



Appeal Decision

Site visit made on 1 October 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/C3810/W/19/3230749

Land to rear of 41-47 Pevensey Road, Bognor Regis PO21 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr John Parsons against the decision of Arun District Council.
 - The application Ref BR/229/17/PL, dated 14 August 2017, was refused by notice dated 14 December 2018.
 - The development proposed is erection of 3 No. dwellings, 1 No. detached garage, parking and alterations to existing access and driveway (resubmission following BR/200/16/PL).
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Decision

1. The appeal is allowed, and planning permission is granted for erection of 3 No. dwellings, 1 No. detached garage, parking and alterations to existing access and driveway (resubmission following BR/200/16/PL) at Land to rear of 41-47 Pevensey Road, Bognor Regis PO21 5NY in accordance with the terms of the application, Ref BR/229/17/PL, dated 14 August 2017, and the plans submitted with it, subject to the attached schedule of conditions.

Preliminary Matters

2. Since the determination of the planning application, the National Planning Policy Framework (the Framework) has been updated. References to the Framework within this decision relate to the latest version published on 19 February 2019.
3. The description of development provided in the application form has been amended in subsequent documents. I have adopted the description of development provided within the appeal form, as it accurately reflects the proposal as determined by the Council.
4. The appellant has submitted a signed Planning Obligation dated 12 December 2018, under Section 106 of the Town and Country Planning Act 1990, which I shall return to later in this decision.

Background and Main Issues

5. The appeal results from the refusal of the Council to grant planning permission for the erection of 3 dwellings, 1 detached garage, parking and alterations to existing access and driveway. The Council has however since confirmed that they no longer wish to contest the appeal, as detailed below.
6. The main issues are (1) whether the development would be at risk of surface water flooding or increase flood risk elsewhere and (2) the effect of the proposal in relation to sites of international importance for nature conservation.

Reasons

Flooding

7. Located within an area of primarily residential character, the appeal site comprises two semi-detached properties benefiting from spacious rear gardens. The proposal would entail the construction of a terrace of three dwellings to the rear of nos 41-47 Pevensey Road (nos 41-47). A vehicular access would be provided between nos 43 and 45 Pevensey Road.
8. According to the current Flood Map for Planning produced by the Environment Agency, the appeal site lies within Flood Zone 1, which places it at a low risk of flooding from both tidal and fluvial sources. Nevertheless, the rear gardens of nos 41-47 are known to be at a high risk from surface and ground water flooding, having regard to the updated Flood Map for Surface Water and JBA Risk Management flood risk maps as contained within the Council's Strategic Flood Risk Assessment carried out in November 2016.
9. As detailed within the Statement on Flood Risk and Flood/Surface Water Drainage prepared by Robert Clark Associates Ltd (Reference 1705-R7, dated 4 June 2019), the proposal would include permeable paving (with significant sub-base storage) through to the rear of the new dwellings. Additionally, the submitted topographic surveys demonstrate that water would get into this storage area before it is able to go off site. The volume of storage that would be provided is considered sufficient by the Council's drainage engineers to mitigate against the proposed buildings. The Council is now satisfied with the level of information provided in respect of flood risk and there are no reasons for me to reach a different view.
10. On this basis, and in the absence of substantive evidence demonstrating otherwise, I am satisfied that the concerns previously raised by the Council's drainage engineers have been appropriately addressed and the risk of flooding as a result of the development would be satisfactorily mitigated, subject to the imposition of appropriately worded conditions. I therefore find no conflict with Policy W DM2 of the Arun Local Plan 2011-2031¹ (LP), which permits development in areas at risk from flooding subject to a number of criteria, or the Framework.

Sites of international importance for nature conservation

11. The appeal site lies within 5km of Pagham Harbour, which is designated as a Special Area of Protection (SPA), a Site of Special Scientific Interest (SSSI) and Ramsar site. On this basis, the proposal could have, in combination with other plans and projects, likely significant effects on these European wildlife sites, by reason of the increased recreational pressure which additional residential development places on this sensitive area. In such circumstances, I am required, when evaluating the effects that a proposal might have on a European site, to consider avoidance and reduction measures through an Appropriate Assessment (AA), rather than at the screening stage.
12. The Council considers that any likely significant effects can be managed via mitigation measures. In accordance with LP Policy ENV DM2, all new residential developments located between 400m and 5km of Pagham Harbour are therefore required to make a financial contribution towards mitigation

¹ Adopted in July 2018.

measures, which are normally secured through the completion of a planning obligation. Additional information, including Cabinet Reports dated 20 July 2015 and 10 April 2017 and a note produced by the Council regarding the Strategic Approach to Access Management at Pagham Harbour, provide further justification in respect of the need to secure mitigation measures to protect the integrity of this sensitive area.

13. Natural England, who were consulted as part of the AA, have confirmed that the measures which have been put in place by the Council, in partnership with Chichester District Council, are ecologically sound and, if implemented, will be effective and reliable in preventing harmful effects on Pagham Harbour for the lifetime of the development.
14. A Section 106 (S106) legal agreement dated 12 December 2018, which would provide the required financial contributions towards Strategic Access Management and Monitoring, has been signed by the appellant, the site's owners and the Council. The S106 would ensure that the mitigation measures are secured by legally binding means, and that the financial contribution is paid upon the grant of planning permission. The Council has confirmed that it is satisfied with the contents of the S106. I consider that the financial contribution would accord with the Council's Cabinet's approval of the tariff based system, and the Community Infrastructure Levy (CIL) Regulations.
15. Having regard to the evidence before me, I consider that, subject to the contribution being provided, any likely adverse effect on the integrity of Pagham Harbour resulting from the proposal would be appropriately mitigated. Consequently, I find no conflict with LP Policy ENV DM2.

Other Matters

16. I have had regard to the concerns raised by interested parties, notably in respect of the effect of the proposal on the living conditions of neighbouring residents, highway safety and biodiversity. The proposal has been subject to a detailed assessment from the Case Officer, and no objection has been raised by the Local Highway Authority and the Council's Ecologist. There are no reasons for me to disagree.
17. My attention has been drawn to a previous appeal decision in 2009, but I have been provided with little information in respect of this particular scheme, which was dismissed on tree grounds. Whilst I note the comments from the Arboricultural Officer, the proposed dwellings would remain at reasonable distance away from the trees, and the Council would to some extent retain a degree of control over future tree works, by reason of the protection afforded by the Tree Preservation Order.
18. Overall, I am satisfied that the imposition of appropriately worded conditions, which are considered necessary to make the development acceptable in planning terms, would address these concerns.

Conditions

19. I have considered the conditions suggested by the Council, making minor amendments where necessary, to ensure compliance with the tests as set within the Framework and the Planning Practice Guidance. The appellant has confirmed his agreement to pre-commencement conditions.

20. In addition to the standard time limit, I shall impose a condition specifying the relevant drawings, which are required to provide certainty and clarity. Conditions requiring further details of the materials, landscaping and forms of boundary treatments are considered necessary in the interests of the character and appearance of the area. Detailed arboricultural conditions are necessary to safeguard trees. Conditions to secure the provision of turning, parking areas and visibility splays, as well as the submission of a Construction Management Plan are considered necessary for highway safety reasons.
21. A condition requiring the submission of further details for the provision of cycle parking facilities shall be imposed to promote sustainable modes of transport. I shall also impose conditions relating to electric charging points and the inclusion of decentralised, renewable and low carbon energy supply systems, which are required in the interests of sustainability. Drainage conditions are necessary to prevent flooding.
22. Conditions requiring windows to remain obscure glazed, removing of certain permitted development rights, restricting construction hours and requesting further details in respect of refuse storage are considered necessary to protect the living conditions of neighbouring residents. Conditions restricting the removal of landscaping features, requesting the implementation of enhancement and mitigation measures and further lighting details are necessary in the interests of biodiversity, including protected species.

Conclusion

23. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

S Edwards

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2.13 (Location, Block Plan and Sections), 2.10 A (Proposed Site Plan), 2.11 (Proposed Plans – Floor Plans and Roof Plans), 2.12 (Proposed Elevations), Part Site Plan showing volume of new structures below floor level, Part Site Plan showing total volume of structures to be removed, 1705/D2.1 (Proposed permeable surfaces), PJC/4858/18/C (Tree Protection Plan).
- 3) The development must be carried out in accordance with the mitigation method statement and habitat enhancement measures as set out within the submitted Phase 1 Biodiversity Survey by New Forest Ecological Consultants (Dated August 2017) or as otherwise agreed in writing with the Local Planning Authority. The enhancements and mitigation measures shall be implemented in accordance with the document and then permanently retained and thereafter maintained as fit for purpose.

- 4) The development hereby permitted shall be carried out in strict accordance with the Arboricultural Impact Assessment (ref 4858/18-01) and Arboricultural Method Statement (ref 4858/18-02) both by JPC Consultancy, which are dated 17/05/18. Prior to the commencement of any ground clearance, demolition or development (including alterations to existing ground levels), a pre-commencement site meeting is to be held and attended by the developer's arboricultural consultant and the Local Planning Authority's Tree Officer. At this meeting all protective fencing and ground protection measures will be inspected to verify that they are 'fit for purpose' as required under BS5837:2012 and have been installed in accordance with the approved Tree Protection Plan (drawing no. PJC/4858/18/C).
- A schedule of site monitoring/supervision visits and reporting procedures prepared by an Arboricultural Expert will be required and their extent will be agreed on at the site meeting to the satisfaction of the Local Planning Authority's Tree Officer.
- If there is deemed to be a need for any Utility Service Route connections to bisect retained tree root protection areas/zones, a Method Statement prepared by an Arboricultural Expert, stating how this can be achieved without causing harm to tree roots, shall be submitted and agreed in writing by the Local Planning Authority prior to commencement of any works on site. The Method Statement shall be implemented in accordance with the agreed details.
- 5) Development shall not commence, other than works of site survey and investigation, until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for the Building Regulations, and the recommendations of the SuDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and winter percolation testing to BRE 365, or similar approved, will be required to support the design of any infiltration drainage. No building or part of the extend building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details. The surface water drainage system shall be maintained in good working order in perpetuity.
- 6) The development shall not proceed until details have been submitted to and approved in writing by the Local Planning Authority for any proposals to discharge flows to watercourses, or for the culverting, diversion, infilling or obstruction of any watercourse on the site. Any discharge to a watercourse must be at a rate no greater than the pre-development run-off values. No construction is permitted, which will restrict current and future land owners from undertaking their riparian maintenance responsibilities in respect of any watercourse or culvert on the site.
- 7) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall provide for:
- i) the anticipated number, frequency and types of vehicles used during construction;
 - ii) the method of access and routing of vehicles during construction;
 - iii) the parking of vehicles by site operatives and visitors;

- iv) the loading and unloading of plant, materials and waste;
- v) the storage of plant and materials used in construction of the development;
- vi) the erection and maintenance of security hoarding;
- vii) wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders); and
- viii) details of public engagement both prior to and during construction works.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 8) No development above damp-proof course (DPC) level shall take place unless and until a schedule of materials and finishes to be used for the external walls and roofs of the proposed building have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 9) No development above damp-proof course (DPC) level shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of hard and soft landscaping and details of existing trees and hedgerows to be retained, together with measures for their protection during the course of the development. The approved details shall be carried out in the first planting and seeding season, following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others or similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 10) Notwithstanding the submitted plans, no development above damp-proof course (DPC) level shall take place until details of all new boundary treatments have been submitted to and approved in writing by the Local Planning Authority and none of the approved dwellings shall be occupied until such boundary treatments have been erected.
- 11) Prior to occupation of the dwellings hereby permitted, a refuse/waste storage space/collection point shall be provided as part of the development, in accordance with detailed drawings showing the siting and design of the bin storage and collection spaces, which shall be submitted to and agreed in writing by the Local Planning Authority. The details shall be implemented in accordance with the approved drawings, and shall be maintained and retained for that purpose thereafter.
- 12) No part of the development shall be first occupied until pedestrian visibility splays of 2 metres by 2 metres have been provided either side of the site's vehicular access onto Pevensey Road, in accordance with the approved plans. These visibility splays shall thereafter be kept free of all obstructions over a height of 0.6 metre above the adjoining carriageway level, or as otherwise agreed in writing by the Local Planning Authority.

- 13) No part of the development shall be first occupied until the vehicle parking and turning spaces have been constructed, in accordance with the approved plan. These spaces shall thereafter be retained for their designated use.
- 14) No part of the development shall be first occupied until covered and secure cycle parking spaces have been submitted to and approved in writing by the Local Planning Authority. The approved cycle storage spaces shall be implemented in accordance with the approved drawings, and shall be maintained and retained for that purpose thereafter.
- 15) Prior to occupation of the dwellings hereby permitted, a scheme for the provision of facilities to enable the charging of electric vehicles to serve the dwellings shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented, and the charge point shall be permanently retained and maintained for that purpose thereafter.
- 16) Prior to occupation of the dwellings hereby permitted, a scheme to demonstrate that the development will incorporate decentralised, renewable and low carbon energy supply systems shall be submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented prior to occupation of the dwellings, and shall be permanently retained and maintained in good working order thereafter.
- 17) Demolition or construction works shall take place only between 08.00 and 18.00 Monday to Friday and between 08.00 and 13.00 on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 18) No external lighting shall be installed on site until plans showing the specification of light appliance (luminaire type; mounting height; aiming angles and luminaire profiles), the height and position of fitting, illumination levels, beam orientation and light spillage have been submitted to and approved in writing by the Local Planning Authority. The scheme should seek to conform with the recommendations within BS5489:1-2013 but also minimise potential impacts to any bats using the trees, hedgerows and buildings by avoiding unnecessary artificial light spill through the use of directional light sources and shielding. The lighting appliances shall be installed and maintained in accordance with the approved details.
- 19) No removal of trees, shrubs or other vegetation that may contain birds nests shall take place between 1st March and 31st August inclusive, unless a suitably qualified ecologist/wildlife specialist has undertaken a careful, detailed check of vegetation for active birds nests immediately before the vegetation is cleared and confirmed that no nests will be harmed. Where nests are discovered, the vegetation shall remain in place until nesting activity has ended naturally, and the ecologist has confirmed that it is safe to proceed.
- 20) The dwellings hereby permitted shall not be occupied until the first floor flank windows on the north-west and south-east elevations have been fitted with obscured glazing. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority

before the windows are installed and once installed the obscured glazing shall be retained thereafter.

- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the roofs (above first floor level) of any of the dwellings shall not be extended or altered in any way unless permission is granted by the Local Planning Authority on an application in that behalf.

END OF SCHEDULE