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## Appeal Decision

Site visit made on 28 November 2018

**by N A Holdsworth MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 January 2019**

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**Appeal Ref: APP/Q1445/W/18/3201743**

**81A Shirley Street, Hove, BN3 3WH**

- 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 James Summers of Summers Fabrications Ltd against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/03631, dated 30 October 2017 was refused by notice dated 23 February 2018
  - The development proposed is demolition of derelict light industrial/storage buildings and construction of four terraced mews houses with cycle parking and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of derelict light industrial/storage buildings and construction of four terraced mews houses with cycle parking and landscaping at 81A Shirley Street, Hove, BN3 3WH in accordance with the terms of the application, Ref BH2017/03631, dated 30 October 2017, subject to the attached schedule of 10 conditions.

### Main Issues

2. The main issues are the effect of the development on
  - i) The character and appearance of the area;
  - ii) The living conditions of the occupants of existing neighbouring residential properties, with particular regard to whether or not the proposal would lead to an unacceptable loss of privacy or an overbearing effect; and
  - iii) The living conditions of future residents, with particular regard to whether or not the size and internal layout of the proposed residential accommodation would provide a satisfactory living environment.

### Reasons

#### *Character and appearance*

3. The site comprises a two storey industrial building, set in a yard between two rows of older style residential properties. These surrounding properties are 2-3 storeys in height beneath a pitched roof. They are arranged in terraces close to the street, with small rear gardens, some of which abut the appeal site.
4. The proposed building on the site would rise to 3 storeys in height, although the top storey would be disguised as it would be set within a pitched roof. On the evidence before me the total height of the new building would be lower

than the 2 rows of residential buildings it sits between. Whilst it would be slightly higher than the existing building the increase in height, estimated at 0.4 m by the Council, would be minimal.

5. The extent of excavation proposed is limited, with the front forecourt being set at a broadly similar level to the rear gardens of the properties facing Shirley Street, beyond the immediate boundary of the site. Overall, in terms of scale and mass, the proposal would reflect the residential buildings that surround it. The pitched roof above the building would have similar proportions to the buildings to each of its sides, and would not appear unduly small or contrived. The manifestations of the living accommodation within it would be limited to roof lights which would occupy a small proportion of the roof. The building would have a contemporary appearance with narrow windows, however this is appropriate given its well contained, backland location.
6. I have had regard to a historic planning appeal decision on the site<sup>1</sup>. However, this involved the creation of a new commercial building, rather than a residential building. It appears larger than the building now proposed, with 3 full storeys and extensive fenestration facing the residential properties on Shirley Street. The changes to the fenestration and roof design mean that the proposal before me would be less visually intrusive and dominant in views from the site and surrounding area. It would respect the sensitive backland location of the site and would relate well to the neighbouring residential buildings.
7. These considerations lead me to the view that there would be no harm to the character and appearance of the area, arising from this proposal. It complies with policy CP12 of the Brighton and Hove City Plan Part One (2016) ("City Plan"), which seeks to, amongst other things, ensure new development raises the standard of design in the city and respects the diverse character and urban grain of the city's identified neighbourhoods.

#### *Living Conditions (existing residents)*

8. The existing industrial building faces the rear of the properties along Shirley Street at close range. It includes windows at first floor level, which directly overlook these residential properties. Whilst the facility has not been used for many years, it could be bought back in to use. Were this to be the case, these residential properties along Shirley Street would be directly overlooked by an industrial building.
9. Consequently, whilst there would be windows in the proposed building that overlook the properties on Shirley Street, in terms of privacy the situation would not be materially worse than the current position. The rooflights on the front of the building at second floor level would be set at an angle and would not lead to intrusive overlooking. Considering the rear of the building, towards Livingstone Road, there is currently a window that directly overlooks the surrounding rear gardens, which would be removed. There would be roof lights in the rear roof slope of the proposed building, but these would be set at an angle and would not be a significantly intrusive feature when viewed from these neighbouring properties. The appellant does not object to a condition requiring these, along with the west facing roof lights, to be made from obscure glass, which would avoid any perceived loss of privacy.

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<sup>1</sup> APP/Q1445/A/07/2060632

10. The proposal reflects an existing close relationship between buildings on the appeal site, and those in the surrounding area. The increase in height and bulk associated with the proposed building is very limited, when compared with the existing situation. These considerations lead me to the view that the proposal would not be unduly overbearing on the neighbouring residential properties.
11. In my experience, the potential for noise and disturbance from the proposed residential buildings, including the access and amenity space, is significantly less than the existing industrial use were it to be resumed. The residential use of the site would accord with the surrounding domestic environment. It would also overcome the concern, expressed by the previous planning Inspector, of the potential for a larger light industrial operation being carried out on the site and consequential noise and disturbance.
12. These considerations lead me to the view that there would be no harm to the living conditions of the occupants of surrounding residential buildings through an overbearing effect or loss of privacy, as a consequence of this development. In this regard there is no conflict with saved policy QD27 of the Brighton and Hove Local Plan (2005) ("Local Plan"), which requires that, amongst other things, planning permission will not be granted where it will cause loss of amenity to existing residents.

*Living conditions (future residents)*

13. The proposed second floor would be set within the pitched roof, and would therefore have restricted height across part of the floor. However, there would be sufficient headroom on this floor to provide some useable living space. The Council argue that the limited habitable area on the top floor means that the proposed units fall below the required floor area for a 4 person, 2 bedroom unit, as set out in the Technical Housing Standards - Nationally Described Space Standards ("NDSS"). However, the planning policies referred to by the Council in its reasons for refusal do not appear to enact the NDSS.
14. The units are narrow, which means that a significant proportion of the space within them is used as hallways and staircases. However, this is not unusual in townhouse style accommodation. Each unit would have well sized, functional rooms on ground and first floor level with appropriate circulation space, plus additional accommodation in the roof. The accommodation would benefit from natural light and outlook, and the landscaped space at ground floor level would provide a degree of privacy to the proposed residential accommodation. There is likely to be sufficient storage space within each dwelling.
15. I therefore consider that the proposal maximises the potential of this well located, previously developed site in central Hove for residential accommodation. It does not comply with the NDSS, but a reasonable standard of living accommodation would nonetheless be provided. I conclude that the size and internal layout of the proposed residential accommodation would provide a satisfactory living environment, and the effect on the living conditions of future occupiers would be acceptable. In this regard there is no conflict with saved policy QD27 of the Local Plan, which requires that, amongst other things, planning permission will not be granted where it would cause loss of amenity to proposed residents.

### *Other Matters*

16. Any disruption from building works would be temporary, and such works would need to be carried out in accordance with relevant legislation. Concerns about building works affecting boundary walls, together with rights over land including future access arrangements are a private matter, is also dealt with under other legislation. The vehicular movements and parking pressure in the local area arising from this residential development is likely to be less than the existing industrial use of the site, were it to be resumed.

### **Conditions**

17. Conditions are necessary to comply with legislation [1] and in the interests of certainty [2]. Given the industrial use of the site a condition is necessary to ensure that any contamination, including asbestos, is dealt with appropriately [3] and given the risks to human health it is essential that such studies are undertaken prior to works commencing on site. The appellant has agreed to this condition. Conditions are also necessary in the interests of ensuring a satisfactory standard of development that is sympathetic to the character and appearance of the area [4 and 5], and to enact relevant optional standards in relation to accessible dwellings [6], energy efficiency [7], and water consumption [8] which are, on the evidence before me, reflected in the requirements of development plan policies.
18. The proposal is located in close proximity to other residential properties, and has been justified by its limited size and the fenestration incorporated in to the design on each of its elevations. Consequently, a condition removing permitted development rights for future alterations to the proposed building is exceptionally justified [9]. A condition requiring the roof lights facing towards the north and west to be made from obscure glass is justified in the interests of protecting the living conditions of surrounding residents [10]. In some cases I have amended the Council's suggested wording, to comply with national planning policy on the use of planning conditions.
19. Sufficient detail is shown on the plans of landscaping, refuse and cycle parking facilities within the development, and further details of such items are not necessary to make the development acceptable in planning terms. Conditions are suggested that would require highway improvements in the surrounding area, and to limit the ability of future occupiers to apply for parking permits. However, the evidence before me does not demonstrate that the absence of such measures would lead to unacceptable harm to the free flow of traffic, highway safety or the wider residential environment.

### **Conclusion**

20. The proposal is acceptable and, subject to conditions, complies with the development plan. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should succeed.

*Neil Holdsworth*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not 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: AC017/010; AC017/011; AC017/012; AC017/013; AC017/014; AC/017/015; AC017/016; AC017/017; AC017/018.
- 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. Contamination, for the purposes of this condition, shall include the risks posed by any asbestos that may be found on the site. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 90 days of the report being completed and approved in writing by the local planning authority.
- 4) No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) No part of the development hereby approved shall be occupied until the cycle parking facilities, refuse and recycling facilities and landscaping details shown on plan number AC017/011 have been installed.
- 6) The development hereby permitted shall not be occupied until the dwellings hereby permitted have been completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) and shall be retained in compliance with such requirement thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 7) None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).

- 8) None of the residential units hereby approved shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.
- 9) No extension, enlargement or alteration to the dwellinghouses hereby approved, or provision of buildings etc incidental to the enjoyment of the dwellinghouse within the curtilage of the dwellinghouses hereby approved, as provided for within Schedule 2, Part 1, Classes A, B, C, D and E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out without planning permission obtained from the Local Planning Authority.
- 10) The rooflights on the building hereby approved facing towards the north and west shall be made from obscure glass and fixed shut prior to the first occupation of the development. They shall be maintained as such thereafter.

**END OF SCHEDULE**