Planning Inspectorate

Appeal Decision

Inquiry held on 8-11, 14 July 2025

Site visit made on 10 July 2025

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24th July 2025

Appeal Ref: APP/C3810/W/25/3361225
Windmill Inn and 34 Mill Lane, Rustington, Littlehampton BN16 3JN

- 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 Churchill Living Ltd against the decision of Arun District Council.
- The application reference is PR/143/24/PL.
- The development proposed is demolition of the existing public house and dwelling and redevelopment to form retirement living accommodation for older people comprising 28 retirement living apartments and 3 retirement living cottages including communal facilities, access, car parking and landscaping.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was partly refused on the basis of the scheme's failure to provide a contribution towards the off-site provision of affordable housing. Following the appellant's agreement to reinstate an earlier offer, which has been secured through a Section 106 Agreement, the Council removed its objection. I shall therefore consider the matter no further except insofar as scheme viability also has some relevance to drainage.

3. An application for costs was made by Churchill Living Ltd against Arun District Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is the effect of the development in relation to drainage and flooding, and, within that context, whether it would be suitably drained.

Reasons

Background

5. The site comprises the Windmill Inn, a recently closed public house with large beer garden and car park, and the adjoining plot containing No 34, a bungalow with garden and driveway. Both properties are currently occupied and stand within plots which total approximately 3000m². Below areas of made ground, the geology generally comprises chalk overlain by river terrace deposits which is typical across a large part of the District.

6. Both properties lie within Flood Zone 1. Whilst there are no known flooding issues on site, the available evidence is insufficient to provide a full picture of how and to where rainwater currently drains. It is however likely that pub's car park drains to a soakaway, as does an extension attached to No 34. Where other downpipes attached to No 34 drain is unknown. Part of the rear of the pub, whose pipework was destroyed in a fire, apparently drains to the ground, as does rainwater which falls on the beer garden and garden attached to No 35. Though it has been demonstrated that there are at least 2 points of connection to the foul sewer, this does not account for all the downpipes attached to the pub. Indeed, only 206m² of the existing 1687m² impermeable area of the site is currently confirmed to drain to the foul sewer. Even if the pub's existing pipework was in a less ramshackle state, its dimensions would furthermore act to physically limit the volume of discharge possible.

7. Whether or not a legal right of connection exists, foul sewers are not designed to carry rainwater. This is reflected in their smaller diameter than both combined sewers and surface water sewers. Discharging rainwater into foul sewers can therefore increase the risk of downstream flooding of property, and of sewer spills. Both are currently an issue locally, with discharges from within same catchment into the sea and into the River Arun recorded for a combined period of around 4581 hours during 2024. Though records of downstream sewer flooding of properties are less easy to attribute to the catchment in question, they can be linked to tide locking of the above outfalls.

8. Policy D DM3 of the Arun Local Plan 2018 (the Local Plan), seeks to secure the incorporation of Sustainable Drainage Systems (SuDS) in new development. Insofar as providing SuDS more generally contributes towards achievement of 'sustainable development', it is likewise promoted by paragraph 182 of the National Planning Policy Framework (the Framework). Connection to the foul sewer is not a recognised component of the SuDS hierarchy as set out within the SuDS Manual and the Planning Practice Guidance (PPG). The SuDS Manual furthermore excludes it as an option. Except where a departure is agreed, it is also ruled out by the Government's newly published National Standards for Sustainable Drainage Systems (the National Standards) which supersede the Non-statutory Technical Standards currently referred to in the PPG. This includes where there is capacity to accommodate additional flows, or where there is an element of surface water already in the foul sewer.

9. The Building Regulations are a separate regime. However, to the extent that they are relevant, Regulation H3 refers to a 'sewer' as opposed to a combined sewer as its lowest priority destination for rainwater. Approved Document H nonetheless sets out the Secretary of State's view of how H3 should be interpreted, in effect aligning it with the SuDS hierarchy. Here it is notable that whilst combined sewers fall at the bottom on the SuDS hierarchy, the PPG encourages the removal of surface water from them in the interests of reducing flood risk.

10. Within this context the scheme's proposal to discharge all surface water into the foul sewer was acknowledged as unusual even by the appellant's drainage witness. The latter could claim experience of only one other similar, but yet to be determined scheme from the past decade. The proposal indeed draws no support in principle from the above listed policy and guidance, regardless of the absence of 'prohibition'.

Infiltration

11. Policy W DM3 requires developers to follow the hierarchy, referring to the SuDS Manual and Approved Document H, as considered above. Aside from capture for non-potable use, infiltration sits at the top of the hierarchy. Though the existing pattern of rainwater drainage on site is only partially understood, infiltration currently appears to play a significant, if not principal role in relation to both impermeable and other parts of the site. No problems with this arrangement have been identified other than silting up of the soakaway in the pub car park. This is however an issue of design and maintenance rather than underlying function. At face value therefore, the site appears to be very well suited to infiltration.

12. This was presumably one reason why infiltration was proposed when the application was submitted, albeit on the erroneous understanding that the scheme was in outline, and minus the percolation testing and winter ground water monitoring data required by Policy W DM3. Though the appellant has continued to question the need for such evidence upfront, it plays an important role in demonstrating whether or not a site is capable of supporting infiltration, and of ensuring that, if it can, it is properly accommodated within the scheme design. There can be far less certainty of this where the design has already been fixed, as was the case in this instance, thus constraining the options available.

13. The appellant's subsequent shift from infiltration, and justification for not undertaking groundwater monitoring or infiltration testing was based on the results of a ground investigation report. This identified variable superficial deposits at 2 out of 5 borehole locations within the site. Though these deposits were categorised as 'potentially anomalous', the data was insufficient to confirm the presence of dissolution features. The latter are pockets of dissolved chalk filled with loosely bonded deposits from the strata above which can collapse under weight, or undergo settlement if large volumes of water are introduced. No such features have been previously reported in close proximity to the site, and nor have they since.

14. To the limited extent that the report specifically dealt with drainage, no further investigation was recommended. This was directly at odds with the approach taken to foundation design in relation to which trial pits and deeper boreholes were recommended to allow further inspection of the deposits. Trial pits were also noted as prudent in parts of the site where the deposits had not been identified, and further investigation was also recommended in relation to ground water. In these regards the report took a precautionary approach in outlining options subject to further data being obtained through a supplementary phase of intrusive investigation. It did not therefore present its findings as conclusive.

15. BRE365 indicates that site investigations must be undertaken thoroughly and competently so that all aspects of soil properties, geotechnology and hydrogeology are adequately reviewed alongside the hydraulic designs of soakaways. In this case however, the report's findings that soakaways would not be feasible due to the fine-grained strata, would be unsuitable due to low permeability soils, and that they may otherwise be precluded due to stability issues, was not based on a full understanding of ground conditions. Moreover, these findings did not explain or take into account existing patterns of drainage on site, which, as noted above, currently include both soakaways and more general infiltration. This is similarly true of the claim made at appeal that percolation testing might itself be sufficient to trigger ground stability issues.

16. Though it was indicated at the Inquiry that trial pits might not be deep enough to provide the further information required in relation to drainage, it was acknowledged that the data could instead be acquired through further penetration testing. It was also conceded that at least one of the boreholes might in fact indicate conditions suited to infiltration, thus further undermining the findings of the report. Indeed, simply ruling out soakaways appears to have been the most commercially expedient option, the alternative being more thorough investigation prior to acquisition of the site together with the additional costs and risk that this would entail. Again, the fact that the layout of the proposed development had already been fixed may have also helped to inform the approach taken. Either way, I have been provided with no evidence which demonstrates that a more detailed investigation of the site could not have taken place.

17. The appellant has additionally sought to stress the impracticality of providing soakaways based on advice in CIRIA C574. This recommends positioning of soakaways 20m from foundations in areas where dissolution features are known to be prevalent. However, whilst the recent formation of a couple of sinkholes within the wider area has been drawn to my attention, the evidence does not indicate that dissolution features are 'prevalent', nor justify the lack of further investigation.

18. Whilst I have also been directed to guidance relating to the hazards of soakaways over chalk, it was agreed that this was most likely to refer to traditional point infiltration rather than more diffused methods often favoured within the context of SuDS. The sinkholes noted above likewise appear to have formed due the concentrated input of large volumes of water into the ground arising from broken pipes.

19. Whether or not pathways could exist between a SuDS system and potential dissolution features, it remains the case that the presence of such features is unproven, and the report's treatment of drainage was not informed by consideration either of the way the site currently drains, or the way in which it might drain. As was confirmed at the Inquiry, these matters were beyond its remit.

20. Given that the report was both inconclusive and identified the need for further evidence, the high degree of certainty expressed at the Inquiry that dissolution features are both present on site and will lead to some form of potentially catastrophic collapse within the next century, attracts little weight. I therefore find that the potential for use of infiltration has not been ruled out, and that at this stage the matter cannot be appropriately resolved through the imposition of conditions. This failure, as too the absence of required groundwater monitoring and percolation testing, gives rise to conflict with Policy W DM3 as set out above.

Other options

21. The SuDS hierarchy operates on an evidential basis. This is emphasised by the National Standards which make clear that to utilise a lesser priority final destination, appropriate evidence shall be provided that demonstrates all higher priority final destinations have been utilised to the maximum extent practicable. In this case the scheme has failed to justify movement beyond consideration of infiltration, and I see no reason why any departure from the above should be agreed. Further consideration of the other options identified is nonetheless necessary in order to fully assess the scheme's effects.

22. Whilst there was some acknowledgement at application stage that options to connect to a surface water body, a surface water sewer, and highway drain existed, these were only explored in anything approaching detail during the course of the appeal. Within this context it remains unknown where gullies within the adjacent highway drain as the matter has again not been fully investigated. However, it is noteworthy that the existence of soakaways has not been ruled out.

23. Connection to the watercourse to the north and a surface water sewer towards the west would each entail challenges in terms of engineering, engagement with third parties, the possible need to leverage the assistance of the Lead Local Flood Authority, and considerable costs. The appellant's claim that such options fall outside the realm of 'reasonable practicability' is offered as late justification for not pursuing them. Whether or not this crossed the mind of the author of the appellant's Flood Risk Assessments, this doesn't alter the lack of supporting evidence within those documents.

24. Reasonably practicable is not otherwise a term which appears within Policy W DM3. Though it is used within the Building Regulations, it is not defined within Approved Document H. A definition is however contained within the National Standards. This explains that to determine what is reasonably practicable involves gathering data and working through a structured series of decisions. This includes the process for determining whether and to what extent solutions are reasonable and appropriate. It elsewhere indicates that higher cost alone shall not be a reason to utilise lower priority final destinations. Drainage should thus be considered as both a constraint and as a requirement from the outset.

25. Within this context the challenges in question have not been shown to be insurmountable, and insofar as viability has been raised in defence of the proposed scheme, the quoted costs played no role in informing the benchmark land value. This is relevant because acknowledgement of such costs at an early stage plays a role in scoping what development a site may or may not be capable of suitably accommodating. Again, insofar as viability is advanced as post-hoc justification, it attracts little weight.

26. Given serious deficiencies in terms of both evidence and process, even had progress beyond consideration of infiltration been justified, I cannot accept the appellant's claim to have exhausted all other drainage options on grounds of reasonable practicability.

Drainage to foul

27. As set out above, the scheme proposes discharge of all surface water into the foul sewer. This would include rainwater captured in areas where permeable paving was installed, which, together with water from downpipes would drain into a 154m³ attenuation tank. This would not provide long term storage but empty at the first available opportunity at an undifferentiated rate.

28. Some reduction in the modelled rate of discharge could be achieved during storm events, as too the volume of water discharged into the foul sewer at these times. However, given attenuation, the overall volume of water discharged from the site would significantly increase, as would the duration of time over which this discharge took place.

29. Here the appellant's assertion that consideration should be limited to the 6-hour period of a 1 in 100-year storm event (the 1% AEP) is relevant in terms of design, but does not fully account for effect. No such 6-hour limitation is specified within Policy W DM3 or the National Standards. Within this context the discharge rate from the development for the 1% AEP would exceed the peak discharge rate specified within the National Standards, which, as set out above, are not in any case specifically drafted with discharge to the foul sewer in mind. The claimed impossibility of meeting this rate again remains unproven. Further consideration of the merits of relaxation is unnecessary.

30. The development would increase and extend the effect of storms on the sewer network. In relation to a sewer not designed to carry rainwater, and a network already prone to spills and related sewer flooding, the proposed drainage strategy would increase the potential for each, thus exacerbating a problem which already gives rise to substantial harm.

31. It is wholly unrealistic to fall back on the right to connect and the undertaker's responsibility to accommodate any increased flow. Were the answer so simple, the problem would not exist. Instead, the omission of the foul sewer from the SuDS hierarchy, together with the operation of supporting policy, is one way the planning system helps to responsibly minimise and avoid the potential for sewer flooding and discharges into the environment.

32. Had a combined sewer been available in this case the consequence of discharging an increased volume of rainwater into it could also have been negative. It remains the case however that none is available, the design parameters of the sewers differ, and as the least desirable option in the SuDS hierarchy, it is again necessary to properly rule out other options first.

33. During the course of the appeal the appellant arrived at an acceptance that discharging rainwater into the foul sewer would fall outside the SuDS hierarchy. Here no automatic progression logically exists from the hierarchy to other options directly at odds with its purposes. Indeed, as a generality, the failure of a development to incorporate sustainable drainage must undermine any claim that the development itself would be 'sustainable'. More so in this case given that the omission of SuDS lacks sound justification.

Conclusion

34. For the reasons set out above I conclude that the appellant has failed to demonstrate that the development would be suitably drained, and that the strategy proposed would result in an increased risk of environmental harm arising from sewer discharges and related sewer flooding. The development would therefore conflict with Policy W DM3 of the Local Plan as outlined above.

Other Considerations

35. The pub benefits from an existing planning permission for extensions to support a hotel use. This is due to expire during August. Even if kept alive, the permission is for a different type and scale of development and so not directly comparable. Though the appellant nonetheless claims that the Council took a different approach to assessing drainage in that scheme, movement in national policy concerning the requirement for SuDS has occurred since, and that scheme notably proposed

infiltration. For the above reasons the existing permission attracts little weight for the purposes of my assessment above.

36. The appeal scheme would conflict with the development plan taken as a whole. The Council however acknowledges that it does not have a demonstrable 5-year supply of deliverable housing sites, with current supply placed at 3.41 years. For the purposes of decision making the policies most important for determining the application are thus deemed 'out of date'. Even so, the relevant parts of the policy with which I have identified conflict are broadly consistent with the Framework's promotion of sustainable drainage systems and the need to ensure that flood risk is not increased elsewhere. This conflict attracts substantial weight.

37. The scheme would be broadly consistent with key policies within the Framework which direct development to sustainable locations, as least insofar as these relate to travel and access to services. Much less so in relation to design and making effective use of land. This is insofar as only part of the site is PDL, its suitability to accommodate the proposed development is open to question in the absence of a properly evidenced drainage scheme, and the identified potential for sewer discharge and flooding would not safeguard and improve the environment, ensure safe and healthy living conditions, or function well and add to the quality of the broader area. Though the development would make a financial contribution towards the provision of off-site affordable housing, this would be relatively small, having been much reduced on grounds of viability; a matter which, as considered above, was deficient in relation to drainage.

38. The scheme would otherwise provide 31 units of specialist accommodation, meeting an identified need. This would provide a boost to the delivery of housing within the context of a significant shortfall. But the scale of the related social and economic benefits, including in relation to the potential release of underoccupied units onto the market, would be modest. Moreover, any biodiversity benefits claimed would be more than negated by the overall level of environmental harm to which the development would give rise. Even if attaching significant weight to the overall benefits of the scheme, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

39. For the reasons set out above the effects of the development would be unacceptable, giving rise to conflict with the development plan taken as a whole. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

APPEARANCES

For the Appellant

Christopher Boyle KC	Counsel for the appellant, Landmark Chambers

He called

Robert Hodges	(Ground conditions) Crossfield Consulting Ltd
Stuart Magowan	(Drainage) CEP
Matthew Shellum	(Planning) Planning Issues Ltd

For the Local Planning Authority

Harriet Townsend KC	Counsel for the LPA, Cornerstone Barristers

She called

Katherine Waters	(Drainage) WSP
Kathryn Welch	(Planning) Arun District Council

Additional contributions from

Sarah Burrow	(Flood Risk and Drainage Engineer) Arun District Council

INQUIRY DOCUMENTS

ID1. LPA commentary on comparison sites.

ID2. LPA table on older persons housing schemes.

ID3. Marcic case law.

ID4. Water Industry Act 1991 (extracts).

ID5. Email exchange with attachments: Waters – Magowan.

ID6. Scott Schedule.

ID7. Appellant's opening.

ID8. LPA opening.

ID9. Scott Schedule Rev.3.

ID10. Costings: SWW/Churchill and SWW charging arrangements (extracts).

ID11. Appellant – 3 plans plotting distances from features/points within/adjacent to site.

ID12. Scott Schedule Rev.4.

ID13. LPA discharge calculations.

ID14. LPA suggested drainage condition.

ID15. LPA suggested drainage condition.

ID16. Scott Schedule Rev.6.

ID17. Appellant closing.

ID18. Appellant revised costs application.

ID19. LPA costs response.

ID20. LPA closing.

ID21. LPA closing with correction.