Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2024

by J E Jolly BA (Hons) MA MSc MCIH MRTPI

an Inspector appointed by the Secretary

Decision date: 14 November 2024

Appeal Ref: APP/M3835/W/24/3349597
Site of 1, 1a, 2 and 3 New Broadway, Worthing, West Sussex BN11 4HP

- The appeal is made under Article 3(1) and Class AB, Schedule 2, Part 20 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) as amended.

- The appeal is made by Mr David Fitness against the decision of Worthing Borough Council.
- The application Ref is NOTICE/0018/23
- The development proposed is for the construction of an upward extension to form one additional storey to provide 2 x flats.

Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity and certainty, I have used the address and description of development given on the Council's decision notice.

3. The National Planning Policy Framework (the Framework) was revised in December 2023. However, on 30 July 2024 the new Government published a consultation on proposed reforms to the Framework and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework published in December 2023.

4. In line with the Wheatcroft principles[1], in certain circumstances a proposal can be amended through revised plans during an appeal. The appellant suggests that the proposed drawings now include a revised one-bedroom, one-person flat scheme that meets GDPO size requirements, rather than a one bedroom, two person flat of a similar size that the Council found unacceptable.

[1] Bernard Wheatcroft Ltd v Secretary of State for the Environment (JPL, 1982, P37)

5. However, Annexe M of the Procedural Guide, Planning Appeals, England (2019) and the national Planning Practice Guidance (PPG) advise that the appeal process should not be used to evolve a scheme to overcome the Council's reasons for refusal, rather a fresh planning application should usually be made.

6. Furthermore, whether the flat would be used as a single person dwelling or not, the revised proposal has not been put before interested parties. As such, it is my view that the appeal must be determined on the basis of the plans as originally submitted to the Council upon which it based its decision, and that have also been subject to consultation. To do otherwise would prejudice not only the interests of the Council but also interested third parties and consultees, who may have observations to make on the revised scheme.

7. Moreover, it is important that the evidence which is considered by the Inspector is essentially the same as that which has been considered by the Council, and on which interested parties' views were sought. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted.

Preliminary Matters and Main Issues

8. Article 3(1) and Schedule 2, Part 20, Class AB of the GPDO permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a terrace building in commercial or mixed use. Development is permitted under Class AB subject to the limitations set out in paragraph AB.1 and the conditions set out in paragraph AB.2 of the GDPO, which require the developer before beginning the development to apply to the Council for prior approval in relation to a number of matters. The Council is content that the proposed development would meet all of the matters in this respect, other than that relating to the external appearance of the building. Based on the evidence before me, I have no reason to reach a contrary conclusion to the Council in relation to the other matters.

9. In addition, I concur with the Council that in interpreting the provisions of Part 20 of the GPDO, the control of the external appearance is not limited to the effect of the proposal on the appeal site but also includes the effect on neighbouring dwellings and the surrounding area, as established in a 2022 High Court judgement.[2]

10. Article 3 (9A) is clear that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse - (a) where the gross internal floor area is less than 37 square metres in size; or (b) that does not comply with the nationally described space standard.

11. Therefore, the main issues in this appeal are:

    - whether prior approval should be given, having particular regard to the resulting external appearance of the building; and,

    - whether the proposal complies with nationally described space standards.

[2] Cab Housing Ltd v SSLUHC (2022) EWHC 208 (Admin)

Reasons

External appearance of the building

12. The appeal building is located to the northern side of Tarring Road at the junction with the A2031 and is adjacent to the railway line and West Worthing station. The surrounding built form is predominantly typified on this side of the road by a row of mostly flat-roofed terraced commercial properties, some of which have brick-faced residential units above.

13. The appellant has brought to my attention that the proposed development would be similar in appearance to Marie Court, which is a mansard roofed building found to the east of the appeal site. However, this dwelling appears to be of some vintage, for which I have limited details. Moreover, it is a mid-terrace development relatively distance from the junction location of the scheme before me. Therefore, I have considered the proposed development on its own planning merits.

14. The proposal would be constructed in similar materials to the surrounding dwellings and align with the existing fenestration of the host building to the front. However, the bulky mansard roofed development would be located in a highly visible position at the end of a simple, flat-roofed terrace.

15. Indeed, the development would be highly prominent in the street scene at this well-used junction location. As such, its tapered design would appear as an incongruous and alien addition to the horizontal roofline in this specific location on the northern side of Tarring Road.

16. Consequently, in respect of its external appearance the proposal does not comply with Article 3(1) and Class AB.2 (e), Schedule 2, Part 20 of the GDPO, is not therefore, permitted development.

Nationally described space standards

17. The original submitted drawings demonstrate that the proposed flats would meet the gross internal floor area requirements of Article 3 (9A)(a) of the GDPO and that both flats would have space to fit a double bed. Therefore, Flat 3 of the proposal could readily be construed as being suitable for 2 persons living.

18. However, while the 2-bedroom Flat 4 also includes a single bed and meets the nationally described space standards for a 3-person dwelling, the fact remains that Flat 3 does not meet the nationally described standard for a two-person dwelling.

19. As such, I conclude that the proposal in respect of space standards would not therefore be Permitted Development in accordance with Article 3(9A)(b), Schedule 2 of the GPDO.

Conclusions

20. I conclude therefore, for the reasons given above, that the appeal should be dismissed.

J E Jolly

INSPECTOR