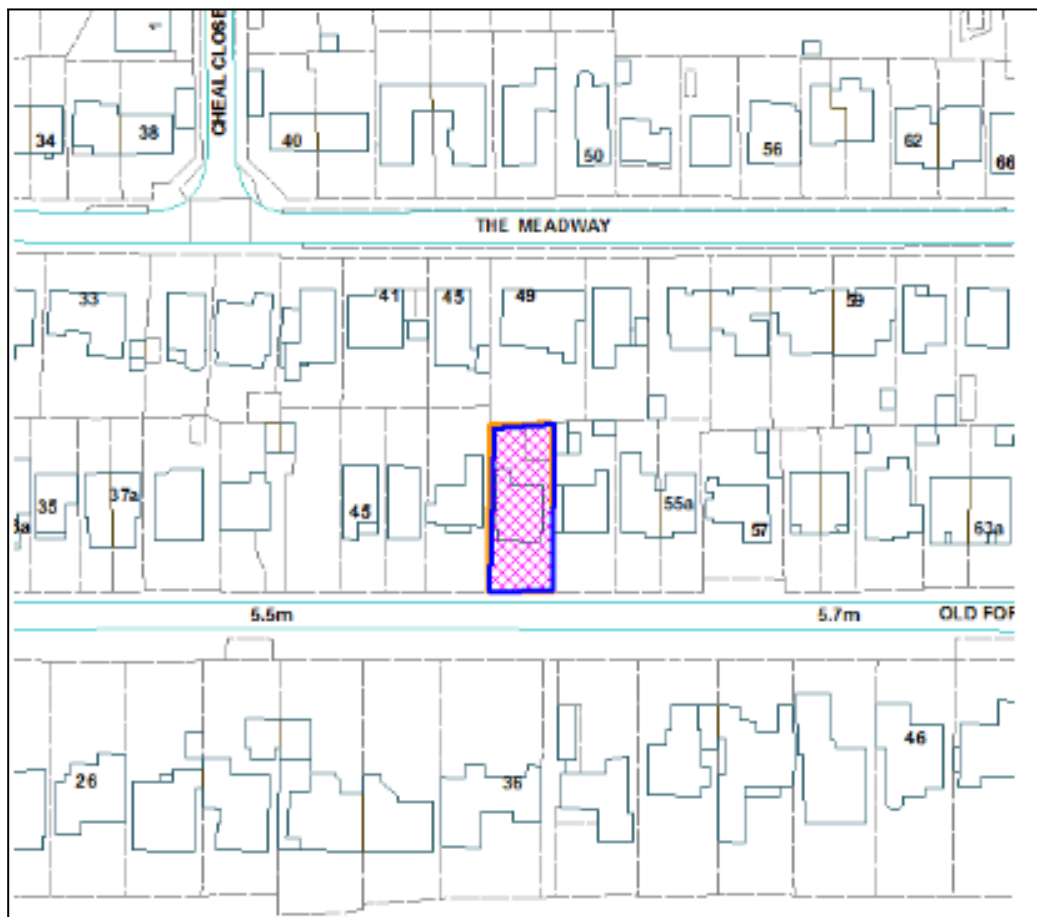


<b>Application Number:</b>	<b>AWDM/1058/24</b>	<b>Recommendation - APPROVE</b>
<b>Site:</b>	<b>Former 51 Old Fort Road, Shoreham-By-Sea, West Sussex</b>	
<b>Proposal:</b>	<b>Application to vary conditions 1 &amp; 15 of approved AWDM/2007/21 to enable floor level of the ground floor living rooms to be set as built at 5.91 metres AOD and for the lower ground floor to be habitable.</b>	
<b>Applicant:</b>	<b>Mr and Mrs David and Brenda Collins</b>	<b>Ward: Marine Adur</b>
<b>Agent:</b>	<b>Mr James Breckell</b>	
<b>Case Officer:</b>	<b>Hannah Barker</b>	



**Not to Scale**

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This application was called in for determination by the Planning Committee by the local Councillor Joss Loader. The reasons given are in the interests of openness and transparency and given the application's history.

### **Proposal, Site and Surroundings**

This S.73 application relates to a pair of semi detached dwellings at 51 Old Fort Road. The planning permission to which it relates is 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" AWDM/2007/21. This was approved by members in March 2022.

Following this members considered and approved AWDM/1698/22 which sought amendments including changes to windows, materials and greater details of the basement and addressed some conditions (drainage and construction management). AWDM/1119/23 was a delegated approval, also to amend the proposed materials.

The dwellings have recently been completed and are being marketed. The current application seeks two things: Firstly to allow the basement to be used for habitable space but not for sleeping, this would involve a change to the wording of condition 15 of the planning permission (below in bold font). Secondly, to regularise a discrepancy between the floor level of part of the (split-level) ground floor as built, and the level stipulated by condition 15.

Condition 15 states: -

*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:*

- *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).*
- ***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.*

**Reason:** *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.*

The ground floor level of the semi detached houses as built, is at its lowest point 5.91 AOD rather than the stipulated 6.15 AOD. This is shown on the submitted plans. As mentioned, the applicant seeks consent to retain this as built level and also to be allowed to use the basement rooms (1 room per dwelling) for habitable use but not to include sleeping.

This application originally proposed to include sleeping within the basement but this part of the proposal has since been removed.

This application will also involve amendment to condition 1 (list of approved drawings), to include the drawing of the as built floor level.

## **Consultations**

**Environment Agency:** - We confirm that the lower level of 5.91m AOD [at the ground floor] is satisfactory. We are also satisfied that Condition 15 could be varied as follows.

## **Condition**

**The development shall be carried out in accordance with the submitted Flood Risk Assessment and the following mitigation measures it details:**

- **The room on the lower ground floor (labelled as 'flexible room' on drawing no.058, revision A at Appendix C of the Flood Risk Assessment) shall not be used for sleeping accommodation.**
- **Clear internal access is provided from the lower basement to the upper floors.**

**The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.**

**Reason:** *To reduce the risk of flooding to the development and future occupants.*

**Representations:** - 2 representations have been received objecting to the proposals. Owner/occupier of 45 and 49 The Meadway.

- Residents were assured that the basement would not be used as bedrooms.
- This space has been marketed as such.
- The construction of the lower ground floor has resulted in serious damage to neighbouring properties.
- Attempt to upsell the properties.
- Overdevelopment of the site, 2 properties on such a small site, increased noise and disturbance to local neighbourhood.
- The examples given by James Breckell are not comparable as the unique position and terrain on the Old Fort Road and proximity to the foreshore should always be considered. The basement is lower ground floor.

- The law states that non habitable space means space in a structure that is unsafe or unsuitable for living, sleeping, eating or cooking and which does not comply with the standards of fitness for occupancy.
- The Council should not overrule the judgement of the Environment Agency and would be a dangerous precedent.
- We must put people's lives first over any commercial gain.
- Properties have been built other than in accordance with planning permission.
- Planning permission would not be agreed without condition 15 and the applicant agreed to no habitable or bedrooms.
- Nothing has changed to allow the condition to be changed.
- Water would flood the basement area and no pump would assist.
- Planning and Building Control should check what has been built.
- Different flood levels throughout the application.
- There has been overwhelming wilful intent to circumvent planning in order to produce 4 bed properties.
- The condition should remain to protect future residents.

### **Relevant Planning Policies and Guidance**

Adur Local Plan 2017 Policy 15

'Supplementary Planning Guidance' comprising: Development Management Standard No.2 'Extensions and Alterations to Dwellings'

National Planning Policy Framework (December 2023)

WSSC Guidance on Parking at New Developments (Sept 2020).

### **Relevant Legislation**

The Committee should consider the planning application in accordance with:

Section 70 of the Town and Country Planning Act 1990 (as amended) provides that the application may be granted either unconditionally or subject to relevant conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations; and

Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

### **Planning Assessment**

#### ***Principle***

The principle of the semi-detached development has been accepted and the scheme has been constructed. The key considerations here are the use of the basement as habitable accommodation in terms of flood risk. Also the flood risk implications of the part of the ground floor level being below that required in the planning condition no.15. as set out above. The only change to the approved plans is to the drawing which shows the ground floor height (condition 1 is the list of approved plans and would need to be amended to include this). The change does not affect the height of the building or approved details such as the position, size and height of windows.

There are no other changes to the approved plans.

### ***Flood risk***

The proposal has been amended to request the removal of non habitable from the planning condition but to retain non sleeping. The lower ground floor space could therefore be used as a home office, living room or playroom for example. No one would be able to sleep in this space therefore protecting the risk to life should a flood occur when occupiers are asleep.

This is in line with other planning conditions which have been attached to similar applications to limit the use of areas of the building at risk of potential flooding. The applicant's agent has submitted two examples of similar conditions. AWDM/1398/22 a new dwelling in Old Salts Farm Road Lancing had a condition attached which stated that all sleeping accommodation must be at the first floor level or above. Also AWDM/0881/21 a new dwelling in Fishermans Walk Shoreham with a condition attached which stated no sleeping accommodation to be located at ground floor. Both were examples where the Environment Agency had recommended the conditions.

It is therefore not unreasonable to accept that this condition could be varied to be just non sleeping; this would still protect the future occupants from the risk of flooding. There is a means of escape from the basement in the event of a flood. The Environment Agency has advised that they are in support of such a variation and this is set out in their comments above.

With reference to the floor level of the ground floor being a minimum of 5.91 AOD and the request that the requirement of 6.15 AOD is removed from the condition. The Environment Agency has confirmed that they are satisfied with the as built floor level and that this can be removed from the condition. The following advice has been given from the Environment Agency to justify this stance.

"The original FRA for application ref: AWDM/2007/21 offered a floor level of 6.15 mAOD (section 3.2) – as that was included in the FRA, we conditioned it as written. However, the point is about the freeboard being offered. Ideally, we seek 600mm above the design flood level as specified in Flood Risk Standing Advice. For this site, the design flood level is 5.26 mAOD. A floor level of 5.91 mAOD is still offering sufficient freeboard so it is satisfactory from our perspective."

The floor height remains sufficient to protect from risk of flooding.

It should be noted that the Environment Agency as a national body of expertise can allow for conditions to be varied if in their expert opinion this is deemed acceptable. The reasoning above would justify such a variation in this case.

The previous, relevant conditions and the varied conditions in question (condition 1 and the previous condition 15, now numbered as **condition 11**) are set out below. For clarity, officers have added the words 'at any time' concerning the sleeping prohibition in condition 11 and have added the plan which shows the as built floor levels, to this condition and to the list of approved plans in condition 1.

## **Recommendation**

**Approve** subject to the following conditions: -

1. Approved plans (**including the amended floor level drawing 406/20**)
2. Materials as set out in approved plans.
3. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015, as amended, (or any order revoking and re-enacting that Order with or without modification), the proposed dwelling shall not be extended or altered by means of any development as set out within Classes A, AA, B, C, D and E of Part 1 of the Schedule to that Order.

**Reason:** *In the interests of amenity and the environment having regard to the nature of the site and policy 15 of the Adur Local Plan.*

4. The windows in the east and west side elevation of the dwellings hereby permitted shall at all times be glazed with obscured glass. No additional openings other than those hereby approved shall be inserted in the building. The privacy screens shown on the approved plans shall be installed prior to occupation and shall remain in place at all times unless otherwise approved in writing by the Local Planning Authority.

**Reason:** *To prevent overlooking and to comply with policy 15 of the Adur Local Plan.*

5. The dwelling shall be constructed and fitted out so that the potential consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day. The dwelling shall not be occupied unless the notice for that dwelling of the potential consumption of wholesome water per person per day required by the Building Regulations 2010 (as amended) has been given to the Local Planning Authority.

**Reason:** *In order to set a higher limit on the consumption of water by occupiers as allowed by regulation 36 of the Building Regulations 2010 and to increase the sustainability of the development and make efficient use of water in accordance with policy 18 of the Adur Local Plan.*

6. The sustainability and energy efficiency measures referred to in the Design and Access Statement submitted with AWD/2007/21 shall be installed before the dwelling hereby approved is occupied.

**Reason:** *In the interests of amenity and sustainability having regard to policies 15, 18 and 19 of the Adur Local Plan.*

7. The existing trees to the north of the site within the adjacent garden shall be protected for the duration of construction works and shall not be damaged, destroyed, uprooted, felled, lopped or topped.

**Reason:** *In the interests of visual amenity and the environment and to comply with policies 15 and 30 of the Adur District Local Plan.*

8. No part of the development shall be first occupied until such time as the vehicular access serving the development has been constructed in accordance with the details shown on the drawing titled Proposed Site Plan and numbered 04A.

**Reason:** *In the interests of road safety and to comply with Policy 15 of the Adur Local Plan.*

9. No part of the development shall 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. The parking area shall be edged with raised blocks to abut the pavement to create a barrier to limit the amount of gravel overspill onto the public highway.

**Reason:** *To provide car-parking space for the use and to comply with Policy 15 of the Adur Local Plan.*

10. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with the approved plan. Reason: provide alternative travel options to the use of the car in accordance with current sustainable transport policies.

11. **The development shall be carried out in accordance with the submitted floor levels shown in drawing 406/20, dated August 2024 and the Flood Risk Assessment and the following mitigation measures it details:**

**The room on the lower ground floor (labelled as 'flexible room' on drawing no.058, revision A at Appendix C of the Flood Risk Assessment) shall not be used at any time for sleeping accommodation.**

**Clear internal access is provided from the lower basement to the upper floors.**

**The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.**

**Reason:** *To reduce the risk of flooding to the development and future occupants.*

12. Prior to installation details of the proposed air source heat pumps and the associated acoustic information shall be submitted to and approved by the Local Planning Authority, and shall be installed in accordance with such approved details and remain in place and maintained at all times unless otherwise approved in writing by the Local Planning Authority.

**Reason:** *In the interest of residential amenity and to accord with Policy 15 of the Adur Local Plan.*

13. Work shall be carried out in accordance with the drainage and soakaway and technical plans hereby approved and details contained in the email from Simon Dent Associates dated 29th November 2022. These shall be complied with at all times unless otherwise approved in writing by the Local Planning Authority.

**Reason:** *To ensure adequate drainage and to comply with the National Planning Policy Framework and policy 36 of the Adur Local Plan.*

14. In addition to the approved plans listed above the following plans approved under AWDM/2007/21 shall be complied with at all times: -

Existing and Proposed Block Plan 02 - received 8th November 2021

Existing Digital Survey 03 - received 8th November 2021

FRA - received 13th December 2021

Height Comparison Plan 08 - received 9th December 2021

Proposed site plan 04D - received 10th February 2022

Existing and Proposed Location Plans 01 15th August 2023

Existing and Proposed Block Plan 02 15th August 2023

Proposed Elevations 05C 15th August 2023

**Reason:** *For the avoidance of doubt and in the interests of proper planning.*

## **Informatives**

1. The developer should be aware that pulverised fuel ash (PFA) has been identified on Shoreham Beach. This is a potentially contaminative material, which can present as grey and ashy in nature or as small, black, coal-like deposits. It is the responsibility of the owner and developer to establish the extent of such material on the site and to carry out appropriate remediation where necessary.
2. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.



3. The applicant is advised to contact the operator of the street lighting pole to organise the moving/relocation works.
4. The applicant is advised that in addition to obtaining planning permission they must also obtain formal approval from the highway authority to carry out the site access works on the public highway. The granting of planning permission does not guarantee that a vehicle crossover licence shall be granted. Additional information about the licence application process can be found at the following web page:  
<https://www.westsussex.gov.uk/roads-and-travel/highway-licences/dropped-kerbs-or-crossovers-for-driveways-licence/>  
Online applications can be made at the link below, alternatively please call 01243 642105.  
<https://www.westsussex.gov.uk/roads-and-travel/highway-licences/dropped-kerbs-or-crossovers-for-driveways-licence/vehicle-crossover-dropped-kerb-construction-application-form/>
5. Due to changes in legislation that came into force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. The applicant is advised to contact Southern Water Developer Services, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk) or email [developerservices@southernwater.co.uk](mailto:developerservices@southernwater.co.uk)
6. A formal application for connection to the public sewerage system is required in order to service this development. The applicant is advised to contact Southern Water Developer Services, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk) or email [developerservices@southernwater.co.uk](mailto:developerservices@southernwater.co.uk)
7. Infiltration rates for soakage structures are to be based on percolation tests undertaken in the winter period and at the location and depth of the proposed structures. The percolation tests must be carried out in accordance with BRE DG365, CIRIA R156 or a similar approved method and cater for the 1 in 10 year storm between the invert of the entry pipe to the soakaway, and the base of the structure. It must also have provision to ensure that there is capacity in the system to contain below ground level the 1 in 100 year event plus 40% on stored volumes, as an allowance for climate change. Adequate freeboard must be provided between the base of the soakaway structure and the highest recorded annual groundwater level identified in that location. Any SuDS or soakaway design must include adequate groundwater monitoring data to determine the highest winter groundwater table in support of the design. The applicant is advised to discuss the extent of groundwater monitoring with the Council's Engineers. Further detail regarding our requirements are available on the following webpage:  
<https://www.adur-worthing.gov.uk/planning/applications/submit-fees-forms>

A surface water drainage checklist is available on this webpage. This clearly sets out our requirements for avoiding pre-commencement conditions, or to discharge conditions.

8. Under current legislation and guidance SUDS rely upon facilities which are not adoptable by sewerage undertakers. Therefore, the applicant will need to ensure that arrangements exist for the long term maintenance of the SUDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system.
9. All Planning Applications for both domestic and non-domestic premises that have been granted approval for new development or conversions will require a new, or amended property address for the proposed development. Developers will be required to submit a Street Naming and Numbering Application to the Street Naming and Numbering Department upon commencement of works to enable the new development to be officially addressed in compliance with the British Standard of Addressing; known as BS7666. Developers are invited to complete their Street Naming and Numbering Application via the following link to the councils' website: [www.adur-worthing.gov.uk/naming-and-numbering](http://www.adur-worthing.gov.uk/naming-and-numbering) Information and guidance regarding the Fees for the service provided are also available at this location. Alternatively, please do not hesitate to contact the Street Naming and Numbering Department via the following methods should you have any queries; Street Naming and Numbering, Adur & Worthing Councils, Portland House, 44 Richmond Road, Worthing BN11 1HS. Telephone Number: 01903 221479. Email: [llpg@adur-worthing.gov.uk](mailto:llpg@adur-worthing.gov.uk)

30 September 2024

## **Local Government Act 1972**

### **Background Papers:**

As referred to in individual application reports

### **Contact Officers:**

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