
Appeal Decision

Site visit made on 21 October 2013

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2013

Appeal Ref: APP/Q1445/A/13/2193922

Land adjoining 64 Connell Drive, Brighton BN2 6RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr G Wells against the decision of Brighton & Hove City Council.
- The application Ref BH2012/01394, dated 8 May 2012, was approved on 20 December 2012 and planning permission was granted subject to conditions.
- The development permitted is demolition of existing garages and erection of a 2No storey, 3No bedroom end of terrace dwelling.
- The condition in dispute is No 13 which states that: The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Local Planning Authority: (a) a desk top study documenting all the previous and existing land uses of the site and adjacent land in accordance with national guidance as set out in Contaminated Land Research Report Nos. 2 and 3 and BS10175:2001 - Investigation of Potentially Contaminated Sites - Code of Practice; and, unless otherwise agreed in writing by the Local Planning Authority, (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; and, unless otherwise agreed in writing by the Local Planning Authority, (c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include the nomination of a competent person to oversee the implementation of the works. (ii) The development hereby permitted shall not be occupied or brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of (i) (c) above that any remediation scheme required and approved under the provisions of (i) (c) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise: a) as built drawings of the implemented scheme; b) photographs of the remediation works in progress; and c) certificates demonstrating that imported and/or material left in situ is free from contamination. Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved.
- The reason given for the condition is: to safeguard the health of future residents or occupiers of the site and to comply with policy SU11 of the Brighton & Hove Local Plan.

Decision

1. I allow the appeal and vary the planning permission Ref BH2012/01394 for demolition of existing garages and erection of a 2No storey, 3No bedroom end of terrace dwelling at Land adjoining 64 Connell Drive, Brighton BN2 6RT granted on 20 December 2012 by Brighton & Hove City Council, by deleting condition 13) and substituting for it the following condition;

- 13) If during construction, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority), shall be carried out until a method statement identifying, assessing the risk and proposing remediation measures, together with a programme, shall be submitted to and approved in writing by the Local Planning Authority. The remediation measures shall be carried out as approved and in accordance with the approved programme.

Application for Costs

2. An application for costs was made by Mr G Wells against Brighton & Hove City Council. This application is the subject of a separate Decision.

Reasons

3. The Environmental Health Officer had recommended a condition setting out the steps to be taken should contamination be found during construction based on the previous long term use of the site for domestic garages. Whilst this may be regarded as a slight risk, or no risk at all as stated by the appellant, that level of condition appears reasonable in the circumstances and may not be needed to be actioned in any event.
4. The permission that the Council granted however contained a far more detailed condition, as copied in full on the header to this Decision, which went beyond what the Environmental Health Officer had recommended, and beyond what appears reasonable and necessary in this case. The Council subsequently agreed with the appellant that this condition had been attached in error.
5. Having mind to the nature of the site, its previous use and the nature of the development, it is the case that the disputed condition fails three of the tests in Circular 11/95 '*The Use of Conditions in Planning Permissions*' as it is not necessary, relevant to the development to be permitted or reasonable in all other respects. That condition should be deleted.
6. The condition recommended by the Environmental Health Officer passes all six of the tests in the Circular, being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects and should be substituted as originally intended. That condition does however lack an implementation clause which should be added.
7. For the reasons given above it is concluded that the appeal should succeed. The planning permission is varied by deleting the disputed condition and substituting another.

S J Papworth

INSPECTOR