The Planning Inspectorate

Appeal Decision

Site visit made on 1 August 2022

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2022

Appeal Ref: APP/M3835/W/21/3289580
20 Bernard Road, Worthing BN11 5EL

- 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 P Nash against the decision of Worthing Borough Council.
- The application Ref AWDM/1764/21, dated 21 September 2021, was refused by notice dated 17 November 2021.
- The development proposed is a detached 3-bedroom dwelling with associated parking, bin and cycle store.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have omitted reference to a previous application in the description as it does not form part of the development for the purposes of this appeal.

3. The Submission Draft of the Worthing Local Plan 2020-2036 (the 'Draft Local Plan') is nearing the end of its examination with consultation on a series of main modifications recommended by the Inspector having taken place between April and May 2022. Given the advanced nature of the draft plan, I have taken account of it, as proposed to be modified, as a material consideration in my decision.

Main Issues

4. The main issues are the effect of the development on:

    - The living conditions of neighbouring occupants, with regard to dominance and overlooking
    - Flood risk
    - The living conditions of future occupants, with regard to outlook and garden space
    - The character and appearance of the area

5. It is also necessary to consider what effect the lack of a five year housing land supply should have in the appeal. I consider this issue in my conclusion.

Reasons

Living conditions of neighbouring occupants

6. The proposed house would occupy a square shaped plot formed from part of the rear garden of the host dwelling at 20 Bernard Road. Due to the shallow depth of the plot, the rear elevation of the proposed dwelling would stand close to the side boundary with the adjoining property at 18 Bernard Road, extending along a significant portion of its rear garden. In my view a building of the size proposed so close to the neighbouring garden would have an overbearing and oppressive effect on its enjoyment by the neighbouring occupants. It would result in a distinctly different relationship to the existing layout or that between neighbouring buildings and the rear gardens of other houses in Bernard Road.

7. The overbearing effect would be exacerbated by overlooking from a first floor bedroom window that would look down on to the rear garden of 18 Bernard Road. Notwithstanding the internal fittings the appellant intends to install to reduce viewing angles, views would still be obtained of the neighbouring rear garden. The overlooking of the neighbouring rear garden would be closer and more direct than that from the rear windows of other properties in Bernard Road. The proximity of the building would preclude screen planting to mitigate overlooking from the first floor windows, as is the case between 18 Bernard Road and 15 Latimer Road.

8. The development would result in the flank elevation of the proposed dwelling being sited within some 13m of the rear elevation of 20 Bernard Road. However, the garden area remaining to the host dwelling would meet the Council's minimum size standard, and as pointed out by the appellant there are similar side-rear relationships in the immediate area, Anscombe Close being given as an example. The Council makes reference to a minimum separation distance of 14m in the Adur District Council's residential standards, but as this document relates to a different authority area, it is not applicable to residential development in Worthing.

9. I conclude that the proposed development would have a dominant effect and cause unacceptable overlooking to the garden at 18 Bernard Road. As a result, it would conflict with saved Policy 18 of the Worthing Local Plan 2003 (the 'Local Plan') and Policy DM5 of the Draft Local Plan, which require new development to avoid causing an unacceptable reduction in amenity for local residents.

Flood Risk

10. The site lies within Flood Zones 2 and 3 as defined on the Environment Agency's Flood Map for Planning. Policy 15 of the Worthing Core Strategy 2011 (the 'Core Strategy') states that development will only be permitted in areas at risk from flooding where, amongst other criteria, the sequential test has been satisfied. The aim of the sequential test as set out in the National Planning Policy Framework (the 'Framework') is to steer new development to areas with the lowest risk of flooding. Paragraph 162 of the Framework says that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas at lower risk of flooding.

11. The built up area of Worthing covers a wide area, the majority of which is at a lower risk of flooding than the appeal site. Infilling and small scale development of the type proposed in the appeal is acceptable in principle in the built up area of Worthing, subject to it complying with the other policies in the development plan. There is an acknowledged shortfall of housing land supply in

Worthing which I address later in my decision, 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.

12. It is preferable to avoid placing more vulnerable development in areas at risk of flooding irrespective of whether there is a technical solution that would make a development safe for its lifetime, such as in this case with a raised ground floor level. While such a solution addresses the concerns of the Environment Agency and the Council's Drainage Engineer, it would still leave the dwelling in an area at risk of flooding. I conclude that the development fails the sequential test as set out in the Framework and conflicts with Policy 15 of the Core Strategy because there are other sites which are reasonably available and are at a lower risk of flooding.

Living conditions of future occupants

13. The concern expressed by the Council is to the relationship of the proposed house to its plot, in particular the shallow rear garden and consequent lack of outlook to the rear. However, no objection is raised to the overall size of the garden, which the Council concedes is adequate in relation to the size of the proposed dwelling. While the rear garden is indeed very short, the house has been designed with the outlook from its main ground floor rooms orientated towards the larger side garden and the front. The outlook from the first floor main windows towards the front and rear would be unobstructed, notwithstanding that the latter outlook would be over other properties' gardens.

14. I conclude that the living conditions of future occupants would be adequate in terms of garden space and outlook. The development would therefore comply with Policy DM5 of the Draft Local Plan, in so far as it relates to potential users of the site.

Character and appearance

15. Bernard and Latimer roads contain a range of detached and semi-detached one and 2-storey buildings, some of which have been purpose-built as flats. The site would have a similar plot width to other plots and the proposed 2-storey building would be of a similar height and alignment to other buildings in the roads. Although the plot would be much shallower than other plots in the vicinity, the lack of depth would not be immediately apparent from a public vantage point.

16. While mainly of brick and tile, other materials do appear in the external elevations of buildings in Bernard and Latimer roads including render and, in the case of 18 and 20 Bernard Road, first floor cladding. The proposed 2-storey building, which would have a similar appearance to these two neighbouring buildings, would not therefore appear out of place or discordant in the street scene.

17. I conclude that the proposed development would not have a harmful effect on the character and appearance of the area and would therefore comply with Policy 16 of the Core Strategy and Policy DM5 of the Draft Local Plan, in so far as these policies promote good design that respects the qualities of the existing built environment.

Conclusion

18. The Council is unable to demonstrate a 5-year housing land supply, the last published assessment only able to show a supply of 1.15 years[1]; and a housing delivery test figure well below 75%. In such circumstances, paragraph 11 of the Framework says that planning permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal, or any adverse effects of doing so would significantly and demonstrably outweigh the benefits.

19. One of the policies in the Framework that does seek to protect areas or assets of particular importance is that relating to areas at risk of flooding[2]. As I have concluded that the development would fail the sequential test in the Framework, this provides a clear reason for refusal. The presumption in favour of sustainable development is not therefore triggered in this case.

20. I have concluded that the proposed development would cause harm by reason of its adverse impact on the living conditions of the occupants at 18 Bernard Road, and because the site is at risk of flooding. Although I do not consider that the development would harm the living conditions of future occupants or the character and appearance of the area, I conclude that the development would conflict with the development plan when taken as a whole.

21. Balance against this are the benefits of the development, in particular the provision of a residential dwelling. Although the presumption in favour of sustainable development is not triggered in this case, the benefit of an additional dwelling still carries significant weight given the very poor housing land supply and housing delivery position in Worthing. However, I consider that the benefit of a new dwelling, significant though it is, is not sufficient to outweigh the harm that has been identified.

22. Accordingly, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR

[1] Worthing Annual Monitoring Report 2019-2020
[2] Footnote 7 of the Framework