

PLANNING APPEAL STATEMENT

JANUARY 2020

SITE: 77 ALDWICK ROAD, BOGNOR REGIS, WEST SUSSEX, PO21 2NW

PROJECT: PART CHANGE OF USE OF GROUND FLOOR & FORMATION OF A FIRST FLOOR REAR EXTENSION TO CREATE 2 NO SELF-CONTAINED STUDIO FLATS WITH ASSOCIATED REFUSE / RECYCLING & CYCLE STORE (RE-SUBMISSION FOLLOWING BR/63/18/PL)

CLIENT: MR SIMON ROYALL

LPA / REF: ARUN DISTRICT COUNCIL / BR/233/19/PL

1.0 INTRODUCTION

- 1.1.1 We have been instructed by the appellant, Mr Simon Davis, to prepare and submit this appeal against the decision of the Local Planning Authority to refuse planning permission for the erection of a first floor extension and the conversion of an existing ground floor extension to form 2no self-contained residential flats.
- 1.1.2 The application to which the appeal relates was lodged with the Local Planning Authority on 08 August 2019 and validated on 28 October 2019 on receipt of a completed s.106 agreement, which put in place the Access Management Contribution towards Pagham Harbour. The application was determined on 19 December 2019.
- 1.1.3 The planning application was submitted with a detailed planning / design and access statement that accompanied a complete pack of application drawings. The application was also accompanied by a Biodiversity Checklist and Local Validation Checklist. These documents are appended to the appeal form.
- 1.1.4 Our planning statement for the application noted that there was an earlier refusal of planning permission on the site (BR/63/18/PL). This sought permission for three flats on the site, and differed from the appeal scheme by the addition of a top floor flat in a second floor extension. This application was refused planning permission for the reasons set out in paragraph 2.2.3 of our application planning statement. The refusal was issued on 06 July 2018.
- 1.1.5 There was no material changes in site circumstances between when the previous decision to refuse planning permission in 2018, and this application being lodged and determined. There was however, a change in the development plan very shortly after the 2018 decision was issued, with the Arun Local Plan 2011 – 2031 being adopted on 18 July 2018.
- 1.1.6 Furthermore, shortly after the decision on the earlier 2018 application, and post adoption of the Arun Local Plan on 18 July 2018, the government published the revised NPPF on 24 July 2018 (subject to later amendments). Therefore, whilst the circumstances of the site remained

unchanged leading up to the application the subject of this appeal, there was a considerable change in the development plan and government's planning policy.

- 1.1.7 On 17 December 2019, two days prior to the application now the subject of this appeal being determined by the Local Planning Authority, the Council published its Annual Monitoring Report (AMR) for 2018-19 (**Appendix A**). Of relevance to this appeal, is section 13 of the AMR, which provides the Local Planning Authority's assessment of their current housing land supply position. It is noted that the report confirms that the authority has a 3.7 year supply.
- 1.1.8 For the avoidance of any doubt therefore, paragraph 11(d) of the NPPF is firmly brought into relevance within this appeal, and the presumption in favour of sustainable development is applied to the effect that permission should not be refused unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits. Whilst the officer's report is not entirely accurate or cogent in terms of the implications of paragraph 11(d), we note that officers are now accepting of the tilted planning balance against which this appeal scheme needs to be considered.

2.0 PLANNING POLICY UPDATE

- 2.1.1 Having in mind the above clarification in respect of the position of the Local Planning Authority resulting from their evidenced housing land supply deficiency, and with the obvious ramifications in mind for those policies that restrict the supply of housing, for which we would identify policies SD SP1A, SD SP2 and H SP1 of the Arun District Local Plan (ADLP), it is not considered necessary to consider any further detail the planning policy position. Our planning statement submitted with the application sets out the relevant policies for the purposes of the consideration of this appeal, and there has been no significant adjustments in the governments published planning policy since the end of last year.

3.0 UNREASONABLE GROUNDS FOR REFUSAL

- 3.1.1 The appellant has referred in section 1.0 above to an earlier planning application that was submitted and determined by the Local Planning Authority (BR/63/18/PL). That application was identical to the current appeal scheme with the exception of a second floor extension that provided the floor space for a third (no.) studio flat.
- 3.1.2 In order that the Inspector can fully understand the similarities between the 2018 and 2019 applications, we attach a full set of the plans for the earlier 2018 scheme in **Appendix B**, and we trust that these can readily be compared with the plans under this appeal. The Inspector will note that the only substantive change between the appeal scheme and the earlier 2018 scheme is the removal of the second floor extension (i.e. the proposed scheme has been reduced in height through the removal of the formerly proposed top floor extension).
- 3.1.3 It is a point of common sense that it is not possible for a smaller extension (within the same siting and location, and with no other changes in site circumstances) to have a greater impact on a neighbouring property than a larger extension that preceded it. The Inspector will note from a comparison of the plans that this is what has occurred in this instance. The proposal submitted and refused under the 2018 application, has been reduced in height, size and scale and re-submitted under the appeal scheme, but has been refused for having a greater impact.

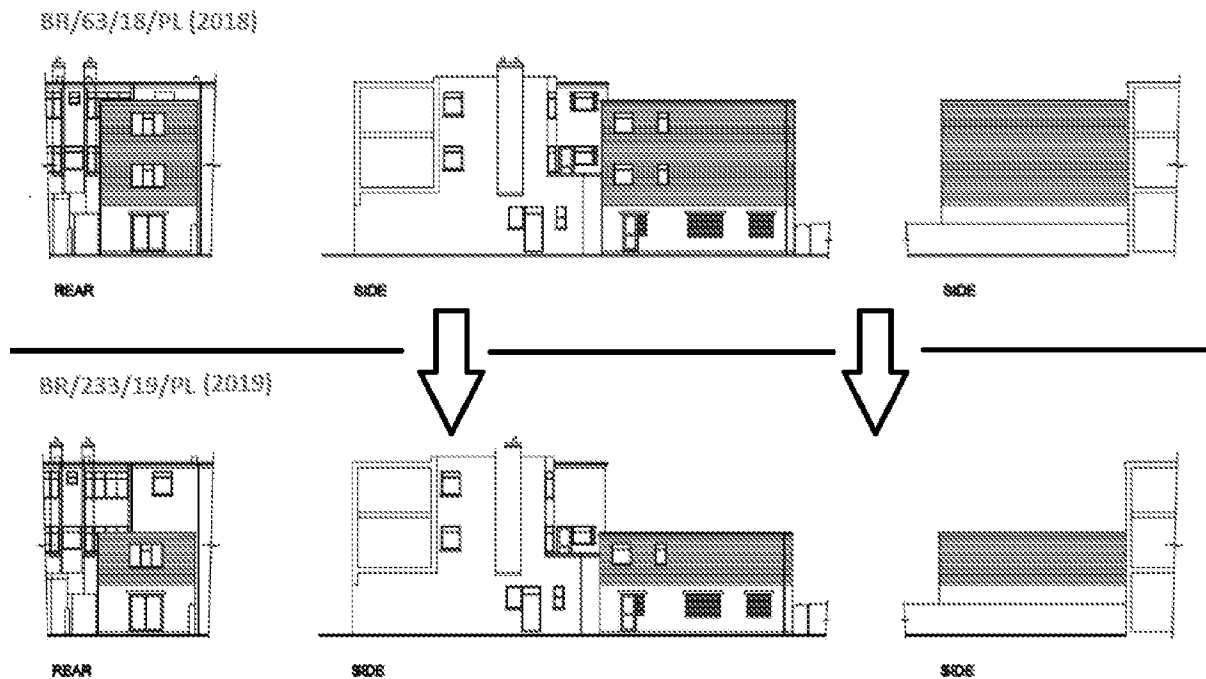
- 3.1.4 Notwithstanding this reduction in the size of the proposed extension when compared with the 2018 application, the Local Planning Authority has introduced new grounds for refusal which allege that the harm to be caused by the appeal scheme would be different and greater than they alleged in their earlier decision in 2018. Most notably, the differences between the 2018 and 2019 decisions relate to the impacts on daylight, overbearing impact on no.77 Aldwick Road, and the overlooking of 14/16 Stocker Road.
- 3.1.5 Specifically, we set out the differences in the decisions in the following table:

Fig.1

BR/63/18/PL (2018)	BR/233/19/PL (2019)	Changes in LPA's Case
1. The scale of the proposed two additional floor extension to the rear of 77 Aldwick Road will result in an overbearing impact on - and loss of outlook to the amenity of the existing windows of residential flats in the rear of 73-75 Aldwick Road to the east and 79 Aldwick Road to the west. In addition, there will be a harmful loss of sunlight and overshadowing of the two large residential windows on the closest part of the rear of 79. The proposal is therefore contrary to policy GEN7 of the Arun District Local Plan; the National Planning Policy Framework; and policies DDM1 & DDM4 of the Arun Local Plan 2011-2031 Publication Version showing Modifications	1. The height and scale of the proposed additional first floor extension to the rear of 77 Aldwick Road will result in an overbearing impact on, and loss of outlook to, the amenity of the existing windows of the first floor residential flats in the rear of 75 - 79 Aldwick Road. In the absence of a full BRE sunlight/daylight study there Local Planning Authority has not been satisfied that there will not be a demonstrable harmful loss of sunlight/daylight to neighbouring residential properties. The proposal is therefore contrary to policies D SP1, D DM1, D DM2 and QE SP1 of the Arun Local Plan and the National Planning Policy Framework.	The differences to reason for refusal 01 are as follows: 1. A loss of daylight (or lack of evidence to demonstrate that there would not be a loss of daylight) was not part of the reason upon which the 2018 scheme was refused permission. However, the 2019 application was refused on the grounds of a loss of daylight to nos. 75-79 2. The 2018 application was only refused on the grounds of a loss of sunlight to two specifically identified windows on no 79. The appeal scheme was refused on the grounds of a loss of sunlight (or lack of evidence to demonstrate that there would not be a loss of sunlight) to an unspecified number of windows on more than one neighbouring property (i.e. plural).

		3. The LPA did not require a BRE sunlight / daylight study in the 2018 scheme, whereas the non-provision of the BRE study was included as a reason for refusal in 2019. 4. The 2018 application was not refused for an overbearing impact and loss of outlook on no.77 Aldwick Rd. The 2019 application was refused on the grounds of an overbearing impact and loss of outlook on the windows of no.77.
2. The new first and second floor studio windows will look out towards the rears of Nos. 10 & 14/16 Stocker Road at a distance of only around 8.8m. This will result in a loss of privacy to number 10's private residential garden and the proposal is therefore contrary to policy GEN7 of the Arun District Local Plan; the National Planning Policy Framework; and policies DDM1 & DDM4 of the Arun Local Plan 2011-2031 Publication Version showing Modifications	2. The new first floor studio apartment window on the southern elevation of the building will look out towards the rear private amenity spaces of nos. 10 and 14/16 Stocker Road at a distance of around 8.8m. In the absence of requested sight line sections/diagrams the proposal will result in a loss of privacy to the adjacent amenity spaces of nos. 10 and 14/16 Stocker Close; contrary to Policies D DM1, D DM4 and QE SP1 of the Arun Local Plan and National Planning Policy Framework.	The difference to reason for refusal 02 is as follows: 1. The 2018 application was only refused on a harmful impact arising from the loss of privacy to 10 Stocker Road. The 2019 application was also refused on a harmful impact arising from the loss of privacy to 14/16 Stocker Rd (as well as no. 10).

Fig. 2



- 3.1.6 The image above (fig.2) shows extracts taken from the proposed elevations of the refused scheme the subject of application reference BR/63/18/PL (top), and the proposed elevations of the refused scheme the subject of this appeal (bottom). It is trusted that these elevations clearly show the differences in height, scale and position of the extension in the respective applications. It is also evident on the rear elevations where the proposed windows were to be inserted in the respective applications.
- 3.1.7 The appellant contends that it was clearly wrong and unreasonable behaviour for the Local Planning Authority to refuse the latter application (appeal scheme) on the grounds of a loss of daylight, an overbearing impact on no.77 Aldwick Road, and harm by reason of overlooking 14/16 Stocker Road, when these were not within the reasons upon which the Local Planning Authority refused permission in the earlier (2018) application. It is clear from these elevations that the proposed development has been decreased in height, size and scale since 2018.
- 3.1.8 It has long been established in case law that previous planning decisions can be a material planning consideration for the determination of an application. This largely reflects the need for Local Planning Authorities to provide consistency in their decision making, and therefore effect the proper consideration of applications and maintain a quality to their decisions. The reasoning for a need for consistency in decision making is explained within the judgement of Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137, and we specifically refer to the following statement:

“One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency [...]. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system.”

- 3.1.9 Furthermore, and whilst the matter is also addressed within section 4.0 of this appeal statement, we would ask the Inspector to note the significant lowering of the height of the proposed extension in respect of the flats within the main building. In the 2018 application, the Local Planning Authority determined that there would be no adverse loss of daylight as a result of this first and second floor extension, and they came to this assessment without needing a BRE daylight and sunlight study. Since then, the appeal scheme has had a whole storey removed, and is now only a first floor extension. Notwithstanding this reduction in height, the Local Planning Authority has now stated that it cannot determine that the application would not result in an adverse loss of daylight without the use of the aforesaid BRE study. This is plainly a contradictory and unreasonable position to adopt.
- 3.1.10 Similarly, whilst 14 / 16 Stocker Road was referred to in reason for refusal 02 on the 2018 refusal of planning permission, it is evident that their reference was only as a means by which to identify the boundary and approximate position of neighbouring properties. The reason for refusal was very careful to define the only harmful impact as being attributed to the overlooking of the private garden amenity area of no.10. This is not a mistake in the 2018 refusal, but is a conscious decision of officers, because the area to the rear of 14/16 Stocker Road is the car parking area serving the larger property which is split into flats. There would be no harm associated to the overlooking of a parking area.
- 3.1.11 Whilst the appellant recognises that there has been both a change in the development plan and the government’s policy in the NPPF since the 2018 decision was issued, this has not materially worsened the impact that the proposed development would have on neighbouring properties, and has not put in place any policies that are more rigorous and which apply a lower threshold for the amount of harm that would justify a refusal of permission. Indeed, the new additions to the NPPF under section 11 (making effective use of land) has only had the effect of heightening the level of harm needed to justify a refusal of permission (paragraph 123.c) where the application of policies and guidance would inhibit making the efficient use of a site. The policy shift cannot be used to explain the inconsistency in decision making.
- 3.1.12 The appellant has made a separate costs application as the Local Planning Authority’s actions in respect of the above elements of the refusal reasons seems to amount to a *prima facie* case of unreasonable behaviour that has put the appellant to unnecessary time and costs at appeal. This is a substantive costs application for a partial award. The reason for these matters also being discussed within this section of our appeal statement is because the consistency of decision making, or lack thereof, is a material consideration for this appeal.

4.0 THE APPELLANT'S CASE

4.1 INTRODUCTION

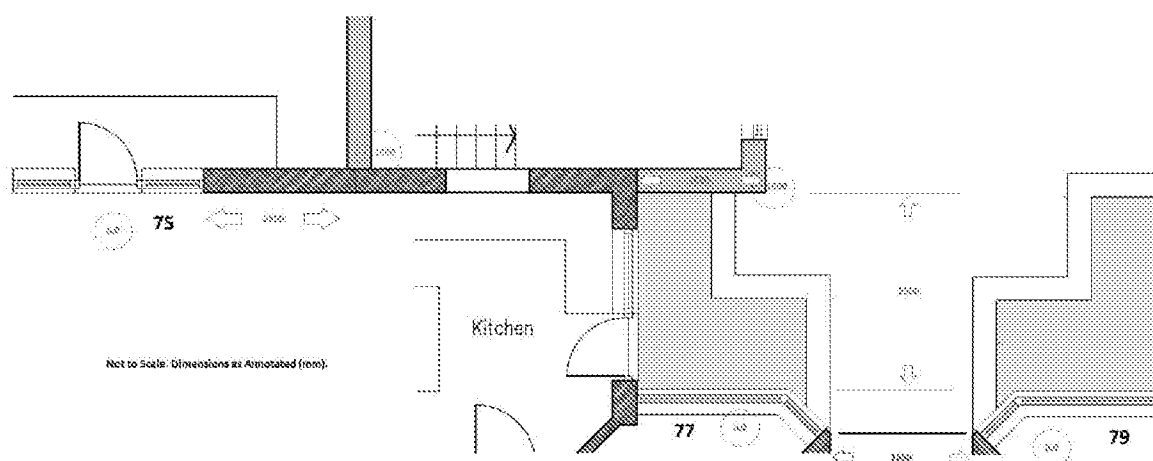
- 4.1.1 We have set out in our section 3.0 above that the Local Planning Authority's decision on application ref: BR/63/18/PL is a material consideration to this planning appeal. This is for the reason that there is very little difference between the refused scheme then, and the appeal scheme now, with the exception of a reduction in the height, size and scale of the proposed extension (and the consequential loss of one dwelling unit). Furthermore, whilst there have been changes to the development plan and NPPF in the intervening period of time, these have not changed the level of assessment required on this application against matters relating to amenity. Moreover, section 11 of the NPPF has sought to place a significant emphasis and shift of weighting onto making a more efficient use of previously developed land.
- 4.1.2 The proposed scheme now the subject of this appeal was predicated on overcoming the grounds for refusal in the 2018 application. The appellant carefully reviewed these reasons for refusal before submitting application BR/233/19/PL, and made changes to the proposed scheme that would overcome the reasons stated in the decision notice. The appellant did not appreciate however, that the Local Planning Authority would go beyond the limitations of their earlier refusal, and add different and additional objections against the new scheme. The appellant now finds himself in the position of having to justify the appeal against two sets of reasons for refusal, namely:
- (a) **The proper refusal reasons.** These are the refusal reasons from BR/63/18/PL for which the Local Planning Authority remain unconvinced that they have been satisfactorily overcome.
 - (b) **The *ultra vires* refusal reasons.** These are the refusal reasons attached to the latest decision (i.e. the appeal scheme), which are tantamount to being *ultra vires* because they represent new reasons not raised in the 2018 decision. For clarity, the (b) reasons are set out in the third column of the table in **Fig. 1** (section 3)
- 4.1.3 Under (a), the appellant in no way accepts that the Local Planning Authority's case against the appeal scheme was correct in terms of the planning merits of their argument, however it is accepted that they were entitled to come to such a decision and refuse permission. Under (b), the appellant strongly asserts that the Local Planning Authority was not correct in terms of the planning merits of their argument, and furthermore contends that they were not entitled to come to such a decision on these matters.
- 4.1.4 In the latter case, we ask that the Inspector set aside the Local Planning Authority's reasons under (b) (see third column, **Fig 1** above), for the decision on BR/63/18/PL is of such a weighty material consideration that to allow any further consideration of the Local Planning Authority's case in this regard, would be to fail to consider the applications "*in a like manner so that there is consistency*" and would risk undermining "*securing public confidence in the operation of the development control system*" in the words of the judgement of Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137.
- 4.1.5 It is on the above basis that we hereby set out the appellant's grounds for appeal in full. Our grounds are made on the premise of primarily addressing the reasons coming under (a) - see paragraph 4.1.2 above. We have also sought to respond to reasons (b), however as above, we ask that these matters be set aside or given no weight.

4.2 REASON FOR REFUSAL 01

(i) **Overbearing Impact and Loss of Outlook**

- 4.2.1 The first part of the first reason relates to the alleged impact that the development would have on the neighbouring properties by reason of being both overbearing and resulting in a loss of outlook. Specifically, the reason for refusal identifies harm caused by the impact of the development on the windows of 73, 75 and 79 Aldwick Road (please note that no.77 and the terrace areas are not included here for they were not refused under the 2018 application).
- 4.2.2 We have provided a full set of plans for the appeal scheme under separate cover, however for the purposes of clarity within this statement, we have provided figure 3 below. Figure 3 shows a dimensioned plan with the proposed extension shaded in purple and the windows of 75 and 79 Aldwick Road in blue. The plan also shows in green and circled the height of the proposed extension when taken from the datum point of 0.0 which has been set at the internal finished floor level of the relevant flats. It can be seen that the highest point of the proposed extension will sit 1.8m above the internal floor level of the flats at nos. 73 - 79. The latter can be seen on the section / elevation through the main building on drawing ref: 1357/P03 Rev C.

Fig.3



- 4.2.3 The matter for consideration is therefore whether a first floor extension in its intended location is going to have an overbearing impact and loss of outlook on the internal living conditions of 73, 75 and 79 Aldwick Road. The proposed extension is positioned over 3.0m to the nearest window of no.79 Aldwick Road, and is 2.3m from the nearest point of the rear facing window on no.75 Aldwick Road.
- 4.2.4 We have not considered the impact on no.73 for the nearest window to this property is located some 7-8m from the proposed extension, and the minimal height of the development above internal finished floor level at 1.8m is simply not going to have any discernable overbearing impact or loss of outlook from that distance. It is noted that the Local Planning Authority has not included no.73 in the refusal reason on the appeal scheme and so presumably agrees that this property is now not going to be impacted.
- 4.2.5 The appellant recognises that there is no definition of an overbearing impact or loss of outlook either in planning legislation or in a policy of the development plan. However, whilst the

terminology is evidently subjective to a degree, for it to form a reason for refusal against a development there is an expectation that it must be a reasonably held and evidenced belief.

- 4.2.6 There is no local guidance document or design guide for which the appellant or the Local Planning Authority can refer, and which provides a useful description of overbearing impacts and loss of outlook. To provide some degree of objectivity to the consideration of these matters, we have therefore sought to provide useful proxies from alternative sources. In doing so, the appellant notes the following guidance within the BRE guidance document '*Site Layout Planning for Daylight and Sunlight*', *A guide to good practice, Second Edition*:

5.2.1 *At the site layout stage in design the needs for view and for daylight rarely conflict; an open, well daylight layout will usually provide reasonable views.*

- 4.2.7 Whilst the right to a view is not usually held up to be a material planning consideration, a common dictionary definition of outlook has similar connotations. It is the ability for a person to be able to look out at something, and when combined with the material consideration that is an overbearing impact, it is the ability to look out at something without having an overbearing or dominant structure that would impair one's view or outlook. The above paragraph 5.2.1 of the BRE guidance is therefore useful in terms of assimilating the ability to have a view or outlook, as the same ability for one to receive sufficient daylight.
- 4.2.8 As described in more detail within sub-section (ii) below, the BRE guidance uses the 25 degree test for assessing whether there is likely to be an adverse impact on daylight affecting a conventional window design. The 25 degree test is designed to operate by taking either a point 2m above the internal finished floor level, or the centre point of an 'affected' window, and ensuring that any development falls underneath a 25 degree vertical line above the horizontal. In the case of the proposed development, the 25 degree daylight test is readily passed in both scenarios, and there is no adverse impact on daylight to neighbouring windows.
- 4.2.9 This is also evident just by considering the height of the structure and the point at which the 25 degree line is drawn (i.e. the 25 degree daylight line is drawn at 2m above finished floor level whereas the proposed extension is only 1.8m above the finished floor level). This factor, when taking into account a separation distance of 2.3m and 3.0m to the nearest windows of 75 and 79 Aldwick Road, make it abundantly clear that there could not be an adverse impact on daylight. Therefore, having regard to paragraph 5.2.1 of the BRE guidance, it is unlikely that there is going to be a loss of a view (or outlook) arising from the appeal scheme.
- 4.2.10 According to the latest ONS data, the average height of men and women in the UK is 1.753m (5ft 9in) and 1.616m (5ft 3in) respectively. Carrying out a crude mean average of these two figures provides a height of 1.68m (5ft 5in), and with an eye height of between 50mm and 100mm less the height of a person, we can take an average eye height position of say 1.6m above the internal finished floor level. When compared with the height of the proposed extension from the same finished floor level, the difference between eye height and the top of the extension 0.2m (200mm). This is hardly overbearing even at a close proximity, however the proposed extension is not positioned at a close proximity but is some metres distant.
- 4.2.11 The distance between the proposed extension and the nearest point of the window of no.79 is 3.0m, and the nearest point of the window at no.75 is 2.3m from the proposed extension, albeit one would not be able to see the nearest point of the extension at 2.3m because this is on the same wall as the window. It is for this reason that an oblique view from the window of no.75 is only likely to see the proposed extension at a distance of 3m (taken on a diagonal line from a horizontal plane). Allowing for the set-back of a person standing within the room (i.e. taking into account the width of the window cill and wall), the actual separation distance between the person to be affected within the rooms of nos. 75 and 79 and the nearest point of the proposed development, is likely to be in the region of 3.3m.

- 4.2.12 To clarify therefore, the proposed development seeks to position a section of wall 1.8m high at a distance of no less than 3.3m from the alleged affected occupants of nos. 75 and 79. In addition, the proposed extension would be no more than 0.2m above the average person's eye height, meaning the difference is a height of 0.2m over a separation of no less than 3.3m. It is very difficult to understand let alone agree with the Local Planning Authority's position that this difference in height is so significant as to render the appeal scheme as being overbearing and resulting in a loss of outlook to the windows of nos. 75 and 79 Aldwick Road.
- 4.2.13 We have also clarified in figure 3 that the extent of the proposed wall running parallel to the window of no.79 (i.e. the offending section) is only 1.6m long, and it is off-set to the east and is therefore not in a direct line of sight out of the window of no.79. The total surface area of the visible wall from the window of no.79 is 2.88m². Set against the whole outlook from the aperture of no.79, an off-set structure with an area of 2.88m² simply cannot reasonably be considered to represent an overbearing impact or loss of outlook.

(ii) Absence of a BRE Daylight and Sunlight Study

- 4.2.14 Notwithstanding the fact that the previous application (BR/63/18/PL) was dealt with by the Local Planning Authority without a BRE compliant daylight and sunlight study, officers were able to come to a decision that the two storey extension would not have an adverse impact on neighbouring residential properties in terms of daylight. The development has been reduced in height, and instead of confirming the same position again, the Local Planning Authority has sought to introduce a potential loss of daylight as a new reason.
- 4.2.15 The appellant submitted the application leading to this appeal having due regard to the contents of the Local Planning Authority's Local Validation Checklist (see **Appendix C**). This does not require or even mention the need for a BRE compliant daylight and sunlight study. It is not therefore seen how procedurally, the Local Planning Authority could have required one to be produced during the course of the application. Practically, the appellant also does not understand how the BRE daylight and sunlight study could have been required, as it is very clear that the application would not result in any significant loss of daylight. This is laid out under paragraph 2.1.21 of the BRE guidance document '*Site Layout Planning for Daylight and Sunlight*', *A guide to good practice, Second Edition*:

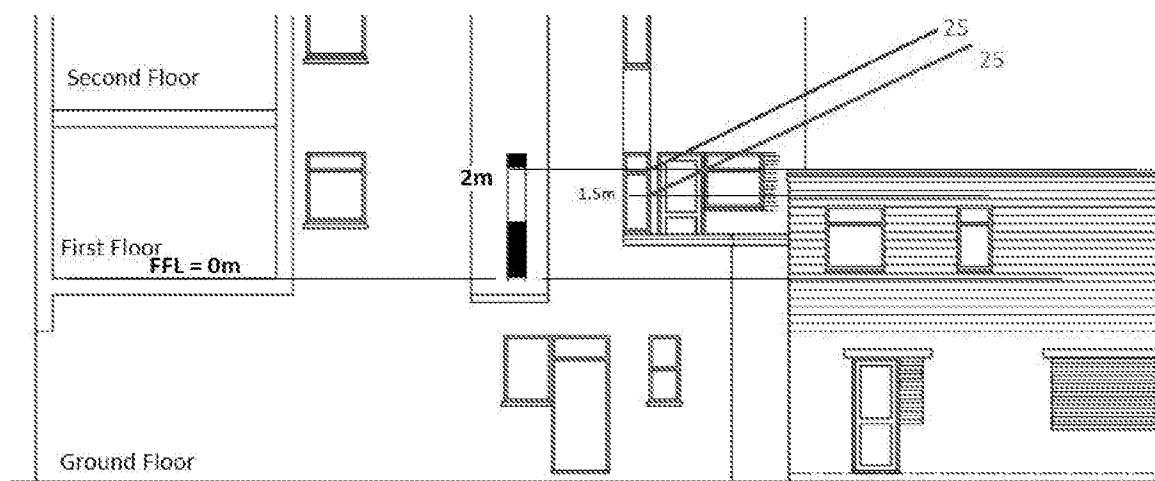
2.1.21 When applying the 25 degree test, the following BRE guidance and recommendations apply:

- *less than 25°, conventional window design will usually give reasonable results.*
- *between 25° and 45°, special measures (enlarged windows, changes to room layout) are usually needed to provide adequate daylight.*
- *between 45° and 65°, it is very difficult to provide adequate daylight, unless very large windows are used.*
- *more than 65°, it is often impossible to achieve reasonable daylight, even if the whole window wall is glazed.*

2.2.5 If this angle is less than 25° for the whole of the development then it is unlikely to have a substantial effect on the diffuse skylight enjoyed by the existing building.

- 4.2.16 The Local Planning Authority must have been conversant with the above paragraph of the BRE guidance for the same extract was included in an e-mail from the agent to officers dated 04 December 2019. Indeed, to refuse permission on the grounds that a BRE compliant daylight and sunlight study is required to support the application, would presuppose the fact that officers must have some understanding of the BRE guidance first and foremost, and that they would also understand the importance of the above paragraphs for determining whether or not there is likely to be an impact, and therefore whether the report was actually needed.
- 4.2.17 In terms of the likely impacts of the proposed development on neighbouring properties, during the course of the application, figure 4 below was prepared and sent to officers under cover of the aforementioned agent's e-mail dated 04 December 2019. The illustration shows a section through the building that shows the finished floor level at first floor, the rear facing window of no.77, and the proposed development. It can be noted that we have drawn the 25 degree lines from a point 2m and 1.5m (centre) above finished floor level. In both cases, the proposed extension falls well underneath the 25 degree line, and this is a very strong indication that sufficient daylight will still reach the rear window of no.77.

Fig. 4



- 4.2.18 It should be noted that the 2018 application was not refused on the grounds of an adverse loss of daylight to the rear window of no.77, moreover this was only added into the later refusal reason on the 2019 planning application. The above diagram shows that there would not be a loss of daylight to the rear facing window of no.77 even were the matter to be re-considered in this application. Clearly however, if the closest window to the development at no.77 is not to be adversely affected, it is certain that those off-set windows further away from the proposed development (for which we refer to those of nos. 75 and 59) are not going to be affected by a loss of daylight.
- 4.2.19 The Local Planning Authority contends that there maybe a loss of sunlight arising from the proposed development. As the terrace areas have not ever been mentioned within a reason for refusal (in 2018 or 2019), this can only mean a loss of sunlight to the windows of nos. 75 and 79 (or even no.77 if taken from the latest reason for refusal 01). Having regard to the above section drawing in figure 4, the top of the proposed extension is lower than the head of the first floor window to no.77, and is only 0.5m above the centre point of the window. It is therefore self-evident that at least some sunlight will be received by the window.

- 4.2.20 It is common knowledge that on the winter solstice (21st December), in the south of England, the sun has a maximum elevation of 15 degrees above the horizon (12:00 noon). It will stay above 11 degrees between 10:00 and 14:00. By means of reference, the top of the extension is at 12 degrees elevation from a centre point on the rear facing window of no.77. The extent of the wall facing nos. 77 and 79 is only 1.6m in width, and there is no development or obstruction to the west of the proposed extension.
- 4.2.21 It therefore follows that even on the winter solstice when the sun is lowest in the sky, it would still provide direct sunlight through the top half of the rear facing windows on nos. 77 and 79 (above 1.5m), and as the sun moves along its path and around the western side of the proposed extension, it would provide direct sunlight until much later in the day. The rear windows of nos. 77 and 79 would be largely unaffected by the proposed development in terms of the level of sunlight that they enjoy. In terms of no.75, and taking the winter solstice into account again, this would have uninterrupted sunlight for all of the morning up to around 15:00 when the sunlight would drop below the roof of the proposed extension. Even then, the sunlight levels would only start to drop for the lower sections of their rear facing window.
- 4.2.22 The criteria below relate to the BRE guidance on sunlight levels. It can readily be seen from the above analysis that the low height of the top of the extension when compared with the higher positioned habitable room windows in the host building, means that there would not be a significant reduction in sunlight arising from the appeal scheme. It is contended that even without this assessment, it should have been readily evident to officers that there would not be a significant adverse impact on sunlight to the rear facing windows of neighbouring properties, and that a BRE compliant report was certainly not needed to inform the same.

3.1.15 In general a dwelling, or non-domestic building which has a particular requirement for sunlight, will appear reasonably sunlit provided:

- *at least one main window wall faces within 90 degrees of due south;*
- *the centre of at least one window to a main living room can receive 25% of annual probable sunlight hours, including at least 5% of annual probable sunlight hours in the winter months between 21 September and 21 March.*

4.3 REASON FOR REFUSAL 02

(i) Impact on 10 Stocker Road

- 4.3.1 It is noted that policy D DM4 of the Local Plan does not contain any specific requirement for a separation distance between an extension or new residential development and a neighbouring boundary. In the case of the appeal scheme, there will be a first floor window positioned 8.7m from the rear boundary, the majority of which forms the division between what will be the communal garden space of the proposed development and the car park which presently serves 14/16 Stocker Road. A smaller proportion of the rear boundary is shared with 10 Stocker Road, albeit owing to the orientation of the proposed development and the widening angle of the plots from east to west, the rear elevation and window of the proposed scheme will face more towards the south-west and away from 10 Stocker Road. Figure 5

provides an illustration of the current arrangement of the neighbours, and the proposed development as it will be laid out on the site in accordance with the proposed plans.

Fig. 5



- 4.3.2 Whilst the separation distance from the proposed first floor window to the rear boundary is 8.7m, it is evident from the above layout plan (and as measured from the location plan), that the total distance between the window and the rear elevation of 10 Stocker Road is 30m. This is a considerable separation gap having in mind that the proposal is only for a first floor extension, and neighbouring property at 10 Stocker Road is only two storeys. It is also a very generous spacing for this relatively dense part of the urban area.
- 4.3.3 The part of the rear garden of 10 Stocker Road that is closest to the appeal site does not appear to be the primary or intimately used part of the garden for the main enjoyment of the neighbouring residents. 10 Stocker Road has a patio laid closest to the house and a sizeable area of lawn stretching out 17-18m from their rear elevation. The remaining 4-5m at the rear of the garden of 10 Stocker Road mainly comprises of dead space with much of it under the existing tree canopies. The overlooking of this part of the garden of 10 Stocker Road is less sensitive than the more well-used garden space closest to the house.
- 4.3.4 It has been informally mentioned in discussions with officers that they would prefer to see a separation gap of around 10-11m from the first floor window to the rear boundary of the site. This is opposed to our 8.7m shown at present, thereby leaving a difference of circa 2.3m. If the Local Planning Authority maintains its position in this respect, and having in mind the off-set angled nature of the extension when compared with 10 Stocker Road, then they are presumably only concerned about the overlooking into the dead space under the tree

canopies and at the very rear of the neighbouring garden. The significance of any harm derived with the overlooking of such a limited extent of the neighbour's garden is minimal.

- 4.3.5 The appellant is more than content to work with the Local Planning Authority and neighbours by providing some semi-mature tree planting in the south-eastern corner of the appeal site. The effect of such landscape planting would be to screen any potential oblique view that maybe afforded from the proposed window over the adjoining boundary line of the appeal site and 10 Stocker Road in the south-eastern corner. There is already space within this part of the site for tree planting, and it would only need to be localised around the south-eastern corner for there is no overlooking problems with nos. 14 and 16 Stocker Road.

(ii) Impact on 14/16 Stocker Road

- 4.3.6 The officer's report for the application stated:

"The close proximity of the proposed first floor apartment would result in overlooking into the rear private amenity space of nos. 10 and 14/16 Stocker Road."

- 4.3.7 The above statement shows that officers had clearly not read the appellant's planning statement or conducted a thorough site visit or made use of online resources such that it would have been very apparent from any one of these sources that the area to the rear of no. 14/16 Stocker Road is actually a car park for the flats contained within the main building.
- 4.3.8 We trust that the Local Planning Authority does not take issue with the proposed first floor window overlooking the neighbouring car park, however if they do, then we would attribute any such harm very limited / negligible weight on the basis that it was not raised as a concern in the 2018 decision, and that it is quite simply not harmful to residential amenity.

4.4 PLANNING BALANCE

- 4.4.1 Taking into account the above analysis, and foregoing those parts of the refusal of the appeal scheme that were not raised before in the 2018 application, the remaining parts of the Local Planning Authority's case for refusal can be summarised as follows:

- Overbearing and loss of outlook on the windows of 75 & 79 Aldwick Road;
- Loss of sunlight to the rear windows of 79 Aldwick Road;
- Loss of privacy to the rear garden of 10 Stocker Road.

- 4.4.2 The appellant takes an alternative position to the Local Planning Authority in respect of these reasons for refusal, however even were there to be some harm derived from the proposed scheme in these respects, that is not sufficient reason in and of itself to refuse planning permission. There needs to be a weighted decision made under paragraph 11(d) of the NPPF.
- 4.4.3 There can be no dispute that the Local Planning Authority are very much struggling with an under-supply of deliverable sites both in terms of those completed (the latest housing delivery test shows only a 68% over the past 3 years) and those forecasted (the AMR shows a 3.7 year housing land supply figure). The supply of housing, in such circumstances, can only reasonably be given a substantial weight in the planning balance.

- 4.4.4 The extent of the district's under-supply of housing is considered to be so overwhelming that when a site is proposed in a sustainable part of the urban area and on previously developed land it should be attributed considerable weight notwithstanding how many units are being proposed. Such windfall sites on brownfield locations form an integral part of the district's housing supply, and are very much promoted within the NPPF. The appellant's planning statement sets out the case for applying planning policies seeking to protect amenity flexibly having in mind section 11 of the NPPF, and notably paragraph 123(c).
- 4.4.5 We disagree with the approach taken by the Local Planning Authority in their determination of the alleged harm as set out within the above three bullet points. The extent of adverse impacts being alleged by the Local Planning Authority cannot be reasonably weighted in the Local Planning Authority's planning balance. It is beyond comprehension that officers could properly come to the conclusion that, for example, the extent of overbearing impact from an opposing wall 0.2m higher than an average line of sight and at a distance of 3.3m, could be so deleterious as to significantly and demonstrably outweigh the benefits of the provision of new housing within a sustainable PDL location.
- 4.4.6 It is the position of the appellant that there is no harm of any significance caused by the appeal scheme on the amenity of neighbouring residential properties. The appellant is aggrieved that it is seemingly the case that the Local Planning Authority has sought to try and bolster its argument against the proposal by stepping outside of the previous refusal that it issued in 2018, and in doing so has sought to add further reasons into their justification. It is also the appellant's case that the Local Planning Authority has determined the application using paragraph 11(d) of the NPPF in name but not in substance. It has certainly not given due weight to the benefits of the scheme, and in many instances seems to be fabricating harm through the use of subjective but unevidenced concerns.
- 4.4.7 We hereby submit this appeal to the Inspector and respectfully request that it be allowed.
- 4.4.8 We also ask that due consideration be given to our application for an award of costs.

Report Prepared by:

James Hutchison BA MA MRTPI

Planning Director

Corbil Estates & Planning Ltd