
Appeal Decision

Site visit made on 27 November 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2024

Appeal Ref: APP/U1430/W/24/3343665

Land at Bairnsbourne, Sea Road, Fairlight

- 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 Mike Roche against the decision of Rother District Council.
 - The application Ref is RR/2023/976/P.
 - The development proposed is to erect one single dwelling in the rear garden of the existing dwelling Bairnsbourne.
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Decision

1. The appeal is allowed and planning permission is granted to erect one single dwelling in the rear garden of the existing dwelling Bairnsbourne at Land at Bairnsbourne, Sea Road, Fairlight in accordance with the terms of the application, Ref RR/2023/976/P, subject to the attached Schedule of Conditions.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised in December 2024 and the parties were invited to make further comments, but no responses were received.
3. The appellant submitted an amended proposed layout plan 02 Revision I to replace plan 02 Revision G with the appeal documents, explained as a location plan error. However, it also shows alterations to the proposed drainage arrangements which could cause procedural unfairness or prejudice to the Council and interested parties. Therefore, I have determined the appeal based on plan 02 Revision G.

Main Issues

4. The main issues in this appeal are:
 - whether the arrangements for the drainage of surface water would be acceptable; and
 - the effect of the proposal on land stability.

Reasons

Surface water drainage

5. The appeal site lies on the corner of Lower Waites Lane and Sea Road. It comprises part of the domestic garden for Bairnsbourne and is largely grassed, with trees and hedgerows along the roadside. Parts of the site are raised on a

bank above the level of the adjoining roads which slope down towards the road bend. There is a stream on the opposite side of Lower Waites Lane.

6. The Council's Development and Site Allocations Local Plan 2019 (LP) recognises the Fairlight/Pett Level area as an area of drainage concern. At Fairlight Cove, the LP states that issues of ground water affect land stability and cliff erosion. It also outlines the need to take care in relation to further discharge into the Lower Waites Lane sewer and therefore seeks a sustainable drainage systems (SuDS) report for small scale planning applications. Although the appeal site is at low risk of surface water flooding, there is a high risk of such flooding along the stream and other parts of the lane.
7. Policy DEN5 of the LP requires new development to utilise opportunities to reduce the causes of flooding, ensuring flood risks are not increased elsewhere. In the Fairlight and Pett Level drainage area, it states that surface water run-off from development shall be no more than the greenfield rate, in terms of volume and flow. Further, Policy EN7 of the Council's Core Strategy (CS) requires flood risk to be taken into account in the planning process.
8. The proposed new dwelling would incorporate a sedum green roof, with three large cylinders to collect rainwater from the roof. There would also be a driveway with a roadside channel drain and bio-retention gardens. The cylinders, drain and raingardens would be connected to an attenuation tank, providing significant capacity to hold rainwater. The purpose of an attenuation tank is to capture surface water run-off that occurs during periods of rain. It stores and redirects water to a watercourse, ensuring water is discharged at a safe rate.
9. According to the East Sussex County Council SuDS decision support tool, green roofs and rainwater harvesting are appropriate SuDS solutions in this case. The site is within Southern Water's Fairlight Pathfinder catchment due to historical and current flooding occurrences and current sewer overflow performance in the area. Southern Water sets out the SuDS scheme information which should be submitted to the Council and requires a formal application to connect to the public foul sewer but does not object to the proposal. Further, the Environment Agency makes no comments on the proposed scheme.
10. The proposal would include comprehensive and integrated measures to manage surface water run-off, with substantial rainwater storage capacity in the sizeable containers and an attenuation tank. This would accord with the recommendations in the preliminary land stability and cliff assessment (the assessment) that all drainage should be directed to off-site drain runs and care should be taken to avoid any water collecting or being introduced into the ground. From the information before me and with a condition requiring a detailed surface water drainage scheme, I am satisfied that the development would not increase flood risks elsewhere and that surface water run-off would be no more than the greenfield rate.
11. Consequently, I conclude that the arrangements for the drainage of surface water would be acceptable. The proposal would comply with Policy DEN5 of the LP and Policy EN7 of the CS which set out requirements for sustainable drainage and seek to avoid flood risk.

Land stability

12. The LP recognises that land stability and coastal erosion are issues in the district. LP Policy DEN6 outlines that development will only be permitted on potentially unstable land, including coastal margins, where the nature of the instability has been properly assessed and any remedial measures are environmentally acceptable and implemented prior to building works.
13. The LP highlights the specific problems of coastal erosion at Fairlight Cove and various bunds at the sea edge have recently been constructed to manage this. The LP states that it remains prudent to limit development that may have an effect on the loading near the cliff or on the flow of water in the ground near the cliff edge. In this respect, the LP identifies a 50m coastal zone within which neither soakaways nor development that would add to the loading will be permitted. Although Bairnsbourne is within the zone, the appeal site comprises part of its garden and lies over 14m from the identified coastal zone. The scheme would not include a soakaway and, as set out above, the proposed arrangements for surface water drainage would be satisfactory.
14. The assessment, carried out by qualified ground engineers, presents the results of a desk study and site reconnaissance, providing a review of available previous site investigation and remediation validation reports. It contains some limitations including in relation to the reliability of information from others, the use of reasonable skill, care and diligence and the conclusions being restricted to those which can be determined from the consulted information. These limitations are not unreasonable. Although some reviewed reports are quite dated, the assessment includes up to date information from the British Geological Society and Groundsure websites and the results of the closest borehole with available information. It considers the ground conditions and the impact they may have on the physical construction of future development, principally foundations, slope stability, drainage, road design and groundwater control.
15. The assessment concludes that the site is not currently at considerable risk from cliff retreat and that the proposed works would not have a significant effect on the stability of the cliff or the small cutting on-site, if undertaken with due care. It sets out recommendations for construction works at the site, including avoiding stockpiling materials in the northern corner of the site where slope stability remains a potential problem, keeping site levels as close to the existing as possible.
16. There are concerns that no on-site intrusive ground investigation has been undertaken to verify the results of the assessment and, despite concerns about the impact of boreholes on cliff stability, the ground engineer sets out potential different methods for such investigation. However, the engineer states that if the arisings from such an investigation were consistent with those observed in the cliff, the recommendations would remain the same as in the assessment. As the soft exposed cliff rocks are considered a worst-case scenario, the ground engineer considers that an intrusive investigation could only improve the outcome of the desk-based assessment. The engineer also confirms no visual or other evidence of historic or existing ground movement on site or in the immediate vicinity and no current evidence of further rotational slips landward.

17. Bairnsbourne and the appeal site are not within the area where certain permitted development rights¹ have been removed due to the potential impact of development on loading near the cliff or the flow of water in the ground near the cliff edge. The site lies outside the 50m coastal zone identified in the LP and there is no evidence indicating that this will be reviewed or amended. The information before me indicates that the proposed scheme would not significantly affect the stability of the cliff or land within the site and, in this respect, an appropriately worded condition would ensure that the development would be implemented in accordance with the assessment's recommendations.
18. Therefore, I conclude that the proposal would not significantly affect land stability. It would comply with Policy DEN6 where it sets out requirements for development on potentially unstable land.

Other Matters

19. The site is outside but adjacent to the Fairlight Cove development boundary identified in the LP due to its sensitive nature and risk of erosion. However, the Council did not refuse the proposal on this basis. Given this, the satisfactory surface water drainage arrangements and the absence of significant effects on land stability, I do not find conflict with the Council's spatial strategy.
20. The site is some distance from the nearest services. However, it is within a residential area and a single dwelling would generate only a small increase in the number of vehicle movements.
21. There are concerns that the location of the site alongside narrow unadopted roads on a blind bend and the parking arrangements could harm the safety of walkers using the coastal path and other road users. The proposed vehicular access would be some distance from the bend in the road and, given the narrow nature of the lane, vehicles are likely to be travelling at slower speeds. Further, the scheme would provide two parking spaces which the Council states is adequate for a dwelling of this size. It would include a turning space enabling vehicles to enter and exit the site in a forward gear. I note that there were no objections from the Highway Authority. Given the provisions for access, parking and turning, the proposal would not harm road user safety.
22. Interested parties are also concerned about potential blocking of access and damage to the road and stream caused by construction vehicles. A condition requiring the submission and adherence to a construction method statement would ensure no adverse impacts on highway safety during construction.
23. There are existing trees and hedgerows along the roadside boundaries, part of which would need to be removed to provide the new vehicular access. Conditions requiring retention of the remaining roadside landscaping and protective fencing around this during construction would ensure that the existing character of tree and hedge lined lanes is maintained. Further, a condition requiring new soft landscaping would enhance planting on the site.
24. Dwelling styles in the vicinity vary, but mainly comprise hipped and pitched roof bungalows. Whilst the proposed house would be of a less traditional design, its scale would be similar, and its appearance would not be out of

¹ Under Article 4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

context given the variety of structures in the area. Most roadside boundary planting would be retained and there is existing landscaping on the opposite side of the road. Therefore, the development would be largely screened in views from the surrounding lanes and the setting of the adjacent High Weald National Landscape (formerly the Area of Outstanding Natural Beauty) would be conserved.

25. Concerns have been raised about the extent of development on the proposed plot. There are detached dwellings on spacious plots at this end of Lower Waites Lane but a variety of plots in the wider area. Due to the set back of the proposed building from the lane, the reasonable sized side garden and given the built-up nature of the area, the scheme would not result in overdevelopment of the site.
26. The site is within a Site of Special Scientific Interest impact risk zone and is a highly suitable habitat for the presence of Great Crested Newts. NatureSpace do not object to the proposal and there is no pond within 50m. Although neighbours are concerned about the impact of the proposal on wildlife, the site is part of a maintained domestic garden and there is no evidence that the scheme would harm protected species in this case.
27. There are concerns about the impact of the appeal scheme on the privacy of neighbouring residents at Badgers Drift. The proposed house would have glazed doors to the kitchen-diner and living room giving access to a side patio, facing the adjacent property. However, due to the different orientation of the rear bedroom windows at Badgers Drift and the reasonable distance between the proposed house and patio and the adjacent dwelling, the proposal would not cause unacceptable overlooking of neighbouring occupiers.
28. Interested parties have raised the issue of living conditions for the future occupants of the proposed house, including the provision of private garden space, WCs and storage space. LP policies set out internal space standards, require sufficient bin storage and expect proportionate levels of private usable external space, with private rear garden spaces at least 10m long normally required. The scheme would provide a side garden over 14m long, a walk-in wardrobe, external bin store and WC within the ensuite. There is limited evidence that the proposal would fail to meet LP policy requirements and as such it would provide acceptable living conditions for future occupants.
29. Some parties have expressed general dissatisfaction with the Council's handling of the application. However, this is a matter between those parties, and it cannot have any bearing on my determination of this appeal.

Conditions

30. I have had regard to the Council's suggested conditions and considered them against the statutory tests outlined in the Framework and the advice in the Planning Practice Guidance. I have made minor amendments, where necessary, to ensure that the conditions comply with the relevant tests.
31. In the interest of certainty, I have imposed the standard time limit condition and a condition requiring that the development is carried out in accordance with the approved plans which the Council and appellant agree are correct. A condition requiring the construction and completion of the works in accordance

with the recommendations in the assessment is necessary in order to safeguard the safety of future occupiers.

32. Pre-commencement conditions requiring a construction method statement, a detailed surface water drainage scheme and protective fencing to the roadside boundary hedges and trees are necessary in the interests of: highway safety and the living conditions of neighbouring occupiers; preventing increased risks of flooding off-site; and ensuring that existing boundary landscaping is not damaged by building operations. The appellant has agreed to these.
33. Conditions relating to the retention of roadside boundary landscaping, a scheme for new soft landscaping, and external materials are necessary to protect the character and appearance of the area.
34. I have imposed a condition requiring the provision of the parking and turning area to ensure that the proposal does not prejudice the free flow of traffic or highway safety.
35. Conditions relating to maximum water consumption rates and meeting part M4(2) of the Building Regulations are necessary to ensure efficient use of water resources and the provision of an accessible dwelling respectively.
36. A condition restricting future development of the site is necessary to protect the character and appearance of the area, ground stability and drainage.

Conclusion

37. I conclude that the proposal would accord with the development plan and there are no material considerations that outweigh this finding. Accordingly, the appeal is allowed.

A Wright

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 Revision A; 02 Revision G; and 03.
- 3) Construction and completion of the works shall be undertaken in accordance with the recommendations outlined in paragraph 11.2 of the Preliminary Land Stability and Cliff Assessment by LEAP Environmental, dated 29 March 2023, including the details to be submitted in respect of the construction method statement and the surface water drainage scheme.
- 4) No development shall commence, including any ground works or works of demolition, until a construction method statement has been submitted to and approved in writing by the local planning authority. The statement shall include the following provisions:
 - a) the anticipated number, frequency and types of vehicles to be used during construction;
 - b) the method of access and egress and routeing of vehicles during construction;
 - c) the parking of vehicles by site operatives and visitors;
 - d) the loading and unloading of plant, materials and waste;
 - e) the storage of plant and materials used in construction of the development;
 - f) the erection and maintenance of security hoarding;
 - g) measures to mitigate the impact of construction upon the public highway; and
 - h) details of public engagement for the duration of all works associated with the development.Thereafter the approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) No development shall commence until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include:
 - a) details of the attenuation tank, permeable and hard surfaces;
 - b) a timetable for its implementation; and
 - c) a management and maintenance plan for the lifetime of the development.The development shall subsequently be carried out and managed and maintained in accordance with the approved scheme.
- 6) No development shall commence until a scheme for protective fencing to the roadside boundary hedges and trees has been submitted to and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved scheme before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site.

- 7) All existing roadside boundary trees and hedgerows shall be retained, unless shown on the approved plans as being removed or their removal is otherwise approved in writing by the local planning authority. All retained roadside boundary trees and hedgerows shall be protected from damage for the duration of works on the site. Any roadside boundary trees or hedgerows which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) No development above ground level shall commence until a scheme containing details of new soft landscaping for the site has been submitted to and approved in writing by the local planning authority. The soft landscaping works shall be carried out in accordance with the approved scheme within 12 months of the completion of the development. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless otherwise agreed in writing by the Local Planning Authority.
- 9) Prior to the construction of any external wall of the development hereby permitted, details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details/samples.
- 10) The dwelling hereby permitted shall not be occupied until the parking and turning area have been provided in accordance with drawing number 01 Revision A and that space shall thereafter be kept available at all times for those purposes.
- 11) The dwelling hereby permitted shall not be occupied until the Building Regulations optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with.
- 12) The dwelling hereby permitted shall meet the accessible and adaptable dwellings standard in Part M4(2) of the Building Regulations. The dwelling hereby permitted shall not be occupied unless this standard has been met and the dwelling shall thereafter be retained as such.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting this Order with or without modification), no development shall be carried out within Classes A, AA, B, D and E of Part 1 of the Schedule 2 of that Order (or any Order revoking and re-enacting that Order) without prior planning permission from the local planning authority.