PLANNING APPEAL STATEMENT

Land to the South of 17-19 Victoria Road

Shoreham by Sea

West Sussex

For Mr & Mrs Abbott

LPA PLANNING REFERENCES: AWDM/1999/20

May 17, 2021

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1-Site description and proposal

The proposal to which this appeal relates sought to erect a two-storey detached family dwelling (with landscaping) to land south of 17-19 Victoria Road, Shoreham by sea, West Sussex.



The site has an area of 190m², which is currently overgrown and used for ad-hoc parking. The site is hardstanding/wasteland and is not of any amenity value. This is shown in the Site Photo sheet which was submitted with the application.

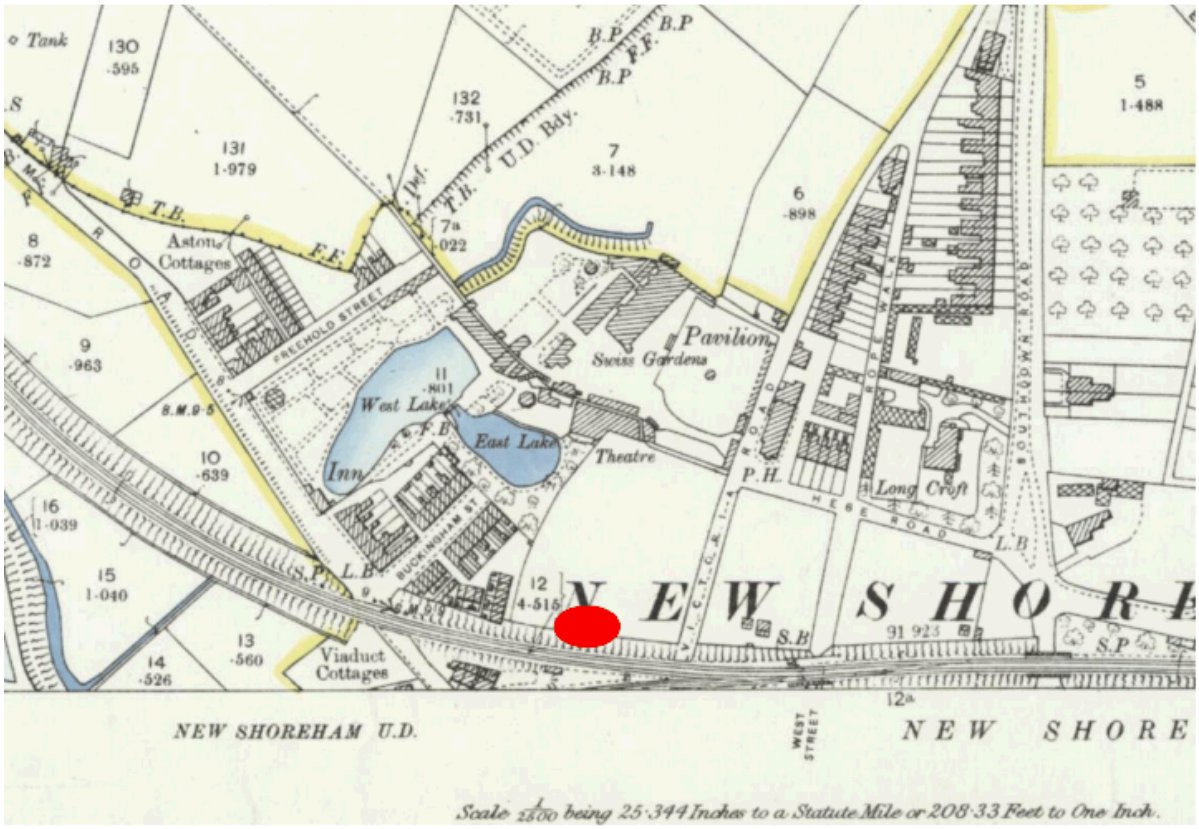
To the south, there is an embankment of a disused railway line, following which there is intervening land (part of the Riverside Development). Beyond this is the main railway line. The site is bound north by the road serving the dwellings opposite.

The dwellings opposite the site consist of a row of 3 pairs of semi-detached units. They date from the interwar period, a style that is the vernacular in this part of Shoreham by Sea and not of any particular architectural merit. They are not listed and lie well outside of the historic part of the town.

There is a block of garages to the west and beyond this are 3-storey blocks of flats. To the north east are 2-storey terraced houses.

The following image demonstrates the prevailing styles in the locality. It is clear that this area evolved over time. The arrival of the railway brought more growth to Shoreham by Sea. And although it saw a lull during WWI, building returned. Overtime as railway services contracted, disused railway land including former tracks, sidings and sites such as this, were left unattended to and often left in an overgrown state.

Even before the line northwards was decommissioned, the development of the area during the late Victorian period, saw housing, assessed off Buckingham Street set close to and abutting the railway embankment as can be seen from 1898 2nd Edition OS map for 'New Shoreham'.



Ref: 1898 2nd Edition map for New Shoreham. Approx. Location of appeal site marked

When compared to present-day mapping, it is clear that the area evolved to a zone with a finer urban gain and denser pattern of development with the housing at Buckingham Street giving way to the current flatted development during the 1960's.

The subject appeal site was put to residential use as additional amenity space to dwellings to the north, when purchased.



The existing terrace and road access





From the entrance and view along. Site to left (south) and interwar terrace to the west side of Victoria Road (north)



South east of railway line. Victoria Road comprising a mix of style. The Ropetackle development can be seen southwards of this position



View of west side Victoria Road, which sees development from interwar and post war periods

When compared to the present day mapping, it is clear that the vicinity has evolved to an area with a finer urban gain and denser pattern of development with the housing at Buckingham Street.

The site is within a sustainable location, being within a short distance on foot to the High and East Street, with a variety of shops, retail services, public houses, restaurants and cafes. It is also, within easy reach of community uses such as the local primary school, the library and a number of churches. Bus services can be accessed from the High Street and the Old Shoreham Road, together with the main train station being a short distance to the east with easy access on foot or by bicycle.

2-Policy Position

The planning system is a plan-led system in which planning decisions must accord with the relevant development plan, unless there are material considerations of sufficient weight to indicate a decision otherwise. *Section 38(1)* makes it clear that the development plan includes adopted or approved development plan documents and London Plan, although the NPPF(2019) now clarifies in greater detail what constitutes the development plan for decision making purposes, particularly as the Adur Local Plan pre-dates the NPPF, the revisions to the NPPG and NDG.

In summary, the following 'Policies', documents and guidance are considered to be applicable to the assessment of the application.

Adur Local Plan 2017 policies 2, 3 ,15, 18, 20, 22, 28, 34 and 36

- 'Supplementary Planning Guidance' Comprising: Development Management Standard No.1 'Space Around New Dwellings and Flats' West Sussex 'Guidance on Parking at New Developments' and 'Parking Demand Calculator' (WSCC 2019)
- National Planning Policy Framework (F2019) (NPPF)
- National Planning Practice Guidance (NPPG)
- Nationally Described Technical Housing Space Standards – (DCLG 2015)
- National Design Guide (MHCLG October 2019) NDG

3-NPPF

The NPPF sets out the Government's requirement for the planning in terms of the planning decision making process. The introduction to the 2019 version reiterates the legal primacy of the development plan, explaining that planning law requires applications for planning to be determined in accordance with the development plan, unless material considerations indicate otherwise. The Government also directs that the NPPF must be taken into account when preparing the development plan, and is a material consideration in planning decisions.

Sustainable Development

The NPPF is clear in its intent to support development that is deemed to be sustainable, meeting the three overarching objective as set out in paragraph 8. The requirement is set for development to meet:

a) An economic objective
b) A social objective
c) An environmental objective

The key as far as decision-making is concerned and the presumption in favour of sustainable development is set out in paragraph 10 and is seen as being at the heart of National Planning Policy. Where pursued in a positive way, there is a clear and unambiguous presumption in favour of sustainable development under paragraph 11 and this specifically means:

11 c) approving development proposals that accord with an up to date development plan without delay

Housing delivery paragraphs of the NPPF

One of the key objectives of the NPPF is to support the sustainable delivery of housing making the most efficient use of land, and thus the following paragraphs are also paramount to the assessment of the application:

Paragraph 59 states one of the Government's objectives is to significantly boost the supply of homes;

Paragraph 117 states planning policies and decisions should promote an effective use of land in meeting the need for homes;

Paragraph 118 d) states planning policies and decisions should promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively;

Paragraph 112 states that planning policies and decisions should support development that makes efficient use of land, taking into account: a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it.

4-Design paragraphs of the NPPF

The NPPF states that good design is a key aspect of sustainable development and that development should function well, add to the overall quality of the area, respond to local character and reflect the identity of local surroundings (***paragraph 124-127***).

Paragraph 128 encourages early discussion with local planning authority which is a point referred to further in this statement.

Paragraph 130 states that 'Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local Planning Authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as materials used).'

Paragraph 131 states that 'in determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surrounds.'

5-NPPG

This Practice Guide interprets the application of the NPPF and is updated regularly to reflect changes in national legislation and elaborating on rulings of the Court, on the matter of material planning considerations, confirming the scope of what can constitute a material consideration in planning decisions is very wide but does not extend to purely private interests such as the impact of a development on the value of a neighbouring property or matters of personal taste. Paragraph 009 charges the decision maker, whether that be a local planning authority, a planning inspector or secretary of state, with responsibility for deciding what weight is to be given to the material considerations in each case, but also recognises that the Courts are ultimately the arbiters of what constitutes a material consideration.

NPPG paragraph 009 (*Determining a planning application*) draws attention to the distinction between whether or not something is a material consideration and the weight a material consideration is to be given, highlighting that materiality depends on the particular circumstances of any case and is a matter on which the Courts will pass Judgment, whereas the weight to be given to a material consideration is purely a matter for the decision maker and with which the Courts will not get involved.

6-Nationally Described Technical Housing Space Standards

This document reflects the intention of National Government to improve standards for new dwellings in the delivery of a higher quality of accommodation. It sets out specific internal space requirements for units of accommodation depending on the number of bedrooms and bedspaces. The appeal scheme has taken this into account and is complaint.

7-NDG

The NDG by definition, is a wide-ranging 'catch-all' summary for best practice and aspirations. It sets out ten characteristics of good design that development should embrace, where appropriate.

Design is acknowledged as one of the most contentious of all material planning considerations. With past ministerial advice concerned to inhibit the ability of the planning system to influence the external appearance of buildings and internal layout. The reasons for this historical restraint on 'Design' control are to be found variously in the difficulty of substantiating a refusal of planning permission based on the essentially subjective matter of design. At the same time, it is recognised that 'good design is indivisible from good planning' a sentiment repeated in current NPPF policy as well as good design being a key aspect of sustainable development.

The characteristics of good design consider buildings internal and external including in relation to their context and whilst suggesting design codes as a way forward, it does not prescribe that one should slavishly copy and create a pastiche of the prevailing architectural style of a street, but to respect it.

8-History of Application and Timeline

There is at present a separate planning appeal application being considered (APP/Y3805/W/20/3266076). This emulates from planning application (AWDM/0989/20) and relates to the same parcel of land. This particular planning appeal statement has been included (together with relevant documents) in the (*Submitted Appendix Confirmation of Valid Appeal AWDM-1999-20*)and will be referred to in this Appeal Planning Statement as the "Original or First Application", where appropriate in comments below.

From the outset (pre-application stage) the principle has been supported by the planning officer. The support was continued through to the detailed stage and the recommendation for approval to committee.

Pre-applications

In seeking to engage proactively with the Council, pre-application proposals were submitted (*Submitted Appendix* PREAPP_0437_19 & PREAPP_0927_19). Two options were presented at pre-application stage – two storey dwelling or a block of lock-up garages. In response and under reference (PREAPP/0437/19) the council indicated their support for the dwelling (see section 3.0, page 6 of the First Design & Access Statement (First-DAS) and details attached as DAS AWDM-0989-20).

The lock up garage proposal was not supported on the basis that on potential adverse impact on residential and visual amenities as well as more vehicular activity. It was also stated that they would have less visual interest.

The responding Officer considered the proposed dwelling to be 'well-designed' and could be considered here in principle. Advice was provided on the need to address overlooking, the quality of the accommodation being close to the embankment as well as internal and external space standards and flood risk. Accordingly, the Architect progressed proposals for a two storey dwelling, the evolution of which is clearly depicted in the application for the dwelling was prepared as shown on pages 8-10 of the First-DAS.

A further pre-application consultation exercise was progressed under reference (PREAPP/0927/19) as noted on pages 11-13 of the First-DAS, explaining the evolution of the design and how the concerns expressed could be adequately addressed. The response from the Officer in summary:

- The new dwelling would not appear cramped
- It had been reduced in footprint
- Repositioned to the western end of the site
- Bedrooms moved to the upper floors overcoming concerns with regard to flood risk
- Re-orientation helps to increase light and outlook for future occupiers

- Acceptable separation distance from flats in Buckingham Street
- Less impact on privacy of existing occupiers to the north
- Some oblique views possible but should not cause a serious loss of amenity
- Reduced bulk should result in a less imposing and overpowering building mass than previously proposed
- Design is still contemporary, overtly different from the tradition existing streetscene, but an acceptable design which could work in this location in its reduced form
- Pleased to note sustainability measures to be provided

9-First Planning Application

Following the pre-application submissions, with clear and positive Officer support throughout for the reduced scheme, a formal application for full planning permission was progressed, It was only due to the support provided by the planning department that the applicant considered it appropriate and reasonable to progress with the Architect to a full submission.

The First-DAS summarises the proposal, explaining how the final submission was arrived at, the influences including constraints and along with the pre-application responses, thus presenting an opportunity for a contemporary response to this site.

The proposed dwelling exceeds the Nationally Described Technical Space Standards being 102sqm GIA for a 2 storey, 2 bedroom detached house and provides additional storage space. Private amenity space of 72sqm and a sqm balcony provided. Despite being in a sustainable location, the appeal scheme includes provision for 2 car parking spaces (according with Manual for Street requirements) and bike storage. As such, and although challenging, it was demonstrated that a dwelling of a smaller footprint could be satisfactorily accommodated on the site whilst meeting the required standards.

Issues relating to sunlight/daylight, outlook, privacy, flood, noise, flood risk and tree protection, highway matters including access and parking were accepted. Where required, internal and external consultees raised no objections to each subject matter including the Local Highway Authority.

These matters are clearly and concisely referred to on page 16 of the First-DAS. Attention was drawn to the Phase 2 proposal for the Riverside Walk development that sits to the West and on both sides of Old Shoreham Road which sees the reduction and levelling of the defunct railway embankment spur, opening up the eastern extremities of the site which runs along the southern boundary with the appeal site. That development will ultimately improve the context for this development.

The application was required to be determined at Planning Committee due to the objections received through third parties. Five objections were received, a number of which raised matters that were not material to the planning consideration of the case. Subjective comments were raised in relation to the design of the dwelling and it attracted criticism for

being 'overtly different' to other dwellings. Despite being largely concealed and not on the road frontage, it was also criticised for changing the look of the road, substantially.

10-First Planning Committee

The first application was presented to the Committee on 5th October 2020 (Appendix). For the avoidance of doubt the first application was recommended for approval, subject to conditions. The applicant agreed all pre-commencement conditions. The report succinctly set out the consultation responses and the third party objections. As prior pre-application advice, the formal report accepted the principle of the development stating:

> '*The proposal will increase the existing housing stock located within the built up area and can be supported in principle*'

On visual amenity and character, it was acknowledged that the building '*will be very different in form and character to those opposite*' the presentation continued to state that its unique location on the south side of a private road are not reasons in themselves to warrant a refusal of the application in principle as there are examples of '*contemporary design siting alongside more traditional forms of housing*' throughout the district. It was considered that '*such design can add visual interest and enhance the area.*'

The case officer presented the proposal as being of modest size which makes good use of the land with a reasonable amount of amenity space. It was noted that while abutting the embankment it was not considered to be overly cramped. It was confirmed that the proposed dwelling would only be '*glimpsed in views from the entrance to the cul-de-sac*' and would '*not have a significant street presence in the wider area.*' The report continued to state that the proposal would not be excessive in height or bulk and the use of material would have a softening impact.

The positive assessment of the proposed dwelling was clearly considered to be acceptable as the report acknowledged the fact that the introduction of a contemporary stand-alone dwelling and materials that did not try to replicate the style of the existing houses:

> *'….it is a stand-alone development which, while opposite existing development, is able to be of a different design and form without harming the established character of the street overall. On balance, it is considered that this proposal is an acceptable addition to the street scene.'*

As well as providing satisfactory amenities, it was considered that the proposed dwelling would not result in harm to the amenities (*privacy, light or outlook*) of neighbouring occupiers.

The report acknowledged concerns of residents in relation to Highway Safety at the junction with the access into the cul-de-sac and Victoria Road. However, and despite a decision to refuse in 1994, pointing out that Victoria Road is no longer a through road. It is closed off at its southern junction with Old Shoreham Road, reducing the level of traffic. West Sussex Highways considered that the presence of the wall to the south side of the access would encourage drivers to emerge more cautiously and noted that drivers tended to 'edge out'

into a slow, low trafficked road. Likewise, drivers approaching the junction encourages other drivers to slow, particularly if they see a car bonnet emerging.

As noted by West Sussex Highways and the case officer, the physical narrowing of the road on the approach and passing under the bridge, along with on-street parking, which and as considered by Manual for Streets reduces road speeds further. Despite the fact that a new dwelling would marginally increase traffic movements, the view of West Sussex Highways was that this would not lead to a material intensification in use of the access. Therefore, it was acceptable in highway and parking terms as explained.

11-First Application Committee Discussion

The formal minutes of the first meeting do not provide much in the way of detail or summary. However, and without seeking to burden the appeal process, the recording of the live stream committee can found at:

https://www.youtube.com/watch?v=3Vr8bY30PJc&feature=emb

(31:34 minutes into the committee meeting)

Despite the positive content and well balanced planning considerations, the application was refused at committee, against the Officer's recommendation. Eight committee members took part in the discussion. Initially it was recorded that three members were in favour of approval and five against. However, on recall, it was clarified as four members being in favour of the Officer recommendation to approve and four were against. Although the split was 50/50, the Chair of the Committee utilised their 'casting vote' and this resulted in the proposal being refused (four votes in favour of the proposal, five against). The appointed inspector should note that this breakdown was noted in the recording of the committee, it is not reflected as such in the minutes of that meeting.

It was noted in the committee meeting that none of the objections were valid planning policy considerations and as such were not material consideration to refuse the new build.

Having listened to the recording of the committee meeting, it was clear, that the debate focussed largely on the design style of the dwelling in what could only be described as matters of '*personal*' taste and this was reflected in the Council's reason for refusal.

Councillor Chipp stated that he '*did not like the development and found it unattractive'* and went on to state that he '*just did not like it*' which was his personal view. He raised the counter recommendation – refusal, although, he considered that the site could accommodate a new dwelling, but not of this contemporary style, stating that it was not in-keeping and to refuse on respect of form, context, massing, layout and design features visual discordant dominant form of development detrimental to the character and appearance of the wider area.

During debate: Councillor Balfe felt the design an '*architectural improvement on the area*'. Councillor Boram found the design '*quite acceptable*' and Councillor Loader stated she '*would have supported a more in keeping design*'.

The reason for refusal that transpired and was issued state:

> *"The proposed development by virtue of its siting, design, form and massing would result in a discordant development which would be out of keeping with the character of the immediately surrounding development. The proposal therefore, fails to comply with Policy 15 of the Adur Local Plan 2017 and guidance contained within the National Planning Policy Framework"*

It is noted that any reference to the '*wider area*' fell away and was replaced with the 'of the immediately surrounding development'

12-Second Planning Application

Following the first application refusal (Decision Notice AWDM 0989-20), together with clear and positive officer support throughout, a second formal application for full planning was progressed. It was again, only due to the support provided by the planning department that the applicant considered it appropriate and reasonable to progress with the Architect to a full second submission.

The Second-DAS & Report to Committee (DAS AWDM-1999-20 & Report to Committee AWDM-1999-20) summarises in detail the further reduced proposal, explaining how the final submission was arrived at, the influences including constraints and along with the pre-application and Committee responses, thus presenting an opportunity for a more traditional and sustainable dwelling.

The design for this second application had been carefully reconsidered and properly developed with reference to Planning Policy and local context to create the design solution presented in the overall Planning Application with the dwelling exceeding the Nationally Described Technical Space Standards, with the proposal of 107sqm GIA for a 2 storey, 2 bedroomed house with over 3sqm of storage space. Private amenity space of 80sqm.

Despite being smaller in design and in a sustainable location, the appeal scheme includes provision for 2 car parking spaces (*according with Manual for Street Requirements*) and bike storage. As such and although challenging, it was demonstrated that a dwelling of a smaller footprint could be satisfactory accommodated on the site whilst meeting the required standards.

Issues relating to sunlight/daylight, outlook, privacy, flood, noise, tree protection and Highway matters including access and parking were accepted. Where required , internal and external consultees raised no further objections to each subject matter, including the Local Highway Authority.

The aforementioned are clearly and concisely referred to in the Second-DAS & Report to Committee. Attention was drawn to Phase 2 of the proposal for Riverside Walk development that sits to the West and on both sides of Old Shoreham Road, which sees the reduction and levelling of the defunct railway embankment spur, opening up the Eastern extremities of the site which runs along the Southern boundary with the appeal site. That development will ultimately improve the context for this development.

The application was required to be determined at Planning Committee due to the first refusal at the same. Three letters of objection were received, a number of which raised matters that were not material to the Planning consideration of the case. A letter of collective objection was received via Speer Dade, an online Planning Consultant, of which identified an issue with the 25 Degree rule, of which was corrected prior to the Committee meeting.

13-Second Planning Committee

This application being very similar to the first, was presented to the Committee on 6th April 2021 (Report to Committee AWDM-1999-20). Again, for the avoidance of doubt the second application was recommended for approval, subject to conditions. The applicant again, agreed all pre-commencement conditions. The report succinctly set out the consultation responses and the third party objections. As prior pre-application advice, the formal report accepted the principle of the development stating:

> *"….Its position on the south side of the private road will continue to be unique. However, as before, it is not considered that this is a reason in itself to warrant a refusal of the application in principle."*

On proposal, site and surroundings, it was acknowledged that the overtly contemporary form and use of materials of the refused scheme has been replaced with a more traditional two storey form with pitched roof and white rendered walls.

With regard to amenity and character, it was noted '*the proposed building will be different in form and character to those opposite. However, following the previous refusal and the Committee's objections to its design being out of keeping with the character of the area, the current application is seeking a more traditional form of two storey house with pitched roof, to reflect the houses opposite*.'

The presentation went to further state differences from the first application stating:

> *"It will not be an exact replica of the design of those houses and will continue to have a contemporary feel, but it is considered that its design is less discordant than previously proposed and is more in keeping with the form of houses in the street. It will face the street, with its entrance on the north side, and will have its narrower elevation facing the houses opposite."*

The case officer presented further, that while the building itself would be taller than the first application, this was a result of the replica design of the dwelling opposite. It was pointed out the height to eaves were lower at 5.4m And the house was narrower in width and projects less far forward than the previous scheme.

It was noted by the case officer that the proposal being of modest size made good use of the land with a satisfactory amount of amenity space. It was again noted that while abutting the embankment it was not considered to be overly cramped. It was accepted to be marginally taller than the houses opposite, but would have a shallower roof pitch. It was confirmed that the proposed dwelling would only be '*glimpsed in views from the entrance to the cul-de-sac' and would 'not have significant street presence in the wider area*' The report continued to state that the proposal would not be excessive in height or bulk and the use of material would have a softening impact.

The case officer made mention that Victoria Road is a narrow road, and that the new proposal would provide a greater separation of dwellings. Stating that introducing a new development opposite the existing houses where there were previously none, it was not considered that the new dwelling would have a harmful visual impact, going on further to suggest: It is not considered that a house in this location would cause unacceptable harm to the established character of the street overall, and that on balance:

"..it is considered that this proposal is an acceptable addition to the street scene"

The report recognized concerns of residents in relation to Highway Safety at the junction with the access into the cul-de-sac and Victoria road. However, and again despite a decision to refuse in 1994, pointing out that Victoria Road is no longer a through road. It is closed off at its southern junction with Old Shoreham Road, reducing the level of traffic. West Sussex Highways considered that the presence of the wall to the south side of the access would encourage drivers to emerge more cautiously and noted that drivers tended to '*edge out*' into a slow, low trafficked road. Likewise, drivers approaching the junction encourages other drivers to slow, particularly if they see a car bonnet emerging.

As noted by West Sussex Highways and the case officer, the physical narrowing of the road on the approach and passing under the bridge, along with on-street parking, which and as considered by Manual for Streets reduces road speeds further. Despite the fact that a new dwelling would marginally increase traffic movements, the view of West Sussex Highways was that this would not lead to a material intensification in use of the access. Therefore, it was acceptable in highway and parking terms as explained.

14-Second Application Committee Discussion

The formal minutes of the second meeting did not provide much by way of detail or summary. However, and without seeking to burden the appeal process, the recording of the live stream committee can be found at:

https://www.youtube.com/watch?v=Z0NAYmRiMOM&t=3169s

(52.49 minutes into Committee Meeting)

Despite the more traditional and less discordant design, positive content and well balanced planning considerations, the application was again refused at committee, against the Officer's recommendation. Seven committee members took part in the discussion, 3 approved and 4 voted for refusal.

After comprehensive discussion on the merits of the objections, it was noted by in the committee meeting that none of the written objections were valid planning policy considerations. Save for one member, who voiced concern as to the massing that could result in a discordant development, out of keeping with the character of the immediate surrounding area. This view should only be described as a matter of personal taste and this was reflected in the reason for refusal.

Planning officer James Appleton presented to committee, stating that the applicant had addressed the reason for the previous refusal:

'*….the key issue being the reduced scale, bulk, massing and form of the to respond to committee's previous refusal*' & it represented a '*contemporary design on a traditional approach*'

During debate: Councillor Cowen, made mention of the state of the road and address the issue of adding repair conditions to the Construction Plan. Committee were advised, that given Highways approved the scheme, any added condition might be viewed as 'altra vires' and would open the Council to a potential order for costs.

Councillor Boram, indicated that his preference was the original application, but nevertheless, said, the current project does reflect the layout in the area more and '*sits better by way of design*.'

Councillor Chipp was reminded of his comments at the original meeting, where he stated:

> *"I am in favour of development …. I really am" & "this is a site that can be developed. But not of this contemporary style"*

After hearing the applicant's submission at the second committee hearing, Councillor Chipp said and agreed that he made the statement at the first committee meeting, However, he appeared to distance himself from the former statement, by declaring:

"*I made no mention of what could be developed on it.*"

He went on to emphasize that the faults of the previous application had not been addressed, with the current proposal being:

"..*not much different*."

He went further to reference:

"…the history of the site, with refusal after refusal'.

He then indicated that with this or any other potential application, too much is being taken out of the space and failed to see how anything could be built on the site, he asserted

"…*regardless of the design, the siting, forming and massing would have a discordant affect on that local area…. There are no other reasons*".

He went on to say:

" …this is a conversation for us to have as a planning commission, as to whether we believe that this is an acceptable development for that site, and I'm afraid I disagree with Councillor Boram, that I do not think that it is."

He then made a counter recommendation – for refusal, of which was seconded by Councillor Loader.

The reason for refusal that transpired and was issued stated:

"The proposed development by virtue of its siting, form and massing would result in a discordant development which would be out of keeping with the character of the immediately surrounding development. The proposal, therefore, fails to comply with Policy 15 of the Adur Local Plan 2017 and guidance contained within the National Planning Policy Framework."

It is noted that any reference to the '*local area*' fell away and was replaced with '*of the immediately surrounding development*.'

15-Bias and Pre-determination

With the exception of the two councillor's that voted against the application and did not actually contribute to the discussion (*Councillor Loader and Councillor Albury*). It is accepted that Councillor Chipp was entitled to hold a '*pre-disposition*' in the way he did, on the application. However, he appeared to have held a '*pre-determination*' resulting in a closed mind to any other possibility beyond an implied pre-disposition, where he had a duty to '*act fairly*' in applying judgment fully and properly to the application without clear pointers to the contrary, moreover, his pre-determination should not have been inferred upon other committee members' as they were.

Section 25 Localism Act 2011

Section 25(2) of the Localism Act 2011 provides that Councillor Chipp is not to be taken to have had a closed mind at the committee meeting '*just because*' he had previously said or done anything that indicated what view he might hold or might take related to the application. The Section makes it clear, if Councillor Chipp had expressed his view and considered in isolation, does not necessarily show that he had a closed mind.

However, in determining bias and pre-determination, great empathise is placed on the phrase '*just because'*, where it is suggested that other factors can still give rise to an accusation of pre-determination. Case law has made it clear, that words used by particular members and the interpretation put on those words is of particular importance: (see *R(Lewis) v Persimmon Homes Teeside Ltd[2008]EWCA Civ 746*).

Consequently, the Inspector is invited to consider the conduct, behaviour and in particular the wrong and or very misleading words used and said by Councillor Chipp with particular empathise on whether by way of suspicion or otherwise, an impression was given, at the second committee meeting (inter alia, based on the comments made at the first, not least for reason, the applicant acted upon such words used, in order to form the second application) that Councillor Chipp's mind was closed from the outset and with clear pointers to all present, and as such not only was it a foregone conclusion, furthermore, other members' were likely to have been unduly influenced.

16-Our response to the reason for refusal

The Council's single reason for refusal was as follows:

> *"The proposed development by virtue of its siting, design, form and massing would result in a discordant development which would be out of keeping with the character of the immediately surrounding development. The proposal therefore fails to comply with policy 15 of the Adur Local Plan 2017 and guidance contained within the National Planning Policy Framework."*

The reason for refusal references four elements:

- Design
- Form
- Siting
- Massing

At the committee meeting, it was considered that this proposal again resulted in an alleged discordant design and out of keeping with the character of the immediately surrounding development, which and as referred to in paragraph (Decision Notice AWDM-1999-20), of which is an altered version of the recommendation by a member that it would have detrimental to the character and appearance of the '*wider area*'.

Although the NPPF is referenced in the reason for refusal, the specific paragraphs are not, and therefore it is not clear where the Council consider there is conflict. As a result there is a lack of clarity and preciseness in the policy reasoning relied upon by the Council. Clearly and as set out in this appeal statement and the case officer's committee report, the reference in the sole Reason for Refusal implies that the development is at odds with the NPPF as a whole which is not the case.

Policy 15 of the Adur Local Plan 2017 states:

> '*Development should be of a high architectural quality and respect and enhance the character of the site, and the prevailing character of the area, in terms of proportion, form, context, massing, siting, layout, density, height, size, scale, materials, detailed design features and landscaping*.'

Nine criteria are listed in relation to *Policy 15*, and (*relevant to this proposal*) include – enhancing the local environment by appearance and character, making a positive contribution to the sense of place, local character and distinctiveness of an area, not have an unacceptable impact on adjacent properties, respect the natural features of the site, and have safe access et al. The requirements of *Policy 15* are aligned with the ten characteristics of good design of the *National Design Guide (2019*),13 which and as stated previously, do not impose a requirement to slavishly replicate the design of the terraced dwellings within the immediate area.

No residential amenity impacts or other concerns (*such as Highways safety*) were upheld and this is clear through the reason for refusal, and there was only an alleged conflict with *Policy 15*.

Considering *Policy 15*, the applicant believes it is clear this proposal is of high architectural quality and it would raise the standard of architecture in the locality, contributing to the sense of place. This was also the view of planning officers as expressed in the case officer's committee report.

The *NPPF* states that good design is a key aspect of sustainable development and that development should function well, add to the overall quality of the area, respond to local character and reflect the identity of the local surroundings.

Paragraph 130 of the NPPF states:

> *'Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.'*

In this case the proposal represents an opportunity to improve the character and quality of the area. *Paragraph 131 of the NPPF* states:

> *'In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.'*

The proposal is styled on traditional construction, but with a contemporary design which raises the level of architecture and promotes high levels of sustainability not only through fabric and technologies, but also due to the sustainable location and use of a brownfield site.

The four elements referenced in the reason for refusal shall now be addressed (*Design and form, sitting and massing*)

Design and form

The design approach to this scheme has a more contemporary feel on a traditional style, than the previous application, and is honest in its approach. The traditional style does differ (*but not greatly*) from the overall prevailing character of the area, the proposal together with its material finishing as in external appearance, would offer a complementary addition to existing housing stock. There is no policy dictate, at either the local or national level that stipulates that the design of new housing should replicate the style of the existing neighbouring housing.

The assessing officer acknowledges the differing styles, and states

> *"The proposed building will be different in form and character to those opposite. However, following the previous refusal and the Committee's objections to its design being out of keeping with the character of the area, the current application is seeking a more traditional form of two storey house with pitched roof, to reflect the houses opposite. It will not be an exact replica of the design of those houses and will continue to have a contemporary feel, but it is considered that its design is less discordant than previously proposed and is more in keeping with the form of houses in the street. It will face the street, with its entrance on the north side, and will have its narrower elevation facing the houses opposite."*

The applicant welcomes the above Planning Officer's words. Further, the officer goes on to acknowledge the contemporary nature of the dwelling:

> *'It's position on the south side of the private road will continue to be unique. However, as before, it is not considered that this is a reason in itself to warrant a refusal of the application in principle.'*

Although no examples are cited, it is clear that a Council, Adur-Worthing accept that towns, places and streetscenes evolve reflecting periods of change and with that designs that are contemporary for their time. To illustrate the applicant has provided examples where a contemporary/traditional style approach has been supported by the Council and are appended to this statement. (*Case Example 1 AWDM-0965-20, Case Example 2 AWDM-1802-19, Case Example 2 AWDM-1802-19, Decision Notice AWDM-0989-20, Report to Committee AWDM-0965-20 & Report to Committee AWDM-1802-19*)

The applicant welcomes the approach of Council. their measured and balanced approach to design as cited above and draw the Inspector's attention again to *paragraph 131 of the NPPF*.

This appeal proposal clearly raises the standard of design in the locality - it does not attempt to slavishly replicate those in the immediate locality - adopting such an approach was avoided as it would have resulted in '*more of the same*'. Indeed, respectfully speaking, the design style of the existing dwellings is dated and are not of such architectural merit where replication would be beneficial. A more modern contemporary take on a traditional style should not therefore, in itself form or justify a reason for refusal.

Incorporating traditional and contemporary materials further allows the dwelling to be absorbed within the surrounding trees and context, and it would not appear overly prominent or obtrusive, merely being glimpsed from the Victoria Road, visually softened and retaining existing trees which would further filter views.

Again, this has been accepted by the Council's own planning officer who states:

> "*It is acknowledged that it will introduce a building to the south side of the road where there is currently no other development, resulting in a diminution of the sense of openness and vegetation in the street scene. However, it is not considered that a house in this location would cause unacceptable harm to the established character of the street overall. Of the 20m frontage of development, only 6m will comprise the house itself, thereby ensuring that an open aspect will be retained for the majority of the houses opposite and for the street in general. On balance, it is considered that this proposal is an acceptable addition to the street scene*"

17-Subjectivity of design

Design is subjective. It was acknowledged during the committee discussion that one member in particular did not like the design whilst others did. Personal taste cannot be used as a ground for refusal, only material considerations.

The applicant respectfully draw the Inspector to the follow Planning appeal decision, which relates to personal taste. Appeal Ref: *APP/Q1445/W/19/3226126* in relation to 45 The Droveway, Hove, BN3 6PP (Appeal Decision 3226126 as Appended).



Appreciating the Local Authority in the above appeal differs, the primary issue behind the refusals are very similar. The reason this appeal is relevant to the application under appeal is due to the contemporary style of the proposal, where an element of subjectivity has resulted in a refusal. Although in the case of 45 The Droveway, Council Officers (*as opposed to committee members*) refused the proposal on design grounds, where it was considered the proposal would result in:

> *"development which would be out of keeping with and fails to reflect the prevailing character of the area, to the detriment of the character and appearance of The Droveway streetscene and the wider area. As such the development would represent an incongruous and cramped form of development and an overdevelopment of the site, contrary to policy CP12 of the Brighton and Hove City Plan Part One.*"

Whilst arriving at their decision to allow the appeal, the Inspector importantly acknowledged that:

> "*The modern design, whilst not to everyone's taste, would undoubtedly add a new and distinct element to the street-scene adding variety, interest and perhaps a focal point where none currently exists*."

As with the application under appeal, there would arguably be a change to the character/style of the proposed dwelling in the area however, and as the planning officer stated in the Committee Report, this does not constitute material harm. Indeed, as in the case of 45 The Droveway, there would be added interest to the existing situation. The standard of architecture would be raised. There would not be any harm to the character and appearance of the area and accordingly the proposal fully accords with the relevant paragraphs of the *NPPF*, primarily *130 and 131, in addition to Policy 15 of the Adur Local Plan*.

Councillor's forays into design control beyond their remit are often criticised at appeal on the basis that subjective views on design with no qualified architectural evidence to demonstrate that a design was poor or ill-conceived but that the building was unconventional and not of the local vernacular design, differing from neighbouring dwellings did not automatically make a design harmful.

Attempts by local planning authorities to stipulate what buildings should look like, as opposed to deciding whether proposed form, mass, layout and materials are in keeping with local context, is not normally acceptable and is considered to steps into subjectivity as opposed to objectivity on matters of design. On that note, the reason for refusal encapsulates a subjective design opinion that a new dwelling on this site would be more likely to succeed if it was more of the same.

Sitting and Massing

As explained earlier in this statement, the siting of a dwelling in this location is not unusual and was accepted as being suitable for development. It represents a sustainable and satisfactory use a site that has not been put to a beneficial and viable use. It has been reduced on three separate occasions in its footprint and now is set further to the west. As a result, the dwelling would not be prominent from the main Victoria Road or indeed from the junction with the cul-de-sac and this has been acknowledged by the Local Planning Authority. It is noted in the officer's report:

> *"It will be glimpsed in views from the entrance to the cul-de-sac but will not have a significant street presence in the wider area. Landscaping and existing vegetation can also help to screen and soften its visual impact."*

The fact that the dwelling would be visible from the adjacent properties is not a reason for refusal in itself. Although the reason for refusal references 'massing' there were not any residential amenity issues identified as being harmfully or detrimentally affected as a result of the massing of the subject dwelling.

Together with a siting further back to the west, the reduced footprint resulted in a lesser mass. In views, with visual foreshortening and perspective, the dwelling would be less apparent in limited glimpses or fleeting glances that are possible.

It is therefore noted that reference by the councillor opposing the recommendation, that the appearance of the '*local area'* (taken from the recording of the meeting) would be affected did not make its way into the reason for refusal, Instead this was translated as being:

> *"out of keeping with the character of the immediately surrounding development*."

There is no explanation as to why massing would in itself give rise to an objection. In that regard the Second-DAS demonstrates that the visual impact of the resultant massing of the proposed dwelling is relieved by the varying planes, and the proposed materials palette. Elements forming part of the elevational design are to be read in relation to the overall composition of the subject dwelling which has been informed by context, relationship with existing dwellings and internal functioning which is influenced by other matters including inclusive design, the Nationally Described Technical Space Standards and amenity issues. In that regard, the siting of the dwelling and its mass are purposeful in seeking to avoid causing harm to the amenities of dwellings to the north which includes the appellants' own dwelling. Therefore wider elements of built form are to the southern elevation, and not to the elevation which would face the neighbours.

In terms of scale which is an element of mass, the subject dwelling would be 8m in height dropping to 5.3m above slab of 0.3m above ground level. This is not out of context with the dwellings in the immediate or wider locality and the relationship between existing and new is not compromised or harmed. It does not read as an unacceptable form whereby it can be said that the massing itself or how elements of the design are seen in relation to one another, are discordant.

18-Summary

In summary, the applicant believe that the proposed design and layout has been carefully considered in order to utilise the topography of the site and respect its immediate and context. The development would not be overly prominent and would complement, rather than conflict with the prevailing character of the area.

Although differing from the overall prevailing character, it is considered that together with the proposed materials and finishing, the dwelling would complement the existing housing stock and provide a positive contribution to the wider area, without competing or detracting from adjacent built form. It purposely does not attempt to be a centre piece or focal point. Again, it cannot be said to be discordant or out of keeping with the character of its immediate surroundings or immediately surrounding development which in effect encompasses the terraced dwellings to the north served by the cul-de-sac and those directly fronting Victoria Road.

Therefore and in the absence of any tangible consequences arising from design, form, siting and scale of the appeal dwelling on the amenity of neighbours and the admission by officers and the Committee Members that the site is suitable for development, it is considered that the primary objection is related to subjective views on design.

In designing the scheme, a fully balanced and informed consideration is given to all relevant material issues, including the provision of a sustainable residential unit that although contemporary in appearance, does not result in any detrimental harm to residential amenity or the legibility of the existing urban form and streetscenes.

The applicant believes that there is sufficient weight to support the appeal being allowed on the basis that it is complaint at the local and national level. It adheres to the advice contained in the *NPPF* approval against the relevant policies of the local plan and the *NPPF*.

19-Merits

This current proposal presents an opportunity to:

- Optimise the potential of the site;
- Contribute to housing supply through a windfall site;
- Provide a sustainable residential use at an appropriate density within an established area, without detriment to existing building lines or pattern of development;
- Raise the architectural quality of the area
- Adopt a contemporary style which does not seek to replicate, compete or conflict with the character of the area, but would sit comfortably in the surroundings;
- Exceed current standards expected for internal floor space, with suitable provision of amenity levels and private, useable space for existing and future residents;
- Ensure no detrimental impact on residential amenity of existing, adjoining or proposed properties;
- Provide public benefit by way of contribution of housing stock;
- Maximise a sustainable location whilst achieving safe and suitable access;
- Represent a sustainable development in all aspects (social, environmental & economical); and
- Provide a sustainable development with no demonstrable harm, which is fully in accordance with the *Adur Local Plans and the NPPF*.
- In the absence of demonstrable harm, and when recognising the additional weight afforded to housing delivery in line with the *NPPF* presumption in favour of sustainable development; the applicant believes that the overall planning balance demonstrates sufficient merit which indicates the appeal should be allowed.

20-Conclusion

In concluding, the applicant would ask firstly that the Inspector gives consideration to an award of costs for reasons identified under Section 11 of this statement of case.

The applicant would further ask that the inspector gives consideration to the cases given by way of example as mentioned in Section 16 (Design and Form) and as appended.

The applicant would further still ask that consideration is given to the case officers report, the lack of harm identified and the planning balance which allowed for a positive recommendation.

Acknowledging that design is subjective, the personal dislike is not a reason for refusal, nor is the differing style of the dwelling in comparative to the existing semi-detached dwellings.

The proposal would raise the standard of architecture in the locality. The proposed design and layout have been carefully considered in order to utilise the topography of the site and respect its immediate and context.

The development would not be overly prominent and would complement, rather than conflict with, the prevailing character of the area.

A fully balanced and informed consideration has bee is given to all relevant material considerations, including the provision of a sustainable residential unit that does not result in any detrimental harm to residential amenity or the legibility of the streetscape, the applicant believes that there is sufficient weight to support approval against the relevant policies of the local plan and the *NPPF*.

For these reasons, the applicant requests that the appointed Inspector share the views of the Appellant and allow this appeal without delay as it represents sustainable development