



Appeal Decision

Site visit made on 15 June 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/M3835/W/22/3302646

Land at 88 Salvington Hill, Worthing, West Sussex BN13 3BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mrs Susan Simpson against the decision of Worthing Borough Council.
 - The application Ref AWDM/1243/21, dated 22 June 2021, sought approval of details pursuant to conditions Nos 3, 4 and 5 of a planning permission Ref AWDM/0256/20 granted on 21 January 2021.
 - The application was refused by notice dated 27 April 2022.
 - The development proposed is erection of two bedroom chalet bungalow and provision of new vehicular crossover.
 - The details for which approval is sought are:
Condition 3: details of the proposed finished floor level of the dwelling and any proposed earthworks;
Condition 4: details of the proposed surface water drainage and means of disposal; and
Condition 5(i): details of the species of shrubs and plants to be planted.
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Decision

1. The appeal is allowed, and the details required by condition, namely those for finished floor level of the dwelling and any proposed earthworks, surface water drainage and means of disposal and the species of shrubs and plants to be planted, submitted in pursuance of conditions Nos 3, 4 and 5 attached to planning permission AWDM/0256/20 granted on 21 January 2021, in accordance with the application Ref AWDM/1243/21 dated 22 June 2021 and the plans/details submitted with it, namely drawing numbers 5575/03B and 575/01L and the statement '88 Salvington Hill, Worthing BN13 3BD' dated 22/06/21, are approved.

Preliminary Matters

2. Following the refusal of the application the Worthing Borough Council Local Plan 2020 – 2036 (WLP) was adopted on 28 March 2023. The parties have had the opportunity to comment on the updated policy position and these comments have been taken into account, where received.

Background and Main Issues

3. An appeal¹ allowed a proposal in respect of development for a two bedroom chalet bungalow and provision of new vehicle crossover on 21 January 2021. The planning permission granted was subject to conditions, including conditions Nos 3, 4 and 5, which are subject of this appeal.

¹ W/4001471

4. Condition 3 reads as follows:

No work other than site survey investigation shall be carried out until details of the proposed finished floor level of the dwelling in relation to existing ground levels, and details of any proposed earthworks including the excavation, levelling or mounding of the land either across the site or adjacent to the site boundaries have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and constructed in accordance with the details approved under this condition.

5. The reason given for this condition, as set out in the appeal decision, is to protect the living conditions of neighbouring properties.

6. Condition 4 reads as follows:

No work other than site survey and investigation shall be carried out until details of the proposed surface water drainage and means of disposal have been submitted to and approved in writing by the Local Planning Authority and the dwelling shall not be occupied until all surface water drainage works have been carried out in accordance with such details as approved by the Local Planning Authority.

7. The reason given for this condition, as set out in the appeal decision, is to ensure that the proposal does not result in flooding elsewhere.

8. Condition 5 reads as follows:

No work other than site survey and investigation shall be carried out until:

- (i) details of the species of shrubs and plants to be planted along the southern and western boundaries as shown on Plan 575/01C shall be submitted to and approved in writing by the Council. The shrubs and plants to be planted along the southern and western boundaries shall thereafter be planted in accordance with the approved details.
- (ii) all planting seeding or turfing composed in the landscaping scheme shall be carried out in the first planting and seeding seasons following occupation of the dwelling or completion of the development whichever is sooner and any plants which within a period of 5 years die are removed or become seriously diseased shall be replaced in the next planting season with others of similar size and species.
- (iii) the details of the hard landscaping shown on Plan 575/01C shall be completed prior to occupation of the dwelling.

9. The reason given for this condition, as set out in the appeal decision, is to ensure that the proposal sits comfortably within the character and appearance of the area and makes a positive contribution to biodiversity.

10. Although the Council has not provided a Statement of Case, it is apparent from the Council's decision notice that its concerns are related to the adequacy of information for surface water drainage and for details of species of shrubs and plants to be planted along the southern and western boundaries.

11. Having regard to the above and the reasons for the conditions, the main issues are:

- Whether the details submitted in respect of the surface water drainage scheme for the site meet the requirements of the relevant conditions with regard to flooding; and
- Whether the submitted details would satisfy the requirement for details to be submitted and agreed for condition No 5 and, in doing so, ensure that the proposal would sit comfortably within the character and appearance of the area and would make a positive contribution to biodiversity.

Reasons

Surface water

12. The appeal site is an area of garden that has a slightly raised profile in relation to the pavement alongside Firsdow Road, which is to one side. The evidence indicates that the geology underlying the appeal site consists of chalk, overlain by heads of clay, silt, sand and gravel. The site is within Flood Zone 1 and is at low risk of surface water flooding. The Environment Agency predict that during a wet winter groundwater at the site should be no higher than 50-70m below ground surface.
13. West Sussex LLFA Policy for the Management of Surface Water (November 2018) (the PMSW) sets out West Sussex County Council's, as Lead Local Flood Authority, policy for drainage strategy and surface water management provisions associated with applications for development. The PMSW expects the principles of its policy and drainage strategy to be considered for all developments. For all major development, it is expected that the full scope of the policy would be adhered to.
14. The extent to which the PMSW applies is disputed by the main parties. Nonetheless, the development approved under the original planning permission would involve the erection of a single dwelling. It would not be major development and it would have a roof area of approximately 78 square metres. A permeable surface would accommodate a parking area. Three soakaways, each with a 25 square metres capacity are proposed within the site. The submitted plan demonstrates that these would be accommodated outside the root protection zone. Catchpits are proposed to manage silt and other debris that may build up.
15. The surrounding topography slopes down to the south. The finished floor level of the development would be approximately 0.35 metres above the road level. Surplus inert soil would be removed from the site.
16. Having regard to the above, whilst winter infiltration testing and winter ground water monitoring has not been undertaken, the development would be limited in scale and the risks associated with surface water flooding are likely to be low. Evidence from the Environment Agency indicates that the topography and overlying head deposits negate the possibility of groundwater flooding problems, and there is no record of any groundwater flooding at this location.
17. Moreover, approval for the purposes of the requirements of The Building Regulations 2010 (the Regs) has been granted for the development and

surface water drainage strategy proposed. Whilst it would not override planning requirements, the disposal of surface water is an obligation under the Regs and includes a requirement for adequate provision to be made for rainwater from the building. Having regard to the limited scale of the development proposed, this is a matter to which I attach substantial weight.

18. Shrubs and plants would be planted along the southern and western boundaries. The roots of the plants are likely to be shallow and, having regard to the above, there is little substantive basis to consider that the proposed planting scheme submitted in relation to condition No 5 would have any demonstrable harm to the surface water drainage strategy.
19. Several case examples for single dwellings or annexes have been brought to my attention, including at 5 Salvington Hill, where the sites have been in Flood Zone 1 and the area was stated to be at low risk from surface water flooding. In these cases, it is apparent that it has been considered acceptable for surface water drainage schemes to be designed and constructed in accordance with the requirements of the Regs. This is not disputed by the Council. I have had regard to these examples for the purpose of consistency in decision making. However, the full details of these cases are not before me and, therefore, I apply only moderate weight to these examples.
20. The details submitted would not strictly adhere to the full scope of the PMSW. However, the development would be of limited scale and the site is not shown as being at risk from surface water flooding. I am therefore satisfied that the proposed finished floor level of the dwelling would not harm the drainage strategy and that the details satisfactorily demonstrate that the proposed surface water drainage would be acceptable and would not result in flooding elsewhere. Consequently, I find the submission would satisfy the requirement for details to be submitted and agreed for conditions Nos 3 and 4. Furthermore, for the reasons given above, the proposed planting scheme submitted in accordance with condition No 5 would not harmfully impact on the surface water strategy.
21. For these reasons, the details would not conflict with WLP Policy DM20 and its aim of managing and reducing flood risk. There would be no conflict with the National Planning Policy Framework in relation to ensuring that flood risk is not increased elsewhere.
22. The Council also refers to potential risk to groundwater. However, this is not a reason for the condition. In any case, the evidence shows that it would be reasonable to assume that any pollution at surface is unlikely to contaminate the groundwater on the basis that the geology consists of 60-70m of soils and rocks before reaching the groundwater. As such, there would also be no conflict with WLP Policy DM21, which amongst other things, seeks to protect groundwater.

Planting

23. Although in my reasoning above I have already addressed the effect of the submitted scheme on surface water drainage, I consider the specific requirement for condition No 5 here.
24. The details submitted with the application sets out the species which would be planted along the southern and western boundaries. The planting would retain

the green character of the existing boundary, provide a suitable habitat for wildlife and sit comfortably within the residential context.

25. Consequently, the information would satisfy the requirement for details to be submitted and agreed for condition No 5. It would ensure that the proposal would sit comfortably within the character and appearance of the area and would make a positive contribution to biodiversity.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

J White

INSPECTOR