Statement of Case of the Local Planning Authority

Appeal Reference APP/M3835/W/24/3351194

Local Planning Reference: AWDM/0098/24

Town and Country Planning Act 1990 (as amended).

Appeal by Mr Kelmend Murataj

Site: Gospel Hall, Bedford Row, Worthing, West Sussex

Rebuttal of Appellants grounds of appeal

The Officer's Delegated report sets out the case for refusal. This statement is therefore intended to address the appellant's grounds of appeal and where necessary elaborate further upon the Council's reasons for refusing planning permission for the appeal proposal, amplifying issues highlighted in the officer's report for AWDM/0098/24.

Reasons for refusal

The application was validated on 25 January 2024 and had the following description:

"Demolition of existing buildings including 2 Bedford Row and erection of a part four and part five-storey building comprising commercial and community units (E class and F1) at ground floor and 9x flats (C3) above."

It was subsequently refused on 21 March 2024 for the following reasons:

1. The proposed demolition of the non-designated heritage assets and proposed replacement building by reason of scale, siting, design and lack of information on photovoltaic panels and air source heat pumps are considered to cause less than substantial harm, at the upper end of the scale, to the setting of adjacent listed buildings and the South Street Conservation Area contrary to policies DM5 and DM24 of the Worthing Local Plan (2023), paragraphs 205 to 214 of the National Planning Policy Framework and sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

2. The proposed demolition of the community facility and the lack of information regarding the intended use or users for the proposed smaller replacement facility is considered to be contrary to policy DM8 of the Worthing Local Plan (2023).

3. The proposed development, by reason of scale, siting, fenestration and balconies is considered to cause an unacceptable level of overlooking and loss of privacy for neighbouring residential occupiers contrary to policy DM5 of the Worthing Local Plan (2023).

4. Insufficient evidence has been provided to enable the Local Planning Authority to adequately assess the impact of the proposal on the neighbouring residents in terms of loss of daylight, loss of sunlight and overshadowing of amenity spaces contrary to policy DM5 of the Worthing Local Plan (2023).

5. The proposed accommodation, by reason of rear level access only is considered to provide substandard access for residents, visitors and users of the commercial and community facilities contrary to policies DM5 and DM8 of the Worthing Local Plan (2023).

6. The submitted flood risk assessment, by reason of inadequate assessment of alternative sites as part of the sequential test is not considered to adequately address issues related to flooding and is therefore contrary to policy DM20 of the Worthing Local Plan (2023).

Relevant Planning Policy

The Worthing Local Plan (2020-2036) (WLP) was adopted by Council on the 28th March. The Worthing Local Plan (2023) forms part of the statutory development plan, which sets the strategic development and land-use priorities for Worthing (outside the South Downs National Park) up to 2032, and contains the policies against which development management decisions within that area will be made.

Policies within the Worthing Local Plan were referred to within the officers report and reasons for refusal. The appeal statement will refer to policies within the WLP (2023) and elaborate where appropriate.

The Council argues that the appeal should be dismissed as the development fails to achieve social or environmental gains by failing to create a high quality built environment or improving the conditions in which people live. The adverse impacts of allowing the appeal would therefore significantly and demonstrably outweigh the benefits, when assessed against Local Plan policies, Supplementary Planning Documents and the NPPF.

The Court of Appeal case (*Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government & Ors. Case Number: C1/2020/0542/QBACF)* found that the NPPF presumption is "*policy, not statute*" and "*does not change the status of the development plan as the starting point for decision making*". Sir Keith Lindblom went on to state:-

"*Restricting the scope of paragraph 11(d)ii to shut out the relevant policies of the development plan, as if they were automatically alien to the assessment it required, would seem incompatible with the status and role of the NPPF. Fortunately there is no need to construe the works of paragraph 11(d)ii as having that effect, and in my view, it would be wrong to do so*."

He added that other provisions of the NPPF reveal the Government's continuing commitment to the "plan-led" system:-

"*If the proposal is plainly in conflict with the policies in the plan, granting permission for it might be seen as undermining the credibility of the plan, inimical to the 'plan-led' system itself, and contrary therefore to the basic policy of the NPPF. ……...It is clear, therefore, that a complete assessment under pargraph11(d)ii, in which 'adverse impacts' and 'benefits' are fully weighed and considered , may well be better achieved if relevant policies of the development plan are taken into account. I would therefore reject an interpretation of paragraph 11(d)ii that renders the policies of the development pan as irrelevant as a matter of law from the assessment required under that provision, What emerges on a true interpretation of paragraph 11(d)ii….is that it requires of the decision- maker an assessment of the kind described, in which the relevant policies of the development plan may be taken into account. Whether and how policies of the development plan are taken into account in the application of the policy comprising paragraph 11(d)ii will be a matter for the decision-maker's judgement, in the circumstances of the case at hand*."

The observations within the officer delegated report clearly sets out that having regard to the policies of the Worthing Local Plan and the NPPF it is considered this small contribution is outweighed in this case by the significant and demonstrable harmful effects of the designated and non-designated heritage assets, loss of community facility floorspace, living conditions for neighbouring and proposed residents, and the risk of flooding.

Comments on the appellant's statement

The observations within the officer's delegated report clearly set out that having regard to the policies of the Worthing Local Plan and the NPPF. Additional comments based on the appellant's statement are set out by refusal reason below.

Reason for refusal 1

The proposed demolition of the non-designated heritage assets and proposed replacement building by reason of scale, siting, design and lack of information on photovoltaic panels and air source heat pumps are considered to cause less than substantial harm, at the upper end of the scale, to the setting of adjacent listed buildings and the South Street Conservation Area contrary to policies DM5 and DM24 of the Worthing Local Plan (2023), paragraphs 205 to 214 of the National Planning Policy Framework and sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

Commentary setting out the reasons for the refusal on this basis are set out within the "Design and Conservation" section of the officer's report. It is considered that this sets out in detail the harm to the designated and non-designated heritage assets from both the loss of the two buildings and the proposed modern development.

IIn response to comments in the appeal statement, the listed Bedford Row townhouses exhibit a regular rhythm along the street facade with equal spacing between their bow fronted bays and the regular punctuation of their framed entrance doors. The proposed development is symmetrical around the single entry point and fails to echo the harmonious rhythm of the adjacent terrace.

The existing multifaceted, west facing elevation of Bedford Row expresses a wide variety of window types and sizes, together with varying depths of individual offshoots of accommodation. In contrast, the adjacent proposed building facade is sterile, monotonous and repetitive in nature.

The setting of Bedford Cottage (Grade II) and the Gospel Hall adjacent to one another on either side of the historic twitten closely resemble the setting at the time these heritage assets were constructed and are considered to contribute strongly to their significance. The loss of the Gospel Hall and the proposed insensitively located development would diminish the setting of Bedford Cottage.

The officer's report discussed a proposed development at 15 Bedford Row located to the north of the listed terrace. This has been attached as Appendix B.

The appellant's statement notes details of plant and photovoltaic panels can be addressed by condition. However, it is not considered appropriate to leave this level of detail to condition given the impact on the listed buildings and conservation area. It is important that these details are designed into buildings at

an early stage to minimise their impact, not left until last where they may have the biggest impact.

The Local Planning Authority maintains that the development would cause less than substantial harm to heritage assets at the upper end of the scale. The proposed replacement building is not considered to be a high quality design and the lack of information on the impact of plant and photovoltaic panels has not been carefully considered. The appeal should therefore be dismissed on this basis.

Reason for Refusal 2

The proposed demolition of the community facility and the lack of information regarding the intended use or users for the proposed smaller replacement facility is considered to be contrary to policy DM8 of the Worthing Local Plan (2023).

The commentary setting out the reasons for the refusal of the application on this basis is set out within the "Community use (F1)" section of the officer's report. The application is found to not be compliant with Policy DM8e which requires that "development which would result in the loss of community facilities will normally be resisted and will only be permitted where: i) an accessible replacement facility of a similar nature is provided that meets the needs of its current and intended users, as well as the local community".

The appeal statement does not attempt to discuss the needs of the local community when it comes to a replacement community facility. The appellant has argued that the space would offer some degree of flexibility for a future occupier. While it is recognised that some flexibility is necessary, the statement sets out only that it "will allow for a range of community functions and groups of people to meet here" and that "within the (F1) use class the new facility could be used as a place of worship, an art gallery, museum, public or exhibition hall or a library. The facility could be occupied by one user serving one of these functions or indeed be a multi-purpose, shared facility able to fulfil several of these needs". At only 61 square metres it is considered to severely restrict the usefulness of the space for any of these uses which tend towards larger units. It would have been expected that some assessment setting out how the space could specifically be used for some of the uses mentioned was provided.

The appellant has also argued that as the current building is derelict it no longer provides a community facility. While it is recognised that the building has not been in use for some time its underlying use is still as community floorspace. The Gospel Hall appears to have been left to decay in a state of neglect for a number of years. This is not sufficient justification to allow for the loss of the space for community use.

The Local Planning Authority maintains its position that the loss of the community use has not properly been considered and evidence has not been put forward to set out that the replacement unit would be fit for purpose. Therefore the appeal should be dismissed for this reason.

Reason for refusal 3

The proposed development, by reason of scale, siting, fenestration and balconies is considered to cause an unacceptable level of overlooking and loss of privacy for neighbouring residential occupiers contrary to policy DM5 of the Worthing Local Plan (2023).

The commentary which discusses the reasons for refusing the development on this basis is set out within the "Impact on the amenities of neighbouring occupiers" section of the officer's report. The development is located within a dense urban environment with residential properties to the north and south.

Paragraph 6.5 of the appellant statement's states that "Views from the public domain into the rear windows are available." In paragraph 6.6 the appellant goes on to suggest that the new development would "shield this rear elevation from views from the public domain which would be a benefit … to the sense of exposure of occupiers within the building". The occupiers of 26-27 Marine Parade are not currently considered to be likely to be experiencing a loss of amenity from people within the public realm. Any views from the public realm are from street level looking up towards windows at first floor level and above. Given the oblique angle of the views upwards, or the distance required from the building to get a more horizontal view it is not considered that there are currently views into these units that would result in a detrimental loss of amenity.

These proposals are for predominantly bedrooms along the southern boundary with some living room windows. The rooms in the north elevation of Marine Place appear to also serve bedrooms, with living rooms predominantly located to the south. It is noted that the drawings have not included an assessment of the placement of windows on the neighbouring buildings and it is not clear if an attempt has been to offset the windows on the proposed development. There is therefore likely to be overlooking between the two developments to bedrooms where a certain level of privacy would be expected.

The Local Planning Authority maintains its position that the development will overlook the neighbouring developments causing a loss of privacy for neighbouring residents. The appeal should therefore be dismissed on this basis.

Reason for refusal 4

Insufficient evidence has been provided to enable the Local Planning Authority to adequately assess the impact of the proposal on the neighbouring residents in terms of loss of daylight, loss of sunlight and overshadowing of amenity spaces contrary to policy DM5 of the Worthing Local Plan (2023)

The commentary which discusses the reasons for refusing the development on this basis is set out within the "Impact on the amenities of neighbouring occupiers" section of the officer's report.

The appellant has provided Daylight, Sunlight and Overshadowing (XDA Consulting, March 2024) which sets out the figures for the loss of daylight and sunlight to neighbouring windows and overshadowing to adjacent gardens.

The report concludes that there will be some impacts to neighbouring properties in terms of loss of light. Particular to 3 Bedford Row to the north of the site. North facing rooms are affected with 9 of 12 windows experiencing a loss of light. It is noted that this changes to 3 of 12 when a mirror image of the development is produced. These windows result in a marginally acceptable level of current VSC (13.5-15.5) falling to levels of 10.5-11.6 which is likely to be noticeable and result in low daylight for the residents of these rooms. Similarly the garden for 3 Bedford Row would experience a loss of sunlight above that recommended by the guidance.

Residents in 26 Marine Place which also fails to provide the levels recommended in the guidance are not considered to be adversely affected as their VSC levels remain above 19.7 which is expected to provide adequate levels of daylight to these residents.

The provision of the daylight and sunlight report is sufficient to enable the Local Planning Authority to assess impacts on neighbouring properties. It is considered that the impacts are sufficient to warrant refusal and therefore the appeal should be dismissed on this basis.

Reason for refusal 5

The proposed accommodation, by reason of rear level access only is considered to provide substandard access for residents, visitors and users of the commercial and community facilities contrary to policies DM5 and DM8 of the Worthing Local Plan (2023).

The commentary which discusses the reasons for refusing the development on this basis is set out within the “Standard of accommodation” section of the officer’s report.

The appellant in their statement argues that Local Plan policies don’t specifically require level access to the main or front entrance to the site. It is recognised that this is not explicitly mentioned in the text. However, policy DM5 states that all new development should “ include a layout and design which takes into account potential users of the site; create safe conditions for access”. The front entrance of the development is considered to be the safest part of the development as it is open and overlooked from the street. The rear entrance due to its location used for bin storage could cause conflict with people using the ramps and overflow from bins could cause obstruction to people using the ramp.

Comments relating to design of the building are noted but as a new build development it is considered that there is every opportunity to design a scheme that would allow all users a safe and legible entrance through the front of the building.

The Local Planning Authority maintains its position that the development hasn’t provided adequate safe and accessible access for all and the appeal should be dismissed on this basis.

Reason for refusal 6

The submitted flood risk assessment, by reason of inadequate assessment of alternative sites as part of the sequential test is not considered to adequately address issues related to flooding and is therefore contrary to policy DM20 of the Worthing Local Plan (2023).

The commentary which discusses the reasons for refusing the development on this basis is set out within the “Water and flooding” section of the officer’s report.

The Local Planning Authority would like to re-emphasise our position that the appellant hasn't sufficiently undertaken the sequential test (as they only considered land in their own ownership which the PPG specifically addresses) and therefore hasn't demonstrated that it has been passed. It is important to note that we are not necessarily saying that it can not be passed.

In response to comments in paragraph 8.6 of the appellants statement the sequential and exception test that accompanied the Local Plan only covers allocated sites. SHLAA sites as suggested in the appeal statement were not covered.

In relation to comments made in paragraphs 8.7 and 8.8 it may be that an assessment of sites within the town centre is acceptable. However, it is noted that an assessment has not been submitted that assesses other town centre sites.

On page 34 of the appellants statement they provide a box with underlined red text. This text is from Chapter 4 of the Local Plan and relates to site allocations. As confirmed by the last line in the box which states that only the allocated sites within Chapter 4 have been assessed to pass the sequential test that was carried out for the Local Plan.

In response to comments in section 4.11 this refers to sites where national policy on flood risk has been complied with e.g. sequential and where applicable exceptions tests have been undertaken and passed.

In section 8.12 the appellant suggests that the sequential test has been passed as much of the town centre is within the flood zone. However, no evidence has been provided setting out what alternative sites have been considered and whether these are available and at higher or lower flood risk. As a minimum we would expect consideration of whether any SHLAA sites could accommodate the development and be considered available plus sites with extant planning permission, and whether there are any available on the open market in line with PPG and EA advice:

The applicant will need to identify whether there are any other 'reasonably available' sites within the area of search, that have not already been identified by the planning authority in site allocations or relevant housing and/or economic land availability assessments, such as sites currently available on the open market. The applicant may also need to check on the current status of relevant sites to determine if they can be considered 'reasonably available'. (Paragraph: 029 Reference ID: 7-029-20220825 Revision date: 25 08 2022).

A number of appeals within Worthing have been dismissed related to the need to properly apply the sequential test to find sites at lower risk of flooding. In their decision in APP/M3835/W/19/3225671 the Inspector concluded that "I do not consider that the reasoning that a low housing supply Borough wide necessarily requires this site to be developed contrary to established national requirements." A similar conclusion was made in the appeal decision for APP/M3835/W/21/3289580 where the Inspector stated "There is an acknowledged shortfall of housing land supply in Worthing … but for the purposes of the sequential test, it is apparent that there are other sites in Worthing that are able to provide housing, and which are at a lower risk of flooding". Both appeal decisions are attached as appendices C and D.

The Local Planning Authority maintains its position that the development hasn't provided an adequate flood risk assessment which clearly sets out whether the sequential and exception tests have been passed and the appeal should be dismissed on this basis.

Conclusion

The Council contends that the appeal should be dismissed as the development fails to achieve social or environmental gains by failing to improve the conditions in which people live. It is considered the public benefits associated with providing new units are outweighed in this case by the significant and demonstrable harmful effects on the designated and non-designated heritage assets, loss of community facility floorspace, living conditions for neighbouring and proposed residents, and the risk of flooding. The adverse impacts of allowing the appeal would therefore significantly and demonstrably outweigh the benefits, when assessed against policies and the NPPF taken as a whole.

Should the Inspector be minded to allow the appeal the Local Planning Authority conditions are set out below as Appendix A The Inspector is also advised that the development would be subject to CIL charging.

List of appendices

Appendix A - Proposed conditions

Appendix B - APP/M3835/W/16/3163605

Appendix C - APP/M3835/W/19/3225671

Appendix D - APP/M3835/W/21/3289580

Appendix A - Suggested conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

   Reason: To comply with Section 91 of the Town and Country Planning Act 1990

2. The development hereby permitted shall be carried out in accordance with the following approved plans unless specified otherwise in a subsequent condition imposed on this decision notice.

   Reason: For the avoidance of doubt and in the interests of proper planning

3. No development shall be carried out unless and until a schedule and samples of materials and finishes to be used for the external walls (including windows and doors) and roofs of the proposed buildings has been submitted to and approved in writing by the Local Planning Authority and the development shall be completed in accordance with the approved schedule and retained as such for the lifetime of the development.

   Reason: In the interests of visual amenity and to safeguard the character and appearance of the conservation area in accordance with policies DM5 and DM24 of the Worthing Local Plan.

4. Prior to the commencement of above ground works, scaled drawings and sections showing the detailed design of the windows and doors, and architectural details including but not limited to terrace screening, and relationship with adjacent listed building shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall only be carried out in accordance with the agreed details.

   Reason: In the interests of visual amenity and to safeguard the character and appearance of the conservation area in accordance with policies DM5 and DM24 of the Worthing Local Plan.

5. No development shall take place, including any works of demolition, until a Construction Method Statement and Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Method Statement and Plan and shall be adhered to throughout the construction period. The Statement and Plan shall provide for:
   (i) the method of access and routing of vehicles during construction
   (ii) parking of vehicles of site operatives and visitors;
   (iii) loading and unloading of plant and materials;

(iv) storage of plant and materials used in constructing the development;
(v) the erection and maintenance of security hoarding;
(vi) wheel-washing facilities;
(vii) measures to control the emission of dust and dirt during construction
(viii) protection of SuDS during construction

Reason: To protect the environment and neighbouring amenity and ensure highway safety during construction.

6. Prior to above ground works, full details of the proposed plant shall be submitted to the Local Planning Authority for approval in writing. Details shall include the type of plant and screening required and include a Noise Impact assessment which demonstrates how neighbouring residents will be protected from noise impacts and mitigation methods. The plant shall be installed in accordance with the details approved and maintained thereafter.

   Reason: To ensure the development preserves the setting of the listed buildings and conservation area.

7. Prior to above ground works, precise details of the siting, design and a technical specification of the proposed sustainability, biodiversity and energy efficient measures to include the solar photovoltaics (PVs) shown on the approved roof plan, and a timescale for their implementation, has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be completed in accordance with the agreed details and timeframe for implementation. The dwellings shall achieve a minimum 'C' rating Energy Performance Certificate and achieve the minimum optional requirement set through the Building Regulations for water efficiency that requires an estimated water use of no more than 110 litres per person per day.

   Reason: In the interests of sustainable development and to safeguard the character and appearance of the Conservation Area in accordance with policies DM5, DM16, DM17, DM21 and DM24 of the Worthing Local Plan.

8. Details of the proposed secure, covered cycle storage to serve the development shall be submitted to and approved in writing by the Local Planning Authority prior to above ground works. Details shall include adaptation to allow for cycle maintenance and adequately spaced stands. Thereafter, such provision as agreed shall be provided prior to first occupation of any dwelling and shall thereafter be retained permanently solely for such purposes.

   Reason: To encourage and provide for a sustainable non-car mode of transport in compliance with the National Planning Policy Framework and policy DM15 of the Worthing Local Plan.

9. Details of the proposed bin storage for refuse and recycling to serve the development shall be submitted to and approved in writing by the Local Planning Authority prior to avoid ground works. Thereafter, such provision as agreed shall be provided prior to first occupation of any dwelling and shall thereafter be retained permanently solely for such purposes.

   Reason: In the interests of proper planning and the environment and to comply with policy DM5 of the Worthing Local Plan.

10. The development shall be carried out in accordance with the submitted Flood Risk Assessment (dated January 2024) and the following mitigation measures it details:

    • Residential accommodation shall be at the first floor level and above.

    These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

    Reason: To reduce the risk of flooding to the proposed development and future occupants.

11. No work for the implementation of the development hereby permitted shall be undertaken on the site except between the hours of 08.00 and 18.00 on Monday to Friday and between 08.00 and 13.00 hrs on Saturday. No works shall take place on Sundays or on Bank or Public Holidays.

    Reason: To protect residential amenity in accordance with policy DM5 of the Worthing Local Plan

12. All units shall be constructed to Building Control Standard M4(2) Category 2: Accessible and Adaptable dwellings

    Reason: In the interests of providing accessible units in accordance with policy DM1 of the Worthing Local Plan

13. All units shall be designed to ensure adequate levels of storage in line with the nationally described space standards with full detail showing compliance to be submitted to the Local Planning Authority for approval in writing prior to occupation of any unit.

Reason: To ensure adequate storage to provide a high quality of accommodation.