The Planning Inspectorate

Appeal Decision

Site visit made on 13 August 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2024

Appeal Ref: APP/M3835/W/24/3344060
78 Clarendon Road , Broadwater, West Sussex, Worthing BN14 8QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr and Mrs Paul & Victoria Elizabeth Rouse against the decision of Worthing Borough Council.
- The application Ref AWDM/0043/24 was approved on 20 March 2024 and planning permission was granted subject to conditions.
- The development permitted is single storey garden room in rear garden.
- The condition in dispute is number 3 which states that: The outbuilding hereby permitted shall only be used for purposes incidental to the enjoyment of the existing dwellinghouse and not for the purposes of primary living accommodation (bedroom, living room, dining room or kitchen).
- The reason given for the condition is: In the interests of residential amenity having regard to policy DM5 of the Worthing Local Plan.

Decision

1. The appeal is allowed and the planning permission Ref AWDM/0043/24 for single storey garden room in rear garden at 78 Clarendon Road, Broadwater, West Sussex, Worthing BN14 8QQ granted on 20 March 2024 by Worthing Borough Council, is varied by deleting condition 3.

Main Issue

2. The main issue is whether the imposition of condition 3 is reasonable, necessary and otherwise accords with paragraph 56 of the National Planning Policy Framework (the Framework) when regard is paid to residential amenity and policy DM5 of the Worthing Local Plan (Local Plan).

Reasons

3. The Officer's Report addresses the claimed need for the condition, including by reference to concerns about overlooking, light, noise and use. The report notes the position of the approved building and the physical relationship with neighbouring boundaries, which I have also noted.

4. In respect of overlooking, paying regard to the heights of the boundary fences, ground levels, the locations of the windows in the approved building, and the withdrawal of permitted development rights under condition 4, there would be no material effect on living conditions from views into neighbouring gardens. This is the case regardless of whether the building is only used for incidental purposes, or not.

5. The north elevation glazed doors will create new views towards the windows of neighbouring properties, with some consequent impact on sense of privacy. Paying regard to the slope of the garden, the relative distances, and the prevailing privacy conditions in an area where a degree of mutual overlooking exists, any loss in sense of privacy would not be unreasonably harmful. Again, this is the case regardless of whether the building is only used for incidental purposes. Condition 3 is not reasonable or necessary to manage overlooking concerns.

6. Turning to general use, including light and noise. Allowing the building to be used for residential purposes other than incidental opens it up to a greater potential range of residential activity and general intensification of use. It is reasonable to expect that the scale and nature of such activity would be compatible with the residential use of the main house and the wider residential nature of the surroundings.

7. In these circumstances, and in the absence of substantiated evidence of specific risks, limiting the use to only incidental activities is not demonstrated to be either necessary or reasonable. Instead, the Council's residential amenity concerns are generic and lack substance. The condition also does not secure accordance with Policy DM5 of the Local Plan, in particular DM5 viii) in terms of not having an unacceptable impact on the occupiers of adjacent properties.

8. In conclusion on the main issue, condition 3 is neither reasonable nor necessary and does not, therefore, accord with paragraph 56 of the Framework when regard is paid to residential amenity and policy DM5 of the Local Plan.

Other Matters

9. I have paid regard to neighbour representations. Concerns relating to residential amenity have been considered as part of my assessment of the main issue. Business use triggering a change of use of the building would be subject to its own planning assessment, if proposed. Restrictive covenants are a separate private land matter.

Conditions

10. Condition 3 is removed from planning permission Ref AWDM/0043/24. All other conditions remain.

Conclusion

11. The appeal is allowed.

D R McCreery

INSPECTOR