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TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

Planning Appeal by Mr J Bacon of
Pursuit Properties

Site at No.17 Old Fort Road, Shoreham Beach, Shoreham-by-Sea, West Sussex BN43 5RL

Appeal reference: APP/Y3805/A/13/2202322

Local Planning Authority reference:
AWDM/0284/13

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FINAL COMMENTS ON BEHALF OF THE APPLICANT

Site at:
No.17 Old Fort Road, Shoreham Beach, Shoreham-by-Sea, West Sussex BN43 5RL

Appeal against the LPA's decision to refuse planning permission in respect of Planning Application ref: AWDM/0284/13 in respect of the demolition of an existing bungalow and the construction of 2 no. semi-detached, 3-storey flat-roofed dwellings with front roof terraces and first floor balconies.

1. Introduction

These further comments follow the Local Planning Authorities (LPA) undated Statement, which was attached to the Planning Inspectorates letter dated 11th September 2013.

2. Background

For clarity, it is considered beneficial to confirm the LPA's reasons for refusal, and the context in which the decision was made.

We engaged with the LPA's Planning Officer at an early stage, and had extensive pre-application discussions, as detailed at paragraphs 4.1 – 4.3 of our Grounds of Appeal Statement. On this basis of these discussions, the planning application was submitted to the LPA in March 2013.

The planning application was subsequently written up for approval by the Planning Officer, and this was agreed with the Head of Planning (Mr James Appleton). The

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application was then presented to the District Councils Planning Committee meeting on 3rd June 2013, with an Officer recommendation for approval.

At the Committee meeting itself, the application was vigorously supported by the Planning Officers. The Councillors expressed concern regarding the top floor element of the proposed blocks, but they were told by Officers that a clear precedent had been set by neighbouring developments for exactly this form of development with very similar relationship with neighbours to the rear and sides (for instances at No's 25-27, and No.37 Old Fort Road). Despite the professional views of the Case Officer and his manager, the Members voted to not accept their Officers recommendation for approval, and the application was subsequently refused planning permission. The Council's decision notice is dated 10th June 2013, and details one reason for refusal, which reads as follows:

"Having regard to the limited area of the site and its relationship to existing residential properties, the proposal, by reason of its size and height, would give rise to an unneighbourly form of development which would be detrimental to the residential amenities and environment of the locality, resulting in loss of light and an overbearing effect on existing dwellings contrary to the saved policies of the Adur District Plan (AG1, AH2) and the policies of the National Planning Policy Framework."

3. Relevant Planning Policies

It is noted that the Councils submission includes copies of all the relevant planning policies from Adur District Local Plan (1996).

In light of the National Planning Policy Framework (NPPF), it is questionable how much weight should be afforded to the 1996 Local Plan. The NPPF clearly outlines its method of Implementation within Annex 1 of this document. At paragraph 211, the guidance notes that *"for the purposes of decision-taking, the policies in the Local Plan should not be*

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considered out-of-date simply because they were adopted prior to the publication of this framework". However, at paragraph 214, it goes on to note that Local Plan Policies can only be given full weight if adopted since 2004. *"In other cases….. due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework".*

We would therefore argue that the implications of paragraph 214 are that the policies of the 1996 Local Plan can be afforded no weight unless they are still explicitly consistent with relevant policies in the NPPF. In our view, this argument is strengthened because full weight can continue to be given to post-2004 Local Plan policies only if *"there is a limited degree of conflict (with NPPF)".*

The LPA also confirm that the NPPF also provides policy context that is directly relevant to this appeal case. The NPPF was published on 27th March 2012, and at that time the policies in the Framework came into use, with immediate effect. This guidance is now the most-up-to date Government Guidance and replaces all planning policy statements/ guidance that were previously in place.

Although it is the appellant's case that we are fully compliant with the policies referred to by the LPA, we question whether in any case these policies are indeed entirely consistent with the NPPF.

The focus of the new NPPF is achieving sustainable development, the definition of which is summarised in paragraph 6 as being the whole of paragraph's 18-219 of the Framework. Paragraph 7 goes further as it specifies that there are three dimensions to sustainable development: economic, social and environmental. Under the social role it states that the planning system should provide *"the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment..."*

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Under paragraph 11, the NPPF confirms that planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF does not change the statutory status of the development plan.

Paragraph 14 is an important element of the NPPF. It states that: *"at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking"*. It details that objectively assessed needs, such as housing, have to be met unless "any adverse impact of doing so would significantly and demonstrably outweigh the benefits." This is assessed against all the policies of the NPPF, as a whole, or specific policies relating to SSSI, Green Belt, Local Green Space, AONB, Heritage Coast, National Park, designated heritage assets, flood risk locations and coastal erosion. It also states that decision makers should be ***"approving development proposals that accord with the development plan without delay".***

The NPPF advises that a set of 12 core land-use planning principles should underpin both plan-making and decision-taking, and these principles are listed under paragraph 17. Although the NPPF omits the wording that was present in the draft which referred to the default position of "yes" to applications for sustainable development, it does retain the significant change that requires a response to market signals. Each of the bullet points are important, but of particular note is no. 5, where it details that account should be had of the character of different areas, and no. 11 which requires development to be focused *"in locations which are or can be sustainable."*

Section 4 is entitled 'Promoting Sustainable Transport'. Under paragraph 28 it advises that different policies and measures are required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. With reference to car parking, paragraph 39, states that if a LPA provides local parking standards, account should be had of *"the accessibility of the development; the*

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type, mix and use of development; the availability of and opportunities for public transport; local car ownership levels; and an overall need to reduce the use of high-emission vehicles."

Section 6 of the NPPF is entitled 'Delivering a wide choice of high quality homes'. It seeks to ***"boost, significantly"*** the supply of housing, whilst placing more reliance on windfall sites as a source of housing supply. Realistic historic windfall delivery rates and expected future trends are legitimate sources of supply. Paragraph 49 states *"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites".*

Under paragraph 53 the Framework accepts that development on garden land is acceptable provided it would not cause harm to the local area. There is no reference to minimum densities etc, and as such it is assumed that the relaxation in the June 2010 PPS3 has been retained by the NPPF.

Section 7 discusses the need for good design. Under paragraph 58 the NPPF provides what appears to be a clearer and more robust approach to design than in PPS1 paragraph 33 – 39.

The NPPF wishes to avoid unnecessary prescription or detail (paragraph 59), whilst the key criteria of scale, density, massing, height, landscape, layout, materials, access, relationship to neighbouring buildings and relation to the local area more generally remain. Paragraph 58 expands on this by stating that developments should: *"function well and add to the overall quality of the area... establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit... optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses... respond to local character and history, and reflect the*

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identity of local surroundings and materials, while not preventing or discouraging appropriate innovation; create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and are visually attractive as a result of good architecture and appropriate landscaping".

Finally, the crucial caveat of PPS1 paragraph 35 remains within the NPPF. That is that good design goes far beyond aesthetic considerations, with paragraph 61 specifically referring to *"integration of new development into the natural and historic environment."*

It remains our firm view that the Appeal Scheme is in full compliance with the specific guidance and intentions of the NPPF, which is the most up-to-date Development Plan document. In addition, we share the view of the LPA's Planning Officers when they recommended the proposals for Approval in June 2013 – the Appeal Scheme is also entirely in accordance with Policies AG1 and AH2 of the LPA's 1996 Local Plan.

4. Previous Planning History

According to Adur District Councils online planning register, there is no planning history that relates to the application site.

However, there has been considerable built development within the surrounding area in recent years, and this has greatly altered the character of the surrounding area. Whilst the surrounding locale was originally chartacterised by modest sized bungalows; there is now a significant variety to the built form and scale of properties.

Recently there have been a number of applications similar to our own that have been permitted (i.e. two dwellings replacing one original property). The most noteworthy examples of such development being permitted, which are considered relevant to our proposal, are detailed below:-

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- 15 Old Fort Road: SU/48/06/TP – Demolition of existing dwelling and erection of a pair of flat roofed 3-bed houses.

- 25 and 27 Old Fort Road: AWDM /0302/11 – 4 no. flat roofed 3-bed semi-detached houses (3-storeys). A recent application (AWDM/AWDM/0872/13) for changes to the height, fenestration and position of these dwellings has now been approved by the District Councils Planning Committee.



Fig 1. 3-D streetscene of plans approved for No's 25-27 Old Fort Road (courtesy of www.adur-worthing.gov.uk online planning). These dwellings are currently under construction.

- 37 Old Fort Road: ADC/0041/08 – Demolition of existing house and erection of 2 x 3-bed houses (2-storey plus roof enclosure).

- 43 Old Fort Road: AWDM/0827/11 - Demolition of chalet bungalow and erection of 2 semi-detached two-storey flat-roofed three-bedroom houses.

- 55 Old Fort Road: SU/130/02/TP – Demolition of existing bungalow and redevelopment with 2 houses.

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- 59 Old Fort Road: SU/253/04/TP – Demolition of existing dwelling and erection of a pair of semi-detached houses (3-storeys).
- 63 Old Fort Road: ADC/0156/08 – Demolition of bungalow and erection of pair of flat roofed 4 bedroom houses with integral garages (3-storeys).
- 65 Old Fort Road: SU/233/03/TP – Demolition of bungalow and erection of 2 x three bed link detached houses
- 77 Old Fort Road: ADC/0092/10 – Pair of semi-detached flat roofed 4-bedroom houses.
- 89 Old Fort Road: ADC/0313/10 – Demolition of existing bungalow and erection of 2 x 3-bed link detached houses.
- 111 Old Fort Road: AWDM/0167/13) - Demolition of an existing chalet style bungalow and construction of 2 no. semi-detached, 2 storey, 3-bedroom dwellings

In addition, it is noted that there is a current planning application at No.39 Old Fort Road for demolition of an existing chalet style bungalow and construction of 2 no. semi-detached, 2 storey plus roof enclosure, 3-bedroom dwellings. This application is directly comparable to the Appeal Scheme. The application is recommended for approval by Officers, and is due to be heard at the Planning Committee meeting on 30th September 2013.

Lastly, aside from the above examples, it is also noted that 3-storey replacement dwellings have been approved on the opposite (south) side of Old Fort Road, most recently at No.100 (LPA ref: AWDM/0522/13), but also at No.144 (AWDM/0708/12), No. 90 (AWDM/0543/12), and No.2 (AWDM/0314/11).

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All of the above confirm that buildings with accommodation set over 3 floors is very much an established part of the streetscene for both north and south sides of Old Fort Road.

5. Rebuttal to the Case of the Local Planning Authority

It is noted that the LPA accept that the principle of development is acceptable, with no objection raised to the subdivision of the existing plot at No.17 Old Fort Road to provide a pair of semi-detached houses. The LPA comment at para 4.2 of their Statement that *"the existing bungalow is in a poor condition and is in need of replacement. Two storey replacement dwellings are becoming common along this side of Old Fort Road and the replacement of one bungalow with a pair of semi-detached dwellings is also increasingly common".*

Our view is that the proposed design although not identical to others that have been approved on this northern side of Old Fort Road, is very similar in form, size and design principles. It is our view that there is no typical architectural language both with the existing detached dwellings, and the more recent developments. Consequently it is our view that the precedent has been firmly set by a proportion of similar form/designed developments along Old Fort Road, but these can in no way be deemed to be considerable in their number, and the overriding character remains one of a mixture of dwelling types, design, and sizes. The more modern developments just serve to add to this variety. In addition, it is noted that Shoreham Beach is not subject to any planning designation that marks it out as being of special character, and nor is it in a Conservation Area. Nor do the Council have any design guidance that relates specifically to the area.

So, rather than the principle of redevelopment, the density or modern design, the LPA's case centres around the impact the development would have on the residential amenities of properties to the rear of the Appeal Site, located on The Meadway. The LPA's Statement

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makes particular reference to the provision of the top floor roof access element of the building proposed.

These neighbouring properties on The Meadway are located broadly to the north of the Appeal Site, and are either bungalows or chalet style properties.

At the pre-application stage, the LPA's Planning Officer noted that consideration should be had to these properties at the rear of the site and these comments were given careful regard when the Appeal Scheme was being designed.

The closest property to the rear of the site is No. 13 the Meadway, which is a bungalow with no first floor rear facing windows that overlook the application site. The LPA's Planning Officer stated in his initial advice that *"we would normally expect 22m back-to-back separation where first floor windows face each other. In this case there may be scope for a slightly reduced distance but, because of the proximity of 13 The Meadway to the boundary I would not wish to see this distance reduced too much as I would not want the pair of 2 storey dwellings to be overbearing to the occupants of that bungalow. I would also not want to see the new dwellings project too far beyond the rear line of 19 Old Fort Road. A rear garden depth of 10m may therefore be acceptable in this case, which gives a back-to-back distance of 19m".*

In response to these comments, the proposal has been carefully designed to retain a separation distance of 10.9m between the rear elevation of the proposed dwellings and the shared boundary and a further 10.3m between the shared boundary and rear elevation of No.13 the Meadway. This would result in a total separation distance of 21.1m, which given that there are no first floor windows to the rear elevation of this neighbouring property, is considered fully compliant with the LPA's advice and would not cause demonstrable harm to this rear residential property by way of overbearing effect, loss of privacy or overlooking effect.

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At first floor level, the new building would only project slightly beyond the rear of adjacent No.19, and would be broadly in line with that No's 15a and 15b to the west. Again this is in accordance with the LPA's Officers advice at the pre-application stage.

At this juncture, it is considered worth repeating what the LPA's Planning Officer view with relation to impact on The Meadway properties from the Appeal Scheme as described within the Committee Report of June 2013:

"At the rear the dwellings will have a single storey projection to a depth of 1.8m which will be set in from the sides by 1.2m and which will not affect light and outlook to the rear of the adjoining properties... At the rear of the site are bungalows in The Meadway. Most affected is 13 The Meadway which is directly to the north but is some 21m from the first floor of the proposed dwellings. Only high level kitchen windows are shown on the rear elevations which will not cause any overlooking. ***At the distance involved (10.9m to the boundary), the proposal is not expected to cause any significant loss of light. The third storey roof access is to be 2.9m from the rear edge of the building to further reduce the impact on the bungalow.*** *The roof terrace area is limited to the front of the roof only with the roof access structure screening any views to the rear. It is not therefore considered that the development will result in any loss of privacy for neighbouring occupiers."* We share the Planning Officers professional, original views with regard to the Appeal Scheme in this regard.

We would also want to draw the Inspectors attention to the comments we made in our Grounds of Appeal Statement, (dated July 2013), at paragraphs 4.12 and 4.13. In particular the proposed design with a recessed top floor element would create a building that is no higher than a conventional 2-storey house with pitched roof, it also set in significantly (2.9m) from the main rear elevation of the proposed building thereby providing a total back-to-back distance of over 24m between our proposed top floor element, and the rear of No.13 The Meadway. In an urban context, such a back-to-back

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distances are common place, as highlighted by the additional plan (drawing no. 5910 06 Revision B), which was provided with our Appeal submission.

The LPA have an adopted 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-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)

Paragraph 3.8 refers to the provision of daylight. It states *"It is important that rear garden areas are not unduly overshadowed by adjoining properties. The distance required between facing principal windows will usually ensure there is no problem with properties to the rear. Overshadowing of gardens from adjoining properties to the side can be minimised by maintaining a rear "building line". Dwellings will not usually be allowed therefore that project significantly beyond the rear of adjoining dwellings."*

In this respect the Appeal Scheme is also compliant, in that the main rear elevation of the building is set in line with the rear elevation of neighbouring No.15/15a. A small single storey rear projection is proposed, but this will not be visible from neighbouring properties or from outside the appeal site due to its position and low height.

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The proposed roof terrace is at the front of the proposed properties, and there will be no views of The Meadway properties to the rear from this area. The rear windows have been carefully positioned and designed to ensure that overlooking of this property will not occur. Indeed the relationship in this respect is no different to that which already exists (and was previously deemed acceptable by ADC) at many nearby developments on Old Fort Road.

With regards to overshadowing, my client has had additional plans prepared (please see drawing no. 5910 010 Revision A, entitled 'Solar Analysis'). These plans confirm that any loss of light resulting from this proposal to neighbouring properties will be extremely minimal, and is confined to limited times of the day in winter, when the sun is at its lowest (and also when you are unlikely to be spending any notable time in your garden). Any overshadowing would be identical to that created by the developments approved and constructed at No's 25 and 27, and No.37 Old Fort Road. Their impacts in this regard are not seen as demonstrable, and therefore we would have expected a consistent approach to be taken with regard to our proposals.

The LPA are now evidently objecting to any top floor accommodation or roof access at the Appeal Site, despite accepting it at numerous other sites along Old Fort Road. The relationship between the building proposed at the Appeal Site and its immediate neighbours is no different from those where similar development has already been approved and constructed. Although the Appellant accepts that each planning application must be considered on its own merits, the change of tack on behalf of the LPA has resulted in inconsistent decision making, and we feel that this is entirely unacceptable.

It should be noted that the third floor roof access, as proposed by the Appeal Scheme, consists simply of a staircase and store to enable access to the roof - rather than a full floor. The Planning Officers Committee Report states that *"It is set in on all sides and has a sloping roof at the front to reduce its impact in the street scene, similar in that respect to the third storey at 37/37A Old Fort Road. Consequently, while the overall height will be*

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taller than its neighbours, the impact from street level will not be harmful due to the recessed roof level. The two storey parapet height is lower than the neighbouring properties."

The Appeal Scheme proposes a building that would essentially be 2-storey, but with the addition of a recessed second floor element, with front roof terrace. The top floor element takes it cues from other similar developments that have taken place along Old Fort Road. Taking influence from other examples further along Old Fort Road, the approach taken is to provide a low scale top floor roof access, which is set in notably from the front and side elevations of the building. The building would not be higher than a traditional 2-storey building with a pitched roof – of which there are a great number along Old Fort Road. The top floor would be set in from all elevations, and would have a sloping front façade, thereby successfully reducing any possible impact this element would have on the visual amenities of the streetscene. An almost identical design approach has been successfully utilised at neighbouring developments, including No's 25 and 27, and No.37 Old Fort Road.

It has been demonstrated by the details submitted previously to the Planning Inspector, that rear-to-rear separation distances of between 20 and 25 metres is common along Old Fort Road. In this respect the appeal site does fall within the accepted range. However, there are examples of less than this being accepted, for instance at No's 7-9 The Meadway, a recent development which provided separation distances of 19.36m to No.13 Old Fort Road, and 20.04m to No.11 Old Fort Road. It is also noted that at No's 25-27 Old Fort Road a recent revised application sought retrospective approval for the buildings to be positioned closer to the mutual boundary and therefore with neighbouring properties on The Meadway, than was originally approved. The distance to the rear boundary is now 10.8m, 200mm less than originally approved by the LPA for this site. At the relevant District Planning Committee meeting, the Councillors voted to accept the Officer's recommendation and planning permission was granted for this (and other) changes to the approved scheme at this nearby site. Again, this action confirms the LPA's inconsistent

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approach to dealing with similar planning proposals along Old Fort Road, and naturally this is a matter the Appellant is extremely disappointed by.

What is also considered noteworthy is that the same Planning Officer who recommended our planning application for approval is now completely contradicting his own original views within the LPA's Statement of Case.

The Planning Officer previously advised the Councils elected Members that in his professional opinion the Appeal Scheme was entirely acceptable and should be approved. However the Councillors who comprise the District Councils Planning Committee still voted to refuse the planning application for the reasons outlined above.

The overwhelming weight of evidence supports our case that this reason for refusal is flawed.

7. Conclusion

It is evident from the above that the proposed development the subject of this appeal against the LPA's decision to refuse is wholly acceptable. It has been demonstrated both above, and within the previously provided documentation, that the Appeal Site is of a size that can comfortably accommodate the level of development proposed and provides a relationship with existing residential properties, which is entirely appropriate given the type of development proposed to ensure that the amenities of neighbours are not demonstrably harmed.

Specifically, it is the Appellants case that the Appeal Scheme is of a wholly acceptable size and height. The proposed developments position within its plot provides ample separation distances to boundaries and neighbouring, and consequently it is the Appellants case that the Appeal Scheme would not give rise to any form of unneighbourly

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impact, with no resultant loss of light or overbearing effect on existing dwellings that would justify the withholding of planning permission.

As the Appeal Scheme accords with the aims and objectives of national and local policy and guidance, the Appeal Site is considered wholly suitable for the proposed redevelopment, and we respectfully request that this Planning Appeal is allowed.

Rodway Planning Consultancy
September 2013

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