RODWAY PLANNING CONSULTANCY

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL PREPARED ON BEHALF OF MR ANDREW HILL

LAND AT 25-27 OLD FORT ROAD, SHOREHAM BEACH, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RL

PLANNING INSPECTORATE REF: APP/Y3805/A/13/2206067

GROUNDS OF APPEAL

---

1. Introduction

This Planning Appeal is against the Local Planning Authorities (LPA) imposition of Condition No.7 attached to Adur District Council planning permission reference AWDM/0872/13.

2. The Planning Permission

This above planning permission was described as *"**Retrospective application for revision to height, fenestration and positions of four new houses on plot (amendments to AWDM/0302/11) (25-27 Old Fort Road)".***

The planning application was submitted in July 2013, and was subsequently heard at the Adur District Planning Committee meeting of 27th August 2013. The application was recommended for approval by the Planning Officers.

Despite considerable and well orchestrated local resident opposition, the Councils Members voted to accept the Officers recommendation, and approved the application, but with the addition of a further restrictive condition, as detailed below.

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI mediation of space · making of place

3. The Planning Condition

The Councillors approved the planning application with the addition of Condition 7, which reads:

> ***"The dwellings hereby permitted shall not be occupied until the lower, non-opening panes of the existing first floor rear windows have been replaced with obscure glazed and non-opening windows and they shall not subsequently be altered in any way.***
>
> ***Reason: To prevent overlooking and to comply with saved policy AH2 of the Adur District Local Plan".***

This is the condition that this Appeal relates to. It is our case that the imposition of this planning condition is unreasonable, and therefore does not accord with the

4. Relevant Legislation

Circular 11/95 states that *"Section 73 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 73. Section 73 will not apply if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun... Section 73A of the Act provides, among other things, for retrospective planning applications to be made in respect of development which has been carried out without permission, and for applications for planning permission to authorise development which has been carried out without complying with some planning condition to which it was subject. Special consideration may need to be given to conditions imposed on planning permissions granted under section 73A..." (paragraphs 4-5)*

At paragraph 6, the Circular states: *"Conditions should normally be consistent with national planning policies as expressed in Government Circulars, Planning Policy*

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI mediation of space · making of place

Guidance notes, Minerals Policy Guidance Notes and other published material. They should also normally accord with the provisions of development plans and other policies of local planning authorities. Where a certain kind of condition is specifically endorsed by a development plan policy, however, it is still necessary to consider whether it is justified in the particular circumstances of the proposed development..."

At paragraph 14 of Circular 11/95 it lists the 6 tests against which any planning condition should comply with in order to be considered reasonable and justified in being applied to any certain planning permission. It states "*In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they satisfy all of the tests described in paragraphs 14-42. In brief, these explain that conditions should be*

i. necessary;

ii. relevant to planning;

iii. relevant to the development to be permitted;

iv. enforceable;

v. precise; and

vi. reasonable in all other respects".

5. The Appellants Grounds of Appeal

The recently approved retrospective planning application to which the planning condition to which this appeal relates (condition no.7) followed the granting of planning permission by the LPA in January 2012 for the redevelopment of a pair of pre-war bungalows at No's 25 and 27 Old Fort Road with 4 no. three-bedroom semi-detached 2-storey houses with balconies and roof terraces served by a partially pitch-roofed top floor enclosure in the centre of the buildings flat roofs (LPA ref: AWDM/0302/11).

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place

The Appeal Site lies on the north side of Old Fort Road. Following the grant of planning permission, construction works have progressed with haste, and the development is now nearing completion.

However, during the construction process the LPA became aware that the buildings had been constructed approximately 260mm higher than was originally granted planning permission.

On further investigation it became evident that that the buildings had been constructed on a higher slab level higher than was originally approved. In order to address this situation, the Appellants contractors lowered the roof section to ensure that the highest part of the building is just 100mm above the ridge of the neighbouring property (No.29) which is the same as was approved in 2012.

Therefore the recent retrospective planning application was for other minor changes to the height of the parapet level, plus alterations to the roof enclosure design. Window positions are higher than originally approved, with the first floor rear windows (which are the subject of Condition 7) having cill heights of 260mm higher than that originally approved. Likewise, the internal floor level within the buildings has also been raised by 260mm.

The LPA also contended that the distance between the new houses and the rear boundary with The Meadway had been reduced by up to 200mm, resulting in the houses being 10.8m from that boundary rather than the 11m originally approved. The Appellant argues that the boundary actually bows in places, and this has led to the anomaly in this measurement, indeed in some areas, the distance the rear boundary is 11m.

To the rear of the Appeal Site there are bungalows and chalet bungalows to the rear (north) in The Meadway.

The original planning permission (AWDM/0302/11), a copy of which is attached, did not include any condition that restricted the rear windows of the development in any similar fashion to that now imposed by Condition 7 of planning permission AWDM/0872/13.

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place

The Planning Officers report to Committee on the recent retrospective application stated as follows under the section 'Residential Amenity':

> *"There is a great deal of sympathy with the residents of The Meadway who are most affected by this development. Their previous outlook was on to a pair of hip-roofed bungalows and there would have been less built form and a greater expanse of sky visible from their properties. Nevertheless, planning permission has been granted for the redevelopment of those bungalows with two pairs of semi-detached two storey dwellings with loft rooms and an assessment of this application must take this into account as it is a material consideration...*
>
> *In order to reduce any potential impact from the increased height of the front roof terrace towards the dwellings at the rear, the applicant has agreed to reduce the width of the second floor terrace to ensure that it is no wider than the roof access room, thereby preventing any views towards the rear. This would be an improvement on that previously approved in terms of the amenities of residents to the rear of the site.*
>
> *The first floor windows are positioned higher up the rear wall and could give rise to an increased sense of overlooking, particularly when the increased proximity of the houses is taken into account, which reduces the distance to the bungalows in The Meadway to approximately 21.8m, just below the Council's 22m Standard. There has been a suggestion that they should be obscure glazed, although this is usually considered to lead to an unsatisfactory environment if a bedroom does not have an outlook. This suggestion was put to the developer and he has advised that he does not wish to obscure glaze the rear bedroom windows. He advises that the windows will be likely to be children's bedrooms, rather than the master bedroom which is at the front, and will be fitted with blinds or curtains. Any view will be out over the tops of the properties to the rear and as a common courtesy people do not spend their time looking out into neighbours' conservatories or windows...*
>
> *On balance, it is not considered that the amendments will materially alter the relationship between the existing and new dwellings, when compared with the*

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place

approved scheme, to justify refusing the application. Notwithstanding the comments of the Developer, however, Members may want to consider whether a condition should be imposed requiring partial obscure glazing of the rear second floor windows".

A copy of the Officers report to Committee is attached to this submission (pages 5-20 refer).

What is clear is that the professional view of the Planning Officer was that the imposition of a condition restricting the rear first floor windows to be obscure glazed and/or non-opening was not necessary, but he provided the opportunity for Members to add this condition – which, in the face of significant pressure from neighbouring residents, they then duly did. The Appellant does not agree with the imposition of this additional Condition, and we respectfully ask for the Planning Inspector to reconsider this case

What must be taken into consideration first and foremost is the Appellant's fallback position. There is a planning permission for this site which does not require these very same windows to be obscure glazed, or non-opening.

Although it is acknowledged by the Appellant that to comply with this original permission is no longer practical due to the construction now being so far progressed (it would not make any economic sense to revert to the original permission, as this would require substantial deconstruction and rebuilding of the development), it is our case that given this background and the lack of significant deviation from the original approved drawings with respect to the windows in question, it is now wholly unreasonable to impose a new condition that requires these first floor bedroom windows to be obscure glazed and fixed shut.

The reason for the condition being attached to the permission, as stated on the decision notice, is *"to prevent overlooking and to comply with saved policy AH2 of the Adur District Local Plan".*

We consider that the level of overlooking resulting from this slightly revised application is not materially any different from that would have resulted if the buildings were constructed in complete accordance with the originally approved permission. The only

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place

discernible difference is the first floor windows and internal floor levels are now 260mm higher. This change does not justify such a significant restriction being applied.

The LPA refers to Policy AH2 of the Local Plan. This policy states:

> "*any proposal will be expected to be designed so that:*
>
> *a) Its appearance, character and scale create a pleasant place in which to live and is in keeping with and enhances the existing local environment with particular attention being paid to the architectural form, height, materials, density and layout of both buildings and associated structures and hard surfaced areas;*
>
> *b) It respects the existing natural features of the site, including land form and trees;*
>
> *c) It does not have an unneighbourly effect on existing dwellings by reason of unacceptable loss of privacy, daylight/ sunlight, outlook or open amenity space;*
>
> *d) It incorporates adequate standards of residential amenity for the new dwelling(s) in terms of open amenity space, daylight/ sunlight, outlook and privacy;*
>
> e) *access arrangements to the public highway and on-site parking arrangements are acceptable under Policy AT12, and*
>
> f) *it accords with the standards adopted by the District Planning Authority".*

It is also considered important to note that the LPA have adopted a guidance note entitled 'Development Control Standard No.2: Space Around New Dwellings and Flats', which provides the following guidance:

> *"The space required between buildings is affected by the location of principal windows and the need to maintain privacy between facing windows and allow light to enter such windows. A distance of 22m is the minimum required between facing principal windows in order to retain sufficient privacy. For developments over 2-*

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place

storeys in height this distance will need to be increased... Where a principal window faces a solid obstruction a distance of 11m is required between the window and a single-storey structure or 14m between a principal window and a two storey structure, in order to allow adequate light to enter the windows" (paragraphs 2.4 and 2.5).

The guidance goes onto state that *"the acceptable distance between the rear of buildings is governed mainly by the distance required to give adequate privacy between facing principal windows, which is 22m in the case of 2 storey developments..."* (Para 2.9). A copy of this guidance document is attached to this submission also.

In an urban context, circa 22m back-to-back distance are common place, as highlighted by the additional drawing provided with this appeal submission, and previously sent to the LPA. This confirms that the minimum distance separating the development and the rear of properties on The Meadway to the rear is 22.57m. Such separation distances to The Meadway properties are common all along the north side of Old Fort Road. The development approved on the Appeal Site is therefore not out of keeping in this respect.

It is clear that the proposal is entirely in compliance with the Councils own guidance note in respect of back-to-back distances and its relationship with neighbouring properties to the north; and consequently it is also clear that the development is also compliant with the very policy that the Council refer to in their reason for imposing Condition 7 – specifically Policy AH2.

It should also be noted that the uncontrolled treatment of rear first floor windows on other recent developments along Old Fort Road is prevalent. For instance, at No.37 and 37a Old Fort Road, the rear elevation is positioned approximately 23m from No.33 The Meadway (10.9m to rear boundary), and there is no control over this properties rear facing first floor windows. This development was approved in 2008 (LPA reference ADC/0041/08).

Lastly, and as alluded to within the Planning Officers Committee report, due regard must also be given to the future occupants of these houses. Condition 7 applies to all first floor rear facing windows. Consequently it will affect 2 x bedrooms per house (8 in total).

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place

These windows are the only openings that serve each room. The condition would effectively remove any outlook, whilst also limiting the extent to which the windows could be opened. This would create oppressive living conditions for the occupiers of the new houses, and this would not be expected or reasonable given the suburban context of the Appeal Site, and the notable separation distances to boundaries and neighbouring properties to the rear.

6. Conclusions

It is considered that having worked very hard to follow the advice of the Planning Officer, and having subsequently received an Officer recommendation for approval, it was extremely disappointing that the Committee members were unable to support our proposals without the addition of Condition 7, given that the original planning permission did not include such a restriction.

Our case is that the Council have acted unreasonably in this regard, and as such the imposition of Condition 7 does not accord with the tests for conditions, as laid out at paragraph 14 of Circular 11/95.

The development retrospectively granted planning permission was not materially any different from the originally approved scheme at this site, with the only difference to the rear windows being that they are positioned some 260mm higher on the rear elevation than previously permitted. The back-to-back distances (22m – 27m) between the rear of the development and properties on The Meadway are still well within the parameters that are described as acceptable within the LPA's own adopted planning guidance document.

We therefore feel strongly that the LPA's decision to impose Condition 7 of planning permission AWDM/0872/13 is flawed. We have demonstrated above and within the original application submission that regard has been given to the developments relationship with its neighbours. Specifically, if these first floor bedroom windows were not obscured and were allowed to be fully opening, the resultant level of overlooking to properties to the rear would be no different than if the scheme had been constructed in accordance with the original planning permission at this site (AWDM/0302/11). This level

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place

of overlooking was not originally considered to be harmful by the LPA when they first considered the redevelopment of this site, and this was a view reinforced by the Planning Officer in recommending approval without this condition on the recent retrospective application. We consider that the rear windows to the 4 houses would not provide demonstrable overlooking or loss of privacy that will be to the detriment of occupiers of The Meadway properties, which would justify the imposition of Condition 7.

In addition regard must be had to the living conditions of future occupiers. Condition 7 would restrict the only windows serving 8 different bedrooms. By obscuring any outlook and limiting the opening of these windows, there will be a significant loss of amenity to the occupants of these rooms. Given the suburban context of the Appeal Site, such a loss of amenity would not be expected, and would be entirely out of place and unreasonable.

We therefore fully support the Planning Officers original recommendation to approve without the addition of Condition 7. The development would remain in full compliance with the advice contained within the National Planning Policy Framework, saved Policy AH2 of the Adur District Local Plan, and local level guidance contained within the LPA's 'Development Control Standard No.2: Space Around New Dwellings and Flats'.

Therefore we respectfully request that this appeal be allowed and that Condition No. 7 is removed from planning permission AWDM/0872/13.

9 RIVERSIDE, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5RU
T +44 (0)1273 465 240 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK

RTPI
mediation of space · making of place