



Appeal Decision

Site visit made on 24 June 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2019

Appeal Ref: APP/Q1445/W/19/3223788 51-53 Church Road, Hove BN3 2BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval of details required by conditions of a grant of prior approval made in a determination under Schedule 2 Part 3, Class O of The Town & Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr Bacon on behalf of Perth Securities against Brighton & Hove City Council.
 - The application Ref BH2018/02185, dated 6 July 2018, sought approval of details pursuant to conditions Nos 2 and 5(a) of prior approval Ref 2018/00551 granted on 15 June 2018.
 - The development proposed is Prior Approval for a change of use of the lower ground, ground, first and second floor from office (B1) to 12 residential units (C3).
 - The conditions in dispute are Nos 2 and 5(a) which states that:
(2) The development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
(5) Asbestos containing materials (ACM) within the building are a contaminant of concern. Any desk top study and site investigation must fully incorporate ACM into the conceptual site model with any significant risks and pollutant linkages noted and risk assessed.
(a) Prior to commencement, a full asbestos survey of the premises, undertaken by a suitably qualified specialist shall be submitted in writing to the local planning authority for approval.
 - The reason given for the conditions are:
(2) To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan and SPD14: Parking Standards.
(5) 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 dismissed, and the condition is refused, insofar as it relates to cycle parking details submitted in pursuance of condition No 2 attached to prior approval Ref 2018/00551 granted on 15 June 2018.
2. The appeal is allowed, and the condition is approved, insofar as it relates to the Asbestos Survey details submitted in pursuance of condition No5(a) attached to prior approval Ref 2018/00551 granted on 15 June 2018.

Application for costs

3. An application for costs was made by Mr Bacon on behalf of Perth Securities against Brighton & Hove City Council. This application is the subject of a separate Decision.

Procedural Matter

4. I note that on the Council's decision notice for prior approval Ref 2018/00551¹, the final sentence of condition 5a) is incomplete which states "*and if any asbestos containing materials are found, which present significant risk/s to the end user/s then*". However, when reading the condition in full (condition 5 a & b), it is clear that this sentence should form part of the requirement for part b of this condition which states "*a report shall be submitted to the local planning authority in writing, containing evidence to show that all asbestos containing materials have been removed from the premises and taken to a suitably licensed waste deposit site*". I have therefore omitted this incomplete sentence from the wording of the condition 5a in the banner heading above.
5. For the reasons that follow, I find condition 5a to be acceptable and it is clearly separate from condition 2. Therefore, I intend to issue a split decision in this case and approve the condition relating to the asbestos survey.

Main Issues

6. The main issues are:
 - Condition 2: Whether the proposal would provide satisfactory facilities for parking of cycles in order to encourage more sustainable forms of transport.
 - Condition 5a: Whether the asbestos survey submitted would assist in safeguarding the health of future occupiers of the site.

Reasons

Condition 2: Cycle Parking

7. This part of the appeal is seeking the approval of details relating to secure cycle parking facilities for future occupiers and visitors to the site. Brighton and Hove Supplementary Planning document SPD 14 Parking Standards dated 14 October 2016 (SPD) requires for 1 and 2 bedroom units, 1 cycle parking space per unit (Long Stay) and 1 cycle parking space per 3 units (Short Stay). This would therefore require 16 spaces in total (12 for each unit and 4 spaces for visitors). Sixteen cycle parking spaces are proposed in the rear yard at street level which would be in accordance with the minimum requirement of the SPD.
8. However, I note that the cycle parking stands would not be undercover and therefore, would be open to the elements throughout the year. This would be far from ideal for the permanent storage of cycles for future occupiers. Furthermore, no substantive evidence has been submitted explaining why a sheltered cycle parking area could not be provided. In addition, the details submitted fail to demonstrate that the proposed the cycle parking area would be supervised and/or well lit.

¹ Granted on 15 June 2018

9. I therefore conclude that, whilst the number of cycle parking spaces would be acceptable in principle in accordance with the Council's SPD, the proposed details would fail to provide satisfactory cycle parking spaces to encourage more sustainable forms of transport. In this respect the proposal is contrary to Policy TR14 of the Brighton and Hove Local Plan, 2005 (LP), which amongst other things, states that cycle parking for the occupants of new dwellings must be under cover, secure and readily accessible at street level and that cycle parking to cater for longer stay evening use must be secure, supervised and the parking area and approaches well-lit.

Condition 5a: Asbestos Survey

10. This condition required the submission of a full asbestos survey of the premises, prior to commencement. The appellant states that Condition 5(a) was imposed despite the fact that the asbestos survey (Survey Report No CS1118) was submitted as a part of the original Prior Approval Application, as listed on the decision notice².
11. In accordance with this condition I note that the asbestos report provides a full survey of the premises to the Council and has been produced by a Senior Surveyor. Furthermore, during the course of this appeal, the Council has approved an application for approval of details reserved by condition 5(B) of application BH2018/00551³, which confirms that the Council are satisfied that all asbestos containing materials have been removed from the premises and taken to a suitably licensed waste deposit site.
12. Therefore, I conclude that, the Asbestos Survey and the subsequent approval of condition 5(B) demonstrates that the health of future residents and occupiers of the site would be safeguarded. This is in accordance with LP Policy SU11, which amongst other things, states that proposals for development will be granted where the application is accompanied by a site/building assessment and detailed proposals for the treatment, containment and/or removal of the source of contamination, appropriate to the proposed future use and surrounding land uses.

Conclusions

13. For the reasons given above, I conclude that the appeal should fail in relation to condition No 2 attached to prior approval Ref 2018/00551 granted on 15 June 2018.
14. However, in relation to condition No 5(a) attached to prior approval Ref 2018/00551 granted on 15 June 2018, the appeal should succeed.

R Satheesan

INPSPECTOR

² Council Ref: Ref 2018/00551 granted on 15 June 2018.

³ Council Ref: BH2019/01030 granted on 5 June 2019.