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## Appeal Decision

Site visit made on 1 September 2016

by **AJ Steen BA (Hons) DipTP MRTPI**

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

Decision date: 17 October 2016

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**Appeal Ref: APP/Q1445/W/16/3150923**

**63 Marine Drive, Rottingdean, Brighton BN2 7HQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Keith Pryke against the decision of Brighton & Hove City Council.
  - The application Ref BH2015/03019, submitted to the Council on the 14 August 2015, was refused by notice dated 15 March 2016.
  - The application sought planning permission for conversion of existing rear ground and first floor maisonette to create 3 no. two bedroom maisonettes and 1 no. two bedroom flat, incorporating erection of rear extension and additional storey with pitched roof with front, rear and side dormers and rooflights to side without complying with a condition attached to planning permission Ref BH2010/02093, dated 9 November 2010.
  - The condition in dispute is No. 3 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."*
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## **Decision**

1. The appeal is allowed and planning permission is granted for conversion of existing rear ground and first floor maisonette to create 3 no. two bedroom maisonettes and 1 no. two bedroom flat, incorporating erection of rear extension and additional storey with pitched roof with front, rear and side dormers and rooflights to side at 63 Marine Drive, Rottingdean, Brighton BN2 7HQ in accordance with application Ref BH2015/03019 submitted to the Council on the 14 August 2015 without compliance with condition number 3 previously imposed on planning permission Ref BH2010/02093 dated 9 November 2010 subject to the following condition:

The storage of refuse and recycling facilities and cycle parking facilities approved under reference BH2014/01024 shall be retained for use at all times.

## **Background and Main Issue**

2. The development proposed the extension of the original building and sub-division to incorporate four flats, one of which was an existing residential unit to the rear and upper floors. The remainder of the ground floor of the building is a commercial unit, currently an estate agents office although previously occupied by a coal and coke merchant and dry cleaners. The development has taken place, with the exception of a small ground floor extension, although the condition to which this appeal relates has not been complied with.
3. The condition required investigation of the site to demonstrate that the land on which the works were due to take place was not contaminated. The condition was required to be discharged prior to commencement of the development, but no details were submitted or approved at that stage.
4. The Council suggest that, as a result, there is no lawful permission. If this were the case, they suggest there would be no condition to be removed. However, the Council have refused the application for removal of the condition and it is now subject to this appeal. I have considered the appeal on that basis.
5. Consequently, the main issue in this case is whether the condition was necessary and reasonable having regard to the health of occupiers of the residential units.

## **Reasons**

6. The Council refer to the dry cleaners, coal and coke merchants and garage as having potential to result in contamination of the ground on which the development stands.
7. I understand that the coal and coke merchants used the building as an office, but did not store coal or coke on the site. Consequently, there can be no contamination on the site resulting from this use of the building.
8. The appellant suggests that the rear part of the building has always been part of a maisonette and the rear yard has been in use as their garden. The Council's Environmental Health department suggest that the garage to the rear has been replaced by a kitchen, but according to the plans submitted the garage has been replaced with an open area and bike store. The ground floor

kitchen on the approved layout is in the same location as the kitchen in the previous maisonette, although the footprint of the property may have changed over time. There is no evidence before me that former occupiers have suffered any adverse effects of contamination and, as a result, I conclude that the risks of contamination in the location of the garage are minimal such that they are not likely to affect the health of occupiers of the flats.

9. It is unclear in which part of the building the dry cleaning use occurred, although I understand that the rear part of the building has always been a maisonette. The drainage plan submitted suggests that the drains ran under the commercial part of the building and what is now the communal lobby, away from the flats. The storage and use of chemicals and materials relating to this use could have caused contamination, although that would have been in that part of the building that is now in use as an estate agent rather than the flats. It is not clear from the evidence when the use ceased, although the Council refer to being unsure as to what chemicals may have been in use in 1968. There has been a significant passage of time since then without apparent harm to the occupiers of the maisonette. Therefore, there is no evidence to indicate that there is a risk of harm to the health of current and future occupiers of the flats as a result of a previous use of the building as a dry cleaners.
10. For the above reasons, I conclude that condition no. 3 is not necessary or reasonable taking account of the National Planning Policy Framework and Planning Practice Guidance. As such, the development accords with Policy SU11 of the Brighton & Hove Local Plan that seeks to ensure that development can take place without harm to the health of occupiers of the residential units through the contamination of land.

### **Conclusion**

11. On the basis of the above considerations, I conclude that the appeal should succeed and I will issue a new planning permission without the disputed condition.

### *Conditions*

12. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original planning permission. No conditions are necessary to limit the period for commencement of the permission, relating to external finishes of the development, to the approved plans and the waste minimisation methods as the development is now complete. The details reserved by conditions 4, 5, 6 and 8 of planning permission reference BH2010/02093 have been approved under reference BH2014/01024. Consequently, they do not require repeating in full on this permission. However, retention of the approved refuse and recycling storage facilities along with cycle parking facilities are required and I shall impose a condition to that effect.

*AJ Steen*

INSPECTOR

