Appeal Decision

Site visit made on 24 November 2008

by S J Emerson BSc DipTP MRTPI

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

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Decision date:
8 December 2008

Appeal Ref: APP/M3835/A/08/2079550
19 Ripley Road, Worthing, BN11 5NQ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J McCabe against the decision of Worthing Borough Council.
- The application Ref WB/08/0383/FULL, dated 18 April 2008, was refused by notice dated 29 May 2008.
- The development proposed is redevelopment for six flats with associated site works. Flats on 2 storeys with bedroom in the roof space.

Decision

1. I dismiss the appeal.

Main issues

2. The main issues are:
   (a) The effect on the character and appearance of the area;
   (b) The effect on highway safety;
   (c) The effect on the living conditions of adjoining occupiers with particular regard to privacy, sunlight and noise;
   (d) Whether the development should contribute to off-site infrastructure.

Reasons

Character and appearance

3. No 19 Ripley Road is a detached Edwardian style house and, uniquely for Ripley Road, has a wide side garden. Ripley Road is characterised by late Victorian/Edwardian semi-detached houses (opposite and to the south west of the appeal site) and short terraces of 1930s style houses (to the north east). No 23, immediately to the north east, is the only other detached house nearby. Local residents express concern at the loss of the house and its garden. I accept that it is an attractive feature of the road, but it is not a listed building, it is not in a conservation area and the Council has confirmed that the principle of redevelopment to a more intensive residential use is acceptable in accordance with national and local policies to make more efficient use of urban land. I saw that the property is within a short walk of a good range of local shops and services. There is no planning objection to the provision of flats in this location.

4. The proposed block of flats would be a single building with 2 distinct parts. The front part of the building is modelled on the proportions and detailing of

privacy could be successfully mitigated by requiring the lower half of these 2 windows to be permanently obscure glazed. Whilst not an ideal arrangement, I consider that living conditions for future occupiers of these particular flats would still be acceptable as these windows do not serve the main habitable rooms and there would still be outlook to the sky. The appellant has indicated that such a condition would be acceptable. The rear facing 1st floor lounge and main bedroom window in the rear projection would result in overlooking of the rearmost parts of the gardens of the adjoining houses (both to the rear and on either side), but I do not consider that this would be intrusive.

14. I have already noted that the rear projection would be at a lower ground level than the front part of the proposed building. It would be lower than the ground level of the existing building. In my view, its comparatively low ridge and eaves lines and its set back from the side boundaries would ensure that it was not a dominant or oppressive building when seen from the properties on either side. Given that the existing building is already close to No 23, I consider that the proposal would not result in any substantial loss of sunlight to its rear garden. The comings and goings along the drive serving the 3 parking spaces would be audible from No 17, but these movements would be modest in number, at low speed and would be sufficiently screened by existing and proposed planting and the boundary fence to avoid being intrusive.

15. I consider that the living conditions of adjoining residents would not be unacceptably harmed and that there is no conflict with policy H18 of the local plan.

Infrastructure provision

16. The Council's 2nd reason for refusal was that the development had failed to provide for the required contribution to upgrading local transport facilities necessary to accommodate the development. There is a policy framework for such contributions, but the specific harm that would arise from the absence of such infrastructure improvements has not been identified by the Council in the appeal representations. This is not surprising as the appellant has consistently indicated an acceptance of the need for such contributions. I therefore regard the need for such contributions as agreed, with the consequence that the development must be regarded as unacceptable without it.

17. The appellant has submitted a draft section 106 unilateral undertaking to provide for the required financial contribution. This appears to be satisfactory, but the undertaking is not signed or dated and therefore would have no legal effect if I were to allow the appeal. The appellant indicates that the need for such a finalised undertaking should be secured by a condition. However, Circular 11/95 *The Use of Conditions in Planning Permissions* states (paragraph 13): *Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under section 106 of the Act or an agreement under other powers.* In the recent past, there are examples of conditions being imposed which, in practice if not on their face, would require appellants to enter into section 106 obligations, but I do not regard these as consistent with national advice and I see no good reason to depart from this advice. Given the agreement as to the need for such a contribution, the absence of a mechanism to secure its delivery makes the development unacceptable.

18. I recognise that the development would make better use of urban land and that, subject to conditions, I have found it acceptable in relation to all other material considerations except in relation to off-site transport infrastructure. Whilst the impact of this scheme on such infrastructure would undoubtedly be very modest, the cumulative impact of a number of similar developments in a local area may be significant and it is important to address this cumulative impact by securing needed contributions from each development. The absence of a completed undertaking to secure the required contribution is sufficient reason to dismiss the appeal.

Simon Emerson

INSPECTOR