

Worthing Borough Council

Statement by Worthing Borough Council in relation to the appeal at 94 Marine Crescent, Worthing, West Sussex, BN12 4JH

PINS Ref: 6009240

LPA Ref: AWDM/1520/25

The Officer's Delegated report sets out the LPA case for refusing the planning application. This Statement provides a rebuttal to the points raised in the Appellant's Grounds of Appeal.

Background

The planning application AWDM/1520/25 was refused by the Local Planning Authority on: 02.02.2026 on the following grounds: -

1. The proposed development of this constrained site would represent an overly cramped and unsympathetic form of infill development that would be anomalous and visually discordant within the street scene and harmful to existing local character and distinctiveness contrary to policy DM5 of the Worthing Local Plan, the Council's SPD 'A Guide to Residential Development' and the NPPF.
2. By reason of its height, scale, massing, form, orientation and design, the proposed dwelling would have an unacceptably harmful impact on the residential amenities of neighbouring dwellings contrary to policy DM5 of the Worthing Local Plan and the NPPF.
3. In the absence of a completed sequential test the Local Planning Authority cannot be satisfied that alternative sites at a lower risk of flooding that would meet the development need are not reasonably available. The development is therefore contrary to policy DM20 of the Worthing Local Plan and the NPPF.
4. In the absence of a S106 unilateral undertaking to secure a self-build/custom-built development, the Planning Authority cannot be satisfied that the development is exempt from providing biodiversity net gain as set out in the Biodiversity Gain Requirements (Exemptions) Regulations (2024) and as such is contrary to the provisions for biodiversity net gain required under Schedule 7A of the Town and Country Planning Act 1990.

Rebuttal to Grounds of Appeal

Reason 1

Paragraph 129 of the NPPF states that planning decisions should support development that makes efficient use of land taking into account (amongst other things) the desirability of maintaining an area's prevailing character and setting, including residential gardens, and the importance of securing well-designed, attractive places.

Paragraph 131 goes on to state that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development

process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 135 requires decisions to ensure that developments are visually attractive as a result of (amongst other things) good architecture and layout, are sympathetic to local character and history, including the surrounding built environment and landscape setting, and establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.

Adopted Worthing Local Plan Policy DM2 states that development proposals must make the most efficient use of land, but this should not be to the detriment of the quality of the environment. It states that the optimum density for development should result from a design led approach to determine the capacity of a site taking into account the site context and character, and the need to achieve high quality design and minimise environmental impacts, including on the amenities of adjoining occupiers.

DM5 requires all new development, including intensification, to (amongst other things) be of a high architectural and design quality and respect and enhance the character of the site and the prevailing character of the area including consideration of proportion, form, design, context, massing, siting, layout, density, height, size, scale, materials, detailed design features and landscaping; enhance the local environment by way of its appearance and character, with particular attention being paid to the architectural form, height, materials, density, scale, orientation, landscaping, tree canopy, impact on street scene and layout of the development; and make a positive contribution to the sense of place, local character and distinctiveness of an area.

The Officer report provides a detailed description of the existing site and its surroundings, outlining the formal symmetry to the layout of surrounding streets and strong consistency to the patterns of existing development from which this area derives its distinctive character. It describes how the sizeable plots fronting this part of Marine Crescent together with the careful placement of dwellings within their respective plots, and wide junctions of the side roads leading off it, contribute to a sense of space and openness that complements the wide expanse of the seafront greensward on the south side of the road. Whilst development in St John's Avenue has a different character it is nevertheless characterised by consistent plot sizes and recognisable patterns of development with repeated built forms providing a clear sense of visual coherence. The proposed development would be seen within the context of both Marine Crescent and St Johns Avenue but would not be visually well integrated with either.

Fundamentally the appellant's argument presented in paragraphs 5.1 and 5.2 fails to attach significant weight to the importance of new development integrating with its context and respecting local character as required by the above mentioned national and local policies. Good planning is not simply a matter of determining what development can be fitted onto a site based on minimum space standards and separation distances from neighbouring properties.

The site is constrained by reason of its uncharacteristically small size compared to other dwelling plots in St John's Avenue, the consequences of which result in a

proposed building that is sited uncharacteristically forward in its plot, with an uncharacteristically shallow footprint and uncharacteristically shallow rear garden having an area substantially below the 85sqm required for a small detached dwelling by the Council's External Space Standards SPD.

The site is further constrained by its location within EA Flood Zone 3, where the design response necessitates the floor levels of the proposed dwelling to be raised by 0.6 metres and sleeping accommodation to be located on the first-floor floor. However, owing to the constraints of the small site and small building footprint, the composition requires an anomalous 'raised eaves' to the built form in order to achieve the necessary headroom to accommodate 2no double bedrooms in accordance with the Government's minimum internal space standards. The combination of these factors, which derive from the constraints of the site, merely heighten the prominence of the dwelling in the street scene, accentuating its anomalous form and cramped appearance and emphasising its visual discordance compared to the established street scene.

The Appellant refers to similarities in the design approach with 149 Alinora Crescent (paragraph 5.5). However, it is noted that the fully hipped roof form in that case minimises the visual 'bulk' of the roof. Moreover, it has a wholly different site context with the neighbouring bungalow to the north (No.147) well-separated and orientated at an oblique angle to the new dwelling.

The Appellant's Statement (paragraph 5.5) refers to a '2-storey block of flats' at the junction of Marine Crescent and St John's Avenue, but in fact the scale, form, massing, proportions and external finishes of these buildings (96/98 Marine Crescent and 1/3 St John's Avenue) are not dissimilar to the adjacent detached houses in Marine Crescent, and are not immediately identifiable as 'flat blocks'. Contrary to the Appellant's Statement, these 2-storey buildings are not directly opposite the appeal site. As you enter St John's Avenue and the road narrows beyond the junction with Marine Crescent, the character of the built form changes with a uniformly single-storey eaves height to the front elevation of the dwellings in this road. This defining characteristic is evident even on the canopy roof detail over the front bay windows of No.8 St John Avenue. Hence, contrary to the Appellant's Statement (paragraph 5.7) the form of the proposed dwelling does not echo that of No.8, or the other dwellings in this road.

Without any consideration of site context it is simply not possible to conclude as the Appellant's Statement does at paragraph 5.6 (Lustrells Crescent APP/Q1445/W/22/3291040) that a development found to be acceptable in that case has any relevance to the current appeal proposal (let alone it being within a wholly different planning authority area and subject to a different local policy regime).

Reason 2

Local Plan Policy DM5 states that new development should not have an unacceptable impact on the occupiers of adjacent properties, particularly residential dwellings, including (amongst other things) unacceptable loss of privacy, daylight/sunlight and outlook

It would not be expected for Consultees whose technical expertise lies elsewhere to comment on the impacts of a new development on residential amenity. It is not surprising therefore that the Environmental Agency, Southern Water, the Local Highway Authority, the Council's Drainage Consultant or the Council's Environmental Health Officer did not raise any objection to this aspect of the proposed development.

Again, the Appellant's reference (paragraph 5.9) to an appeal outside the administrative area of Worthing is irrelevant. This ground for refusal is not based on a shortfall of private amenity space (from the Council's External Space Standard SPD) serving the residual host dwelling. Undoubtedly, however, the height, massing and proximity of the proposed dwelling to the windows serving habitable rooms in the rear (north) elevation of No.94 will have a notable enclosing effect that will detract from the existing amenity and overall attractiveness of this dwelling.

The Street Elevation 1106_300 highlights the taller ridge and eaves height of the proposed dwelling compared to its neighbours in St John's Avenue, with the ridge sitting notably forward (west) of others in the road. The resulting 'bulk' of the proposed north side gable wall of the dwelling in proximity to the front of No.8 St John's Avenue would have a significant enclosing effect on the set-back front entrance to that dwelling, the effect of which would be oppressive as well as unattractive, and harmfully detract from the amenity of this property.

It is noted from the Appellant's Statement (paragraph 5.8) that the roof lights windows at first floor in the East elevation (Bedroom 2) would be positioned 1.7 metres above the floor level of the room. There are no section drawings, annotations on the submitted floor plans or elevations submitted with the application to verify this statement. Indeed, a scaled measurement taken from the head of the ground-floor window/door openings and the lower edge of these rooflights shown on the Proposed Elevation drawing 1106_301 Rev A measures only 1.5 metres.

It is noted that the Appellant's Statement does not comment on the unacceptable loss of privacy that would result from direct overlooking of the neighbour's garden and swimming pool (at No.92) from the raised rear terrace allowing views over the top of the boundary fence. Parts of the raised terrace would be sited less than 2.5 metres from the common boundary. As stated in the Officer report, given the confined space available, it is unlikely that retention of the existing mature shrub planting adjacent to this boundary would be compatible with the new dwelling. In consequence the effect of direct overlooking from the elevated ground floor openings and rear terrace over this short distance into the rear garden of No.92 would be severely intrusive.

Reason 3

The EA Flood Map shows the proposed development to be within Flood Zones 2 and 3a. The NPPF requires a sequential risk-based approach to be taken for proposals in areas known to be at risk now or in the future from any form of flooding with the aim of steering new development to area with the lowest risk of flooding from any source.

The NPPG makes clear that even where a FRA shows that development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The application the subject of this appeal was not accompanied

by a sequential test. The Appellant now accepts that this is required and has sought to apply the sequential test retrospectively to the development, albeit flawed.

The Council is required by the Self Build and Custom House Building Regulations 2016 to maintain and publish a Self Build and Custom House Building Register for individuals seeking to acquire serviced plots of land within the local authority's area. The Register is used to assess levels of demand for self-build and custom plots in the Borough. The Local Authority is not required to find plots to match specific requirements and the Council's website makes it clear that applicants who register should expect to undertake their own research to identify a suitable plot.

The Appellant dismisses larger sites published within the Council's SHLAA as unsuitable for self-build or custom housing plots. It concludes that there are no suitable alternative sites available but does not explain the criteria of the search that has been undertaken for equivalent rear garden infill plots similar in size and nature to the appeal site.

Government guidance within the NPPG (paragraph 028 Ref: ID:7-028-20220825) states that sites should be considered reasonably available for the purposes of the sequential test if their location is suitable for the type of development proposed, they are able to meet the same development need and they have a reasonable prospect of being developed at the same time as the proposal.

It states that in considering whether alternative lower risk sites would be available for accommodating the proposed development, such alternative site do not need to be owned by the applicant to be considered 'reasonably available'

No evidence has been provided of any contact with local agents to identify whether there are any other such suitable sites available on the open market. Nor has any evidence been provided on the basis for which other potentially suitable small infill sites have been considered and dismissed.

A brief interrogation of public planning records identifies several extant planning permissions for new single infill dwellings on sites across the Borough which are at lower risk of flooding than the appeal site, including: -

- AWDM/1701/23 1 Normandy Road: Demolition of existing garage, and erection of 1 bedroom chalet bungalow. Permitted 10.04.2024 – not implemented.
- AWDM/0118/24 6 Furze Close: Demolition of existing 4-bedroom detached house and erection of 2no. self-build 4-bedroom detached houses with new access to Plot 2, car barn to Plot 1 and associated landscaping and surfacing. Permitted 22.08.2024 – not implemented.
- AWDM/0282/25 26 Ilex Way: Proposed new build single-storey dwelling with access off Compton Avenue. Permitted 01.05.2025 – not implemented.
- AWDM/1191/25 6 Hayling Rise: Demolition of existing extension to No.6 and subdivision of dwelling plot to provide a detached 2-bedroom bungalow to south side with new vehicle access. Permitted 26.02.2026 – not implemented.

Contrary to the assertion at paragraph 4.1, the extent of EA Flood Zones 2 and 3 in Goring is confined to a relatively narrow band along the coastal strip. A significant

proportion of the built-up area of the town, including substantial areas of Goring, lie outside of EA Flood Zones 2 and 3, meaning that other small scale infill sites at lower flood risk than the appeal site are likely to be available for development. Attention is drawn to a recent appeal decision in the Borough relating to a similar small, rear garden infill development to the appeal proposal, where the Inspector arrived at this conclusion in dismissing the appeal (ref: APP/M3835/W/24/3352190 land East of 20 Bernard Road, Worthing, BN11 5EL).

To demonstrate that the sequential test has been passed, the NPPF is clear:

“Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.”

Insufficient evidence has been provided in Appellant’s Statement: Appendix A to establish that there are no suitable alternative sites at lower risk of flooding capable of accommodating the development and consequently the Sequential Test is not considered to be passed.

Reason 4

Under Schedule 7A of the Town and Country Planning Act 1990 and the Biodiversity Gain Requirements (Exemptions) Regulations 2024, certain types of development are exempt from the requirement to deliver a minimum 10% increase in biodiversity value relative to the pre commencement biodiversity value of the onsite habitat. The planning application form claims exemption on the basis the proposal is a self-build and custom build development.

In deciding the application, it was determined that in the absence of any mechanism to secure the development as a self-build and custom build development the proposal would be contrary to the mandatory BNG provisions.

The Appellant’s Statement confirms at (paragraph 5.13) that the intention is to address this ground of refusal by submitting a Unilateral Undertaking to the Inspectorate in advance of the appeal being determined. It is unclear if the U-U has been supplied to PINS.

The Appellant’s Statement goes on to state that other self-build schemes in Worthing have not been subject to S106 Agreements/U-Us to secure self-build exemption from BNG stating that the requirement for a S106 in this case is inconsistent with the Council’s own practice. However, no examples have been provided by the Appellant to verify this claim. In fact, the only other examples of self-build or custom build housing developments permitted in the Borough since 12 February 2024 have been subject to the transitional arrangements laid out in the Regulations, meaning that the biodiversity gain condition did not apply to them. For information, this includes: -

- AWDM/0118/24: 6 Furze Close, Worthing: *Demolition of existing 4-bedroom detached house and erection of 2no. self-build 4-bedroom detached houses with new access to Plot 2, car barn to Plot 1 and associated landscaping and surfacing.* The application was not a ‘major development’ and was made before 2 April 2024 (i.e. during the extended transition period for small sites).

- AWD/0979/24: 1 Boxgrove, Worthing: Application to Vary Conditions; 01 (Approved Plans), 05 (Cycle parking), 07 (Surface Water Drainage), 09 (Boundary Treatments) of approved application AWD/1849/22. Proposed two storey, 2-bedroom end of terrace house with front and rear gardens. The original planning permission to which this Section 73 planning permission relates was granted before 12 February 2024.

The Appellant's Statement (paragraph 5.13) goes on to suggest that the necessary biodiversity gain could be met on site (should the self-build exemption not be accepted) through the statutory Biodiversity Gain Condition. Whilst the provision of bat and bird boxes in connection with the proposed development would be welcome, such provision would not satisfy Biodiversity Gain Condition requirements. In the absence of a completed baseline habitat survey or completed BNG Metric calculation it cannot be determined whether the required 10% biodiversity gain could be met on site or not. Since the post-development classification of the appeal site would be low value habitat 'private garden' (i.e. vegetated garden), with any proposed tree-planting, ponds or wildlife-friendly enhancements (such as bat and bird boxes) not included as biodiversity gain, it is in fact highly unlikely that mandatory biodiversity gain could be met onsite in this case

Should the Inspector be minded to allow the appeal, it is suggested the permission be subject to a S106 U-U to:

- secure the development as a self-build or custom housing scheme to be occupied by the Applicant for a minimum period of 3-years; and
- require the completion of a baseline habitat survey and completion of the Small Site Metric in order to establish the pre-development biodiversity value of the site. This is considered necessary as a safeguard in the event of a potential breach of (i) above, as a result of which the development would no longer exempt from mandatory BNG provisions, and the Statutory Biodiversity Gain condition would apply.

Conclusion

It is acknowledged that the proposal would make a small contribution towards the Borough's housing land supply. However, such benefit provided by a single dwelling would be minimal and significantly outweighed in this case by the flood risk and the unacceptable harm to the street scene and established local character, and the living conditions of neighbouring occupiers, as identified in the officer's delegated report and this rebuttal to the Appellant's grounds of appeal.

The Inspector is therefore respectfully requested to dismiss the appeal.