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## Appeal Decision

Site visit made on 24 January 2024

**by Elizabeth Lawrence BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> March 2024**

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**Appeal Ref: APP/C1435/W/23/3322172**

**1 The Drive, Hailsham, BN27 3HN**

- 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 Mrs V Warren and Mrs J Barber against the decision of Wealden District Council.
  - The application Ref WD/2022/1132/F, dated 29 April 2022, was refused by notice dated 7 November 2022.
  - The development proposed is described as 2No. newbuild detached bungalows on land at rear of 1 The Drive, Hailsham. Formation of new access, new driveway and visitor parking.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. Since the appeal application was refused the National Planning Policy Framework 2021 has been replaced. Within the current National Planning Policy Framework December 2023 (Framework) paragraphs 130, 159, 162 and 163 of the Framework 2021 have been renumbered 135, 165, 168 and 169, although their content is unchanged. I confirm that in this decision I refer to the new numbering.
3. During the processing of the application the site and detailed dwelling plans were substituted. For the avoidance of any doubt, I confirm that this decision relates solely to the substitute drawings numbered 1927/03 Rev N, 1927/04 Rev. F and 1927/05 Rev. F.

### Main Issues

4. The first main issue is the effect of the proposal on the character and appearance of the site and its surroundings. The second main issue is whether the site is in an appropriate location with regard to Flood Risk.

### Reasons

5. The appeal site is located within an established and accessible residential area in the defined built-up area of Hailsham. Accordingly, it is an area where in principle planning policies allow for new residential development.
6. The Drive and The Avenue are primarily characterised by a broad range of detached and link detached bungalows and chalet bungalows, that are set back

from the street scene behind front gardens. The dwellings typically project close to their side boundaries and occupy varied sized plots. The detached and semi-detached houses located a short distance to the north similarly project close to their side boundaries and occupy varied sized plots.

7. It is noted that a planning appeal for two detached houses was dismissed last year solely due to overlooking from the proposed upper floor windows.
8. The appeal site is located at the northern end of The Drive and comprises part of the curtilage to a detached bungalow which occupies a particularly large plot. The appeal site is situated immediately adjacent to Nursery Path, which is a narrow footpath that links The Drive to nearby roads. On the opposite side of the path are two dwellings, one of which occupies a triangular shaped 'backland' position. To the rear of the appeal site is a row of semi-detached two storey houses with predominantly modest sized rear gardens. There is a tall mature evergreen hedge along most of the boundary between these dwellings and the appeal site. At the end of the hedge is a gap through which the adjacent dwellings, which sit at a slightly higher level, are clearly visible.
9. Together and amongst other things policy WCS14 of the Spatial Planning Objective SPO2 of the Wealden Core Strategy Local Plan 2013 (CS) and policy EN27 of the Wealdon Local Plan 1998 (LP), promote a presumption in favour of sustainable development, which includes improvements to the environmental condition of the area. New development should respect the character of adjoining development and not be intrusive in the landscape. Policies HAIL D1 & HAUIL D2 of the Hailsham Neighbourhood Plan are consistent with this. Amongst other things paragraph 135 of the Framework requires proposals to be sympathetic to local character and history, including the surrounding built environment and landscape.
10. The proposed dwellings would be modest in size, height and form. Due to their siting there would be a good degree of separation between the two dwellings and there would be reasonable sized gaps between the dwellings and boundaries of the site. Having regard to the modest size of the dwellings their irregular shaped gardens would be satisfactory. Whilst they would not meet the 10 metres recommended in the Wealden Design Guide, they would satisfy the recommended minimum garden size of 100m<sup>2</sup>. The proposed gardens would also be comparable in size to other gardens in the immediate and wider area. The overall site coverage by buildings would also be compatible with that of adjoining and nearby developments.
11. Adjacent to the northwest boundary of the site is a mature multi-stemmed Beech tree, which is classified as being within category B. The proposed dwelling on plot 1 would materially encroach into the root protection zone of this tree. The tree has already been pruned back and with the proposal may in the future face further pressure to prune again or be removed. However, this tree is not the subject of a Tree Preservation Order and due to its 'backland' position only makes a modest contribution to the character and appearance of the immediate and wider area. Whilst it does contribute to the biodiversity of the site, a full range of biodiversity protection and gains on the site could be satisfactorily secured through the imposition of conditions. This includes the protection of this tree during the construction of the proposed development.
12. For these reasons I conclude on the first main issue that the proposal would not amount to an over-development of the site and that it would respect the

character and appearance of the locality. Accordingly, it would comply with LP Policy EN27, CS Policy WCS14 and paragraph 135 of the Framework.

### *Flood risk*

13. It is noted that the appeal site is located within flood zone 1. However, as stated in footnote 59 of the Framework a site-specific flood Risk Assessment (FRA) should be provided for development of land which may be subject to other sources of flooding where its development would introduce a more vulnerable use.
14. Together paragraphs 165, 168 & 169 of the Framework state that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk to areas with the lowest risk of flooding from any source. Also, that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. A sequential test should be applied when any part of the site is at risk of flooding. Where development is necessary in such areas, the development should be made safe for its lifetime, without increasing the risk of flooding elsewhere.
15. Together paragraphs 023, 027 & 028 of the current National Planning Practice Guidance (PPG) advise that the sequential approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. Even where flood risk assessments show the development can be made safe throughout its lifetime without increasing flood risk elsewhere, the sequential test still needs to be satisfied. The planning authority needs to determine the appropriate area of search, based on development type and relevant spatial policies. It should identify whether other sites of lower flood risk exist within a reasonable search area and there is no requirement for other sites to be within the ownership or control of the applicant. Decision makers need to consider whether the sequential test is passed, with reference to the information it holds on land availability.
16. It is acknowledged that flood risk and sequential testing may not have been addressed in relation to other applications on the appeal site. In relation to the previous appeal for a two storey dwelling on the appeal site, as flood risk was not raised as a main issue and the appeal was dismissed for other reasons, there was no necessity for it to be raised when determining that appeal. Irrespective of the fact that flood risk has not previously been raised as an issue, given the importance placed on flood risk by the Framework and having found in favour of the appellant in relation to the first main issue, it is not a matter that can be set aside
17. The surface water flooding maps submitted with the appellants latest FRA show that most of the appeal site is at risk of flooding from surface water. It is accepted that such plans are indicative and do not definitively show that a specific area of land is at risk of flooding. They do however give a broad picture for an area. As stated in paragraph 023 of the PPG, other forms of flooding need to be treated consistently with river and tidal flooding in mapping probability and assessing vulnerability, so that the sequential approach can be applied across all areas of flood risk.
18. From the submitted topographic survey and my site visit it is clear that ground levels within and surrounding the appeal site rise gently in a northeasterly

direction. The appellant's latest FRA states that site has never flooded and that there are buildings, fences and hedges around the site which would obstruct the flow of surface water towards the appeal site. The potential likelihood and depth of any surface water flooding in the area is not stated and the effectiveness of such barriers, which are not continuous, is not quantified. As such it has not been demonstrated that the site would not be at risk from surface water flooding in the future and that any measures to protect the site from flooding would not increase the risk of flooding elsewhere.

19. Ultimately, from the evidence submitted, the appeal site presents a greater risk of flooding than sites outside areas at risk of other forms of flooding. Paragraph 168 of the Framework, states that development should not be permitted if there are reasonably available sites in areas with a lower risk of flooding and this should be demonstrated through the application of the sequential approach set out in the Framework.
20. From the evidence submitted it appears that the appellant did not ask the Council to identify a search area within which to undertake a sequential test. Whilst sequential testing is addressed in the appellant's FRA, it does not accord with the approach set out in paragraphs 165 & 167 of the Framework and paragraphs 023, 027 & 028 of the PPG.
21. Regarding exception tests, whilst table 2 in the PPG does not show a requirement for an exception test in Flood Zone 1, the notes below this table state that table 2 does not reflect the need to avoid flood risk from other sources other than rivers and sea. Also, that the exception test does not need to be applied to those developments set out in paragraph 56 of the 2021 Framework. The appeal proposal does not fall within any exceptions set out in this paragraph. As I have found that the sequential test does not satisfy the requirements set out in the Framework and the PPG, the need for the exception test, if necessary, has not been demonstrated.
22. As stated by the appellant, the council has granted planning permission for a single dwelling on the appeal site. Whilst this may set a precedent for one dwelling on the appeal site, the proposal is for two dwellings, which would exacerbate the potential flood risk for people and property on the site and beyond.
23. The appellant has referred to an FRA relating to a site in Mid-Sussex, where reliance on obstructing features was fully accepted. Few details are provided concerning when this FRA was prepared; the extent of any identified potential flood risk; the nature of the proposed development; whether a sequential test was required; and the nature of any potential surface water barriers. Irrespective of this, each proposal needs to be considered on its own merits and in light of the prevailing planning policies.
24. For these reasons, on the basis of the evidence submitted, I conclude on the second main issue that the proposed development would result in inappropriate development in an area at high risk of flooding, resulting in unjustified flood risk to people and property. Accordingly, in this respect the proposal would conflict with paragraphs 165, 168, 169 & 173 of the Framework and Paragraphs 023, 024, 027 & 028 of the PPG.

## **Other matters**

25. Regarding the living conditions of local residents I note that the gap in the hedge along the rear boundary of the appeal site opens up views towards the rear windows of the dwellings and the rear gardens at Nos.2 & 4 Freshfield Close. This is a matter that could be satisfactorily addressed by the imposition of a condition which secures the continuation of the existing hedge, which falls within the appeal site.
26. In view of the modest height of the proposed bungalows and the distance between them and the adjacent dwellings and gardens, I am satisfied that the proposal would not result in a material loss of privacy, daylight or outlook for the occupiers of neighbouring dwellings.
27. The vast majority of dwellings in the area have on-site parking provision and on-street parking is unrestricted. The proposal is for two modest sized dwellings and the scheme includes on-site parking and turning for four cars. This, along with pedestrian and vehicular visibility splays could be secured through conditions. As such I am satisfied that the proposal would not have an unacceptable impact on vehicular and pedestrian highway safety.
28. Whilst the placing of refuse vehicles on the pavement on collection days would add to obstructions and clutter on the pavement, this would not amount to a reason for dismissing this appeal. Foul water drainage would be dealt with by the relevant authority. Finally, it is acknowledged that additional traffic, noise and disturbance is a consequence of many building operations. It can however be minimised by imposing conditions relating to working hours, on-site parking and storage and measures to minimise dust.

## **Planning Balance and Conclusion**

29. The proposal would take place in an area at risk of surface water flooding, resulting in unjustified flood risk to people and property. The appellant has failed to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas at lower risk of flooding, contrary to the sequential testing set out in section 14 of the Framework. This is a concern to which I give substantial weight.
30. The absence of harm to the character and appearance of the locality and the living conditions of local residents are neutral factors which attract no weight.
31. The council has confirmed that as at October 2023 it had a 3.8 year supply of deliverable housing sites and the 2022/2023 Housing Delivery Test Results state that during this period the council met 78% of its housing target. The proposal would deliver 2 modest sized new homes and so would make a very modest contribution to the local housing supply. I give a modest amount of weight to this factor.
32. Collectively I give a moderate amount of weight to the accessible location of the appeal site and the short and long term economic benefits of the proposal.
33. Finally, the Council has confirmed that the District does not have a deliverable supply of sites to provide a minimum five-years supply of housing sites. Therefore, the development plan policies that are most important for

determining the appeal are out-of-date and the tilted balance as set out in paragraph 11d of the Framework is engaged. However, as stated in paragraph 11 d) and d)i of the Framework, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 clarifies that such policies include those relating to areas at risk of flooding.

34. Accordingly, having regard to my conclusion on the second main issue, the tilted balance set out in paragraph 11 of the Framework is not applicable to the appeal proposal.
35. Even if the presumption under Paragraph 1 d)ii of the Framework applied here, taking all of the factors above into account, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. The proposal would therefore not represent a sustainable form of development when assessed against the Framework read as a whole. In these circumstances, there are no material considerations to justify making a decision other than in accordance with the development plan.
36. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Elizabeth Lawrence*

INSPECTOR