



Appeal Decision

Site visit made on 29 March 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Appeal Ref: APP/M3835/W/21/3281130

The Dovecotes, 55 Pembroke Avenue, Marine, Worthing BN11 5QS

- 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 Mr Christopher Dixon of Landmore Property Services Ltd against the decision of Worthing Borough Council.
 - The application Ref AWDM/0409/21, dated 9 March 2021, was refused by notice dated 2 August 2021.
 - The application sought planning permission for change of use from existing store (Use Class Sui Generis) to serviced offices (Use Class B1(a)) without complying with a condition attached to planning permission Ref AWDM/0352/19, dated 10 June 2019.
 - The condition in dispute is No 5 which states that: The flat roofed part of the building shall not be used as a roof terrace at any time.
 - The reason given for the condition is: To safeguard the amenities of surrounding residential properties and to comply with saved policy H18 of the Worthing Local Plan.
-

Preliminary Matters

1. Permission was granted under Ref AWDM/0352/19 for change of use of the building to serviced offices. Subsequent to that decision, permission was granted under Ref AWDM/1053/19 for the rearrangement of the permitted solar panels on the south (rear) roof slope to facilitate the addition of 3 no. rooflights. This is a standalone permission, but the plans listed on the decision notice do not include all of the elevations. Given that the rooflights and solar panels are shown correctly on the plans submitted with the appeal scheme, and have already been installed, I have proceeded to determine the appeal on the basis that permission is being sought to vary or remove conditions on the original permission. No party would be prejudiced by this approach.
2. Section 5 of the application form indicates that the appellant's intention is to remove condition no 5 in order to use the roof, 'primarily for maintenance of the building and to keep the fencing installed to provide additional security'. There is an implied application to vary condition no 2 of the permission in order to substitute new plans showing a balustrade around the edge of the flat roof and a set of French doors in the west elevation of the building at first floor. No party would be prejudiced if I dealt with the appeal on that basis.
3. The above site address is taken from the application form. However, since the application refers back to a previous planning permission I shall use the site address from that case in my formal decision.

4. There are a number of inconsistencies between the development as constructed and the approved plans, including the courtyard wall being higher than shown on the approved plans and a further timber structure which has been erected on the northwest corner of the building and was not shown on the approved plans. These are not referenced on the application form and, whilst noted in the officer report, they do not appear to have been formally considered by the Council. Although the increased wall height is shown on the plans before me, my decision does not grant permission for this aspect of the development.

Decision

5. The appeal is dismissed insofar as it relates to the removal of condition no 5.
6. The appeal is allowed insofar as it relates to the balustrade and French doors and planning permission is granted for change of use from existing store (Use Class Sui Generis) to serviced offices (Use Class B1(a)) at The Dovecotes, 55 Pembroke Avenue, Worthing, West Sussex BN11 5QS in accordance with the application Ref AWDM/0409/21 dated 9 March 2021, without compliance with condition no 2 previously imposed on planning permission AWDM/0352/19 dated 10 June 2019, subject to the conditions set out in the attached schedule.

Main Issues

7. The main issues are whether the disputed condition is reasonable and necessary to safeguard the amenities of surrounding residential properties, and whether the installed French doors and balustrade cause material harm to planning interests.

Reasons

8. The appeal building lies within the service area at the rear of a shopping parade on the corner of Goring Road and George V Avenue. It directly abuts the boundary with the rear garden of 53 Pembroke Avenue. The flat roof referenced in condition no 5 lies at the western end of the building. When standing on this roof there are views towards the windows of flats above the shopping parade. It is also possible to look downwards, over the top of the balustrade, into the back garden of No 53. The use of the flat roof for socialising or relaxation would be intrusive for occupiers of the affected properties as it would give rise to the perception of being overlooked and in the case of No 53 a loss of privacy. For this reason, I consider that the disputed condition is necessary and reasonable to safeguard the living conditions of the occupiers of surrounding residential properties and ensure compliance with Policy H18 of the Worthing Local Plan (2003).
9. The appellant would like to retain access to the flat roof for maintenance purposes. It is unlikely that the building will need significant maintenance, particularly given that it is newly converted. Nevertheless, the Council has indicated that maintenance can be carried out without the need to vary the disputed condition. I am minded to agree with this approach which would not undermine the purpose of the condition.
10. The Council is concerned that the French doors and balustrade would encourage the use of the flat roof as an amenity area. However, that is not the appellant's stated intention as the balustrading was erected to improve security. I am told that marketing particulars describing the flat roof as a sun terrace/roof garden were published in error and I have had sight of the tenancy agreement with the

incoming tenant which clearly states that the flat roof is not to be used socially and is for access and maintenance only. Signage has been erected to warn of a fragile roof and instructing occupiers of the building to keep off. I note that the development provides a separate covered courtyard which is available for use by the occupiers of the offices during recreation breaks.

11. I have considered the possibility that the occupiers of the offices may disregard the signage and their tenancy obligations. However, the condition is precise and enforceable. Breaches will be easy for local residents to detect and evidence to the local planning authority which has the necessary enforcement powers to secure compliance. It is the responsibility of the appellant as landowner to take all necessary steps to ensure that the terms of the planning permission are met. Failure to comply with an enforcement notice or breach of condition notice could lead to prosecution proceedings in the Magistrates Court.
12. The Council does not object to the appearance of the balustrade or French doors. I have no reason to take a different view. Although the alterations are noticeable, they do not cause material harm to the visual amenities of the area. Provided that the disputed condition remains in place to prevent the use of the flat roofed part of the building as a roof terrace, there would be no grounds to justify a refusal of planning permission for the physical works.
13. I conclude that condition no 5 is reasonable and necessary in the interests of safeguarding the amenities of surrounding residential properties. The balustrade and French doors do not cause material harm to planning interests.

Other Matters

14. I have taken into account the concerns raised by local residents, including those relating to landownership, the cordoning off of an area of land and access for refuse collection. However, these matters are not directly relevant to the application and they do not alter my overall conclusions.

Conclusion

15. I will grant a new permission with a revised plans condition and restating those conditions which are still relevant, including the disputed condition relating to the use of the flat roof. The development is substantially complete and therefore the standard commencement condition and conditions relating to hours of work and contamination are no longer necessary.
16. Since it is unclear, based on the information before me, whether the external materials accord with the permission, I have reimposed the condition requiring the external walls and roof of the dormer extension and alterations to match those of the existing building. This will ensure that the Council is not prejudiced, should it need to pursue any breach of planning control in relation to this matter.
17. For the reasons given above, I conclude that the appeal should be allowed in part and dismissed in part.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans unless specified otherwise in a subsequent condition imposed on this decision notice.

Reference/Drawing Number	Version	Date Rec
PROP FIRST FLOOR PLAN	Drg 2 Rev A	15.05.2019
PROP ROOF PLAN	Drg 3 Rev A	15.05.2019
PROP REAR (SOUTH) ELEVATION	Drg 7 Rev A	15.05.2019
PROP WEST ELEVATION	Drg 8 Rev A	15.05.2019
LOCATION AND BLOCK PLAN		11.03.2019
EXTG GROUND FLOOR PLAN	Drg 1 Rev A	11.03.2019
EXTG FIRST FLOOR PLAN	Drg 2 Rev A	11.03.2019
EXTG ROOF PLAN	Drg 3	11.03.2019
EXTG SECTION A-A	Drg 4	11.03.2019
EXTG FRONT (NORTH) ELEVATION	Drg 5	11.03.2019
EXTG EAST ELEVATION	Drg 6	11.03.2019
EXTG REAR (SOUTH) ELEVATION	Drg 7	11.03.2019
EXTG WEST ELEVATION	Drg 8	11.03.2019
PROP GROUND FLOOR PLAN	Drg 1	11.03.2019
PROP SECTION A-A	Drg 4	11.03.2019
PROP FRONT (NORTH) ELEVATION 1	Drg 5	11.03.2019
PROP FRONT (NORTH) ELEVATION 2	Drg 5	11.03.2019
PROP EAST ELEVATION	Drg 6	11.03.2019
NORTH, WEST & SOUTH ELEVATIONS*		09.03.2021**

* This plan is approved only insofar as it shows the proposed balustrade and French doors. The increase in the height of the wall on the north (front) elevation does not form part of the permission.

** This is the date of application Ref AWDM/0409/21

2. The external walls and roof of the dormer extension and alterations hereby permitted shall, prior to commencement of use of the building, be completed to match those of the existing building.
3. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 as amended (or any Order revoking and reenacting that Order with or without modification), no windows or other openings shall be formed in the southern (rear) elevation (wall or roof slope) of the building.
4. The flat roofed part of the building shall not be used as a roof terrace at any time.
5. The premises shall be used only for offices (Use class B1a) as hereby approved and shall not be used for any other purpose without an application for planning permission first being made and granted.
6. Secure, covered cycle parking shall be provided prior to commencement of use of the offices hereby approved and shall thereafter be retained permanently solely for such purposes.

*** END ***