



## Appeal Decision

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By Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 03/10/2023

Appeal reference: CAS-02767-W6D9K3

Site address: Church of Saint Baruc, Phyllis Street, Barry Island, Barry, Vale of Glamorgan, CF62 5UX.

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- The appeal is made under Regulation 3 of the Sustainable Drainage (Appeals) (Wales) Regulations 2018, against a refusal to grant approval.
  - The appeal is made by Mr Oliver Evans of Newydd Housing Association against the decision of Vale of Glamorgan Council.
  - The application Ref: SAB/FUL/2022/044, dated 19 October 2022, was refused by notice dated 18 April 2023.
  - The development proposed is the construction of residential flats at former Saint Baruc's Church.
  - A site visit was made on 4 September 2023.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The development proposed is the construction of residential flats at the site of the former Saint Baruc's Church on Phyllis Street in Barry Island. The proposed scheme has already been granted planning permission, under LPA Ref: 2022/01011/FUL. However, as per the Flood and Water Management Act 2010 (the Act), there is a requirement in law that construction work which has drainage implications may not be commenced unless a drainage system for the work has been approved by the Sustainable Drainage Systems (SuDS) Approval Body (SAB) which, in this case, is the Vale of Glamorgan Council.
3. The Act establishes 11 Principles which underpin the design of Sustainable Drainage Schemes (SuDS). Six '*statutory standards*' for the design, construction, operation and maintenance of SuDS serving new developments in urban or rural areas of more than one dwelling, and where the area covered by construction work equals or exceeds 100m<sup>2</sup>, have also been established. The SuDS statutory standards seek to ensure that the most effective drainage scheme is delivered for protecting and enhancing both the natural and built environment. Applicants seeking SAB approval must demonstrate how they have complied with these principles or provide justification for any departure.

4. Statutory Standard S1 comprises five levels with the most preferred level represented by Level 1, and movement from Level 1 to lower levels determined by demonstration that the exception criteria apply. Level 1 should be met to the maximum extent possible, with lower levels used where required and where appropriate justification can be provided. Different levels may be suitable for different parts of a site, and more than one level may be required to effectively drain the site to meet the requirements of the standards. Fixed Standards S2 to S6 establish the minimum design criteria, setting out how they should be constructed, maintained and operated. To be compliant with these standards, developers need to demonstrate how the proposed SuDS scheme satisfies the relevant criteria.

## Main Issues

5. Having regard to the principal matters of dispute, the main issue in the determination of the appeal is whether the proposed drainage scheme would comply with the key principles and statutory standards for Sustainable Drainage Systems, having particular regard to Standard S2 and Standard S6.

## Reasons

6. The proposed drainage scheme would see surface water runoff generated by the development managed through the use of rain gardens and SuDS planters. The attenuated discharge would be made to the existing combined sewer, as per the existing situation. However, the evidence indicates that an impermeable membrane would be installed to line the rain garden features and the SAB contends that, with reference to Table G2.1 of the statutory standards, the proposed rain garden would not meet the assumed compliance for interception given that lined bioretention features would only deliver interception through evapotranspiration. Calculations have been submitted in an attempt to address this issue, but the evidence suggests that levels of interception would fall significantly short of demonstrating that the rain gardens would have the potential to manage rainfall events of less than 5mm through the process of interception. It has not therefore been demonstrated that the proposal would comply with Clause 1 of statutory Standard S2 which states that surface water should be managed to prevent, so far as possible, any discharge from the site for the majority of rainfall events of less than 5mm.
7. The SAB has also raised concerns in respect of compliance with statutory Standard S6. Specifically, whilst it is satisfied that the submitted design could be constructed easily, safely, cost effectively and in a timely manner, a full and comprehensive maintenance schedule for the drainage system has not been provided for review. This particular element of the statutory standards has not therefore been addressed. Specifically, the proposed scheme fails to comply with Clause 2 of Standard S6 which states that all elements of surface water drainage systems should be designed to ensure maintenance and operation can be undertaken easily, safely, cost effectively, in a timely manner, and with the aim of minimising the use of scarce resources and embedded carbon energy.
8. Much of the appellant's arguments relate to the fact that the site is restricted by its size. Specifically, the appellant contends that the SuDS features are as large as they can be without reducing the number of residential units provided on site. However, whilst it is clearly material to note that Standard S2 is a requirement that should be met "*so far as possible*", there is little evidence to counter the SAB's concerns and neither does the appellant adequately discount the alternative drainage suggestions set out at paragraph 4.11 of the SAB's Statement of Case. I acknowledge the appellant's contention that reducing the scheme to a single residential unit would render the scheme unviable. However, without adequately discounting the full range of options, and providing tangible evidence of such viability concerns, such arguments only carry limited weight. It is clearly material to note that the existing situation discharges to a combined

sewer. However, that does not in my view render the scheme exempt from the proper application of the statutory standards.

9. Therefore, based on the foregoing analysis, I find that the submitted drainage design would fail to adequately comply with standards S2 and S6. As such, and having considered all matters raised, I conclude that the appeal should be dismissed. In coming to this conclusion, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

*Richard E. Jenkins*

INSPECTOR