From: Tim Rodway | Rodway Planning <tim@rodwayplanning.co.uk>
Sent: 04 December 2024 21:03
To: East3
Subject: APP/M3835/W/24/3352190
Attachments: Appeal Decision.pdf; 241204_34088_20 Bernard Road Flood Risk Final Comments Paul Bond v01.pdf

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FAO: Harrison Dun

Dear Mr. Dun,

Town and Country Planning Act 1990
Appeal by Paul Nash Properties Ltd
Site Address: Land East of 20 Bernard Road, fronting Latimer Road, Worthing, West Sussex, BN11 5EL

I write further to your letter of 21st November 2024 in respect of the above Appeal case.

In response to the submissions of the LPA, please now find attached our final comments on behalf of the Appellants.

In addition, the LPA's submissions includes a document that suggests 13 no. conditions that could be applied in the event that the Appeal is allowed. A number of these conditions require further work and submissions either pre-commencement or pre-occupation. At this stage, we consider that the requirements of these conditions are generally reasonable. However, we note that the LPA proposes the submission and approval of a Construction Management Plan (their suggested condition no. 7). In this respect we would ask the Planning Inspector to consider the comments of their colleague on a Planning Appeal for a new detached dwelling on Land west of 2 Lansdowne Road, Worthing (PINS reference: APP/M3835/W/22/3299096). At paragraph 27 of that decision (copy attached), the Inspector said *"Given the scale of the scheme for one dwelling, with access direct from Lansdowne Road, I do not consider it necessary to require a construction management plan over and above the requested condition relating to hours of construction, to respect the amenities of nearby residents."* We suggest that a similar approach can be taken with respect to this Appeal proposal, and therefore suggested Condition no.7 is not required.

I trust that this is satisfactory, and I would be very grateful if you could acknowledge safe receipt of this email and its attachment.

Best regards,

TIM RODWAY
DIRECTOR / M +44 (0)7818 061220

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The Planning Inspectorate

Appeal Decision

Site visit made on 25 April 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date:2 June 2023

Appeal Ref: APP/M3835/W/22/3299096
Land west of 2 Lansdowne Road, Worthing BN11 4LY

- 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 Slipstream Developments Ltd against the decision of Worthing Borough Council.
- The application Ref: AWDM/1790/21 dated 24 September 2021, was refused by notice dated 13 January 2022.
- The development proposed is detached 4 bedroom dwelling house with new access, parking space, bicycle store and bin area.

Decision

1. The appeal is allowed and planning permission is granted for detached 4 bedroom dwelling house with new access, parking space, bicycle store and bin area on land west of 2 Lansdowne Road, Worthing BN11 4LY in accordance with the terms of the application Ref: AWDM/1790/21 dated 24 September 2021, subject to the conditions set out in the schedule at the end of this decision letter.

Preliminary Matters

2. The application plans were amended during the application process and I have determined the appeal on the basis of the scheme plans determined by the Council.

3. The application forms referred to 2 Lansdowne Road, whereas the Council's decision notice referred to land west of 2 Lansdowne Road. I consider the latter address to be a more accurate description given my understanding that the land the subject of this appeal is now in separate ownership to No 2 Lansdowne Road. A similar description has been used by the Appellant in a number of the supporting documents.

4. Since the application was determined and the appeal submitted, the Worthing Local Plan 2020 – 2036 has been adopted (March 2023) (Local Plan). I am advised that the new Local Plan supersedes both the Worthing Core Strategy (2011) and the Local Plan 2003, both of which are referenced in the reasons for refusal. I shall no longer refer to these policies.

5. I am required to determine the appeal on the basis of the development plan at the time of my decision, which is now the new Local Plan. In the determination of the application the Council referenced Policies DM5 and DM24 of the Submission Draft Local Plan and provided a copy of the policies at that stage. I

have now been provided with a copy of the adopted Plan. There are very limited changes to these policies in the adopted version of the Plan. As the Council relied on the draft version in its decision notice, which the Appellant has also referenced, I am satisfied that there is no need to seek the further views of the Appellant or the Council following the adoption of the Local Plan which I shall refer to in my decision.

Main Issues

6. The main issues in this appeal are:

   a) The effect of the proposal on the character and appearance of the Heene Conservation Area, including on the setting of No 2 Lansdowne Road, and

   b) The effect of the proposal on the living conditions of the occupiers of No 2 Lansdowne Road, with particular regard to overlooking and loss of outlook as well as loss of light and noise disturbance.

Reasons

Issue a) Character and Appearance

7. The appeal site relates to part of the former garden to No 2 Lansdowne Road (No 2), which is a large Victorian, detached property on the corner of Lansdowne Road and Heene Road within a predominantly residential area. I am advised that the main house and later extensions have been divided into some 15 flats.

8. The site lies within the Heene Conservation Area and the existing building at No 2 is identified as a Local Interest Building. There are several mature trees along the southern and eastern boundaries of No 2 protected by a Tree Preservation Order (TPO 16/1993).

9. Section 72 (1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Policy DM24 of the Local Plan confirms that Buildings of Local Interest are regarded as non-designated heritage assets and will be a material consideration when determining planning applications. The policy goes on to indicate that they have been identified for their contribution to the character of the area and that development proposals should respect, support and where possible, positively contribute to the essential character of these heritage assets. Paragraph 203 of the National Planning Policy Framework (Framework) also indicates that the effect of a proposal on the significance of a non-designated heritage asset should be taken into account in determining an application.

10. No 2 appears to be one of the original substantial Victorian villas in the local area and there are a number of other large Victorian villas but a number of these, like No 2, have been extended and altered, and they are now very much intermingled with replacement and infill development. Whilst I agree with the Council that where still remaining, the sizeable Victorian Villas, such as No 2, contribute to the significance of the Conservation Area, the size of individual dwellings and the spacing between dwellings across the Conservation Area is noticeably mixed, particularly as a result of later replacement and infill development. As a result, the pattern of development and spacings between buildings, which now characterises the local area, is very varied. Nonetheless

there remains a verdant appearance to individual properties which together with the many mature trees contributes to the attractive and leafy appearance of the local area and to the significance of the Conservation Area. Boundary walls, many of flint, are also an attractive and unifying feature to the individual street scenes.

11. The proposal would introduce a new detached dwelling into part of the former garden to No 2, fronting Lansdowne Road. It would be set broadly in line with the front of No 2, facing Lansdowne Road, and would be three storeys with windows facing primarily to the front and to the rear. The proposed design would be traditional in form and appearance and would be primarily of brick under a tile hung pitched roof and with tile hanging to the front bay. Although it would be set on a narrower plot to No 2, there would remain a clear spacing with No 2 and a generous open gap to the property to the west (Heene Rectory).

12. Whilst I appreciate that there would be the loss of some of the former garden area to No 2, I am satisfied that there would remain adequate spacing around the building and between the existing building and the proposed new dwelling which would reflect the varied pattern of development and spacings between individual buildings in the local area. Indeed, it is my view that the spacing would be more generous than in many other examples in the vicinity. As a result, I do not agree with the Council that the new development would appear as a cramped or 'crammed' form of development.

13. Similarly, there would remain adequate spacing around the existing building at No 2 so that its presence in the street scene would not be diminished. I also do not consider that in street scene views along Lansdowne Road the new proposal would detract from the existing building, given the spacing and smaller scale of the new dwelling. Moreover, I am satisfied that it would fit in comfortably with the wide range of spacings now found and form part of the prevalent pattern of development throughout the Conservation Area.

14. Part of the existing boundary wall would be removed to allow for a vehicular access but the submitted images indicate that the rest would be retained or rebuilt to continue the boundary wall which is a feature in the Conservation Area. In terms of trees and planting, there would be scope to add new planting to the existing to be retained to maintain the verdant character and appearance of the street scene and of the Conservation Area. From the information provided to me, the protected trees under the TPO appear all to relate to that part of the site which remains as part of the curtilage to No 2.

15. I am therefore satisfied that the proposed new dwelling would respect the significance of and the setting of the Local Interest Building at No 2 and the significance of the Heene Conservation Area. It would therefore preserve the character and appearance of the Heene Conservation Area. There would be no conflict with Policies DM5 and DM24 of the Local Plan and the Framework with particular reference to Sections 12 and 16, all of which amongst other things seek a high quality of design which respects the local context and the significance of both designated and non-designated heritage assets.

b) Living Conditions

16. The existing original building at No 2 has windows in the side elevation facing towards the appeal site over three floors, and the two storey extension towards

the rear has windows facing to the side and to the south towards the appeal site. I have been provided with no detailed information to confirm the rooms which the windows serve or the number of flats to which they relate.

17. I am satisfied that would be no overlooking or loss of privacy for the occupants within the original dwelling as there would be no windows in the side elevation at first floor level or above (except for two roof lights) facing towards No 2. Moreover, and taking into account the distance between the windows in the existing side elevation of the original part of No 2 and the new proposed dwelling, with the garden area in between, I do not consider that the outlook from these existing windows would be materially harmed.

18. Although there would be windows in the rear elevation of the proposed dwelling at first and second floor levels, and there are windows facing south and to the west in the extension to No 2, any overlooking would be at a very oblique angle which I do not consider would lead to a material loss of privacy. Furthermore, the window at first floor level in the proposed dwelling closest to No 2 would serve a bathroom, and a condition would be imposed to ensure that this was in obscure glazing.

19. The Council has raised in its second reason for refusal that the proposed dwelling would overshadow the neighbouring property at No 2. Neither the Council nor the Appellant has provided any technical evidence in this regard. However, given the distance between the proposed and the existing main house at No 2 I consider that any overshadowing of windows would be very limited. Although the remaining communal garden to No 2 would be south facing, there would potentially be some overshadowing of part of the garden area during late afternoon / early evening during the summer months. However, I do not consider that this in itself would justify withholding planning permission.

20. In terms of noise and disturbance, this is an existing residential area and there is no basis to consider that the addition of one house would lead to a material increase in noise and disturbance to the residents of No 2, particularly taking into account that the existing property is divided into some fifteen flats.

21. I therefore conclude that the proposed development would not materially harm the living conditions of existing and future occupants, with particular regard to overlooking and loss of privacy, overshadowing and loss of light and loss of outlook. There would be no conflict with Policy DM5 of the Local Plan, the Council's Guide to Residential Development SPD 2013 and the Framework with particular reference to paragraph 130, all of which amongst other matters seek to respect the living conditions of existing and future occupiers.

22. I have also had regard to concerns raised by neighbouring residents about overlooking and loss of privacy as a result of the proposed new dwelling. However, given the distances to other surrounding residential properties, I am satisfied that the living conditions, with particular regard to overlooking and loss of privacy would not be materially affected.

Other Considerations

23. I agree that the proposed dwelling would be in a generally accessible location and within an existing residential area. It would also make a contribution, albeit

very modest, to the Council's housing land supply figures with attendant socio-economic benefits.

Conditions

24. In terms of conditions, I agree that further details of materials, hard and soft landscaping including boundary treatments need to be provided in the interests of protecting the character and appearance of the Conservation Area and the setting of No 2. I consider that none of these require to be pre-commencement conditions but can be required to be approved prior to any works above slab level, or later in the construction period.

25. I agree that to protect the character and appearance of the local area, existing trees to be retained require to be protected but this can be addressed by requiring the scheme to be undertaken in accordance with the submission and plans by Lizard Landscape Design and Ecology, rather than requiring further details to be submitted.

26. Provision of the access and parking spaces require to be in place in accordance the approved plans prior to first occupation in the interests of highway safety. Further details of an electric charging point and covered cycle store require to be approved and implemented prior to first occupation to ensure alternative sustainable transport options are available from the outset of occupation.

27. Given the scale of the scheme for one dwelling, with access direct from Lansdowne Road, I do not consider it necessary to require a construction management plan over and above the requested condition relating to hours of construction, to respect the amenities of nearby residents.

28. I agree that a condition should be imposed to prevent further windows being added to the side elevations without specific consent, to protect the living conditions of neighbouring residents. For the reasons already set out I shall impose a condition to require the bathroom windows in the rear first floor to be in obscure glazing and fixed shut below 1.7m above floor level. However, given the size of the plot and relationship with surrounding development, I do not consider that there is any planning reason to withdraw all permitted development rights as requested by the Council; it would not meet the tests set out under paragraph 56 of the Framework.

29. The Council has proposed a condition requiring a range of sustainability measures to be approved but the condition is very loosely worded and some of the measures referenced are already covered by other conditions, and some may be required under legislation. Whilst the objective is to be commended, there is insufficient detail before me to justify its imposition. There is however, very limited information provided on surface water drainage and further details are required to be approved and implemented prior to first occupation to ensure a satisfactory development in terms of drainage that incorporates sustainable drainage measures. In addition, details of the storage for refuse and recycling requires to be submitted and approved prior to first occupation, to ensure a satisfactory development.

30. I shall list the approved plans for the avoidance of doubt and in the interests of sound planning. I have sought to remove areas of repetition and have amended some of the wording to reflect latest guidance.

Conclusion

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

L J Evans

INSPECTOR

Schedule of Conditions (Conditions 1 – 14 inclusive)

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

2. The development shall be undertaken in accordance with the following approved plans: 1272/01; 1272/03 Rev A; 1272/02 Rev B; 1272/04 Rev A; 1272/05 Rev A; 1272/06 Rev A; 1272/07 Rev A; 1272/08 Rev A; LLD2402-ARB-DWG-001 and LLD2402-ARB-DWG-002.

3. No development hereby permitted shall be carried out above slab level until a schedule and samples of materials and finishes to be used for the external walls (including windows, rooflights and doors) and roof of the proposed building have been submitted to and approved in writing by the Local Planning Authority and the development shall be completed in accordance with the approved schedule.

4. The development hereby permitted shall be undertaken in strict accordance with the Arboricultural Impact Assessment and Method Statement by Lizard Landscape Design and Ecology (reference LLD2402-ARB-REP-001 dated December 2021) together with LLD2402- ARB-DWG-001 – Tree Constraints Plan, LLD2402-ARB-SCH-001 – Existing Tree Schedule and LLD2402-ARB-DWG-002 – Tree Retention and Protection Plan.

5. The development hereby permitted shall not be first occupied until there has been submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping. The soft landscaping scheme shall include planting plans; written specifications; schedules of plants stating species, sizes and numbers/densities; and the implementation programme. Hard landscaping scheme shall include hard surfacing materials, all boundary treatments including the details of the retained or reconstructed wall to Lansdown Road, finished levels and location and details of biodiversity measures. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out within the first planting and seeding seasons following the first occupation of the building. Any trees or plants which, within a period of 5 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, unless the Local Planning Authority gives written consent to any variation. All hard landscaping shall be provided prior to the first occupation of the development hereby permitted.

6. The proposed first floor windows in the rear elevation of the development hereby permitted serving en-suite bathrooms shall be glazed with obscure glass and fixed shut to a height of 1.7 metres above the finished floor level of the room in which the window is installed and thereafter so retained.

7. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 (or any order amending, revoking and re- enacting that Order with or without modification), no additional window or any other opening shall be inserted into any side wall of the dwelling hereby permitted (other than as hereby approved).
8. The development hereby permitted shall not be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details to be first submitted to and approved by the Local Planning Authority.

9. The development hereby permitted shall not be first occupied until such time as the vehicular access has been constructed in accordance with the approved site plan.

10. The development hereby permitted shall not be first occupied until facilities for storing refuse and waste, including for waste that can be recycled, have been provided in accordance with plans and details to be first submitted to and approved by the Local Planning Authority. Such facilities as provided shall thereafter be retained and used only for the storage of refuse and re-cycling waste.

11. The development hereby permitted shall not be first occupied until the car parking has been constructed in accordance with the approved site plan. These spaces shall thereafter be retained at all times for their designated purpose.

12. The development hereby permitted shall not be first occupied until an electric vehicle charging spaces has been provided in accordance with plans and details to be first submitted to and approved by the Local Planning Authority.

13. No work for the implementation of the development hereby permitted shall be undertaken on the site except between the hours of 08.00 and 18.00 on Monday to Friday and between 08.00 and 13.00 hrs on Saturday. No works shall take place on Sundays or on Bank or Public Holidays.

14. The development hereby permitted shall not be be first occupied until surface water drainage works shall have been implemented in accordance

with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non- statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. The drainage system shall be implemented in accordance with the approved details, prior to first occupation of the development hereby approved and thereafter managed and maintained in accordance with the approved details.

Final Comments: Flood Risk

Paul Christopher Bond MSc BSc (Hons) CSci MIEnvSc MCIEEM

Appeal by Paul Nash Properties Ltd against Worthing Borough Council's refusal of planning permission for the demolition of existing garage and proposed erection of a new single storey dwelling on land to the rear of 20 Bernard Road, Goringby-Sea, Worthing, West Sussex, BN11 5EL.

Land to the rear of 20 Bernard Road, Goringby-Sea, Worthing, West Sussex, BN11 5EL.

Planning Application Reference: AWDM/0947/23

DATE OF ISSUE: **4 DECEMBER 2024**
ISSUE: **01**
HM REFERENCE: **34088-HML-XX-XX-RP-U-870001**

PROJECT NAME:	**Land to the Rear of 20 Bernard Road, Goringby-Sea, Worthing, West Sussex, BN11 5EL**
REPORT NAME:	**Final Comments: Flood Risk**
	Paul Christopher Bond MSc BSc (Hons) CSci MIEnvSc MCIEEM
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1 Introduction

1.1 This document comprises my Final Comments relating to the Statement by Worthing Borough Council in relation to the Appeal by Paul Nash Properties Limited ("the Appellant") at Land East of 20 Bernard Road, Worthing, BN11 5EL ("the site"). The Appeal has been lodged by the Appellant in respect of Worthing Borough Council's refusal of planning permission for the demolition of the existing garage and proposed erection of a new single storey dwelling on the above land.

1.2 In providing these Final Comments, I have reviewed the above Statement and have provided below, clarification on, or rebuttal of, various statements made or points raised by Worthing Borough Council, aimed at helping the Inspector to make an informed decision on the Appeal. My comments are provided below in a sequential manner broadly consistent with the content of the Statement.

2 Comments on the Worthing Borough Council Statement

2.1. Flood Risk Status of the Site

2.1.1 On page 3 of the Statement under the heading "*Strategic Flood Risk Assessment*", and referring to the JBA Consulting "*Methodology in Support of Performing the Sequential Test*", it is stated that:

"*Table 2.1.1 sets out the implications of making use of mapping in the sequential test. Where detailed models are available, Future Flood Zones 2 (0.1% AEP event), 3a (1% AEP fluvial event or 0.5% AEP tidal event) and 3b (now the 3.3% AEP) will be assessed with climate change allowances. Where no detailed modelling is available it states that Flood Zone 2 should be used as a proxy for future Flood Zone 3a. At the time of publication (in July 2024) there was no detailed modelling for Worthing. Appendix B illustrates the fluvial and tidal datasets used to include climate change allowances to derive the high, medium and low risk categories (with Flood Zone 2 used as a proxy for 'High' risk in Worthing).*"

2.1.2 As described in Section 4.4.3 of the Hilson Moran "*Flood Risk Assessment & SuDS Strategy, 20 Bernard Road, Worthing*", 12/01/24, Report Ref. 34088-HML-XX-XX-RP-U-870001, Issue 03, the site is not susceptible to any fluvial flooding, with the presence of Flood Zones 2 and 3 associated with the impacts of tidal flooding.

2.1.3 With regard to the Worthing Borough Council statement that: "*At the time of publication* [of the JBA Consulting "*Methodology in Support of Performing the Sequential Test*"] *(in July 2024) there was no detailed modelling for Worthing*", that is incorrect, as detailed modelling is available for tidal flooding. "Product 4" flood level data provided by the Environment Agency (EA) and reproduced in Appendix

B of our Flood Risk Assessment (FRA), is taken from the "*Arun to Adur Coastal Modelling*", completed by JBA Consulting in 2012, and considered robust by the EA, as long as the impacts of climate change (CC) are corrected as per their prescribed methodology (see para. 2.1.4 below).

2.1.4 As also described in Section 4.4.3 of our FRA, the CC impacts on the modelled tidal flood levels in the vicinity of the site, have been determined, at the request of the EA, by using their prescribed methodology, which is presented on the UK Government's "*Guidance: Flood Risk Assessments: Climate Change Allowances*" website at https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances. This methodology requires the derivation of baseline (2017) extreme sea levels from the EA's "*Coastal Design Sea Levels - Coastal Flood Boundary Extreme Sea Levels (2018)*" dataset and associated guidance ("*Coastal flood boundary conditions for the UK: update 2018, Technical summary report*" and considers both the Higher Central and Upper End allowances. With reference to EA guidance (re: https://www.gov.uk/guidance/flood-and-coastal-risk-projects-schemes-and-strategies-climate-change-allowances), the Higher Central level should be used as the design flood level and the Upper End level "*to test sensitivity to severe climate change and any required mitigation*."

2.1.5 The application of this methodology on the EA's uncorrected "Product 4" data is presented in detail in Section 4.4.3 of our FRA. In summary, the application of the EA approved methodology on their data demonstrates that:

i. The sea defences protecting the site will not be overtopped over the presumed 100-year lifetime of the scheme, by either the 1 in 200-year or 1 in 1000-year events, whether for the Higher Central CC or Upper End CC scenarios.

ii. If the sea defences were to fail, sea water would pass through the resulting failure and flooding of the area behind the defences would be propagated over time as the floodwaters advanced from the failure point. With regard to the supplied Product 4 data, the EA flood modelling used to predict the "defended" flood levels, take account of the defences but also allow for wave overtopping and tidal breach of the existing defences.

iii. The ground level in the vicinity of the proposed property is around **4.28 m AOD**. With the sensitivity test flood levels (Upper End 2125 1 in 200 and 1000 year defended (breach) levels) at **~4.14m AOD** and **~4.17m AOD** (both corrected as per the above EA-prescribed methodology for CC over the lifetime of the scheme), these breach flood levels will not even exceed ground levels within the vicinity of the proposed dwelling.

iv. Only in the undefended scenario would the site be susceptible to any flooding, which would reach **5.19 mAOD** during the Higher Central CC 1 in 200-year undefended flood event. For this to happen, there would have to be cataclysmic failure of all defences in the vicinity of the scheme, whereby all defences would need to be completely absent.

v. As described in our FRA, the coastal defences along the Worthing seafront are actively managed and maintained by Worthing Borough Council and the EA, who have just announced plans to significantly enhance them, including repairing the existing groyne field to a higher standard. The project is set to commence in Autumn 2025, following expected approval in January 2025. In addition to these repairs, the second phase of the project, planned for Autumn 2026 and 2027, will involve shingle movement works to further strengthen the defences. Consequently, it is highly unlikely that the flood defences to Worthing Sea front will be removed entirely or that maintenance of these defences to their current levels will cease during the lifetime of the proposals.

vi. Nevertheless, even if there was a cataclysmic removal of all defences along the seafront during the lifetime of the scheme, all sleeping accommodation within the new dwelling will be set at least 600 mm above the 1 in 200-year Higher Central CC undefended design flood level, flood resilient construction will be provided that will withstand an external static head of 600 mm before water enters through the fabric of the building, and continuous Flood Zone 1 (Low risk) is accessible only 5 m east of the development.

2.1.6 Consequently, the residual risk of tidal flooding to the occupants of the proposed development is deemed very low and, as such, this conclusion has been accepted by the EA who have approved the Hilson Moran FRA and lifted any objections it had to the scheme on flood risk grounds, by means of a letter dated 12/10/23 (reproduced in Appendix A of the Written Statement)).

2.2. Worthing - Housing Land Supply

2.2.1 With regard to Worthing Borough Council demonstrating a 5-year supply of 6.3 years, as at 1st April 2024 (as stated on page 4 of their Statement), as explained in para. 3.3.3.7 of my Written Statement, this is based on an adopted Local Plan with a 74 % housing shortfall, which was at the centre of a Court of Appeal battle, and was deemed sound only after an Inspector found the authority had "*done everything it realistically could*" to identify potential housing sites. As such, the housing supply within the adopted Local Plan masks an acute demand for, and shortage of, available housing in the borough. Furthermore, as described in para. 3.3.3.6 of my Written Statement, not only does

Worthing's housing supply mask an acute need for housing, Worthing Borough Council has consistently under-delivered housing since at least 2019, with a delivery compared to housing requirement scored at 93% in 2019, 54 % in 2020, 52 % in 2021, 35 % in 2022 and 33 % in 2023. With reference to the UK Government's webpage "*Guidance: Housing Delivery Test: 2022 measurement*" at https://www.gov.uk/government/publications/housing-delivery-test-2022-measurement, Worthing Borough Council ranks sixth lowest in the housing delivery test measurement, out of 287 English Councils.

2.2.2 As a consequence of this under-delivery, the presumption in favour of sustainable development applies; an Action Plan has been produced; and in calculating the five-year housing land supply, a 20% buffer has been added.

2.2.3 Consequently, it is expected that Worthing Borough Council demonstrate that they are doing everything they realistically can to identify and deliver potential housing sites, in order to address the significant local need for housing and the failure to facilitate the delivery of safe and sustainable dwellings in the borough.

2.3. Background to Planning Application AWDM/0947/23

2.3.1 With regard to the comments on the current and former use of the site, it is not disputed that it was once part of the residential garden associated with 20 Bernard Road. However, it is now under separate ownership, is overgrown and includes a dilapidated garage fronting onto Latimer Road. It is unlikely ever to return to its former use associated with 20 Bernard Road and it is difficult to imagine another use for this land, other than for its development as a small dwelling, in keeping with neighbouring land uses, securing economically and appropriate use of the land.

2.3.2 On page 5 of their Statement, Worthing Borough Council quote the Inspector at the appeal of a former proposed scheme at the site (Planning Ref. AWDM/1764/21) stating:

"*The built up area of Worthing covers a wide area, the majority of which is at a lower risk of flooding than the appeal site. Infilling and small scale development of the type proposed in the appeal is acceptable in principle in the built up area of Worthing…….It is preferable to avoid placing more vulnerable development in areas at risk of flooding irrespective of whether there is a technical solution that would make a development safe for its lifetime, such as in this case with a raised ground floor level.*

Whilst such a solution addresses the concerns of the Environment Agency and the Council's Drainage Engineer, it would still leave the dwelling in an area at risk of flooding."

2.3.3 It is not disputed that there are significant areas within Worthing Borough that are at a lower risk of flooding than the Appellant's site, however, given the miniscule residual risk of flooding to the site, now and in the future, described in Section 2.1 above and the desperate need for sustainable housing in the borough described in Section 2.2 above, the development should be permitted.

2.3.4 With regard to the use of the term "brownfield" relating to the proposed development in my Written Statement, this is mainly in the context of defining surface water runoff rates, where sites are regarded as either greenfield or brownfield, For example the West Sussex SuDS guidance "*Water. People. Places. A guide for master planning sustainable drainage into developments*", states that:

"*Delivery of SuDS schemes in development areas, greenfield and brownfield, can also be used to reduce pressure on existing infrastructure and reduce surface water flooding which is a particular problem in and around urban areas*", whilst the Adur and Worthing Councils' "*Supplementary Requirements for Surface Water Drainage Proposals*" states that:

"*Discharge to a watercourse or surface water sewer must be restricted to the estimated mean greenfield runoff rate (Qbar) for all design storm events. The calculations must be based on the positively drained area, rather than the entire greenfield site area. Runoff rates can be derived from IH124 or a similar approved method. For brownfield sites, the same criteria applies. If it is deemed that this is not achievable, evidence must be provided and flow should be restricted to as close to Qbar as possible, with a minimum requirement of 50% betterment*."

2.3.5 Nevertheless, it is interesting to note that within the South Gloucestershire Council "*Small Sites Windfall Topic Paper*" presented in Appendix F of my Written Statement, that developments on former residential gardens are also regarded as brownfield (*e.g.* in para. 3.1 and on Chart 3, page 8).

2.3.6 With regard to site selection for the Sequential Test discussed on page 6 of Worthing Borough Council's Statement, as explained in Section 3.2 of my Written Statement, the methodology was based strictly on that previously agreed with Stephen Cantwell, Adur & Worthing Councils Principal Planning Officer (Major Applications), for the nearby consented planning application for 10-20 Marine Place, Worthing (Planning Ref. AWDM/1884/22), granted planning permission on 6th April 2023. This was only 3 months prior to the Appellant's application being received and validated on 6th July 2023. As a precautionary measure, the methodology used included an additional step, whereby a further investigation was conducted of all applications submitted to the Adur & Worthing

Council Planning Applications portal, that were still awaiting a decision between 2021 to the time of preparing the FRA. As with 10-20 Marine Place scheme, the Appellant has committed to completing the scheme within 2-years of being granted planning permission, to help address Worthing's acute housing need – consequently, this was the reasoning behind this time frame being used as a comparator, in agreement with Stephen Cantwell.

2.3.7 Furthermore, on page 8 of their Statement, Worthing Borough Council states that:

"*It is pertinent that the development site for AWDM/1884/22 is located within the designated Worthing Town Centre*" and "*The site the subject of this appeal is not located within the Town Centre, but an outer residential suburb. The approach to a Sequential test in the Town Centre, where new development is directed, will differ to that in other parts of the Borough*" and then cites Policy SS3 of the adopted Local Plan which specifically relates to the Town Centre. However, at no point in the Local Plan, or anywhere else that I am aware of, is it stated that the Sequential Test methodology should be different for the Town Centre compared with the rest of Worthing. As such the Sequential Test approach is robust and supported by very recent precedent.

2.3.8 On page 6 of their Statement, Worthing Borough Council then state that "*for the sake of completeness the LPA contends that the Exceptions test is also not passed*". This is a subjective statement based on their erroneous baseline assessment, discussed earlier on in their Statement, which concludes that the proposed development is at a high risk of flooding. As accepted by the EA and demonstrated in the Hilson Moran FRA, my Written Statement and Section 2.1 above, the residual risk of flooding to the site is very low and thus, the described economic, aesthetic, and flood risk reduction benefits (through the inclusion of SuDS); together with making a modest yet valuable contribution to the Council's housing requirements (which is a significant material consideration that weighs heavily in favour of the proposed sustainable development) easily outweigh the flood risk to the site.

2.3.9 Furthermore, on page 7 of their Statement, Worthing Borough Council states that:

"*The LPA contends that part a) of the Exceptions test is not passed. Any public benefit in providing the proposed 1no 1-bedroom dwelling is negated by the impact of providing an additional property in an area of high flood risk. The development would not offer 'sustainability benefits' to the wider community. This approach is consistent with the Inspector's position in dismissing the earlier appeal*."

2.3.10 As explained in Section 2.4.1 of my Written Statement, the previous Appeal was for a larger two storey scheme, with potential overlooking problems, and where the flood risk to the site had not

been addressed to the EA's satisfaction. Consequently, the one storey scheme currently the subject of this Appeal, has addressed fully the LPA's concerns with regard to overlooking and the EA has fully approved the associated FRA, and has no objection on flood risk grounds, with the Sequential Test issue being the only Reason for Refusal from the LPA. Consequently, this approach is not "*consistent with the Inspector's position in dismissing the earlier appeal*."

2.3.11 On page 7 of their Statement, Worthing Borough Council state that "*the contribution that v1no 1-bedroom house would make toward meeting the considerable housing needs of the Borough is extremely limited.*" Here the Council actually recognise they have "*considerable housing needs*", but are dismissive of the contribution that the dwelling would make to addressing it. With all due respect, this is the sort of approach that has put them sixth lowest in the housing delivery test measurement out of 287 English Councils, and serves to perpetuate their housing supply and delivery problems. As highlighted by the Inspector at the Local Plan Appeal proceedings, Worthing Borough Council should be doing everything it realistically can to identify potential housing sites, whether they be large or small, as all have a valuable part to play in securing well needed homes in the area.

2.3.12 On page 7 of their Statement, Worthing Council state that:

"*The Statement refers to the appeal development as providing desperately needed "centrally" located housing. The site is within the built-up area of Worthing, but not located within the designated Town Centre or any other local centre*."

2.3.13 Although it is accepted that the scheme is not within the Town Centre boundary as defined in the Local Plan, it is in a built-up, highly sustainable location, less than a mile (*circa* 1.4 km) from the Town Centre boundary.

2.3.14 On page 10 of their Statement, Worthing Borough Council highlight that in para. 3.3.1.3 of my Written Statement that:

"*Reference is made here to an earlier (2018) version of the Regulation 18 document (which sets out the Sequential test, and where required, the Exception test for sites allocated in the Local Plan*" and then refers the Inspector to the text within the 2021 final version of this document.

2.3.15 It should be noted that in the intervening three years between 2018 and 2021, the housing situation in Worthing Borough has only got worse, with a delivery compared to housing requirement scored at 93% in 2019, 54 % in 2020 and 52 % in 2021 (reducing further to 35 % in 2022 and 33 % in 2023). Consequently, it can be concluded that the following extract from the 2018 Regulation 18 document is just as valid now, as it was then and even more so:

"*Worthing is tightly constrained and there is little scope to grow beyond the current boundary without merging with the urban areas of Ferring and Lancing and without damaging the borough's character and environment. Furthermore, the town is relatively compact and there are very few vacant sites or opportunity areas within the existing built-up areas that could deliver significant levels of growth.*

The Draft Local Plan seeks to achieve the right balance between planning positively to meet the town's development needs (particularly for jobs, homes and community facilities) with the continuing need to protect and enhance the high quality environments and open spaces within and around the town….However Worthing has a significant need for new housing, and although the local housing need figure is not considered achievable, the Council has sought to plan positively to establish whether housing delivery could be increased significantly to meet local need as far as possible….."

2.3.16 An extract from the 2021 Regulation 18 document is then presented in Worthing Borough Council's Statement and discussed by them, stating that:

"*This makes it clear that the Sequential test will be required to be undertaken and passed for windfall sites for planning permission to be granted as per the NPPF*."

2.3.17 The extract presented from the 2021 Regulation 18 document is just as revealing about Worthing's housing supply problems and the role of the Sequential Test, in that:

i. It states that: "*Given the limited land availability in Worthing the Local Plan is unable to meet the local housing need. It is therefore considered that all potential windfall sites will need to be developed (where acceptable in terms of planning policy) to further contribute to meeting this need as far as possible*."

ii. It states that: "*Individual sites not allocated through the Local Plan will be required to undertake the Sequential Test, and where necessary the Exception Test at the planning application stage. This should consider the Flood Zones and other sources of flooding*." Although the Appellant's scheme has been subject to, and deemed to pass the Sequential and Exception Tests, as per the methodology previously approved by Stephen Cantwell, it is illuminating that the Regulation 18 document text prescribes that Individual sites not allocated through the Local Plan will be required to "*undertake*" the Sequential Test, but does not specifically state that it needs to be passed.

iii. Furthermore, it is seemingly pragmatic in its approach by stating that "*However, given the scale of unmet need it is unlikely to be possible for development to be directed to areas of*

lower flood risk." *i.e.* indicating that even sites failing the Sequential Test will need to be considered for development in order to address the scale of unmet housing need.

2.3.18 As such, although not explicitly stated that all windfall sites will need to be developed (whether or not they pass the Sequential Test), as per the 2018 version of the Regulation 18 document, it is clear that the 2021 version expects there to be flexibility in the application of the test. This is clearly the case with other schemes recently permitted by Worthing Borough Council.

2.3.19 Within their Statement (Appendices 3 & 4), Worthing Borough Council give two examples of other applications that have been refused in 2018 and 2021, on the basis of not passing the Sequential Test, namely 20 Marine Drive (Planning Ref. AWDM/0777/18) and 20 Devonport Road (Planning Ref. AWDM/0723/21). It should be noted that both of these applications were wholly in Flood Zone 3 (other than a small area of the lengthy access to the latter), neither applications were accompanied by any Sequential or Exception Test and flood risk was one of several reasons for refusal for each (with the other reasons comprising character and appearance, overbearing and loss of privacy for the former and overdevelopment of a backland plot, siting, layout and scale for the latter).

2.3.20 The Regulation 18 states that "*It is therefore considered that all potential windfall sites will need to be developed (where acceptable in terms of planning policy) to further contribute to meeting this need as far as possible*." Consequently, these two examples would not have been acceptable in terms of various other elements of planning policy, their residual risk would have been higher than for the Appellant's site, and whether their benefits to the community outweighed the flood risk associated with the sites was not considered through the Exception Test process.

2.3.21 It should be noted that the Appellant's current scheme was refused on only one issue – that being, according to Worthing Borough Council, the application fails the Sequential and Exception Tests, with the scheme being deemed compliant with all other elements of planning policy.

2.3.22 Conversely, I also provided three examples in my Written Statement of other applications, in which a pragmatic view has been adopted by Worthing Borough Council with regard to the application of the Sequential Test and permission duly granted. These comprise:

i. 10-20 Marine Place, Worthing (Planning Ref. AWDM/1884/22), located wholly in Flood Zone 3 and granted permission 6th April 2023). As discussed above, the application was accompanied by Sequential and Exception Test, following the methodology agreed with Stephen Cantwell, Adur & Worthing Councils Principal Planning Officer.

ii. 38 South Street (Planning Ref. AWDM/1375/19), including "*5no residential flats across ground, first, second and third floors*", with the accompanying FRA demonstrating that the western half of the scheme is located in Flood Zone 3, and being granted permission in February 2020. The application was not accompanied by either a Sequential Test or Exception Test. Within Worthing Borough Council's delegated report for the application it is stated that:

"*In response to the submitted flood-risk assessment, the Environment Agency raises no objection. The degree of risk at upper floors to the main building is limited and the Agency recommendations relate to the provision of ground floor resilient construction and the retention of means of escape, and provision of information to future residents. These can be subject of planning conditions*."

iii. 6 East Avenue (AWDM/1920/21) which included the provision of "*2no. 3-bedroom semi-detached dwellings*", is located wholly within Flood Zone 3 and was granted permission in June 2022. In para 4.19 of the accompanying FRA, it is explained that as the site is defended by the local sea defences, such sites can be "*considered as being within an effective Flood Zone 1*" and that as the site is also a windfall site, owned by the those wishing to develop it, the formal definition of a reasonably alternative site cannot be satisfied, therefore, the site is deemed to pass the Sequential Test. Whilst these assertions may not be entirely correct, again Worthing Borough Council have been pragmatic in their approach, and permission for the scheme granted.

2.3.23 It is assumed that a similar approach can be taken with the Appellant's scheme, which is accompanied by appropriate Sequential and Exception Tests, and demonstrates a range of benefits to the community that outweigh the very low residual flood risk associated with it throughout its lifetime.

2.3.24 On page 11 of their Statement, Worthing Borough Council state that:

"*Reference to the policy approach of South Gloucestershire Council to small windfall sites is completely irrelevant to the context of Worthing Borough.*" I beg to differ on this statement. Rather than dismiss the development of residential gardens, be they current or former, as inappropriate development, the inclusion of South Gloucestershire Council's "*Local Plan Phase 3: Towards Preferred Strategy - Small Sites Windfall Topic Paper*" in Appendix F of my Written Statement is provided to demonstrate how a LPA can use such sites to deliver housing in a sympathetic and sustainable fashion. As stated in my Written Statement, such an approach demonstrates:

"*the policy position of avoiding harm to local areas has been appropriately applied while balancing this with the need to provide sufficient new homes, shown by the continued permissions and developments since introduction of the NPPF criteria*."

2.3.25 On page 11 of their Statement, the assertion by Worthing Borough Council that "*Contrary to the suggestion that "in cases like Worthing, where available sites in Flood Zone 1 are rare, for example due to limited land availability", the Council contends that the contrary is correct in so far as the majority of land, and therefore potential development sites in Worthing, are within Flood Zone 1. Land Use Statistics (DLUHC) show that in Worthing, residential land accounts for 333 hectares (Table 400b) of which only 9 hectares (Table 402b) is within Flood Zone 3, or 2.7%*" is surprising. Time and again it is stated in the Local Plan and associated documents, and within their Written Statement, that there is limited land availability in Worthing and that the Local Plan is unable to meet the local housing need (*e.g.* refer to paras. 2.2.1, 2.3.9, 2.3.11 and 2.3.15 above). As such, the Local Plan Regulation 18 documents infer that a pragmatic approach to the Sequential Test should be taken to windfall sites, which satisfy all other planning policy elements, such as the Appellant's scheme.

2.3.26 Furthermore, as with Worthing Borough Council's statement discussed in para. 2.3.11, their stance on page 11 of their Written statement is also surprising, where they state that:

"*With regard to the suggestion that, in the overall balance of considerations, planning permission could be granted even if the Sequential test is not passed, it is worth pointing out that High Court judgement by Justice Holgate (Mead Realisations Ltd v SoS LUHC and North Somerset Council and Redrow Homes Ltd v SoS LUHC and Hertsmere Borough Council) related to the development of up to 75 dwellings and up to 310 dwellings respectively, and in weighing up the overall balance, such provision would make a substantially greater contribution toward meeting the need for housing (in those areas) than the proposed 1no 1-bedroom dwelling under consideration here*."

2.3.27 Within the recent High Court Judgement on the Redrow Homes/Mead Realisations Ltd case[1] cited in my Written Statement, I am not aware of any qualification of Lord Carnwath's comments restricting them to schemes of a certain size when considering the role of the Sequential Test and the overall planning balance (that could enable permission to be granted, even if the Sequential Test was failed). Rather, as discussed in para. 2.3.11 above, Worthing Borough Council should be doing everything it realistically can to identify potential housing sites, whether they be large or small, as all have a valuable part to play in securing well needed homes in the area.

[1] Refer to https://caselaw.nationalarchives.gov.uk/ewhc/admin/2024/279 (accessed on 04/12/24).

2.3.28 Finally, Worthing Borough Council's concluding assertion is refuted *i.e*. that: "*The Council contends that the appeal should be dismissed as the development proposal fails to achieve social or environmental gains by failing to improve the conditions in which people live, it is considered the public benefit in providing 1no 1- bedroom dwelling is outweighed by the flood risk. The presumption in favour of sustainable development is disengaged since the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessed against the policies and the NPPF taken as a whole*"

2.3.29 Rather, as discussed in para. 2.3.8 above, this is a subjective statement based on the erroneous baseline assessment, which concludes that the proposed development is at a high risk of flooding. As accepted by the EA and demonstrated in the Hilson Moran FRA, my Written Statement and Section 2.1 above, the residual risk of flooding to the site is very low and thus, the described economic, aesthetic, and flood risk reduction benefits (through the inclusion of SuDS); together with making a valuable contribution to the Council's housing requirements (which is a significant material consideration that weighs heavily in favour of the proposed sustainable development) easily outweigh the flood risk to the site.

2.3.30 Consequently, the proposed development is compliant with policy DM20 of the Worthing Local Plan (as modified) and the NPPF.

2.3.31 As such, the Council's Statement does not alter my stance on the appropriateness of the Appeal scheme and, on behalf of the Appellant, I respectfully request that the Appeal be granted and planning permission for the 1-dwelling scheme at 20 Bernard Rd, Worthing be permitted.



04.12.2024

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