The Planning Inspectorate

# Appeal Decision

Site visit made on 9 November 2010

**by Jacqueline Wilkinson Reg. Architect IHBC**

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

**Decision date: 15 December 2010**

**Appeal Ref: APP/Y3805/A/10/2131537**
**60 - 66 Busticle Lane, Sompting, West Sussex BN15 0DL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by PR Homes Direct Limited against the decision of Adur District Council.
- The application Ref ADC/0055/10, dated 19 February 2010, was refused by notice dated 26 May 2010.
- The development proposed is erection of four storey block of eleven self contained flats with associated parking.

## Procedural Matters

1. The application was in outline, with details of access, layout and scale to be considered at this stage, with appearance and landscaping as reserved matters.

2. Planning permission, Ref ADC/0092/08, was granted in May 2008 for a three storey block of 8 flats. As this is a fallback scheme I have taken it into account when assessing this appeal.

## Decision

3. I dismiss the appeal.

## Main Issues

4. The main issues are the effect of the proposal on i) the character and appearance of the area, ii) the infrastructure of the area and iii) the living conditions of the adjacent occupiers at No 58 Busticle Lane and Aspen Court in terms of any overbearing impact and sunlight.

## Reasons

*Character and appearance*

5. It is proposed to erect a four storey block with the same footprint and a similar site layout as the scheme approved in 2008, but with one full additional floor. Busticle Lane is a busy thoroughfare, but it has a low scale residential character, with a mixture of bungalows, some two storey houses and some three storey flats, with a larger scale two storey pub on a corner to the south.

6. The front building line would be forward of both of the adjacent properties and of the general line of the street and the building frontage would be much wider than the adjacent properties. The eaves line of the approved scheme would

provide a transition between No 58 Busticle Lane to the south and Aspen Court to the north. However, the eaves line of the appeal scheme would be significantly higher than the eaves lines of both of these properties. The proposed block would therefore be more prominent in the street scene than the approved block and would be significantly at odds with the low scale character of the area.

7. The landscaping area shown at the front on the approved scheme would be reduced in the appeal scheme, to provide an extra parking space at the front. Landscaping is a matter to be reserved, but due to the very restricted space available, I am not persuaded that it would be possible to provide adequate landscaping of a suitable scale and depth to offset the increased massing and urban appearance of the development. Whilst waste/recycling and cycle provision would normally be a matter which would be dealt with by condition, adequate provision remains unresolved, which adds to my concern.

8. I therefore conclude that the proposed block due to its height, massing, position on the site and the dominance of hard surfaces on the frontage, would be significantly out of character with the generally low scale suburban development in the locality. It would therefore fail to comply with Policies AG1 and AH2 of the Adopted Adur District Local Plan (Local Plan) and Policies BE1 and CC6 of the South East Plan, which broadly aim to protect the character and appearance of areas.

*Infrastructure*

9. The Council states that there is insufficient evidence that the necessary contributions would be made to improvements to sustainable transport, education, libraries and fire and rescue services to offset the effects of the proposal on those services, in accordance with Policy AG3 of the Local Plan and Policy CC7 of the South East Plan.

10. The appellant suggests that the contributions could be the subject of a condition, but Circular 11/95 *The Use of Conditions in Planning Permissions* states that permission cannot be granted subject to a condition that the applicant enters into a s106 planning obligation.

11. The Community Infrastructure Levy Regulations 2010 (CIL) came into force on 6 April, 2010 and The Community Infrastructure Levy: *An Overview*, published 18 November 2010, replaces the previous overview dated March 2010. Even if a unilateral undertaking had been made by the appellant to pay the contributions, I would have been required to test it against the CIL Regulations. Undertakings or agreements which fail the tests cannot be taken into account in any decision to grant planning permission.

12. The County Council's adopted Supplementary Planning Guidance document: *The Provision of Service Infrastructure related to new development in West Sussex – Part 1.* 1999 (SPG) and the *Revised County Parking Standards and Transport Contributions Methodology* (SPG) 2003 set out the basis for the calculation of the contributions towards transport infrastructure, called Total Access Demand (TAD).

13. However, the Council has not stated in detail how the contributions would be used to offset the effects of the appeal proposal and the contribution to TAD appears to me capable of being a charge under the CIL Regulations. I am therefore unable to take it into account when assessing this appeal. There is

insufficient information before me to assess whether the contribution sought for education, libraries and fire and rescue services would meet the three tests of Section 122 of the CIL Regulations.

*Living Conditions*

14. The proposed block would be approximately north of No 58 Busticle Lane and would extend the same distance beyond the rear line of No 58 as the approved scheme. The increased height would not cause a loss of sunlight reaching the rear and garden of this property, but there would be a considerable additional bulk projecting beyond the rear line of No 58. Whilst their aspect would be affected by the approved scheme, the additional height now proposed would have an increased overbearing aspect on the occupiers of No 58 and this would harm the living conditions of the occupiers of this property.

15. Aspen Court, which is flats, lies to the north of the property. The appellant states that the appeal scheme would have no worse an effect on this property than the approved scheme as the increase in height is not 3m, but 2.1 m and the property would be well separated from the proposed block by a space of 5.6m at the tightest point. However an increase of 2.1m would increase the loss of sun light reaching windows in the side elevation of this building and would create an unacceptably over-bearing aspect from the flats in this property, which would harm the living conditions of its occupiers.

16. I conclude that the proposal would therefore unacceptably harm the living conditions of adjacent occupiers, contrary to the aims of Policy AH2(c) of the Local Plan.

*Other Matters*

17. The effect of the proposal on parking and the safety of highway users has also been raised. Whilst the occupiers of the two bed flats could own more than one car, this location is well served by public transport and they would be able to use alternative means to the private car as encouraged by the Government in Planning Policy Guidance 13: *Transport*. I consider that the scheme would not significantly add to the risks to other highway users.

18. Residents to the rear of the appeal suite in Downlands Close and Berriedale Drive are concerned about overlooking of their gardens and properties. The proposed block would be one floor higher than the approved block, which would increase the amount of overlooking of the long rear gardens of these properties. However due to the distances involved and the angles of view, I consider that this would not amount to an unacceptable increase in overlooking over the approved scheme.

*Conclusion*

19. The proposed block would increase the supply of housing over the approved scheme by 3 units. However, this would not be such a significant benefit that it would outweigh the significant harm caused to the character and appearance of the area and to the living conditions of the adjacent occupiers. For the reasons given above I conclude that the appeal should be dismissed.

*Jacqueline Wilkinson*

INSPECTOR