

WITNESS STATEMENT OF STACEY ROBINS

Head of Planning and Environmental Services, Wealden District Council

Appeal Reference: APP/C1435/W/24/3334388

Application Reference: WD/2024/1799/MAO

Site: Bird in Eye Farm, Bird in Eye Hill, Framfield, TN22 5HA

1. My name is Stacey Robins (Mr). I hold a BA Honours degree in Urban Studies and Rural Planning and a Postgraduate Diploma in Town Planning, both awarded by the University of Sheffield. I am a Chartered Town Planner and have been since 2002.
2. I have 25 years of town and country planning experience, the majority of which has been with Wealden District Council. I have worked predominantly in Development Management, with periods in Planning Policy. I have been the Council's Head of Planning and Environmental Services since early 2020.
3. The evidence which I have prepared and provided in this statement is true and is given in accordance with the Code of Conduct of my membership of the Royal Town Planning Institute. I confirm that the views expressed are my true and professional opinions.
4. Although I have not provided a main proof of evidence in this matter, this statement responds to comments made in Mr Brown's proof of evidence which alleges that the Council has behaved unreasonably and that this has resulted in the Appellant incurring unnecessary expense in advancing the Appeal (alleged at paras 1.9 and 2.57 of Mr Brown's proof of evidence). I am providing this statement as I was involved in the consideration of the planning application prior to the Appellant's appeal.
5. I have a long-standing professional involvement with the Bird in Eye site. I attended the original public inquiry into development at Bird in Eye, Uckfield in 2008. That inquiry, conjoined appeals at Bird in Eye North, Bird in Eye South, and Downlands Farm, which sat between 15 January and 18 July 2008 and closed in writing on 14 October 2008. The appeals were recovered by the Secretary of State and dismissed by decision dated 24 February 2009.
6. I also attended the 2023 public inquiry into appeal APP/C1435/W/22/3307820, concerning land at Bird in Eye Farm, south of Bird in Eye Hill, submitted by Croudace Homes Ltd following application WD/2021/2198/MAO. That appeal was dismissed on 12 October 2023. Inspector Hayley Butcher's decision identifies serious harm arising from that scheme, including the loss and deterioration of ancient woodland, less than substantial heritage harm which was not outweighed by the public benefits, and an unacceptable impact on highway safety.
7. The present appeal arises from a revised application (WD/2024/1799/MAO) for a reduced scheme of 190 dwellings. While the Appellant did engage in a single pre-application meeting with the Council as Local Planning Authority (LPA) on 23 May 2024, this was the only occasion. The Council was open to constructive

dialogue, and the pre-application letter dated 4 June 2024 reflects our willingness to assist in addressing the outstanding issues (see SB62 attached to Mr Brown's Proof). However, at that meeting, the Appellant's planning consultant advised that they were in separate pre-application contact with East Sussex County Council (ESCC) as Local Highway Authority (LHA). On that basis, the LPA did not pursue any discussion of highways matters at that meeting. It later transpired that no meaningful or formal engagement had taken place with ESCC LHA prior to the application submission, and key material such as a Road Safety Audit was absent from the subsequent planning application — this despite highway safety being a central reason for refusal and dismissal in the 2023 appeal.

8. In this witness statement I address three discrete points which Mr Brown raises. The first is in relation to whether it was reasonable for the Council to take time to consider whether to exercise its discretion under section 70A of the Town and Country Planning Act 1990 to decline to determine the application. The second is had the Council not considered whether to exercise its discretion, whether the highways matters would have been resolved during the application process. The third is whether, had the highways matters been determined at the planning application stage, the Council would have approved the application.

Section 70A

9. Given the recent refusal of a similar scheme for residential development at the appeal site, the Council considered whether to exercise its discretion under section 70A of the Town and Country Planning Act 1990 to decline to determine the new application. This was on the basis that there had been no significant change in material considerations. In particular, the Council was particularly concerned that the Appellant had not sufficiently addressed the harm to the heritage asset which was one reason why the appeal had been refused by the Inspector. The Council was also concerned that the proposed highways solution, which was another basis upon which the 2023 appeal scheme was refused by Inspector Butcher had not been the subject of pre-application discussions with the highway authority and no Road Safety Audit had been produced by the Appellant to support its re-design. The re-design simply hadn't been shown to be safe. At the time of the planning application the Council was also concerned that the revised scheme had not addressed the issue of deterioration to the Ancient Woodland which was another reason (along with loss of ancient woodland) why the previous appeal was dismissed. Although the revised scheme had removed reliance the path through the Ancient Woodland, there was little detail advanced at that stage about the effect of development on the irreplaceable habitat. Whilst the agreed Statement of Common Ground accepts at paragraph 12 that there would be no harm, the measures to achieve this only materialised at the appeal stage. That includes :

- Securing the buffer zone to the Ancient Woodland as per the landscape plan and SANG layout plan
- the closure and blocking off of the existing path in the Ancient Woodland
- the wider management of the Ancient Woodland
- the delineation (and exclusion) of the root protection area to the T6 veteran Ash tree by post and rail fencing) all to be secured in the s106,

10. The Council was concerned that the fresh application was not a genuine attempt by the Appellant to attempt to overcome the reasons which led to the rejection of the previous proposal. In short, the fresh application shared characteristics which were fatal to the previous appeal scheme.
11. On 19 August 2024, I issued a letter to the Appellant's agent inviting comments on the possibility of a decline to determine decision. The Appellant responded with written representations and legal opinion from Mr Andrew Tabachnik KC.
12. The Council took its own advice on the matter¹. The Council remained minded to exercise its powers to decline to determine the application under section 70A but the Appellant issued an appeal for non-determination before any decision was issued, thereby removing jurisdiction from the LPA.
13. In addition to exchanges with myself and Mr Brown of Woolf Bond Planning further senior-level engagement took place during this period between the Council's Director, Mr Chris Bending, and the Appellant's Chief Executive, Mr Matthew Norris. Mr Norris' correspondence expressed a willingness to work with the Council to address concerns (emails at SB6.8). However, the appeal was lodged before any meaningful dialogue or revised submission occurred.
14. I note Mr Brown refers to our telephone call on the 9 October 2024 at paragraph 2.36 of his proof. I did not take a detailed note of that call however, I can confirm I encouraged the application to be withdrawn to allow meaningful and genuine collaborative discussions. That did not take place. Elsewhere Mr Brown asserts that the Council acted unfairly, did not share its legal advice and would not disclose draft copies of the decline to determine report. There is no requirement on any person ever to disclose legal advice or any draft report and so the criticism is extremely surprising.
15. It is my view that the Appellant submitted the appeal to pre-empt a possible decision under section 70A. Such a decision, had it been issued, could only have been challenged by way of statutory review under Section 288 of the Town and Country Planning Act 1990. In my view the Council's actions were transparent, and procedurally fair. The timeline was controlled not by the authority, but by the Appellant.
16. The Appellant's contention that the Council had no proper basis to consider the exercise of powers under section 70A is misconceived. Section 70A(1) of the Town and Country Planning Act 1990 enables a Local Planning Authority to decline to determine an application where the prescribed conditions are met. In the Council's judgment, the application fell squarely within the bounds of this statutory provision. The Council's position was that the application and appeal site was similar, i.e. substantially the same, particularly taking into account the fact that it shared characteristics which were fatal to the previous proposal at the prior appeal. In the Council's view, the application was not a genuine attempt to resolve key issues on which it had been refused during the appeal.

¹ For the avoidance of doubt, the Council does not waive privilege on this advice.

17. If necessary, I understand that legal submissions will be made on the scope of section 70A in response to any costs application.
18. The claim that the Council “entertained doubts” about exercising Section 70A powers because no formal decision was issued within a set period (para 2.55 Mr Brown’s proof) is without merit. The Council is entitled to assess whether it should decline to determine an application under section 70A, and the passage of time reflects due diligence, not indecision. A delay in issuing a notice does not imply a lack of justification. On the contrary, it indicates that the Council took care to ensure its position was sound.
19. Had the application been determined and powers under section 70A not been exercised it would have been refused on both highways and heritage grounds as has been set out in the Council’s statement of case. This is addressed further below.
20. I can confirm that this is not an application which would have been determined by the planning committee and would have been determined by officers. Under the Council’s Scheme of Delegation in force at the time of the application (prior to the revisions made on 1 June 2025), planning applications were only required to be reported to Planning Committee where (i) officers were proposing to depart from the views of statutory consultees and there were third party representations raising relevant material planning considerations, or (ii) the delegation was waived by a senior officer. Neither circumstance applied here. The Council’s position was aligned with the LHA and there were objections on heritage grounds. The application attracted objections, not support. Furthermore, I would not have exercised discretion to waive delegation in this instance. Accordingly, there was no trigger under the adopted Scheme of Delegation that would have resulted in a Committee determination. The application would have been refused under delegated powers and not progressed to Committee.

The effect of the fact that the application was not validated

21. At paragraph 2.56 of his proof Mr Brown states that the failure of the LPA to validate the application ‘deprived the Appellant of the ability to address any consultation responses received from the statutory consultees. For example, highways matters could and would have been resolved through discussion with the relevant statutory consultees’.
22. I make a number of points in response to this. First, there is no requirement in law to validate an application that is liable to be declined under Section 70A. To validate and publish such an application would risk misleading or at that very least cause confusion with the public and consultees by creating a false expectation of determination.
23. Second, Mr Brown fundamentally misunderstands the purpose and value of proper, meaningful pre-application engagement. It is at the pre-application stage — not during formal determination — that applicants should seek to identify and resolve issues with statutory consultees. A failure to use the pre-application

process effectively cannot be remedied by submitting an application and expecting to be able to amend it through the application process. I note that the LHA reviewed 7 iterations of plans prior to agreement being reached between the Appellant and the LHA. It is not correct that an Appellant can submit an application which is sub-standard, not even supported by a road safety audit, and then rely upon being able to make material amendments to its application during its consideration by the LPA.

24. Third, it is not credible for Mr Brown to state that highways matters 'could and would' have been resolved as part of the application process. I have had regard to the statement of Kal Kamboh for the LHA. I note that the Appellant had every opportunity to enter into meaningful pre-application discussions with the highway authority prior to making its planning application. It did not do this. The application as submitted was clearly incapable of achieving the support of the LHA or the LPA. For one thing, no road safety audit had been submitted. Despite the pre-application fee not having been paid to the LHA, the LHA did provide some 'light touch comments' between 9 and 14 of August 2024 on the Transport Assessment, Framework Travel Plan and Road Safety Audit Brief. Technical comments were then provided by the LHA on 11 September 2024. The Appellant then made no attempt to further discussions with the LHA before making its appeal on 20 December 2024. There is no reason why it could not have continued discussions with the LHA during this time but it did not do so. Finally, it was only in May 2025 that agreement was reached with the LHA (following adjournment of the Inquiry by the Inspector to allow for further engagement on access and highway safety concerns). As Ms Kamboh states in her statement agreement was eventually reached mainly through discussions which were led by the LHA. Thus, highway matters were only resolved sixteen months after the Appellant had initially requested to engage with the highway authority and ten months after the application was made. The LHA saw 7 iterations of the access during this process. The LHA was willing to engage with the LPA, in particular during the period where the LPA was considering whether to exercise its powers to decline to determine the application but the Appellant did not take up this opportunity. It is simply not credible for the Appellant to state that highway matters would have been resolved during the application process had the application been validated. But, in any event, all of these discussions should properly have occurred during the pre-application process and the Appellant should not have relied upon the application and appeals process to amend its scheme.

Heritage

25. In any event even if the highways matters had been resolved during the application process then the application would still have been refused on the basis of the heritage reason for refusal. Mr Brown alleges that the Council is only maintaining the heritage reason of refusal to protect its costs position (para 2.60).
26. Mr Brown's opinion is simply wrong. The 2023 Inspector's decision clearly found that the scheme resulted in less than substantial harm to the setting of a designated heritage asset, and this was not outweighed by the public benefits of

the proposal. It was a stand-alone reason for refusal. In light of this, a key issue was the extent to which any re-submission application had addressed the harm and whether the public benefits test were met.

27. Of course, the nature of relevant legislation and policy means that heritage is a matter of particular importance in planning decisions, in any event. Planning authorities are under a statutory duty, under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to have special regard to the desirability of preserving the setting of listed buildings. The NPPF provides that where less than substantial harm is caused to an asset then permission should be refused unless the public benefits outweigh the harm.

28. At the pre-application stage the Council was of the view that the appeal scheme had not materially reduced the level of harm to the heritage asset and would deliver reduced public benefits. The pre-application letter stated:

In summary, the level of harm to the heritage asset is not materially reduced in the view of the Council in the pre-app scheme and the actual public benefits are reduced such that even were there any marginal reduction in harm to the setting, this would be offset in the public benefit test in terms of lesser public benefits. It appears that further consideration is needed prior to submission of any scheme to go further on preservation of the setting of the heritage asset to avoid a direction to refusal under the NPPF. Clearly, the recent appeal decision is a significant material consideration in this assessment.

(letter 4 June 2024 to Mr Brown from the then officer [REDACTED])

29. The Council then carefully considered the impact of the development in this application on the oast house. The Council's assessment is set out in the proof of evidence of Jo Tucker. Mrs Tucker contributed to the Council's Statement of Case. As set out in the Council's Statement of Case, the putative heritage reason for refusal is a stand-alone reason for refusal and not dependent upon the highways position.

30. There is clearly a professional disagreement between Dr Miele and Mrs Tucker. That will be considered during the Inquiry. However, put simply, the Council does not agree with Dr Miele's evidence that there would be no harm to the heritage asset and that will be addressed in the ordinary manner during the round table session.

31. In the Council's view the scheme continues to cause harm to the significance of the listed asset at a moderate level. Mrs Tucker's evidence is not repeated here. The harm to the asset contributes to a breach of the development plan.

32. The result is that the setting of the oasthouse would not be preserved by the development thereby conflicting with the requirements of Section 66(1). In the Council's view, and as set out in the Statement of Case and the proof of Mr Redman, the public benefits of the scheme carry substantial weight. However, this does not outweigh the harm to the listed oasthouse which must be given

considerable importance and weight. Therefore, in the Council's view there is a strong reason for refusing the appeal and the tilted balance does not apply.

33. Mr Brown's assertion that the Council is maintaining the heritage reason for refusal solely as a tactical move to protect its costs position is entirely without foundation. It is a very serious allegation that amounts to an accusation that professional planning and heritage judgments have been artificially sustained for procedural advantage. The Council takes this matter very seriously and confirms that Mr Brown's allegation is wholly incorrect.
34. As a Chartered Town Planner, I am bound by the Royal Town Planning Institute's Code of Professional Conduct, which requires that professional advice be objective, evidence-based and given in the public interest. As Service Leader for the LPA, the RTPI Code also requires me to ensure my team is competent, supported, and acting ethically; promote independent, evidence-led planning decisions, model and enforce respectful, inclusive conduct; and to uphold professional integrity in all work.
35. The Council's position on heritage impact and the heritage balance are matters of proper expert planning judgment in the context of the relevant statutory and policy context.

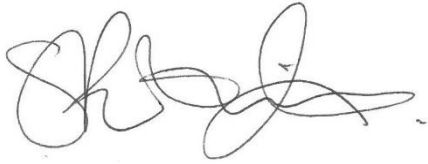
Concluding remarks.

36. I wholly reject the assertion that the Council has acted unreasonably. The Appellant was informed of the Council's thinking with regards to section 70A Town and Country Planning Act 1990, invited to respond, and was aware that a decision had not yet been made. In the Council's view the application was similar to the scheme which was previously refused at appeal. This was in respect of issues which were fatal to the application at that time. The Appellant may not agree with that position but it was not unreasonable. In any event, as set out above, had the Council validated the application it would have been refused on heritage and highways grounds. There is no basis for the Appellant's assertions that the highways issues would have been resolved during the application process. Nor is there any basis for the Appellant's assertion that the Council is improperly maintaining the heritage reason for refusal.
37. In summary, I consider that the Council acted properly, professionally, and transparently throughout. I fully stand by our handling of the matter. For the avoidance of doubt, I reject entirely the unfounded and inappropriate allegation that the Council has tactically or cynically maintained the heritage reason for refusal in order to protect its costs position. That claim is wrong in fact, wholly without merit, and is firmly and unequivocally rejected.

Statement of Truth

I confirm that the facts stated in this witness statement are true.

Signed:

A handwritten signature in black ink, appearing to read 'Stacey Robins', with a stylized, cursive script.

Stacey Robins MRTPI

Head of Planning and Environmental Services
Wealden District Council
Date: 8 July 2025