



Appeal Decision

Site visit made on 22 September 2025

by **C Coles MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 December 2025

Appeal Ref: APP/C1435/W/25/3369881

Land adjoining 125 Eastbourne Road, Eastbourne Road, Polegate BN20 9ND

- 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 Mark Jacobs against the decision of Wealden District Council.
 - The application Ref is WD/2025/0366/F.
 - The development proposed is erection of self-build dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of self-build dwelling at land adjoining 125 Eastbourne Road, Eastbourne Road, Polegate BN20 9ND in accordance with the terms of the application Ref WD/2025/0366/F, subject to the conditions in the attached schedule.

Preliminary Matters

2. Amendments to Planning Practice Guidance: Flood Risk and Coastal Change were introduced on the 17 September 2025. Comments on the amendments were sought from both parties and these have been considered in determining the appeal.
3. Although the appellant ticked the box for a Biodiversity Net Gain (BNG) exemption on the application form, they have subsequently submitted the minimum information required for all planning applications relating to BNG.

Main Issue

4. Whether the proposed development would be at risk from flooding, or would increase flood risk elsewhere.

Reasons

5. Access to the proposed dwelling would be taken from the shared common land to the frontage of 125 Eastbourne Road. There are a number of access points to the A2270 from the common land, any of which could be utilised from the appeal site. The access point closest to the appeal site and within the red line site boundary falls within flood zone 3 and in an area of high surface water flood risk. However, no changes would be required to the existing access to facilitate the development. Furthermore, it is common ground that the built development on the appeal site would be located within flood zone 1 and would not be at risk of flooding.
6. Paragraph 175 of the National Planning Policy Framework (the Framework) requires the application of the sequential test to development proposals located in areas known to be at risk now or in the future from any form of flooding. The aim of

the sequential approach is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk.

7. The Planning Practice Guidance (PPG) advises that in applying paragraph 175 of the Framework a proportionate approach should be taken. Where a site-specific flood risk assessment demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development (therefore addressing the risks identified, for example by Environment Agency flood risk mapping), without increasing flood risk elsewhere, then the sequential test need not be applied.
8. The appellant has submitted information relating to a site-specific flood risk assessment which demonstrates that no built development within the site boundary would be located on an area that would be at risk of flooding from any source, now and in the future. Access and egress from the site by foot is also achievable without crossing flood zones 2 or 3. There is no land raising or other potentially vulnerable elements within the flood zones.
9. The appellant has also provided information which indicates that the depths of water in the vicinity of the access and Eastbourne Road would be low, with the medium/high probability of water depths between 0.2m and 0.3m. Reference has been made by both parties to DEFRA and Environment Agency document 'Flood Risk Assessment Guidance for New Development' which advises that cars will stop and/or float in water as shallow as 0.5m, whilst some emergency vehicles may survive in water of 1m. A fire engine remains controllable in depths of 0.5m up to a flow velocity of 5 m/sec, due to high-level air intakes/exhausts. On the basis of the evidence before me, even if vehicular access were required, the water depths would not exceed the depth that cars or emergency vehicles could safely travel through.
10. The sequential test need not be applied in this case. Although the Council disputes the content of the submitted sequential test, such a test is not a requirement of national policy in these particular circumstances, consequently there is no need for me to consider this aspect any further.
11. In conclusion, the proposed development would ensure that occupiers and users of the proposed development would remain safe from current and future surface water flood risk for the lifetime of the development without increasing flood risk elsewhere. The proposal would comply with policies SPO10 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 and policy EN1 of the adopted Wealden Local Plan 1998 which seek to ensure the safety of residents by avoiding the allocation of land for housing growth in areas subject to medium/high risk of flooding.

Other Matters

12. The Council has attached significant weight to the self-build status of the proposed dwelling. Whilst this would be a benefit of granting planning permission, the site lies within a settlement boundary where general market housing would also be acceptable in principle. As such, the self-build status is not a determining factor in this appeal.

13. Third party comments in relation to easements, character of the area, amenity for existing residents, highway safety and parking have been addressed in the case officer report and I have no reason to take a different approach.

Appropriate Assessment

14. The appeal site lies more than 7km from the Ashdown Forest Special Protection Area (SPA). Visitor surveys have demonstrated that it is residents living within 7km of the Ashdown Forest that are likely to visit this European protected site. As such, the Council has taken the view that the evidence held does not indicate a pathway of effect for recreational disturbance.
15. Natural England's supplementary advice on conserving and restoring the Ashdown Forest Special Area of Conservation (SAC) explains that the heathland habitat of the Ashdown Forest is sensitive to changes in air quality. Exceedance of 'critical values' for air pollutants may modify its chemical substrate and cause the loss of typical heathland species. However, I understand that Natural England was satisfied that significant housing allocations in the emerging (but now withdrawn) local plan could be accommodated without the need for mitigation measures.
16. Having regard to this, the Council has taken the view that a single dwelling on the appeal site would not, alone or in combination with other plans and projects, have an adverse effect on the integrity of the SAC. Based on the information provided, I have no reason to take a different view. Given the above analysis, there would be no Likely Significant Effect on European sites and an Appropriate Assessment, in accordance with Regulation 63 of the Habitats Regulations, is not required.

Conditions

17. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with these documents.
18. The Council is seeking to expedite the delivery of housing and is therefore seeking to reduce the standard time limit for the commencement of development from 3 years to 18 months. I have imposed a condition accordingly.
19. In the interests of certainty and neighbouring amenity I have imposed a plans condition and included a condition which states that the window shown on the first-floor plan of the north elevation should not be included in this elevation.
20. In order to secure a satisfactory standard of development, full details of surface water disposal must be provided.
21. In the interests of visual amenity and the character of the area I have attached a condition requiring the submission of materials samples and a landscape scheme.
22. In the interests of safety, I have attached a condition requiring the car parking spaces to be provided prior to the occupation of the development.
23. The appellant ticked the box on the application form for a self-build exemption for BNG. The Council has provided the wording for a condition to secure this. However, this would not pass the test of enforceability. The appellant has therefore provided the minimum information required for all planning applications relating to

BNG. It would be the responsibility of the Council outside of this appeal to discharge the Biodiversity Gain Plan condition or to be satisfied that the scheme qualifies for the exemption.

24. This is a physically constrained site and any extensions or alterations to the approved dwelling have the potential to harm the living conditions of adjoining occupiers and the character and appearance of the area. I have therefore attached conditions removing permitted development rights for buildings, structures and works as defined within Schedule 2, Part 1, Classes A-E inclusive of the Order. This includes control over the insertion of additional windows and other openings. In line with the Council's suggestion, and to protect the privacy of neighbours, I have also imposed a condition requiring the obscure glazing of windows on the first-floor rear elevation, such windows shall have no opening parts less than 1.7 metres above the floor of the rooms in which they are installed.

Planning Balance and Conclusion

25. The proposal complies with the development plan when taken as a whole and material considerations do not indicate a decision should be taken otherwise than in accordance with the development plan. For the reasons given above the appeal should be allowed.

C Coles

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 18 months from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos (and date stamped) 2492/01 (1 April 2025), 2492/02 (4 February 2025), 2492/03 (1 April 2025).
- 3) Before works above foundation level begin for the development hereby approved, full details of surface water disposal for the development shall be submitted to and approved in writing by the local planning authority. The approved drainage works shall be completed prior to the completion or occupation of the dwelling on site whichever is the sooner.
- 4) Before works above foundation level begin for the development hereby approved, samples of materials to be used on the external surfaces of the building shall be made available for inspection on site and adequate notice given to the local planning authority who will arrange inspection and thereafter approve in writing. The approved materials shall be used in the implementation of the development.
- 5) Before works above foundation level begin for the development hereby approved, a scheme of landscape proposals shall be submitted to and approved in writing by the local planning authority, which shall include full plans and specifications for all hard and soft landscape works.

All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges 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 of similar size and species. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.
- 6) Notwithstanding the detail on the first-floor plans of drawing number 2492 /01, a first-floor window in the north side elevation shall not be installed, and the development shall be constructed in accordance with the elevation as shown on drawing numbers 2492 /01 and 2492/02.
- 7) Before first use / occupation of the development, the car parking spaces and turning areas shown on drawing number 2492/03 date stamped 1 April 2025, shall be provided and thereafter shall be retained for such purposes.
- 8) The dwelling hereby permitted shall not be occupied until the rear facing windows at first floor level, have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

- 9) 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), no buildings, structures or works including the insertion of window openings in the new dwelling as defined within Part 1 of Schedule 2, Classes A-E inclusive of that Order, shall be erected or undertaken on the site.

***** END OF CONDITIONS *****