Planning Inspectorate

Appeal Decision

Site visit made on 30 April 2025

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2025

Appeal Ref: APP/Y3805/W/25/3359461
51 Old Fort Road, Shoreham by Sea, West Sussex BN43 5RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs David and Brenda Collins against the decision of Adur District Council.
- The application Ref is AWDM/1058/24.
- The application sought planning permission for Demolition of existing chalet bungalow and construction of a pair of semi detached 3 storey, 3 bedroom houses (including lower ground floor below existing ground level) without complying with a condition attached to planning permission Ref AWDM/2007/21, dated 14 March 2022.
- The condition in dispute is No. 15 which states that:
  The development shall be carried out in accordance with the submitted Flood Risk Assessment (ref:11726, Second issue dated 8 December 2021, by GTA Civils & Transport Ltd) and the following mitigation measures it details:
  o Finished floor levels for the ground floor shall be set no lower than 6.15 metres above Ordnance Datum (AOD) (Section 3.2 of the Flood Risk Assessment).
  o The room on the lower ground floor (labelled as a 'flexible room' on drawing no 058 Rev A at Appendix C of the Flood Risk Assessment) shall not be used for habitable uses and/or for sleeping accommodation.
  These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.
  Note: The non-habitable use of the flexible room is confirmed in the submitted letter dated 7 December 2021 from James Breckell Architects.
- The reason given for the condition is: To reduce the risk of flooding to the proposed development and future occupants in line with the Planning Practice Guidance (PPG) to the National Planning Policy Framework (NPPF) for Flood Risk and Coastal Change.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Dave and Brenda Collins against Adur District Council. This application is the subject of a separate decision.

Preliminary Matters and Main Issue

3. The application as submitted to the Council sought to regularise the as built floor levels; and use the lower ground floors for habitable accommodation that could also be used for sleeping. The Officer Report refers to the application having been amended and that the request to use the accommodation for sleeping was omitted. I have not been provided with any corroborating evidence to this effect.

4. Given that the Council approved the ‘as built’ floor levels and allowed the lower ground floors to be used as habitable accommodation, the appellants’ appeal is in effect only seeking the use of the accommodation for sleeping. The Council’s appeal statement does not reference the change in description. It identified the key issue as being the use of the lower ground floors for sleeping accommodation and sought to defend the restriction. I have therefore dealt with the appeal on that basis.

5. During the course of the appeal, I sought additional views from both main parties. This established, amongst other things, that the key concern was one of surface water flooding as opposed to coastal/tidal flood risk. The respective comments have been taken into account in my decision.

6. The main issue is therefore whether the lower ground floors could be used as sleeping accommodation, having regard to the flood risk from surface water.

Reasons

7. Based on the ground levels and potential depth of flooding, the lowest floor level required to avoid the houses being flooded is said to be 6.13m AOD. However, as built, water could enter the lower ground floor areas of the houses. As this could potentially occur quickly it would thus pose a risk to life if someone were asleep in the lower ground floor accommodation.

8. This calculation is based on Environmental Agency Surface Water Maps and the originally submitted Flood Risk Assessment. I have not been provided with site-specific modelling which provides alternative or more accurate figures.

9. The appellant suggests that the range of flooding depth upon the maps is not accurate, and the risk at the site is very low. However, no further explanation is provided as to why this might be the case. Reference is made to an online service for flood mapping, which was not available in 2022, when the original scheme was approved. This suggests the site has a maximum of 5.50m AOD for flooding but no further details or substantive evidence is provided.

10. Similarly, it is pointed out that in the past when there has been extreme weather in the area there is no recorded flooding around the site. In addition, it is said that long term flood reports on the government’s website forecast a low flood risk. However, given that according to the Planning Practice Guidance, surface water flooding is likely to occur with a 1% annual probability (a 1 in 100 chance each year) and there should be an allowance for climate change, it is reasonable to conclude that past experiences cannot be relied upon as an accurate prediction of future events and that a precautionary approach is advisable.

11. Condition 14 of the original planning permission required details of the surface drainage scheme for the development. Details have previously been provided and were agreed by the Council. I do not doubt that the information and evidence submitted to discharge the condition was extensive. However, there is nothing before me to indicate that it addressed the issue of surface water flooding. Indeed, had the condition been seeking to address that matter, there would logically have been no need for the restriction on the use of the lower ground floors.

12. I have been referred to the existence of a lifting station within the external courtyard and which has an audible alarm should power be disconnected. I am not

aware that this is specifically designed to address surface water flooding. I also have no information as to when power would likely be lost should the device be affected by surface water flooding, nor any details of the alarm or sound proofing qualities of the glazing on the building. As such, this does not provide me with sufficient certainty that it would address the concerns identified above.

13. Overall, the information and evidence before me does not provide the level of certainty that at this stage any residual flooding risk can be safely managed. It is open to the appellant to discuss the matter further with the Council but the approach for allowing development in areas at risk of flooding, as set out in the National Planning Policy Framework (the Framework), cannot currently be demonstrated. I do not therefore have a sufficiently robust basis on which to agree to the variation of the condition.

Other Matters

14. The appellant suggests that the condition, by restricting the accommodation to being non-sleeping, would be contrary to the 'six tests' for a condition, as set out in Paragraph 57 of the Framework. However, conditions restricting sleeping accommodation to certain parts of a building are commonplace where there is a risk of flooding and to do otherwise would necessitate the scheme being rejected. I do not find the condition contrary to the tests and there is nothing in the appellant's submissions which lead me to a different conclusion.

15. Article 8 of the European Convention on Human Rights provides that everyone has the right to respect for their private and family life and their home. Article 1 of the First Protocol states that every person is entitled to the peaceful enjoyment of their home. These rights are enshrined in the Human Rights Act 1998.

16. These are however qualified rights, and interference may be justified where it is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. I acknowledge that the consequence of dismissing the appeal would be that the appellant's free use of all rooms in the houses would be restricted. However, in this case interference with these rights is justified as it is in the public interest to protect those who might be living in the properties during periods of flooding. As such, it is a proportionate and necessary response that would not violate the appellant's rights under Article 1 of the First Protocol or Article 8.

17. It is said the Council has acted inconsistently in comparison to a case at 66 Old Fort Road. However, no substantive details of that case or the inconsistency have been provided. It is therefore not possible for me to attribute more than very limited weight to this matter in my decision.

18. Similarly, that other properties in the vicinity have lower floor levels than the appeal site is not a reason in itself to allow something which has not been demonstrated to be safe.

19. I have not had further regard in this decision to concerns over how the Council handled the application as this is an administrative matter to be taken up directly with them. I have focused on the planning merits of the scheme in regard to the main issue of the case.

Conclusion

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that decisions should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the Council does not suggest that there would be conflict with any particular policies of the development plan. Nevertheless, the Framework represents a material consideration which in this case, for the reasons given above, causes me to conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR