The Planning Inspectorate

Appeal Decision

Site visit made on 25 June 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th July 2024

Appeal Ref: APP/M3835/W/24/3337792
Cumberland Court, Wallace Avenue, Worthing, BN11 5RB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Clint Westlake against the decision of Worthing Borough Council.
- The application Ref is AWDM/0835/23.
- The development proposed is alteration at roof level to provide a two-bedroom penthouse apartment and new lift shaft together with additional parking, new bin and cycle store and other associated works.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was refused, on 24 August 2023, the National Planning Policy Framework (Framework) has been revised, most recently in December 2023. However, the appeal was lodged on 30 January 2024 and both parties will have had the opportunity to address any changes to the Framework in their Statements of Case. Most of the relevant policies in the Framework remain unchanged, albeit some of the paragraph numbering has changed. Whilst some of the housing policies have changed, these do not affect the main issues raised by this appeal but they are relevant to the application of the tilted balance, which is a matter I address under the heading 'Planning balance'.

Main Issues

3. The main issues are the effect of the proposed development on (a) the character and appearance of the host property and surrounding area, and (b) the living conditions of existing and neighbouring occupiers.

Reasons

Character and appearance

4. The appeal site is located on the western side of Wallace Avenue and comprises a three storey block of flats in the art deco style. At either end of the frontage to the site are 'in' and 'out' accesses. A short stretch of tarmac links these accesses sweeping in front of the main building, which, at the time of my site visit, was being used for parking. In between the two accesses, on the road boundary, is an attractive flint wall behind which is a good sized margin of low level landscaping and lawn. Further hardstanding to the south and north of the

main building leads to the rear of the site, which comprises a further small area of hardstanding and a small well maintained communal amenity area laid to lawn with mature planning and trees towards the rear (western) boundary.

5. The properties to the north and east of the appeal site are largely detached and two storeys, albeit some have rooms in the roof. There are also 3 storey blocks of flats further north. There is no uniform character with properties varying in terms of their age, style, layout, form (including roof form) and materials. To the south of the appeal site is a courtyard of single storey garages that serve Roberts Marine Mansions a modern 3 storey block of flats fronting onto West Parade and the seafront. To the east of this and on the opposite corner, and extending in an 'L' shape, is a further 3 storey block of flats known as Wellesley Court.

6. The appeal proposal essentially involves the construction of an additional floor to provide a two-bedroom penthouse apartment together with a new lift shaft at the rear, additional parking and new bin and cycle store.

7. The Council have referred to policies DM2, DM5 and DM24 of the Worthing Borough Council Local Plan 2020 – 2036 (March 2023) (WLP). These require, amongst other matters, that new development: makes the most effective use of land; secures an optimum density having regard to the sites context and character; be of a high architectural and design quality; respect and enhance the character of the site and the prevailing character of the area; and respect, support and where possible, positively contribute to the essential character of undesignated heritage assets. All of these policies are consistent with those in the Framework. Reference is also made to the Council's 'Guide to Residential Development' Supplementary Planning Document (November 2013) (SPD), which contains further guidance on different forms of residential development.

8. Policy DM24 of the WLP relates to undesignated heritage assets. In this respect, the parties appear to agree that the host property is on the Worthing Local Interest Register as a 'Local Interest Building' (LIB). This emanates from the 'Worthing Local Interest Study August 2003' (WLIS). The Appellants Final Comments make the point that the Council have referred to the host as a locally listed building, but that it is not listed and not afforded such a level of protection. That may be so, but the Council's Delegated Report (CDR) states that, in their view, the host is an undesignated heritage asset, a statement that does not appear to have been challenged by any substantive evidence to the contrary. Within the CDR I also note that the Council's views on the LIB and asset are supported by the advice from its Conservation Design Architect and the responses from the Worthing Society and interested parties.

9. Based, therefore, on the evidence before me I am satisfied that the proposed development should be assessed in relation to policy DM24. The approach of the latter is similar to that in paragraph 209 of the Framework, which requires the effect of an application on the significance of a non-designated heritage asset to be taken into consideration. It continues by stating that in weighing up applications that directly or indirectly affect such assets "*a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset*". I have, therefore, proceeded to determine the appeal on the basis that the LIB is a non-designated heritage asset but at the same time I have also considered whether my findings would change if the building was not a non-designated heritage asset.

10. The host property is a good example of a largely unaltered art deco building dating it would appear from the 1930's. Whilst I accept that its original steel framed windows have been replaced by UPVC, the building retains most of its original features. These are summarised in the WLIS and include its original brick and concrete detailing, flat roof, projecting brick corner bays, curved balconies, concrete surround to the main entrance door and decorative leaded glass lights to the central communal staircase. The building is visually prominent within the streetscene and its attractive features, symmetry and iconic appearance make, in my view, a positive contribution to the character of this part of the streetscene and to its significance as a non-designated heritage asset.

11. Within that context, the appeal proposal would represent an incongruous and harmful addition to the host property. At three storeys, the host is already as high or taller than most existing properties in Wallace Avenue. This is reflected in the submitted streetscene. Whilst this also shows that the proposal would be comparable in height to Roberts Marine Mansions, to the south, the latter fronts onto West Parade and does not, in my view, form part of the same streetscene as the host property or its Wallace Avenue neighbours. That view is reinforced by the fact that the Mansion building is sited some distance away from the host and separated from it by courtyard parking, effectively turning its back on the Wallace Avenue streetscene. It is also a corner site, where its not uncommon to see an increase in scale and massing which often results from the fact that such sites comprise much larger and spacious plots. More importantly, the Mansion faces the seafront, where, as the Council point out and as I observed on my site visit, larger scale buildings are a traditional and well established feature of the streetscene.

12. The proposal would, in my judgement, completely overwhelm the host property and its neighbours, particularly 7 Wallace Avenue (No.7), a two storey detached property, to the north. The new addition would not integrate well with and would visually dominate the host and its art deco design. It would detract from and harm those features, such as its proportioned and symmetrical design and flat roof, that contribute to the architectural quality of the building and in turn its significance as a LIB. The resulting scale, height and mass of the new addition would be out of keeping with the streetscene. I agree with the Council that the proposal would result in an addition that appears wrong in townscape terms and overall the proposal would not sit comfortably on this art deco building. Even if the host was not a non-designated heritage asset my findings on this issue would remain the same.

13. The Appellant has referred to other blocks of flats in the area, including 42 – 44 West Parade, whose art deco style it contends has influenced the design of the appeal proposal. I have not been provided with any planning background to this development but I note that the Council indicate that it is a modern building with a cohesive design. That differs to the appeal proposal which is seeking to add a modern and contemporary addition to an original art deco building. Reference has also been made to Connaught House, which I viewed on my site visit. I again agree with the Council that this is not comparable largely due to its immediate built context, location within the town centre and position on the seafront.

14. The Appellant has referred to the use of a modern pallet of materials such as Zinc cassette panels to contrast with the existing red/brown brick lower walls

and the set back of the new addition from the main elevation. Whilst I accept that these would soften the visual appearance of the new floor, they do not affect my findings in relation to the significant harm that would result from the proposal to the character and appearance of the host property and surrounding area.

15. In relation to the proposed lift shaft, I share the Council's concerns in relation to its excessive scale and height. It is a significant structure, with the main lift enclosed in brick to match existing and what appears to be a glazed link to the main building, with a flat roof that appears to exceed the height of the 'ridge' to the roof of the new floor. It would visually dominate the rear elevation of the host and it would not integrate well with or represent a sympathetic addition to it. Whilst it is on the rear, as I observed on my site visit it would be visible from public vantage points, including the public green located to the south west of Roberts Marine Mansions.

16. Turning to the other works, the space in and around the host building make an important contribution to its setting. The mature landscaping that sits behind the front flint wall is very visible within the streetscene. Its replacement by car parking, even with the benefit of new planting, would, in my view, accentuate the impact that the proposal would have on the setting and special features of the art deco building. The Appellant suggests that the parking would allow an improvement on the minimal amount of landscaping that exists, but there is no detailed plan before me to support that statement. I am also unconvinced that removing a large part of the planting/lawn and replacing it with parking could be seen as an improvement. In relation to the proposed bin and cycle store, I accept that the design of this is something that, if I were minded to allow the appeal, could be controlled by condition. However, I note that it would remove more communal space which is already at a premium and interested parties have raised concerns over its impact on the health of existing trees.

17. Paragraph 135 c) of the Framework states that innovation or change should not be discouraged but this paragraph also states that new development should be: visually attractive as a result of good architecture, function well and add to the overall quality of the area; be sympathetic to local character including the surrounding built environment and landscape setting; establish or maintain a strong sense of place; and secure a high standard of amenity for existing and future users. For the reasons set out above, the appeal proposal would fail to comply with the overall requirements of paragraph 135.

18. Accordingly, I find that the appeal proposal would be contrary to policies DM2, DM5 and DM24 of the WLP, the guidance in the SPD and the corresponding policies of the Framework.

Living conditions – existing & neighbouring occupiers

19. Policies DM2 and DM5 of the WLP require that new development should not, amongst other matters, have an unacceptable impact on the occupiers of existing or neighbouring properties, including an unacceptable loss of privacy, daylight and sunlight, outlook or disturbance (noise). The SPD has a similar approach, consistent with paragraph 135 f) of the Framework, requiring a high standard of amenity for existing and future users.

20. In relation to the proposed lift shaft, as I confirmed earlier this would represent a significant structure, projecting a considerable distance from the main rear

wall of the host property. I note that the submitted plans do not show the internal layout of the existing flats, but merely their footprint. Even so, based on my observations on site and the comments submitted by interested parties, it would appear that the proposed lift shaft would be sited adjacent to the kitchen windows of the flats to either side. As such, this aspect of the proposal would have a harmful impact on the outlook from those windows and would appear overbearing to the occupiers of those flats.

21. Turning to the roof addition, the proposed corner windows to bedroom no.2 would, even with the set back of the building, result, in my view, in overlooking of the rear garden and conservatory to No.7. Direct overlooking of the garden and conservatory to this property would also be possible from the proposed roof terrace, which I note would be accessible from the new master bedroom. The terrace extends to the edge of the existing flat roof, enclosed only by an aluminium balustrade. This overlooking would be direct, from a height and from a location where no such views exist at present and it would not be mitigated by the distance involved or any existing screening.

22. In relation to the submitted Sunlight and Daylight assessment, I agree with the Council that this does appear to show an increase in the overshadowing of No.7 during parts of the year. Even so, had this been the only concern raised in this respect it would not have been sufficient on its own to justify the refusal of planning permission.

23. Accordingly, I find that the proposed development would result in harm to the living conditions of existing and future occupiers of the host property and No.7 contrary to policies DM2 and DM5 of the WLP, the guidance in the SPD and paragraph 135 f) of the Framework.

Planning balance and conclusions

24. The Council have acknowledged that the delivery of housing in the Borough has fallen below 75% of the housing requirement over the last three years. As such, paragraph 79 c) states that the presumption in favour of sustainable development applies, as set out in footnote 8. Paragraph 11 d) ii of the Framework is, therefore, engaged, which requires planning permission to be granted unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*."

25. The appeal proposal would boost housing supply in a sustainable location, make more effective use of land, generate short term employment during construction and increase local spend, benefits that are supported by other policies in the development plan and Framework. Combined and mindful that only one new apartment would be created, I accord modest weight to these benefits.

26. The adverse impact of the appeal proposal on the character and appearance of the host property and surrounding area, on the LIB and non-designated heritage asset and on the living conditions of existing and future occupiers, would, on the other hand, be significant. As I have found, these adverse impacts lead to conflict with a number of development plan policies which remain up to date as they are consistent with those in the Framework and should be accorded significant weight.

27. In my view, the harm I have identified would significantly and demonstrably outweigh the benefits of the appeal scheme, when assessed against the policies in the Framework taken as a whole. Consequently, the presumption in favour of sustainable development envisaged in the Framework does not apply in this instance. The Framework is not a material consideration in this instance that indicates a decision other than in accordance with the development plan.

28. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR