TOWN AND COUNTRY PLANNING ACT 1990
APPEAL UNDER SECTION 78

FINAL COMMENTS / REBUTTAL

submitted on behalf of the Appellant in response to the Statement of Worthing Borough Council

Site	Dolphin Court, Shelley Road, Worthing, West Sussex, BN11 4DD
Proposal	Mansard-type roof extension to provide 4 no. additional residential units (Class C3)
LPA reference	AWDM/1103/25
PINS reference	6007549
Decision	Refusal, dated 5 November 2025
Prepared by	CMK Planning on behalf of the Appellant
Date	02 June 2026

1. Introduction and scope

1.1 These final comments are submitted on behalf of the Appellant in response to the Statement of Worthing Borough Council ("the Council"). They address the matters raised and developed in the Council's Statement. They do not repeat the Appellant's Statement of Case ("the SoC"), which is relied upon in full and should be read alongside this response; matters already dealt with in the SoC are not repeated here.

1.2 The Council develops its national policy case by reference to NPPF paragraphs 131 and 135 in particular; those paragraphs are addressed directly below, and, properly read, they support the proposal rather than weigh against it.

1.3 Any amended or additional drawings accompanying these comments are submitted solely in response to matters raised in the Council's Statement, and to assist the Inspector; they do not alter the scheme that is the subject of this appeal.

1.4 One overarching observation is respectfully drawn to the Inspector's attention. On the two matters that remain in dispute, the Council's case rests very substantially upon assertion, characterisation, assumption and subjective opinion rather than upon reasoned, evidenced analysis.

In several material respects the Statement is contradicted by the Council's own officer report, and by the Appellant's technical evidence. These points are developed below.

2. *Reason for refusal 1 — design, character and appearance*

The Council's assessment proceeds from an incorrect description of the area

2.1 The Council's Statement asserts that the surrounding area is "typically 2-storey" and that, "for the most part, roofs are pitched". Neither characterisation withstands scrutiny when the immediate context of the site is examined — which is where any assessment of scale, dominance and roof form must begin. The immediate context is formed by three buildings: the appeal building itself, Hopedene Court and Queen's Mansions. There is no two-storey building amongst them. On the Council's own officer delegated report, the host is a 2½-storey villa; the element to which the proposal is actually applied is the existing three-storey flat-roofed addition; and the immediate neighbours, Hopedene Court and Queen's Mansions, are each four storeys. The officer report describes the area as comprising "purpose-built and converted flat buildings and several large residential / nursing care home buildings" — not two-storey villas. The aerial view at Figure 1 confirms that the site sits within a tight group of large, multi-storey flatted blocks. Any attempt to characterise this context as "2-storey" is simply incorrect.

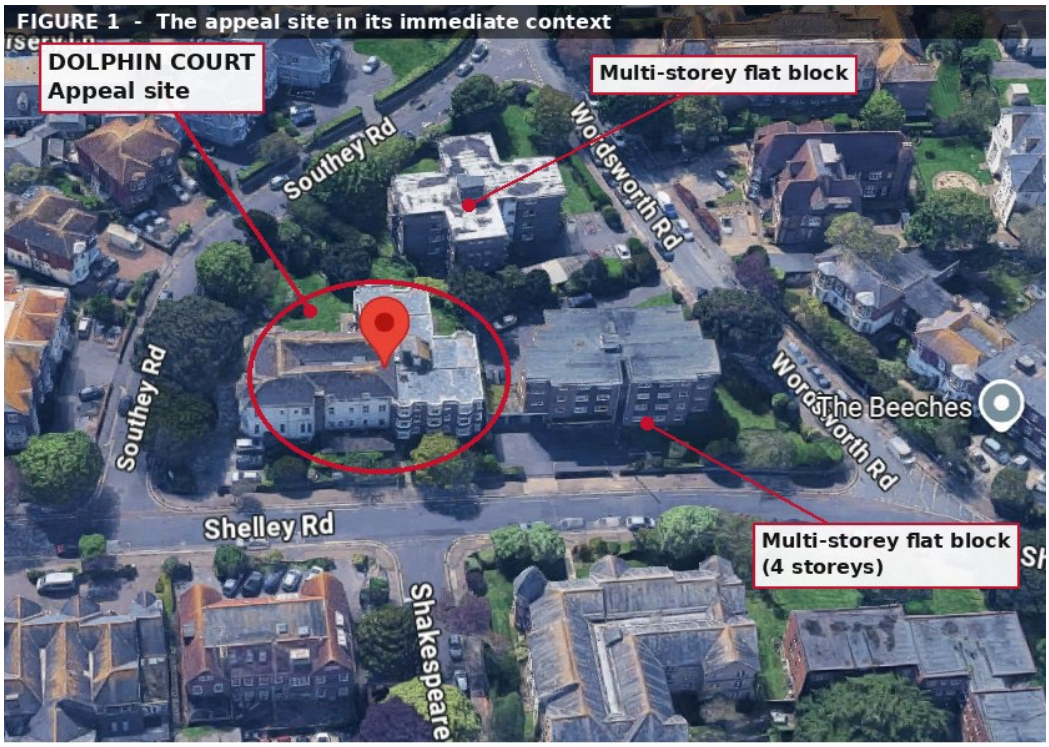


Figure 1 — The appeal site within its immediate context (base imagery: Google Earth). Storey heights as recorded in the Council's officer delegated report.

2.2 This is not a peripheral matter. Reason 1 — "dominance", loss of "subordination", an "unduly assertive" form, harm to character — is an exercise in *relative* scale. If the context against which the proposal is judged is mis-described, the conclusions drawn from it cannot be relied upon. Measured

against a two-storey villa townscape, *any* additional storey will read as excessive; that is precisely the conclusion the Statement reaches. But it is a conclusion produced by the incorrect premise, not by the proposal. Corrected to the true three- to four-storey flatted context, the assessment changes entirely: a single additional storey, contained within a mansard, on a building already three storeys high and set amongst four-storey blocks, is an appropriate addition. The same error of method affects the roof-form point: whilst pitched roofs may predominate in the *wider* streets, the immediate context — the host addition itself and the adjacent blocks — is substantially flat-roofed. The Council cannot make a sound assessment of scale, dominance or roof form on a description of the area that is contradicted by its own evidence.

Paragraph 131, applied to the actual baseline, supports the proposal

2.3 The Council relies on NPPF paragraph 131, which promotes the creation of high quality, beautiful and sustainable places. That objective is not in dispute. But the Council invokes it as though the proposal were to be judged against a blank canvas or a new building. It is not. The relevant baseline is the building as it exists: a flat-roofed 1970s addition with an exposed UPVC fascia and red brick. When built, the addition was no doubt seen as modern and forward-thinking, but the red brick, the UPVC eaves cladding and the flat roof have aged poorly, and it is precisely these features that the proposal seeks to improve. The Council's own officer report accepts the addition is unsympathetic and in a poor visual relationship with the host, which is common ground between all parties. That is the starting point against which paragraph 131 must be applied here.

2.4 Assessed from that baseline, the proposal moves the building *towards* the paragraph 131 objective, not away from it: it removes the UPVC fascia, replaces the flat roof with a tiled mansard that relates to the host roof form, and renders or paints the brickwork to align with the host — improvements the Council itself concedes contribute "some degree of visual harmony". The host currently carries both render and paint; while the plans indicate painted brick, the Appellant would accept render or painted brick, which can be controlled by a standard condition. The proposal is therefore, at its lowest, neutral in townscape terms, and on a fair assessment a clear improvement.

Paragraph 135(c), read in full, also supports the proposal

2.5 The Council relies on paragraph 135 — and in particular the requirement that development be "sympathetic to local character and history" — as a principal hook for Reason 1. But that limb does not stand alone. Paragraph 135(c) requires development to be sympathetic to local character and history "*while not preventing or discouraging appropriate innovation or change (such as increased densities)*". That qualification is part of the test. The framework deliberately stops short of requiring new development to replicate what already exists, and expressly protects appropriate innovation, change and intensification from being resisted in the name of local character. The proposal — a modest residential intensification of four additional homes, delivered through a contemporary mansard, the very form of upward extension that paragraph 125(e) expressly supports — is precisely the kind of "appropriate innovation or change" that paragraph 135(c) safeguards.

2.6 The Council's preference for a traditional "pastiche" solution is also misplaced. The host element is a flat-roofed, 1970s modern addition; to dress it in historic detailing would be the false historicism that good design avoids. A contemporary mansard is the honest and appropriate response to a modern host.

The comparators relied upon are the wrong type of development, and unevidenced

2.7 The Statement holds up five buildings — the "Poets" and "Berkeley Lodge" care homes, and Lomas House, Cambridge Lodge and Pegasus Court — as exemplars of good local practice. Whilst no evidence has been provided, it appears these are new-build redevelopments, not roof additions to existing flat-roofed buildings; they are not comparators for the proposal before the Inspector. The Council provides no evidence whatever — no photographs, elevations, plans or character analysis — to substantiate that these buildings demonstrate good practice or how they relate to the appeal scheme. The assertion is bare, and the Inspector cannot weigh comparators that are neither shown nor analysed.

The existing relationship is poor now; the proposal improves it

2.8 The Statement contends that the proposal would "amplify and reinforce the existing poor visual relationship" and reverse the addition's subordinate status to become "the more dominant form". It is important to be clear about what the Council is describing. The blunt flat roof, the exposed lift over-run, the heavy UPVC fascia and the forward-set horizontal mass — the features that give rise to the "poor visual relationship" — are the existing condition, the product of the 1970s addition. They are not created by this proposal. The proposal is the remedy: it removes the flat roof and the UPVC fascia, caps the addition with a tiled mansard that relates to the host roof, and renders or paints the brickwork to match. The relationship the Council complains of is improved, not worsened.

2.9 The same answer disposes of the "juxtaposition" point. The Council objects to the juxtaposition of the proposed mansard against the host roof, but a far greater juxtaposition already exists: the shallow pitched, tiled roof of the Victorian villa sits directly against a flat-roofed, UPVC-fascia'd 1970s box that already projects forward of the host. The mansard relates far more closely to the host roof than the existing flat roof does. In any event, even a lower-pitched roof would sit in juxtaposition with the host roof — it is unavoidable, the forward projection being an inherited feature of the existing footprint rather than a product of this proposal. The proposal therefore *reduces*, rather than introduces, roof-form juxtaposition.

2.10 The Council concedes the improvements: the Statement accepts, citing the officer report, that rendering the brickwork and removing the heavy fascia "would help to achieve some degree of visual harmony with the host building". The only matter genuinely in dispute is therefore whether the added height *outweighs* those accepted benefits — a matter of planning judgement, which is asserted rather than demonstrated. The Statement's recourse to the metaphor of "the tail wagging the dog", and to the description of the scheme as "unequivocally" unsympathetic, illustrates the point: "unequivocally" admits of no contradiction, yet in the same paragraph the Council concedes "some degree of visual harmony". This is a contradiction.

The treatment of the drawings, and the roof-level windows

2.11 The Statement suggests that the submitted two-dimensional drawings "do not fully reveal" the pitch and siting of the mansard and "understate" its impact. The drawings are accurate, scaled and validated; the pitch, height, set-back and siting are read directly from them. The drawings show exactly what is proposed; the complaint is unfounded. The proposed 3D views (drawings HA060-400 and HA060-401) accompanying these comments illustrate the scheme as built out.

2.12 The Council's related objection — that the roof-level windows are "dormers" whose appearance is understated and which would "inevitably" become heavier once insulation is accounted for — is misdirected. The windows at roof level are framed within the plane of the mansard; it is not logical to add traditional dormers at this level when the building below is not traditional in style, and the windows have been recessed so that the insulating line sits within the roof, producing a deliberately thin frame and a cleaner roof form than bulkier traditional dormers would allow. Drawing HA060-402 (Proposed Window Perspective), attached, shows this detail and confirms that the feature is a framed window, not the traditional dormer the Statement erroneously describes. The Council's concern as to the bulk of "dormers" is therefore directed at a feature the scheme does not contain; and in any event the precise detailing is readily secured by condition, as standard.

2.13 As to the junction of the mansard with the host villa, described in the officer report as "awkward": this is a recessed flank junction at a re-entrant corner, of limited and oblique visibility. The officer report itself records that it would be seen only "through the gap in the trees fronting Southey Road". A low-visibility detail of this kind is a matter of detailed design, readily controlled by condition; it is inherent to the addition of any roof storey to this irregular footprint, and it is not a sound basis on which to resist the principle of the development.

Two matters of correction and clarification

2.14 Amended elevations. The existing and proposed elevations have been amended and now accompany these comments. The window-box height was correct, but the UPVC panel above the window had not been shown, which placed the window head a little too high; this has been corrected. The point concerns the depiction of the existing building only and has no bearing on the design, scale or impact of the proposed mansard.

2.15 Finish. For the avoidance of doubt, the existing brick elevations of the addition would be finished in white render or white painted brick to align with the host villa, both of which finishes already feature on the host building. The reference to "white painted bricks" on the elevation drawings is therefore not an error of substance, and the precise finish is readily secured by condition. It is this treatment that achieves the visual harmony with the host that the Council itself accepts.

Conclusion on Reason 1

2.16 The Council's design case is built upon a description of the area that is contradicted by its own officer report; upon comparators that are the wrong type of development and are wholly unevidenced; and upon assertion, absolutes and metaphor in place of reasoned analysis. The proposal is a policy-supported (NPPF paragraphs 125(e) and 135(c)), contextually appropriate, single-storey mansard that resolves a poorly-resolved flat-roofed addition and delivers visual improvements the Council itself concedes. It does not conflict with Policy DM5, the SPD or the NPPF, and Reason 1 should not be sustained.

3. Reason for refusal 2 — residential amenity

The Council's daylight conclusion is not supported by the evidence

3.1 The Daylight and Sunlight Report ("the D&S Report"), prepared by Right of Light Consulting against the BRE guide (3rd edition, 2022), was submitted with the appeal in direct response to the

Council's second reason for refusal. It is the only technical daylight and sunlight assessment before the Inspector. The Council refused the application on a loss-of-light ground without any daylight assessment of its own, and, when met with a BRE-compliant assessment, has responded with assertion rather than competing evidence.

3.2 The Council asserts that the loss of daylight "demonstrated by the Daylight and Sunlight Report must be considered as significant and consequently unacceptable". That is a bare statement of conclusion, unsupported by any finding — and it is contradicted by the very evidence the Council relies upon to make it. The D&S Report's findings are clear: the proposal would have "a relatively low impact" on the light received by neighbouring properties; non-compliance with the BRE recommendations is "limited to" a single window (window 3); every room with a daylight requirement — including the room served by window 3 — passes the daylight distribution test; every relevant window passes both the annual and winter sunlight tests; and the development is expressly concluded to be acceptable in terms of daylight and sunlight. There is therefore no technical basis for the Council's conclusion of "significant and unacceptable" harm. The Council relies on the Report's figures while attaching to them a conclusion the Report's author expressly rejected.

3.3 The Council is right that the existing floor plans were not provided. The D&S Report nonetheless identifies the use of every assessed window — window 1 (Living Room), window 2 (Bedroom), and windows 3 and 4 (Bedroom/Living) — and the Council plainly read this, since its Statement describes window 3 as "serving a bedroom/living room". Whatever the precise internal arrangement of these units, the daylight *distribution* test — which assesses whether a room remains adequately lit across its actual area — was carried out and all assessed rooms pass, including the room served by window 3 (D&S Report, paragraph 4.2.4). That is the direct answer to the Council's concern about single-aspect accommodation: even on the most cautious view of the layout, the rooms remain adequately daylit on the BRE test.

3.4 On the substance of the Vertical Sky Component (VSC) test, the BRE guidance treats a window as adversely affected only where, after development, the VSC is both below 27% and below 0.8 times its former value. On the D&S Report's own figures:

Window	Room use	Before	After	Ratio	BRE result
1	Living Room	18.4%	17.0%	0.92	Pass
2	Bedroom	28.8%	26.1%	0.91	Pass
3	**Bedroom / Living**	**27.8%**	**18.5%**	**0.67**	**Fails (only window)**
4	Bedroom / Living	29.7%	24.7%	0.83	Pass

Source: D&S Report, Vertical Sky Component results, Dolphin Court (south elevation).

3.5 Only window 3 fails both limbs of the test. Windows 1, 2 and 4 each retain at least 0.8 times their former value and are therefore BRE-compliant, notwithstanding that the absolute figure is below 27%. Window 1, moreover, was already below 27% *before* the proposal — a function of the existing projecting wing — and the proposal reduces it by a negligible 1.4%. The absolute reductions at

windows 1, 2 and 4 (1.4%, 2.7% and 5.0% respectively) are small by any measure. The Council's formulation, that the VSC "will be less than 27% for windows 1–4", is literally true on the absolute figure but materially misleading, because three of the four windows comply. The impact is, as the Report concludes, low — and that is so irrespective of the appeal decisions the Council seeks to distinguish.

The applicable principle is one of law, which the Council has not addressed

3.6 The Appellant's case on the flexible application of the BRE guidance does not depend on the Norwood Walk decision, which is referred to only as one illustration among others. It rests, first, on authority. In *R (Rainbird) v London Borough of Tower Hamlets* [2018] EWHC 657 (Admin) the High Court confirmed that the BRE numerical targets are advisory — not an instrument of planning policy — to be applied flexibly with the location of the site taken into account, and that the question for the decision-maker is not whether the numerical guidelines are met, but whether the resulting effect on living conditions would be *unacceptable*. The Council's Statement does not engage with the relevant case law.

3.7 The Council has sought to distinguish the appeal decisions cited in the SoC — the three London schemes on the basis that the appeal site is not a city or dense town-centre location, and Norwood Walk on the basis of BRE compliance. But even if each of those distinctions were accepted, they leave the governing principle untouched. Distinguishing individual decisions on their facts does not answer the legal proposition, confirmed in *Rainbird*, that the BRE guidance is advisory and that the test is the acceptability of the effect on living conditions. If the Appellant's position on flexibility were wrong, it is that principle — and the High Court authority establishing it — that the Council would need to confront. It has not done so. Applied to the facts, the scheme substantially accords with the BRE recommendations (three of four windows passing the VSC test; all rooms passing the distribution test; all windows passing both sunlight tests), the sole exception being window 3, whose room nonetheless passes the distribution test, and the Appellant's expert assessment is that the impact is "relatively low" and the development "acceptable".

Outlook

3.8 The Council contends that the outlook from these windows would be "significantly affected" and "oppressive". This is, in substance, the daylight point relabelled, and it is asserted with no section, distance or angle to support it. A storey added *above* these windows, set back within the roof and no higher than the villa ridge, does not enclose them. Nothing here meets the high threshold of an oppressive or overbearing enclosure.

Privacy and overlooking

3.9 On overlooking, the Statement relies on the general proposition that perceived overlooking "has long been recognised" as a valid ground for refusal. That is true in the abstract and beside the point. The question is never whether overlooking *can* justify refusal, but whether *this* scheme causes *unacceptable* overlooking on *these* facts. If proximity together with facing windows were inherently unacceptable, the existing situation — multiple flat blocks set close together within an urban group — would already be unacceptable. It plainly is not. The Council itself accepts the existing mutual overlooking between Dolphin Court and Queen's Mansions as the established condition of the area.

It cannot treat that close inter-visibility as both the accepted character of the location and as inherently unacceptable.

3.10 The only proper question is therefore the increment. In respect of Queen's Mansions the relationship is mutual and pre-existing; the proposal adds elevation, not a new relationship. To Hopedene Court, no harm has been identified to any room. The Council asserts overlooking in general terms but identifies no material loss of privacy or amenity to any habitable room. In any event the affected windows are secondary, and the rooms they serve have a further window in a different elevation (a typical Hopedene Court flat layout, showing the dual-aspect bedroom and kitchen, is attached). It is not accepted that mitigation is needed; but if the Inspector considers it appropriate, windows can be obscure-glazed and non-opening by condition.

Conclusion on Reason 2

3.11 On the only technical evidence before the Inspector, the development complies with the BRE daylight, sunlight and overshadowing recommendations save for the VSC of a single window, which passes the distribution test and which the Appellant's assessor concludes is acceptable in the round. The Council's contrary case rests on a conclusion unsupported by — and in conflict with — that evidence, on an unevidenced "outlook" re-framing, and on an overlooking objection contradicted by the established context. Any limited residual effect at window 3 falls far short of the unacceptable harm required to justify refusal, and Reason 2 is not made out.

4. Planning balance and benefits

4.1 The Council acknowledges that the proposal would deliver four additional dwellings, which it "welcomes", but dismisses this as "a very small contribution" that does not outweigh the alleged harm. That weighting is understated, and the balance is circular.

4.2 The benefit is a policy-supported one, and the weight to be given to it is established by the Council's own officer report. The site is previously-developed land in a highly sustainable, town-centre location, and the proposal is a small windfall site of the kind that NPPF paragraph 73 requires decision-makers to support, capable of being built out quickly. The officer report records that **great weight** should be given to the benefits of using suitable sites within settlements for homes, and that **substantial weight** should be given to the use of suitable brownfield land (NPPF paragraphs 124–125). The Statement's re-characterisation of the same four units as a "very small contribution" sits below the Council's own officer's assessment of the weight to be afforded. It is also common ground that the proposal is unobjectionable in respect of the principle of development, housing delivery, sustainable transport, flood risk and internal space standards.

4.3 On the Council's view, paragraph 11(c) of the NPPF applies: the officer report confirms a five-year housing land supply and that the Council passed the most recent Housing Delivery Test, such that proposals which accord with an up-to-date development plan should be approved without delay. The proposal does so accord — the alleged conflicts with Policies DM2 and DM5 being the very matters refuted above. The balance the Council strikes — that a "small benefit" does not outweigh the harm — depends entirely on the existence of that harm (against the weight that must be afforded). For the reasons given in sections 2 and 3, the harm is not made out: Reason 1 proceeds from an incorrect premise, and Reason 2 reduces, on the only technical evidence, to a single window's VSC shortfall in

a room that passes the distribution test. With little or no harm on the other side of the scale, the policy-supported benefit of four additional homes is not "outweighed"; it is determinative.

5. Conclusion

5.1 The Council's Statement is not supported by the only technical evidence in the case, and in several material respects is internally inconsistent with the Council's own officer report — both of which considerably reduce the weight that can be attached to its assertions. Reason 1 rests on a description of the area that is incorrect, on irrelevant and unevidenced comparators, and on subjective assertion and absolutes that the Council's own concessions contradict; the proposal is, in truth, a policy-supported and contextually appropriate improvement to a building the Council accepts is presently compromised. Reason 2 rests on a daylight conclusion unsupported by, and in conflict with, the Appellant's expert assessment — the only such assessment before the Inspector — which finds the impact "relatively low" and "acceptable"; and on outlook and privacy objections that are unevidenced and, in the latter case, contradicted by the established context.

5.2 For these reasons, and those set out in the Statement of Case, the Appellant respectfully invites the Inspector to allow the appeal and grant planning permission, subject to such conditions as the Inspector considers appropriate.

Documents accompanying these comments

- Amended Existing and Proposed Elevations (corrected window cutting eaves)
- HA060-400 — Proposed 3D Views (corrected)
- HA060-401 — Proposed 3D Views 2
- HA060-402 — Proposed Window Perspective (provided in response to LPA misunderstanding)

Appendix 1 — Typical Hopedene Court flat layout (dual-aspect, provided in response to LPA SoC).