



Appeal Decision

Site visit made on 17 February 2010

by **Simon Poole BA(Hons) DipArch MPhil MRTPI**

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

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Decision date:
29 April 2010

Appeal Ref: APP/Q1445/A/09/2115694

Land to the rear of 8-16 St Leonards Road, Hove BN3 4QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr John Kelly against the decision of Brighton and Hove City Council.
- The application Ref BH2009/01365, dated 28 May 2009, was refused by notice dated 24 August 2009.
- The development proposed is described as the demolition of garages and the provision of three new 1½ storey houses.

Decision

1. I allow the appeal, and grant planning permission for the demolition of garages and the provision of three new 1½ storey houses on land to the rear of 8-16 St Leonards Road, Hove BN3 4QR in accordance with the terms of the application, Ref BH2009/01365, dated 28 May 2009, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue in this case is the effect of the proposal on highway safety, with particular regard to the provision of car parking.

Reasons

3. The appeal site is occupied by 17 lock-up garages and situated in a backland location to the rear of predominately residential properties facing St Leonards Road, Seaford Road and Boundary Road. Immediately beyond the southern boundary of the site there is a 2-storey commercial building and along part of the northern boundary there is a single-storey warehouse, which is currently used for equipment storage by a coin machine company. Users of the appeal site and the coin machine company share an approximately 3.5m wide driveway from St Leonards Road, to one side of which there is an alleyway which runs along the rear boundaries the Seaford Road properties.
4. A planning application (Ref BH2008/01689) for the redevelopment of the site to provide 3 dwellings was refused by the Council in August 2008 and a subsequent appeal was dismissed in April 2009 (APP/Q1445/A/2086855). Although the Council as Highway Authority did not object to the proposal, the Inspector concluded that the provision of 3 off-street car parking spaces would not be sufficient to avoid some increased demand for on-street parking and

- that this could have a significant effect on the convenience of road users and lead to increased 'parking stress' for local residents.
5. I note my colleague's observations regarding the on-street parking conditions in the area experienced during his visit. However, during my visit I did not find the car parking situation to be un-typical of a residential street. I observed relatively light level of traffic in St Leonards Road and Seaford Road in the mid afternoon during my visit. I did, however, observe the 3 coin machine company vans double-parked for a while in the street close to the entrance to the site.
 6. The proposal before me is essentially the same as the previous scheme but with off-street car parking provision increased to 5 spaces. This level of car parking would slightly exceed the maximum stated in the Council's Supplementary Planning Guidance Note 4: *Parking Standards* (SPG), which is, for sites outside controlled parking zones, 1 space per dwelling plus 1 space for every 2 dwellings for visitors. As the dwellings would be small 1 or 2 bedroom units and the site is within reasonable walking distance of a railway station, a range of bus routes, local shops, community facilities and recreational facilities, I am satisfied that the level of car parking proposed would adequately meet the needs of future residents.
 7. The appellant has stated that of the 17 garages on the appeal site, 10 are currently used for storage, 5 are vacant and the use of the remaining 2 is not known. In respect of the previous appeal the Inspector noted that on the basis of information provided by the appellant then that 1 or 2 of the garages appeared to be used by local residents. Whether the situation has changed in the last year is not clear from the information before me. However, I consider that the proposal would give rise to no more than, at most, a very small increase in demand for on-street parking in the area.
 8. The Council as Highway Authority has not objected to the proposal and has stated that the loss of the existing garages would not lead to additional car parking on the highway. I attach significant weight to these views and for the reasons set out above conclude that the proposal would not adversely affect on-street parking problems in the area and would not therefore be detrimental to highway safety in this respect.
 9. The Highways Authority considers that the proposal would lead to an increase in trip generation. Although no evidence has been provided on the existing level of trip generation, I consider that the appeal scheme would potentially, at the least, give rise to increased trips during peak times if compared to the current situation. However, there are 17 garages on the appeal site which, if fully utilised, could give rise to trip generation that is greater than that resulting from the appeal proposal. For this reason I consider that significant weight needs to be attached to the potential future situation if planning permission is withheld in this case.
 10. The shared use of the access driveway currently leads to some conflict between users of the garages and vans accessing the warehouse. I recognise that, for as long as the warehouse is in active use, this would remain the case with the appeal proposal in place. However, I consider that the provision of a pavement

to one side of the driveway would improve pedestrian safety within the site resulting in better highway safety conditions than currently exist.

11. For the reasons set out above, and having regard to the site's good public transport accessibility, I conclude that the proposal would not have an unacceptable effect on highway safety within the site or on surrounding roads. I conclude therefore that the proposal complies with Brighton and Hove Local Plan (LP) Policies TR1 and TR7, under which planning permission will be granted only if developments provide for the demand of travel created and do not increase the danger to users of adjacent pavements, cycle routes or roads.
12. The appellant has submitted a signed unilateral undertaking that would trigger the payment of contributions towards sustainable transport improvements. However, there is little before me to justify the Council's request for contributions or how the contributions would be spent. In particular it has not been demonstrated that the obligation would be directly related to the proposed development or that it is necessary to make the proposal acceptable in planning terms. I therefore consider that the tests in Circular 05/2005 are not met. For these reasons I attribute limited weight to the unilateral undertaking and therefore conclude that the proposal complies with LP Policies QD28 and SU15, which states that planning obligations will be sought for contributions for public transport and pedestrian and cycle routes where appropriate and reasonably related to the proposed development.

Other Matters

13. The appeal proposal would be similar to the previous scheme in terms of layout, height, bulk, massing and appearance. I therefore concur with my colleague's conclusions in respect of effects on daylight, sunlight and privacy to, and outlook from, nearby residential properties. I consider that the vehicular traffic movements generated by the proposal would be low and would not therefore give rise to unacceptable levels of noise disturbance. For the reasons I therefore conclude that the proposal would not have unacceptable effects on the living conditions of neighbouring residents.

Conditions

14. I have considered the conditions suggested by the Council having regard to the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*. I have adjusted their wording where necessary in the interests of clarity. In order to protect the character and appearance of the area I have imposed conditions requiring the submission and approval of materials, refuse storage and landscaping. To protect the living conditions of occupants of neighbouring properties and the appearance of the dwellings I have imposed a condition removing certain permitted development rights.
15. In response to the second condition put forward by the Highway Authority, and the concerns raised by my colleague in respect of the earlier appeal I have imposed a condition requiring the car parking spaces to be in place prior to the occupation of the development and retained thereafter. To seek to reduce car use, a condition is imposed requiring the provision and retention of cycle storage.

16. To ensure the development would make efficient use of energy, water and materials, a condition requiring Code for Sustainable Homes certification has been imposed. Having regard to the concerns raised by the Council in respect of previous uses of the site and the potential for contamination, I have imposed a condition requiring site investigation prior to development commencing. This is the model condition circulated in a letter to chief planning officers by the Department for Communities and Local Government on 30 May 2008 as a replacement for the conditions set out in Annex A to PPS23.
17. I am satisfied that the information submitted with the planning application adequately demonstrates that the proposal would comply with Lifetime Homes standards and a condition requiring compliance with the standards is unnecessary. The condition put forward a seeking details of a scheme to provide sustainable transport infrastructure is vague and not directly relevant to the development. It is therefore contrary to the advice in Circular 11/95 and has not been imposed.

Conclusions

18. For the reasons set out above, and having regard to the previous appeal decision, the Highway Authority's comments, concerns raised by local residents and all other matters raised, I conclude that the appeal should be allowed.

Simon Poole

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2398/10B, 2398/11B, 2398/12B, 2398/13B, 2398/14A, 2398/15.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the on-site refuse and recycling storage facilities, including details of the means of enclosure, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The refuse storage facilities shall be completed before any part of the development hereby permitted is occupied and shall be retained in the approved form for as long as the development hereby permitted remains on site.

- 5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include: means of enclosure; car parking layouts; vehicle and pedestrian access and circulation areas; hard surfacing materials and planting.

The approved soft landscaping scheme shall be implemented in the first planting season following the first occupation of the development or the substantial completion of the development, whichever is the sooner. If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 6) 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), no building, structure or alteration permitted by Class A, B or C of Part 1 of Schedule 2 of the 1995 Order (as amended), shall be erected or made within the curtilages of the dwellings hereby permitted without the prior approval in writing of the local planning authority.
- 7) The dwellings shall not be occupied until the 5 car parking spaces shown on drawing 2398/10B have been provided and the spaces shall be retained in the approved form for as long as the development hereby permitted remains on site. The car spaces shall be used solely for the benefit of the occupants of the dwellings of which they form part and their visitors and for no other purpose.
- 8) No dwelling shall be occupied until spaces have been laid out for bicycle storage within the site in accordance with details which have been submitted to and approved in writing by the local planning authority, and the bicycle storage shall be permanently retained thereafter.
- 9) The dwellings shall achieve Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 10) Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 1 to 4 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

2. Submission of Remediation Scheme

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 must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report)

that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of Unexpected Contamination

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 be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

5. Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of [x] years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

