Digit EWC Code(s)

3. Physical Form: Liquid ☐ Powder ☐ Sludge ☐ Solid ☐ Mixed ☐ Gas ☐

4. Colour: Various

5. Total quantity for removal (include units kg/ltrs/tonnes etc):

Container size, type & number:

6. The chemical/biological components that make the waste special are:

Component	Concentration (% or mg/kg)	Component	Concentration (% or mg/kg)
OIL	10%		
WATER	90%		

7. The hazard codes (e.g. H7) are:

8. The process giving rise to the waste is:

C CARRIER'S CERTIFICATE

I certify that I today collected the consignment and that the details in A1, A2 and B1 are correct. The Quantity collected is:

Name

On behalf of (company, address & postcode)

Signature

Date 20/6/07 at 12.00 hrs.

1. Carrier registration n° / reason for exemption:

2. Vehicle registration n° (or mode of transport, if not road):

D CONSIGNOR'S CERTIFICATE

I certify that the information in B and C above is correct, that the carrier is registered or exempt and was advised of the appropriate precautionary measures.

Name

On behalf of (company, address & postcode)

Signature

Date 20/6/07

E CONSIGNEE'S CERTIFICATE

1. I received this waste on

at

hrs.

2. Quantity received (include units kg/ltrs/tonnes etc):

3. Vehicle registration n°

4. Waste Management Operation(s):

I certify that waste management licence/authorisation/exemption n°

authorises the management of waste described in B.

Name

On behalf of (company, address & postcode).

Signature

Date