The Planning Inspectorate

Appeal Decision

Site visit made on 19 January 2016

by Robert J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 February 2016

Appeal Ref: APP/Y3805/W/15/3137803
16, 18, 20, 22 Ship Street, Shoreham-by-Sea, West Sussex BN43 5DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Bruce Williams, Bramber Construction against the decision of Adur District Council.
- The application Ref AWDM/0441/15, dated 25 March 2015, was approved on 15 June 2015 and planning permission was granted subject to conditions.
- The development permitted is described as "application for variation of approved application AWDM/0418/13 to relocate kitchen to first floor (16, 18, 20 and 22 Ship Street)".
- The condition in dispute is No 01 which states that: *Within 2 months of the date of this permission, the kitchen windows hereby approved at first floor level shall be obscure glazed in accordance with details submitted to and approved in writing by the Local Planning Authority. Thereafter, the obscure glazing shall be retained at all times.*
- The reason given for the condition is: *To safeguard the amenities of neighbours in accordance with Saved Adur Local Plan policy AH2 and allied SPG Development Control Standard for Space around new dwellings and flats, and the Core Planning Principle of the National Planning Policy Framework relating to the amenity of occupants*.

Decision

1. The appeal is allowed and the planning permission Ref AWDM/0441/15 for application for variation of approved application AWDM/0418/13 to relocate kitchen to first floor (16, 18, 20 and 22 Ship Street) at 16, 18, 20, 22 Ship Street, Shoreham-by-Sea, West Sussex BN43 5DB granted on 15 June 2015 by Adur District Council, is varied by deleting condition 01.

Background and Main Issue

2. Planning permission was granted in June 2012 for the redevelopment of the site for 4 three-bedroom terraced town houses. A second permission was granted in 2013 for a similar development in different built form. Building operations took place on site, but these were not in accordance with either of the approved plans, although similar to the 2013 permission. While the external built form was the same as the 2013 permission instead of the kitchen being on the ground floor at the rear of the property with a bedroom above these were reversed in construction so that the kitchen was on the first floor.

3. Subsequently, a third application was submitted to regularise the situation. This was the appeal application. This was granted planning permission on 15 June 2015 subject to conditions, with condition 01 requiring the first floor

windows at the rear of the properties to be obscure glazed in accordance with an approved scheme. The remaining conditions are not in dispute.

4. The development has been completed with what appears to be a translucent plastic film applied to the relevant windows in a strip across the lower middle of the window. I have not been advised whether this is in accordance with a scheme approved pursuant to the condition or not.

5. The main issue is whether the disputed condition is necessary and reasonable having regard to the living conditions, in particular the privacy, of the occupiers of properties to the rear in West Street.

Reasons

6. Ship Street and West Street are located in the centre of Shoreham-by-Sea. They are part of the tightly grained centre of the town and lie within the Shoreham Conservation Area. The two streets lie essentially parallel to each other each with frontage development. On Ship Street on both sides of the appeal site there is residential development with that to the north also being three storeys in height.

7. The development on West Street is also predominantly residential. Approximately opposite the appeal site are 14 and 16 West Street which are a pair of semi-detached properties. They are listed buildings. To the north of 16 West Street is a large building used as a snooker centre. To the south of 14 West Street is a terrace of dwellings.

8. My overall impression visiting the site was that there was a significant level of inter-visibility between properties and their gardens/yards both back-to-back and also to the sides although to the sides this is at oblique angles.

9. The appeal sites do not lie directly behind 14 and 16 West Street with 16 Ship Street being also opposite 12 West Street. Therefore, 12, 14 and 16 West Street are most affected by the proposal. The nature of the snooker club on West Street is that it would not be materially affected by this proposal.

10. The National Planning Policy Framework (the Framework) indicates that conditions should only be imposed where they meet six tests. These tests are expanded on in the national Planning Policy Guidance (the PPG). The main dispute is whether the condition is necessary and thus reasonable in all respects. The test of necessity is whether the condition is needed to make the development acceptable in planning terms. In this case would glazing the window in clear glass result in an unacceptable loss of privacy?

11. At the site visit I looked out of both the first and second floor windows at the rear of each of 16 to 22 Ship Street and from within 14 and 16 West Street and their gardens and my conclusion was that the degree of overlooking was comparable from each floor. Thus it was no worse from the first floor when compared with the second floor. The second floor, of course, does not need to have obscure glazing.

12. The Council has referred to its Development Control Standard "Space Around New Dwellings and Flats" which requires developments to be sufficiently separated to give adequate privacy between facing principal windows. There are different separation distances for two and three storey properties. However, the Council accepts that the proposal meets the required separation

distance for two storey development and any greater distance required for three storey development is not affected by the consideration of this matter relating to first floor windows.

13. Consequently, I consider that the condition is unnecessary as the window in an clear glazed form does not lead to levels of overlooking leading to an unacceptable loss of privacy. As such the development, without the condition, would comply with Policy AH2 of the Adur District Local Plan 1996 in that it would not have an unneighbourly effect on existing dwellings by reason of an unacceptable loss of privacy. It would also comply with paragraph 17 of the Framework in that would ensure a good standard of amenity for all existing and future occupiers of land and buildings.

Other issues

14. I can understand neighbours concerns that a kitchen/diner may be used more intensively than a bedroom, but in reality both are habitable rooms where people can expect to be for reasonable and considerable periods of time. Bedrooms are not just used for sleeping but can be used for home-office use or to facilitate hobbies. While a kitchen and bedroom are occupied differently it is my view that there is not a material difference in the degree of overlooking from the use of either room type. Given that the windows were considered to be acceptable for use of the rooms as bedrooms it follows that they are equally acceptable for use of the rooms as kitchens.

15. Concern has been raised by the occupiers of neighbouring properties that by locating the kitchens to the first floor this may involve them being used more intensively for social events and thus leading to an unacceptable increase in noise. Given the separation distance to the adjoining properties in West Street I consider that there would be no material effect on these properties through noise.

16. As noted above the site lies within the Shoreham Conservation Area. Under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Listed Buildings Act) special attention shall be paid to the desirability of preserving the character or appearance of the Conservation Area. In this context the removal of the condition would have no effect on either the character or appearance of the Conservation Area which would therefore be preserved.

17. Similarly under Section 66(1) of the Listed Buildings Act special regard shall be given to the desirability of preserving the setting of a listed building. In my view removing the condition has no effect on the setting of Listed Buildings in the area, in particular 14 and 16 West Street. Therefore their settings would be preserved.

18. Concern has been expressed about the motives of the appellant in undertaking the development first and then only later seeking planning permission. Clearly, breaches of planning control should not be condoned, but the application and appeals procedure allows for the matter to be fully considered.

Conclusion

19. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

Robert J Jackson

INSPECTOR