



## Woolf Bond Planning

Chartered Town Planning Consultants

Our Ref: SB/7336

Email:

3<sup>rd</sup> December 2024

The Planning Inspectorate  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

By Email to: [inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)

Dear Sir/Madam,

### **APPEAL AGAINST THE FAILURE OF WEALDEN DISTRICT COUNCIL DETERMINE AN OUTLINE PLANNING APPLICATION WITHIN THE STATUTORY PERIOD**

**LAND AT BIRD IN EYE FARM, SOUTH OF BIRD IN EYE HILL (FRAMFIELD ROAD), UCKFIELD (FRAMFIELD PARISH)**

**Outline planning application for the erection of up to 190 dwellings, with associated works, parking, landscaping, publicly accessible open space and SANG provision, with access from the B2102 (LPA Ref: WD/2024/1799/O)**

#### **General**

On behalf of Croudace Homes Ltd (the “Appellant”), we are submitting an appeal against the failure of Wealden District Council to determine an outline planning application within the statutory period.

Particulars are submitted in support of the appeal application as follows:

- Schedule of Essential Supporting Information (comprising the application particulars)
- Statement of Case (including a chronology of communication with the Local Planning Authority (“LPA”) (see also below) and the reasons for requesting an inquiry)

#### **Context**

A previous scheme proposing development of a much larger site for up to 290 dwellings and a strategic Suitable Alternative Natural Greenspace (“SANG”) was refused at appeal by decision dated 12 October 2023 (PINS Ref: APP/C1435/W/22/3307820).

The previous appeal was dismissed on the grounds of harms identified in respect of ancient woodland, highway safety, flood risk, and heritage. Nevertheless, the principle of this site being a suitable and accessible location for housing development was established by this appeal.

In March 2023 the Appellant submitted a pre-application request to the LPA on a reduced scheme for 235 dwellings, on a smaller area of land (the northern part of the original application) (LPA Ref: PE/2024/0122/E).

A meeting was convened on 23<sup>rd</sup> May 2024. The LPA provided their written advice by letter dated 4<sup>th</sup> June 2024.

The formal pre-application advice received from the Council raised key concerns relating to heritage (the 'Oast' within Bird in Eye Farm), the need to satisfy County Highways in relation to the access design, as well as ensuring an appropriate relationship between the scheme and impacts upon ancient woodland to the south and south west of the Site.

As is now proposed, the pre-application proposals removed the southern strategic SANG land, and removed the need for pathways through the Ancient Semi-Natural Woodland ("ASNW"). In addition, all built form lies outside the 50m buffer to the ASNW and the 15m buffer was explained to be respected for all other engineering works such as the SUDS basins.

In addition, the buffer area is proposed to be planted with landscaping that will seek to minimise intrusions from residents within the zones with recreation routes outside the 15m buffer and planting designed to 'prevent' easy access to the ASNW.

In the Appellant's view, the Appeal Scheme has addressed the concerns raised by officers during the pre-application process, and provides for up to 190 dwellings (a reduction from the up to 235 dwellings proposed at the pre-application stage), whilst removing previously proposed development and an access road to the west of the 'Oast', thus providing for an enhanced setting; addressing the previously reported heritage concerns.

The Appeal Application for up to 190 dwellings was subsequently submitted to Wealden District Council on 31<sup>st</sup> July 2024<sup>1</sup>. Particulars were transmitted from the Planning Portal to the Council on 2<sup>nd</sup> August 2024.

A letter was then received from Wealden District Council dated 5<sup>th</sup> August 2024 acknowledging receipt of the planning application (**WB1** to the Statement of Case).

A further letter was received from Wealden District Council dated 19<sup>th</sup> August 2024 citing s70 of the Town and Country planning Act 1990 (as amended) (**WB2** to the Statement of Case).

An opinion from A Tabachnik KC (39 Essex Chambers), issued to Wealden District Council on 23<sup>rd</sup> August 2024 (**WB3** to the Statement of Case).

The Planning Agent (Woolf Bond Planning) for the Appellant's spoke to the [REDACTED] from Wealden District Council on 9<sup>th</sup> October 2024. As recorded in the email correspondence at **WB4** to the enclosed Statement of Case, [REDACTED] stated in that call that the Council considers it has a case (pursuant to s70A) to decline to determine the planning application submitted via the planning portal on 31 July 2024 (and released by the portal to the Council on 2 August 2024) (LPA Ref: WD/2024/1799/O), albeit such a stance was in the officer's words "not without some risk".

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<sup>1</sup> The sequential test submitted and confirmed as being received on 22<sup>nd</sup> August 2024.

It was relayed to the Appellant that over what was roughly the 7 week period since the Appellant's 23<sup>rd</sup> August 2024 response on section 70A (see the opinion issued to WDC at **WB3** to the enclosed Statement of Case), that the LPA had been in contact with their Counsel on a number of occasions, and that Counsel had reviewed a 'decline to determine report' concerning the application.

████████ further advised that a decision was to be taken on the grounds of trees, heritage, design and matters raised (albeit in a limited way) by East Sussex County Council. It was added that 'part of the problem' with the application was the purported conflict with some of the main issues raised by the Inspector in the previous appeal decision.

████████ advised that should the Applicant withdraw the application by Friday (11<sup>th</sup> October 2024), the Council would be willing to enter into discussions to discuss a further revised scheme to address the Council's concerns.

Woolf Bond Planning asked on the call, if (without determining the Council's final position) ██████ could advise as to the changes that would be deemed necessary to address the LPA's concerns.

████████ added that the Council had issues with the development proposed in the northwest part of the site as well as the proposed development parcel in the southwest part of the site. ██████ intimated that development to the east of the commercial buildings was likely to be acceptable.

████████ advised that, absent a withdrawal in what amounts to the 36 hours or so after our call, the Council intends to validate the planning application, retain the planning application fee (which I note was in the sum of circa ██████) and issue a report on its decision to decline to determine it. ██████ stated that Croudace Homes Ltd had two days (until Friday 11<sup>th</sup> October 2024) to advise if it intends to withdraw the application. If it advises it intends to do so, the application fee will be refunded. If not, the Council proposed to retain the fee when declining to determine the application.

As set out in **WB4**, it was explained that Croudace Homes Ltd considered the Council's proposed course of action to be both legally flawed and demonstrably unfair.

The Council's 19<sup>th</sup> August 2024 letter raising s70A as an issue and requesting comments upon the Council's intention to decline to determine the application by 1600 on Friday 23<sup>rd</sup> of August, gave just four days to respond.

The Applicant responded with a legal opinion just before 0800 on the morning of Friday 23<sup>rd</sup> August 2024.

We did not hear substantively from the Council until the conversation held on 9<sup>th</sup> October 2024, almost seven weeks after the submission of our legal opinion.

The Appellant's were then given less than two days to confirm if the Applicant is prepared to withdraw the planning application.

As the correspondence makes clear, the Applicant invited the Council (1) to provide the draft decline to determine report and any related counsel opinion on which the Council relies, and (2) to delay any decision to decline until 1600 on Friday 25<sup>th</sup> October 2024 (or until earlier receipt of any comments which the Applicant wishes to make, or confirmation that it does not wish to do so).

As the correspondence at **WB5** confirms, the LPA responded by email dated 11<sup>th</sup> October 2024 advising they would extend the deadline until 18<sup>th</sup> October 2024 for Croudace to respond to the Council's suggestion of withdrawing the application until 18<sup>th</sup> October 2024. That email also confirmed the Council would not be sharing the office advice or draft (failure to determine) report.

There then followed further email correspondence between Woolf Bond and the LPA asking for updates (see also **WB5**). No substantive or conclusive response was received.

Thereafter, the Managing Director of Croudace Homes Ltd ( ) had an exchange of emails with the Director of Place at the Council ( ). The last email was sent from Croudace on 1<sup>st</sup> November 2024, to which there has been no reply. The correspondence is included at **WB6**.

It is against this background that Croudace Homes Ltd is appealing against the Council's failure to validate and determine the planning application.

The 13 week statutory period for the LPA to determine the planning application expired on 22<sup>nd</sup> November 2024 (at the latest).

This appeal is lodged under the provisions at s78(2) of the Town and Country Planning Act 1990 (as amended) as the Council has not given notice of their decision on the application and nor have they exercised their power under section 70A to decline to determine the application.

As the Statement of Case records, the Appellant is requesting that the appeal is to be determined via the inquiry procedure. The Appellant reserves its position in relation to an application for an award of costs in relation to the what it considers to unreasonable behavior on behalf of the Council.

We welcome the opportunity to explore matters with the Inspector in an early case management conference.

Yours faithfully,

*Woolf Bond Planning Ltd*

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Enc.