The Planning Inspectorate

Appeal Decision

Site visit made on 8 August 2018

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2018

Appeal Ref: APP/Y3805/W/18/3198986
89 Old Fort Road, Shoreham-on-Sea BN43 5HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by James Breckell Architects against the decision of Adur District Council.
- The application Ref AWDM/1826/17 was refused by notice dated 30 January 2018.
- The application sought planning permission for the removal of condition 7 of AWDM/1541/13, dated 19 February 2014, to demolish existing bungalow and construct replacement bungalow.
- The condition in dispute is No 7 which states that: *'Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995, as amended (or any Order revoking and re-enacting that Order with or without modification) no windows or other openings (other than as hereby approved) shall be formed in the east or west walls of the building; or the dwelling extended or outbuildings of more than 10 cubic metres erected without the prior permission of the local planning authority on an application in that behalf.'*
- The reason given for the condition is: To safeguard amenity and design integrity and to comply with policy AH2 of the Adur District Local Plan and National Planning Policy Framework.

Decision

1. The appeal is allowed and planning permission is granted for the removal of condition 7 of AWDM/1541/13 to demolish existing bungalow and construct replacement bungalow at 89 Old Fort Road, Shoreham-on-Sea BN43 5HA in accordance with application AWDM/1826/17 without compliance with condition no 7 previously imposed on planning permission AWDM/1541/13, dated 19 February 2014, but subject to the following conditions:

    1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any Order revoking and re-enacting that Order with or without modification) no development under Classes A or B, nor any outbuildings under Class E of more than 10 cubic metres, shall be erected or carried out unless approved by way of a planning permission granted.

    2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any Order revoking and re-enacting that Order with or without modification) no windows or other openings (other than those permitted by way of planning

permission AWDM/1541/13) shall be formed in the east or west walls of the dwelling.

3) The area of the site used set aside for car parking purposes shall be used for this purpose only, and shall be kept available for such at all times.

Background and Main Issue

2. When granting planning permission for the new bungalow the Council saw fit to impose a condition which took away a significant amount of permitted development (PD) rights, normally available for householders wishing to extend their dwellings.

3. Taking the above background into account the main issue is whether the imposition of the condition at issue, in its entirety, is reasonable and necessary in the interests of protecting the living conditions of occupiers, both of the appeal property and also those neighbouring, and also the appearance of the bungalow, with particular regard to its design integrity.

Reasons

4. The appeal site accommodates a modern style detached bungalow, granted planning permission in 2014. It is set between, and close to, two neighbouring bungalows.

5. Subsequent to the above permission being issued the owner submitted a planning application for a proposed single-storey outbuilding, that would run across the garden, close to the rear boundary of the site. The application was only necessary due to the permitted development entitlement having been removed. Planning permission (ref AWDM/0685/16) was granted for the outbuilding in July 2016 but, at the time of my site visit, it had not been implemented.

6. Paragraph 55 of the National Planning Policy Framework (the Framework) says that planning conditions should only be imposed where they are, amongst other things, necessary and reasonable and paragraph 53 thereto states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so.

7. The Planning Practice Guidance (PPG) says that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances. It comments that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

8. PD rights are development which is considered to be acceptable in the normal course of events. All are subject to certain limitations, with Class A covering the enlargement or improvement of a dwellinghouse, Classes B and C concerning roof extensions and alterations thereto, Class D involving front porches and Class E concerned with outbuildings that might be erected in the property's rear garden.

9. Paragraph 2.4 of Adur Council's Development Management Standards No 2 (DMS2) document advises that to avoid an over-development of the site an adequate amount of garden, normally to a depth of 11m, should be retained.

This is both for the property's occupiers' enjoyment and also to prevent a cramped appearance. It also reflects relevant advice within the Council's Development Management Standards No 1 (DMS1) which indicates that the required garden area for a semi-detached dwelling of up to 3 bedrooms is 85 sqm.

10. In this particular instance, despite a discrepancy in the figures quoted by the two main parties as to the area of existing rear garden, both agree that it measuresover 100 sqm. The prescribed area is therefore comfortably met. Similarly, with reference to the submitted Drawing 02 Rev C, the distance from the dwelling's rear wall to the rear boundary would be slightly in excess of 12m, thereby according with the stated advice in DMS2.

11. However, the approved outbuilding would be to a width of 3.5m and, if built, would significantly reduce the depth of usable rear garden. If Class E rights were available then, in addition to the approved structure, further outbuildings could be permissibly erected within the remaining garden area which, if carried out, would amount to an undue loss of residential amenity space and an over-development of the site. Planning permission ref AWDM/0685/16 remains extant until 6 July 2019 and, given the circumstances, until its expiry, I consider that the cubic metre restriction on outbuildings should be retained.

12. Under Class E, structures erected within 2m of the boundary must not exceed 2.5m in height. This allowance is likely available to neighbouring occupiers and is thereby unlikely to affect the living conditions of neighbouring occupiers. However, it is the extent of site coverage that is my concern here and its adverse impact on the future occupiers of the appeal property.

13. Extensions added to the bungalow itself by way of Class A would potentially have the same effect of significantly reducing the depth of the rear garden and is therefore an important safeguard. Although the appellant comments that the bungalow's roof design does not allow for development under Class B, this does not necessarily mean that Class B's provisos might not be relaxed in the future. Extensions to the roof to allow for habitable accommodation within could potentially have two important effects; possible overlooking of neighbouring properties, but also with implications for the design of the bungalow itself.

14. At my site visit I noted the bungalow's modern, clever form and architectural value, and in this regard I consider it important that, for any future proposals which might arise involving extensions to the roof, an application for planning permission should first be made to allow for some scrutiny of the proposed development. This, of course, does not necessarily mean that the intended design would be unacceptable in planning terms. In contrast, any development permitted under Classes C and D, due to their limitations, would be unlikely to have any appreciable impact and I have varied the wording of the previous condition to allow for such.

15. In summary, due to the extant planning permission for the rear outbuilding and the cumulative implications of additionally utilising Class E rights, along with the potential depth of Class A extensions, such development could threaten the extent and future usability of the property's rear garden. Safeguards as to development under Class B equally apply. Prohibiting the installation of additional windows in the bungalow's flank walls, due to their proximity to the

boundaries, without first obtaining planning permission, also serves a planning purpose.

16. In such circumstances a requirement that an application for planning permission should be made for development that is normally permissible under PD rights is not unreasonable. Accordingly, I conclude that condition no 7, in its current form, is neither necessary nor reasonable, but my proposed re-wording would remedy this, is more precisely worded and would allow for compliance with the objectives of Policy 15 of the Adur Local Plan 2017, advice contained within DMS1 and DMS2 and also the Framework.

17. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In this instance, as the permitted dwelling has already been erected and is occupied the only ongoing condition likely remaining relates to the provision of off-street car parking space within the front curtilage, imposed in the interests of highway safety and amenity.

18. In the above connection, to offset the possible loss of rear garden space, the appellant comments that due to the south facing orientation of the front garden many neighbouring occupiers utilise their front gardens. However, here the permitted scheme largely requires the front curtilage be utilised for off-street parking, and the remaining area and shingled surfacing does not practicably allow its use for amenity purposes.

19. The appellant makes reference to other properties in Old Fort Road which have retained their PD rights despite what is termed 'comparable planning permissions.' Each case should be determined on the particular planning merits and impacts arising and the individual circumstances involved. As such, there are rarely direct parallels that can be drawn between what appear to be similar developments. Besides, although the Design & Access Statement accompanying the application made provides reference nos of other planning permissions and the respective properties involved I have not been provided with the relevant papers. Neither have I had the opportunity to visit any of the said sites and am not able to draw comparisons.

20. Finally, both the condition at issue and the appellant make mention of Policy AH2 of the Adur District Local Plan, 1996. This policy, along with the said former development plan, was superseded upon adoption of the replacement Adur Local Plan in 2017.

21. For the above reasons, and having had regard to all matters raised, the appeal succeeds in part.

Timothy C King

INSPECTOR