Appeal Reference: APP/M3835/W/24/3349597

Town and Country Planning Act 1990 (as amended).

Appeal by: Mr David Fitness

Site Address: Site Of 1 And 1A And 2 To 3 New Broadway, Worthing,

West Sussex, BN11 4HP

Local Planning Reference: NOTICE/0018/23

Statement of Case of the Local Planning Authority

Rebuttal of Appellants grounds of appeal

This statement is intended to address the appellant's grounds of appeal and where necessary elaborate further upon the Council's reasons for refusing prior approval for the appeal proposal.

Reasons for refusal

There are two reasons for refusal:

1. The proposed development by reason of its scale, form, height and low architectural design quality, in this highly prominent location, would be significantly out of keeping with the majority of the terraced buildings to the north side of Tarring Road and would fail to assimilate with the design and architectural features of the principal and side elevations of the existing building or to respect or enhance the prevailing character of the area. The additional storey would introduce a visually dominant and intrusive form of development culminating in significant harm to the external appearance of the building, the character of the street scene and visual amenities of the locality. The proposal is therefore contrary to Policy DM5 of the Worthing Local Plan, the Council's SPD 'Guide to Residential Development' and the policies of the revised National Planning Policy Framework.

2. Flat 3 fails to meet the minimum floor space requirements for a 1 bedroom, 2 person flat, as set out within the Nationally Described Space Standard and would fail to provide an adequate standard of living space for the occupants. The proposal is therefore contrary to the provisions of Section (9A) of Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), policy DM5 of the Worthing Local Plan, the Council's SPD 'Guide to Residential Development' and relevant policies of the revised National Planning Policy Framework.

Policy Background

The prior approval application NOTICE/0018/23 was refused by the Local Planning Authority on 08.02.2024. The refusal reasons refer to the relevant legislation set out in the Town and Country Planning (General Permitted Development) Order 2015 (as

amended), the policies of the adopted Worthing Local Plan (2023) and national planning policy as set out in the NPPF.

The Appellants Grounds of Appeal Statement

Reason for Refusal 1

1. (Introduction)

Paragraph 1.2 '*The Appellant contends that the assessment of the site, the legislation set out within the GPDO and the Council's interpretation of these matters, is fundamentally incorrect with regards to the purported impact on the locality and surrounding area, as set out in the officer report, and the use of and reference to national and local policies.'*

4. (Relevant Planning Policy/Permitted Development Considerations)

Paragraph 4.3* 'the Appellant contends that that the above legislation is the only legislation under which the refused application and this appeal can be assessed under.'*

'As will be detailed below, it is contended that the Council has gone against this very clear guidance and the common view in planning terms that local and national policy should not be applied when considering permitted development or prior approval matters, and that it is only the requirements within the GPDO which can be considered.'

5. (**Planning Issues, Grounds of Appeal and Comments on the Officer's Report)**

Paragraph 5.2 *'In the first instance it is noted that reason for refusal 1 does not make specific reference to the GPDO. Instead, the reason for refusal and wording used, as set out above under paragraph 1.1, appears to be more closely related to that of a planning application, which references local and national policy as well as supplementary planning guidance / documents.'*

In response to the above statements, the conditions set out at AB.2 (1) of the legislation state:

AB.2 (1) Where any development under Class AB is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval of the authority as to—

(e) the external appearance of the building, including—

(i) the design and architectural features of —

(aa) the principal elevation; and

(bb) any side elevation that fronts a highway; and

(ii) the impact of any works under paragraph AB(3)(c) or (d);

and the provisions of paragraph B (prior approval) of this Part apply in relation to that application.

The legislation stipulates at paragraph B;

Procedure for applications for prior approval under Part 20

B. - (15) The local planning authority must, when determining an application—

> ***(b) have regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government, so far as relevant to the subject matter of the prior approval, as if the application were a planning application.***

Paragraph B (above) clearly specifies that the LPA when determining an application for Prior Approval under Part 20, must have regard to the NPPF relevant to the subject matter of the prior approval (in this case the external appearance of the building, design and architectural features), as if the application were a planning application.

The Worthing Local Plan 2020-2036 (WLP) was adopted on 28 March 2023 and forms part of the statutory development plan which sets the strategic development and land-use priorities for Worthing and contains the policies against which development management decisions will be made. The Council's Local Plan is in conformity with the NPPF which sets out the overarching framework for all planning decisions and is therefore relevant in decision making and specifically in relation to Paragraph B above.

The Council contends that the relevant considerations were applied for those aspects requiring prior approval, in accordance with the relevant legislation for Schedule 2, Part 20, Class AB of the General Permitted Development Order (GPDO) 2015 (as amended) and in accordance with the provisions of paragraph B - Procedure for applications for prior approval under Part 20.

Although the parameters for assessing the merits of an appeal proposal under Part 20 are more limited than in a planning application, matters of external appearance of the building including the design and architectural features, are a relevant consideration as set out in condition AB.2 (1) (e) and in considering the impact of the proposals in accordance with paragraph B.

Paragraph 5.4 *'As set out above, it is not for the Council to assess prior approval applications based on their local policies. In addition, the criteria as set out within AB.2.—(1)(e) only relates to the external appearance of the building and does not include any purported impact that the development may have on the prevailing character of the area.'*

In response, the inspector will be aware of The High Court Judgement *Cab Housing Ltd v SSLUHC [2022] EWHC 208 (Admin)* which established that in interpreting the provisions of Part 20 the GPDO the control of the external appearance is not limited to the impact on the subject property but also includes impact on neighbouring properties and the locality.

It should also be noted that in the Appeal Decision for APP/M3835/W/23/3320152 (Carlyle House, Bridge Road, Worthing, Sussex BN14 7BS) dated 18 December 2023

the Inspector considers the character and appearance of the both the site and its surroundings and concludes; *'I consider that the proposed development would harm the character and appearance of the surrounding area. It would be contrary to the National Planning Policy Framework (Framework) which seeks the creation of high quality, beautiful and sustainable buildings and places, and sympathy for local character.'*

The delegated officer report for the appeal site, clearly sets out the relevant considerations in relation to the impact on external appearance, as required at AB.2 (1) (e) and in accordance with paragraph B and concludes that *'The principle of an additional storey in this highly visible location is considered unacceptable due to the harm that would result to the character of the terrace as a whole and the surrounding street scene.'* This assertion not only complies with paragraph B but also the relevant case law cited above. The Council maintain their assessment in relation to the impact on external appearance, which is not limited solely to the mansard roof form but rather the external appearance as a whole, as specified within the delegated officer report.

Reason for Refusal 2

Paragraph 1.3 *'Reason for refusal 2 is considered to be a 'technical' reason with regards to Nationally Described Space Standards (NDSS) and has also been addressed by way of an updated plan.'*

Paragraph 3.3 *'In order to address reason for refusal 2, an updated plan is provided with this appeal which shows the 1-bed flat and as a 1-person unit, which would now comply with NDSS.'*

Neither the Council nor statutory consultees had the opportunity to consider the amended plan (to show Flat 3 as a 1 bedroom, 1 person flat) now submitted as part of the appeal and the Council contends that the submission of an amended plan to address a technical matter at appeal stage, is procedurally incorrect. It is a matter of fact that Flat 3 as a 1 bedroom, 2 person flat (as per the original submission that is the subject of this appeal), fails to meet the minimum floor area of 50m2, as required by the Government's Technical Housing Standards - nationally described space standards. Failure to meet this standard means that the application can not comply with the requirements for Permitted Development under Section (9A) of Article 3, Schedule 2 and therefore does not satisfy all requirements under Schedule 2, Part 20, Class AB of the General Permitted Development Order (GPDO) 2015 (as amended).

Article 3

(9A) 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 issued by the Department for Communities and Local Government on 27th March 2015(a).***

Notwithstanding the procedural matters stated above, it is also noted that the amended plan does not increase the available floorspace for the bedroom of Flat 3 but instead replaces a double bed with a single bed on the drawing. However, the dimensions of this bedroom (approx.12m2) exceeds the technical requirements for a double bedroom, as set out in the 'Technical Housing Standards - nationally described space standards' at:

> ***10.d. in order to provide two bedspaces, a double (or twin bedroom) has a floor area of at least 11.5m2***

It is therefore considered that Flat 3 would be used as a double room and therefore still fails to meet the minimum floorspace for a 1 bedroom, 2 person flat.

Conclusion

This statement sets out the LPA response to the Appellant's Statement of Case and the Inspector is respectfully requested to dismiss this appeal. However, should the appeal be allowed, this should be subject to those conditions as set out in paragraph AB.2. (3) (4) (5) (6) (7) (8) of Part 20 Class AB of the GPDO and additional conditions as suggested in the separate document 'List of Conditions' accompanying this statement.