Appeal Decision

Site visit made on 24 November 2008

by S J Emerson BSc DipTP MRTPI

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

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Decision date:
8 December 2008

Appeal Ref: APP/M3835/A/08/2079550
19 Ripley Road, Worthing, BN11 5NQ.

- 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 J McCabe against the decision of Worthing Borough Council.
- The application Ref WB/08/0383/FULL, dated 18 April 2008, was refused by notice dated 29 May 2008.
- The development proposed is redevelopment for six flats with associated site works. Flats on 2 storeys with bedroom in the roof space.

Decision

1. I dismiss the appeal.

Main issues

2. The main issues are:
   (a) The effect on the character and appearance of the area;
   (b) The effect on highway safety;
   (c) The effect on the living conditions of adjoining occupiers with particular regard to privacy, sunlight and noise;
   (d) Whether the development should contribute to off-site infrastructure.

Reasons

Character and appearance

3. No 19 Ripley Road is a detached Edwardian style house and, uniquely for Ripley Road, has a wide side garden. Ripley Road is characterised by late Victorian/Edwardian semi-detached houses (opposite and to the south west of the appeal site) and short terraces of 1930s style houses (to the north east). No 23, immediately to the north east, is the only other detached house nearby. Local residents express concern at the loss of the house and its garden. I accept that it is an attractive feature of the road, but it is not a listed building, it is not in a conservation area and the Council has confirmed that the principle of redevelopment to a more intensive residential use is acceptable in accordance with national and local policies to make more efficient use of urban land. I saw that the property is within a short walk of a good range of local shops and services. There is no planning objection to the provision of flats in this location.

4. The proposed block of flats would be a single building with 2 distinct parts. The front part of the building is modelled on the proportions and detailing of

the adjoining semi-detached pair of houses (although the proposed building would be slightly wider). The front elevation incorporates a pair of adjoining front doors (one serving one flat and the other a communal entrance to al the other flats) so that to the casual observer the front of the building would look like a pair of houses. The design has been well executed and would make the building sit comfortably and unremarkably in the street scene. The ridge of the roof would be slightly below that of Nos 15 and 17 and slightly higher than that of No 23, which is a modest size building. I consider that the height and scale of this part of the building is acceptable. The Council seek greater elaboration of detailing, but in this location where there are several styles of houses I see no justification for further refinement.

5. The rear wing of the building is set well in from the sides of the main part of the building. It would be built at a lower ground level than the front part, resulting in an eaves and ridge line much lower than the front part of the building. The rear wing would be seen only fleetingly from the road and I consider that it would be subservient to the front element and not dissimilar to the projections at the rear of the adjoining semi-detached houses.

6. The proposal also involves a driveway the length of the plot with 3 parking spaces at the rear, one parking space in the front garden, a cycle store to the rear of the building and additional pathways between these elements. Compared to the appearance of the garden when the application was submitted there would be much more hard surfacing, although a gravel drive and parking area in the rear garden has recently been created. I see no objection on visual grounds to parking in the rear garden, but the extent of hard surfacing should be minimised to increase the opportunity to retain existing trees and shrubs and for new planting. I consider that the pathway on the eastern side of the building is unnecessary and it precludes planting here. If the proposed cycle store was repositioned alongside the blank wall of the building alongside the drive proposed paths would not be required and the amenity area at the rear could be larger. These changes could be secured by a condition requiring a revised external layout and landscaping plan if I were to allow the appeal.

7. I therefore consider that the development would not result in harm to the character and appearance of the area and complies with the design objectives of policy BE1 of the Worthing Local Plan 2003 and CH1 of the West Sussex Structure Plan 2005.

Highway safety

8. When the application was submitted, the front boundary was defined by a fence with a tall hedge behind it. The hedge has been removed. The proposal includes the replacement of the fence with a low flint wall.

9. The Highway Authority are content with the number of parking spaces, but object to the proposal because the required visibility splays (for a road where the speed limit is 30mph) cut across the adjoining front gardens and thus are not in the control of the appellant. Many local residents express concern at the anticipated increased pressure for on-street parking. As I have already noted, the site is within a short walk of shops and services, where there is also a good bus service. West Worthing railway station is also within walking distance. This is a location where residents do not need a car to have reasonable access

to a wide range of facilities. Consistent with national policy, the Council's parking standards are maximum not minimum requirements. There is no policy conflict with providing less than the maximum number of parking spaces.

10. From what I saw and the concerns expressed by local residents, this end of Ripley Road is tightly parked at most times of the day in part because of parking by people using local services. But further along Ripley Road (further from the local centre) parking is less intensive and there is no evidence to indicate that parking in the wider area is at saturation level. I recognise that if most residents of the proposed flats had cars (or there were more than one car per flat) the on-site provision would be inadequate and there would be increased on-street parking. Whilst this would be likely to result in some inconvenience for nearby local residents, as they would have slightly less chance of finding a parking space outside their home, I consider that the additional parking could be absorbed along Ripley Road without serious adverse consequences.

11. When emerging from the access there would be intermittent visibility to the right over the front boundary walls of the adjoining semi-detached houses. Whilst these are outside the control of the appellant, it is unlikely that the adjoining owners would enclose their front gardens to such an extent as to preclude all such visibility. To the left, visibility would be available across the wide front garden of the plot, but then blocked by the boundary fence and vegetation at No 23. The visibility available from within the access would be adequate to see approaching pedestrians, but drivers would be unable to rely on what they could see from here to emerge safely because of the obstruction caused by parked cars and the bend in the road to the north west. However, the wide footway and the continuous line of parked cars on this side of the road would provide a safe waiting area for drivers to check visibility again before emerging onto the running carriageway.

12. The visibility available at the access is below normal standards, but is not untypical of many accesses in urban areas and is the best that can reasonably be achieved. The visibility would be better than was available from the drive in the past and better than that available from some of the drives in the front gardens of nearby properties. I recognise that there would be increased use of the access compared with its use by a single dwelling, but it would still be a relatively modest level of movements. There is a benefit in providing some on site parking (rather than none) which would otherwise take place on the street. Overall, I consider that the development would not cause serious detriment to highway safety and is compliant with development plan policies concerning parking and access.

Living conditions of adjoining residents

13. There would be oblique overlooking from the 1st floor rear facing bedroom windows in the main part of the building into the rear gardens of Nos 17 and 23, but this would be typical of the overlooking to be expected from an adjoining house in a suburban area and is not unacceptable. There is already some overlooking from the windows in the existing house. There would be more direct overlooking of the rear garden of No 23 from the 1st floor bedroom window in the side of the rear projection and of the garden and windows at the rear of No 17 by a 1st floor kitchen window in the rear projection. The loss of

privacy could be successfully mitigated by requiring the lower half of these 2 windows to be permanently obscure glazed. Whilst not an ideal arrangement, I consider that living conditions for future occupiers of these particular flats would still be acceptable as these windows do not serve the main habitable rooms and there would still be outlook to the sky. The appellant has indicated that such a condition would be acceptable. The rear facing 1st floor lounge and main bedroom window in the rear projection would result in overlooking of the rearmost parts of the gardens of the adjoining houses (both to the rear and on either side), but I do not consider that this would be intrusive.

14. I have already noted that the rear projection would be at a lower ground level than the front part of the proposed building. It would be lower than the ground level of the existing building. In my view, its comparatively low ridge and eaves lines and its set back from the side boundaries would ensure that it was not a dominant or oppressive building when seen from the properties on either side. Given that the existing building is already close to No 23, I consider that the proposal would not result in any substantial loss of sunlight to its rear garden. The comings and goings along the drive serving the 3 parking spaces would be audible from No 17, but these movements would be modest in number, at low speed and would be sufficiently screened by existing and proposed planting and the boundary fence to avoid being intrusive.

15. I consider that the living conditions of adjoining residents would not be unacceptably harmed and that there is no conflict with policy H18 of the local plan.

Infrastructure provision

16. The Council's 2nd reason for refusal was that the development had failed to provide for the required contribution to upgrading local transport facilities necessary to accommodate the development. There is a policy framework for such contributions, but the specific harm that would arise from the absence of such infrastructure improvements has not been identified by the Council in the appeal representations. This is not surprising as the appellant has consistently indicated an acceptance of the need for such contributions. I therefore regard the need for such contributions as agreed, with the consequence that the development must be regarded as unacceptable without it.

17. The appellant has submitted a draft section 106 unilateral undertaking to provide for the required financial contribution. This appears to be satisfactory, but the undertaking is not signed or dated and therefore would have no legal effect if I were to allow the appeal. The appellant indicates that the need for such a finalised undertaking should be secured by a condition. However, Circular 11/95 *The Use of Conditions in Planning Permissions* states (paragraph 13): *Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under section 106 of the Act or an agreement under other powers.* In the recent past, there are examples of conditions being imposed which, in practice if not on their face, would require appellants to enter into section 106 obligations, but I do not regard these as consistent with national advice and I see no good reason to depart from this advice. Given the agreement as to the need for such a contribution, the absence of a mechanism to secure its delivery makes the development unacceptable.

18. I recognise that the development would make better use of urban land and that, subject to conditions, I have found it acceptable in relation to all other material considerations except in relation to off-site transport infrastructure. Whilst the impact of this scheme on such infrastructure would undoubtedly be very modest, the cumulative impact of a number of similar developments in a local area may be significant and it is important to address this cumulative impact by securing needed contributions from each development. The absence of a completed undertaking to secure the required contribution is sufficient reason to dismiss the appeal.

Simon Emerson

INSPECTOR