



Appeal Decision

Site visit made on 18 September 2023

by J Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 29 September 2023

Appeal Ref: APP/M3835/W/23/3316795

Pharos House, 67 High Street, Worthing, West Sussex BN11 1DN

- 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 Sidney Jay of Nextchoice Ltd against the decision of Worthing Borough Council.
 - The application Ref AWD/1157/22, dated 4 July 2022, was refused by notice dated 24 November 2022.
 - The development proposed is "Creation of four (4) flats (C3) formed of 3 x 2 and 1 x 1 bed units, facilitated by the erection of a second-floor mansard roof addition, modifications to the principle elevation and refuse/cycle provision."
-

Decision

1. The appeal is dismissed.

Main issues

2. The main issues are the effect that the proposed development would have on:
 - the character and appearance of the surrounding area,
 - the commercial, business and service use of the lower floors, and
 - the living conditions of the occupiers of Amelia Court, regarding outlook, daylight and sunlight, and privacy.

Reasons

Character and appearance

3. The roughly east facing 2 storey appeal building is prominently sited roughly south west of the roundabout junction of the High Street, North Street and Lyndhurst Road, within a key office location and in the town centre. The appeal building is situated between a mainly single storey supermarket to roughly north west and a single storey office building to roughly south. The mostly 2 storey listed building at Storm House and a detached bar/grill also lie to roughly south, the sheltered housing development arranged around the listed building at Amelia Court lies roughly west, and, on the opposite roughly east side of the busy High Street dual carriageway is another mostly single storey supermarket. The Little High Street Conservation Area lies to roughly north mainly beyond the busy North Street dual carriageway.
4. The detached mixed use appeal building, which includes a ground floor retail unit and first floor offices (both of which are now within use Class E) is set back from, and a little above the level of, the High Street in its shallow landscaped grounds. The parking court at the back of the appeal building is reached through the adjoining supermarket car park.

5. The mostly hipped roofed modern but classically styled appeal building includes a lower central gabled front staircase outshoot with a porch. The proposal would include a steeper pitched sided and flat topped 'mansard' roof with dormers on all sides, which would be about as tall as the existing hipped roof, an inset roof terrace edged by a balustrade on its flat roof, and a taller pitched roofed staircase outshoot, which would give access to the second floor flats, and to the roof terrace above them.
6. Due to its considerable bulk, steeply sloping sides, prolific bulky dormers, much taller and more prominent staircase turret, and roof top balustrade, the proposal would be an unacceptably discordant addition to the appeal building. Whilst the mostly 3 storey scale of the extended appeal building would respect the scale of the nearby part of Amelia Court, it would be harmfully at odds with the other mostly 2 storey or single storey buildings close by. The tall staircase turret would be a dominant and incongruous feature in the nearby street scenes. As the windows in the dormers would be about as large and as many as those within the first floor, and their surrounds would add to their bulk, the upper floor fenestration would unacceptably damage the appeal building's balanced proportions and ordered composition.
7. Most outdoor seating areas associated with nearby buildings including public houses are sited at around ground level. However, as the occupiers and the associated paraphernalia on the terrace, such as tables, parasols, seating, and planters, would be seen above and through the roof top balustrades, the roof terrace would be a harmfully dissonant feature in the views along and around the nearby streets, including North Street and both parts of the High Street. Moreover, due to its siting by the pavement, and the loss of planting that it would cause, the bin store would be an unsightly feature in the High Street street scene. For all of these reasons, the proposal would be unacceptably harmful to the local character, and to the sense of place.
8. The listed building at Amelia Court is largely screened from the appeal building by the taller more recent development within its grounds, but the appeal building can be seen beyond its grounds from the back of the listed building at Storm House. Due to the relationships between these listed buildings and the proposal, and as their wider settings would be expected to change to some extent over time, their settings would be preserved. The proposal would be seen in southward views from the Conservation Area, but it would not be within an important vista, such as those along the residential streets adjacent to the Conservation Area that are referred to in the Council's Conservation Area Appraisal. Due to the proposal's scale and distance from the Conservation Area and its relationships with its surroundings, which would reasonably be expected to evolve over time, it would not harm the setting of that heritage asset. So, the proposal would satisfy Policy DM24 of the Worthing Borough Council Local Plan 2020-2036 (LP) which aims to conserve the settings of heritage assets. However, these findings do not overcome the harm identified above.
9. Therefore, I consider that the proposal would harm the character and appearance of the surrounding area. It would be contrary to LP Policy DM5 which seeks high quality design and respect for context, and advice in the Worthing Borough Council Guide to Residential Development Supplementary Planning Document (SPD). It would also be contrary to the National Planning Policy Framework (Framework) which aims to achieve well-designed places and which seeks sympathy for local character.

Commercial, business and service uses

10. People choosing to occupy second floor flats within the town centre would reasonably expect to experience more noise and disturbance than those living in suburban areas. Moreover, as the proposal would be car free, the future occupiers would be likely to walk to nearby shops and services, and so they would be likely to contribute positively to the vitality and viability of the centre.
11. Whilst residential and commercial uses in the same building are not unusual in mixed use or town centre locations, each use or unit usually includes independent access from the public domain. So, the existing separate ground floor retail and first floor office uses in the appeal building are reached independently by ground floor doors and the separate ground floor entrance into the staircase hall respectively, and access by members of the public to each part is under the control of each occupier. As the occupiers of the first floor and the proposed flats would need to share the same access from the public domain, the proposal would detract from the attractiveness of the existing commercial, business and service floorspace.
12. Moreover, as the existing uses in the ground and first floors now fall within use Class E, there is greater potential than before for members of the public to have access to the shared staircase at any time. Because the occupiers of the flats would not have access to their homes that would be separate from the use Class E occupiers and their visitors from ground floor level, which would be visible from the public domain or at least audible from it, they would not have reasonably safe and independent access to their homes. So, whilst secure access to the flats could be achieved from first floor level or above, due to the fear of crime occurring within the staircase hall, some occupiers could, at times, feel trapped in their homes or reluctant to return to them. As existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established, a condition seeking to restrict the use of the lower floors to the former use Classes could not reasonably be imposed.
13. The residential use of the flats and the roof terrace could also conflict with, say, the plant, equipment and extract requirements of a business within use Class E operating on a lower floor or floors. So, the proposal could unacceptably diminish the attractiveness of the lower floors to the range of Class E users, and that could, at times, leave that floorspace unoccupied. So, the proposed flats would amount to an agent of change, to the detriment of the vitality and viability of the centre.
14. As the site is overlooked by existing development, the potential for improved passive surveillance from the proposed flats attracts little weight. Moreover, the appellant's suggested conditions for entry control, compliance with Secured by Design principles, and noise insulation, would not overcome the harm that the proposal would cause to the viability of the Class E uses in the lower floors.
15. Thus, I consider that the proposal would harmfully conflict with the commercial, business and service use of the existing building. It would be contrary to LP Policy DM2 which aims to achieve the optimum density of development, LP Policy DM11 which seeks to protect key office locations, LP Policy DM13 which seeks to support the vitality and viability of the centre, guidance in the SPD, and the Framework which aims to support the role that town centres play at the heart of their communities.

Living conditions

16. Amelia Court is a retirement development, so some nearby occupiers may spend much of their time in their homes, and some of the flats there may be single aspect. Even so, due to the tall intervening wall, the partial screening effect of the trees within the grounds of Amelia Court, which would be likely to vary throughout and over the years, and the distances and relationships between the proposal and the east facing windows in the nearby Amelia Court flats, the proposal would not be so overbearing or so oppressive that it would harm the neighbouring occupiers' outlook. Also, having regard to their orientation and the relationships between them, the proposal would not cause an unacceptable loss of daylight or sunlight in the nearby Amelia Court flats, or in their nearby grounds.
17. As the appeal building and Amelia Court are situated within an urban area, some degree of mutual overlooking between neighbouring dwellings would reasonably be expected. So, due to the distances and relationships between the east facing windows in the nearby Amelia Court flats and the proposal's west facing windows, the overlooking that could occur would not cause an unacceptable loss of privacy for the occupiers of the nearby Amelia Court flats. Moreover, as the balustrade would be set back from the upper edge of the steeply sloping roof, the overlooking that could occur from the terrace would not be likely to harm the nearby occupiers' living conditions at Amelia Court.
18. Thus, I consider that the proposal would not harm the living conditions of the occupiers of the nearby flats at Amelia Court, regarding outlook, daylight and sunlight, and privacy. It would satisfy LP Policy DM5 which aims for development to not have an unacceptable impact on the occupiers of adjacent properties, guidance in the SPD, and the Framework which seeks a high standard of amenity for existing and future users. So, this issue attracts neutral weight in the planning balance.

Other matters

19. The most recent Housing Delivery Test indicates that the delivery of housing within the Borough was substantially below (less than 75% of) the housing requirement over the previous 3 years, so Framework paragraph 11 d) is relevant. The proposal aims to make the best use of the site within an accessible urban area, and its other benefits would include 4 welcome new homes and jobs during construction. However, as the harm identified in my first 2 main issues would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, planning permission should not be granted.

Conclusion

20. I have found that the proposed development would be contrary to the Development Plan when taken as a whole. The other considerations in this case, including the Framework, do not outweigh that conflict.
21. For the reasons given, the appeal should be dismissed.

J Reid

INSPECTOR