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ENCLOSURE 5

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APPEAL REF : APP/H5390/W/17/3178404
GROUND FLOOR CRABTREE HOUSE
83 CRABTREE LANE LONDON SW6 6LR



Appeal Decision

Site visit made on 16 October 2017

by Rachael A Bust BSc (Hons) MA MSc LLM MEnvSci MInstLM MCI MRTPI

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

Decision date: 17 November 2017

Appeal Ref: APP/H5390/W/17/3178404

Ground Floor, Crabtree House, 83 Crabtree Lane, London SW6 6LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under a development order.
- The appeal is made by Mr Ashley Fox and Mr Jonathan Wright of Architects Building Company against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2016/04905/PD56, dated 2 November 2016, was granted approval by notice dated 29 December 2016 subject to conditions.
- The development granted approval is change of use of ground floor from office Class B1(a) to residential Class C3.
- The conditions in dispute are Nos 4; 5; 6; 7; 8 and 9 which state that:
 - (4) *No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the Council. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.*
 - (5) *No development shall commence until a site investigation scheme is submitted to and approved in writing by the Council. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.*
 - (6) *Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, following a site investigation undertaken in compliance with the approved site investigation scheme, a quantitative risk assessment report is submitted to and approved in writing by the Council. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land*

Contamination (Defra 2004) or the current UK requirements for sampling and testing.

- (7) *Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, a remediation method statement is submitted to and approved in writing by the Council. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.*
- (8) *Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full and a verification report confirming these works has been submitted to, and approved in writing, by the Council. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the Council is to be informed immediately and no further development (unless otherwise agreed in writing by the Council) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the Council. Any required remediation shall be detailed in an amendment to the remediation statement and verification of these works included in the verification report. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.*
- (9) *Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until an onward long-term monitoring methodology report is submitted to and approved in writing by the Council where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. A verification report of these monitoring works shall then be submitted to and approved in writing by the Council when it may be demonstrated that no residual adverse risks exist. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.*
- *The reason given for the 6 conditions is: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with Borough Wide Strategic Policy CC4 of the Core Strategy 2011 and Policies DM H7 and H11 of the Development Management Local Plan 2013.*
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Decision

1. The appeal is allowed and the approval Ref 2016/04905/PD56 for the change of use of ground floor from office Class B1(a) to residential Class C3 at Ground Floor, Crabtree House, 83 Crabtree Lane, London SW6 6LR granted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class O on 29 December 2016 by the Council of the London Borough of Hammersmith & Fulham is varied by deleting conditions Nos 4; 5; 6; 7; 8 and 9.

Background and Main Issue

2. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) ('the Order') permits the change of use of offices to residential under Schedule 2, Part 3, Class O. Under O.2(1) the local planning authority can consider transport and highways impacts; contamination and flooding risks and impacts of noise from commercial premises on the intended occupiers of the development.
3. Prior approval was granted subject to 11 conditions covering transport and highways impacts; contamination and flooding risks. The appellants object to the imposition of the 6 contaminated land conditions as they consider them to be not relevant to the development permitted and therefore not reasonable.
4. The main issue is whether the suite of 6 disputed conditions are necessary, relevant or reasonable in the interests of protecting humans, controlled water and the wider environment during and following the development works.

Reasons

5. The appeal premises of Crabtree House is a 3 storey detached former wharf building that has been previously converted. It is presently in use as an office (Class B1) at ground floor with 2 self-contained flats on the upper floors. The flats have a separate entrance from that of the office. I observed on my site visit that the ground floor office use was still present and therefore the prior approval has not been implemented.
6. The Council was entitled to consider the matter of contamination by virtue of the Order. The internal consultation response from the Environmental Quality Team led to the imposition of the 6 contaminated land conditions.
7. The surrounding area is a mixture of converted former wharf buildings and new buildings with wharf style designs. The area is predominantly hard surfaced with a combination of concrete, tarmacadam, setts and paving.
8. As the building is presently in use it is expected that there are utilities and other services already in place. The appellants advise that the development would involve no excavation or disturbance of the existing concrete slab which forms the office floor or the concrete paving providing a small forecourt to the office. Consequently, there would be no pathways for any potential contaminants to reach the potential receptors comprising humans, controlled waters or the wider environment. The office is currently the subject of human use and occupation; as such the potential receptor use of the building does not change.
9. I have no cogent evidence before me to explain the rationale behind the contaminated land conditions. Taking into account the nature of the development and the lack of evidence to justify the need, I conclude that the suite of contaminated land conditions is not necessary, relevant or reasonable. The conditions appear to have been imposed based on vague assertions, rather than substantive evidence of risk of contamination which is specific to this site and the proposed change of use. The development without the condition would not adversely affect the living conditions of existing and prospective occupiers of the building.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed. I therefore vary the prior approval by deleting condition Nos. 4; 5; 6; 7; 8 and 9.

Rachael A Bust

INSPECTOR