
STATEMENT OF CASE

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

Appeal against failure of Wealden District Council to determine an outline planning application within the statutory period for up to 190 dwellings, associated works, parking, landscaping, publicly accessible open space and SANG provision, with access from the B2102.

Prepared by:

Woolf Bond Planning

On behalf of:

Croudace Homes Ltd

croudacehomes

DECEMBER 2024

LPA Ref: WD/2024/1799/O

WBP Ref: 7336



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Appendices

- WB1** A letter from Wealden District Council dated 5th August 2024 acknowledging receipt of the planning application.
- WB2** A letter from Wealden District Council dated 19th August 2024 citing s70A of the Town and Country planning Act 1990 (as amended).
- WB3** An opinion from A Tabachnik KC (39 Essex Chambers), issued to Wealden District Council on 23rd August 2024.
- WB4** Email correspondence between Woolf Bond Planning at Wealden District Council (October 2024)
- WB5** Further email correspondence between Woolf Bond Planning at Wealden District Council (October 2024)
- WB6** Email correspondence between Croudace Homes Ltd and Wealden District Council (Oct-Nov 2024)

1.0 Introduction

General

- 1.1. This Appeal is made against the failure of Wealden District Council ("WDC") to determine an outline planning application within the statutory period for up to 190 residential dwellings, associated works, parking, landscaping, publicly accessible open space and SANG provision, with access from the B2102 (all matters reserved except for access) (LPA Ref: LW/24/1799/O).
- 1.2. In this instance, correspondence received from the Council cited s70A of the Town and Country Planning Act 1990 (as amended) with the Council suggesting on 19th August 2024 (**WBP**) their intention to decline to determine the planning application. However, this was never formally progressed nor was it ever confirmed.
- 1.3. Given the failure of WDC to validate and consult upon the planning application, the Appellant does not have receipt of any comments from residents and/or statutory consultees.
- 1.4. Whilst a draft Statement of Common Ground has been prepared and is submitted as part of the appeal papers, the Council's case is an unknown entity to the Appellant.
- 1.5. Until such time as matters are considered either on receipt of the Council's Statement of Case or by means of an exploratory meeting or case management call with the Planning Inspectorate, the Appellant's Statement of Case is to be read alongside the Planning Statement and other submitted application particulars. As such, the Appellant reserves the right to address matters as they may arise from the Council in the preparation of evidence.

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- 1.6. It is further anticipated that a number of topic based statements are common ground will be prepared. Again, this is a matter that can be explored with the Planning Inspectorate in due course.

Context

- 1.7. A previous scheme proposing development of a much larger site for up to 290 dwellings and a strategic SANG was refused at appeal by decision dated 12 October 2023 (PINS Ref: APP/C1435/W/22/3307820).
- 1.8. 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.
- 1.9. In March 2023 the Appellant submitted a pre-application request to the LPA proposing 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).
- 1.10. A meeting was convened on 23rd May 2024. The LPA provided their written advice by letter dated 4th June 2024.
- 1.11. The formal pre-application advice received from the Council raised concerns relating to heritage matters (the impact on the setting of 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.
- 1.12. That pre-application scheme removed the southern strategic SANG land and removed the need for pathways through the 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.

- 1.13. 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.
- 1.14. Amendments were made to the Scheme following receipt of the LPA's pre-application advice. This included reducing the number of dwellings from up to 235 to up to 190; and revising the illustrative layout.
- 1.15. 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.
- 1.16. The Appeal Application for up to 190 dwellings was subsequently submitted to Wealden District Council on 31st July 2024¹. Particulars were transmitted from the Planning Portal to the Council on 2nd August 2024.
- 1.17. A letter was then received from Wealden District Council dated 5th August 2024 acknowledging receipt of the planning application (**WB1** refers).
- 1.18. A further letter was received from Wealden District Council dated 19th August 2024 citing s70 of the Town and Country planning Act 1990 (as amended) (**WB2** refers).
- 1.19. An opinion from 39 A Tabachnik KC (29 Essex Chambers), issued to Wealden District Council on 23rd August 2024 (**WB3** refers).

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

- 1.20. The Planning Agent (Woolf Bond Planning) for the Appellant's spoke to [REDACTED] from Wealden District Council on 9th October 2024. As recorded in the email correspondence at **WB4** refers, [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".
- 1.21. It was relayed to the Appellant that over what was roughly the 7 week period since the Appellant's 23 August 2024 response on section 70A (see the opinion issued to WDC at **WB3**), 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.
- 1.22. [REDACTED] further advised that a decision would 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.
- 1.23. [REDACTED] advised that should the Applicant withdraw the application by Friday 11 Oct 2024, the Council would be willing to enter into discussions to discuss a further revised scheme to address the Council's concerns.
- 1.24. Woolf Bond Planning asked on the call, if (without determining the Council's final position) [REDACTED] could advise as to the changes that would be deemed necessary to address the LPA's concerns.
- 1.25. [REDACTED] 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. [REDACTED] intimated that development to the east of the commercial buildings was likely to be acceptable.

- 1.26. [REDACTED] 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 was in the sum of circa [REDACTED] and issue a report on its decision to decline to determine it. [REDACTED] stated that Croudace Ltd had two days (until Friday 11th October) 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.
- 1.27. As set out in **WB4**, it was explained that Croudace Ltd considered the Council's proposed course of action to be both legally flawed and demonstrably unfair.
- 1.28. The Council's 19th August letter raising s70A as an issue, and requesting comments upon the Council's intention to decline to determine the application, by 1600 on Friday 23rd of August 2024 gave just four days to respond.
- 1.29. The Applicant responded with a legal opinion just before 0800 on the morning of Friday 23rd August 2024.
- 1.30. We did not hear substantively from the Council until the conversation held on 9th October 2024, almost seven weeks after the submission of our legal opinion.
- 1.31. The Appellant's were then given less than two days to confirm if the Applicant is prepared to withdraw the planning application.
- 1.32. The Appellant considers that is a clearly unfair manner in which to proceed, and remains unable to understand the concerns that both purportedly trigger section 70A and justify the exercise of its discretion to decline the Council thinks it has (though noting that the Council itself is of the view such a decision is "not without some risk"). The Appellant asked the Council to afford them a proper opportunity to consider and

comment on the decline to determine report while it is in draft. It was suggested this would not prejudice the Council in any way to do so.

- 1.33. The Appellant invited the Council (1) to provide at once 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 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).
- 1.34. As the correspondence at **WB5** confirms, the LPA responded by email dated 11th October 2024 advising they would extend the deadline until 18th October 2024 for Croudace to respond to the Council's suggestion of withdrawing the application until 18th October 2024. That email also confirmed the Council would not be sharing the officer/counsel advice or draft (failure to determine) report.
- 1.35. There then followed email correspondence between Woolf Bond and the LPA asking for updates (see also **WB5**). No substantive or conclusive response was received.
- 1.36. Thereafter, the Managing Director of Croudace Ltd (██████████) had an exchange of emails with the Director of Place at the Council (██████████). The last email was sent from Croudace on 1st November 2024, to which there has been no reply. The correspondence is included at **WB6**.
- 1.37. It is against this background that Croudace Homes Ltd is appealing against the Council's failure to validate and determine the planning application.

Planning Considerations

- 1.38. In terms of planning considerations, the development plan is out of date in relation to the spatial application of its housing policies, whilst, in addition, the Council is not able to demonstrate a five year supply of

deliverable housing land. In the circumstances, the presumption in favour of sustainable development (the tilted balance) at paragraph 11(d) of the NPPF is clearly engaged. This requires planning applications to be approved unless footnote 7 considerations provide a clear reason for refusing development (which they do not in this case); or any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Again, they do not.

- 1.39. This is demonstrably a case where the weight to be attached to conflict with the development plan (on account of the location of the site beyond the defined settlement boundary for Uckfield) must be reduced given the accepted need to breach the settlement boundaries identified in the development plan to meet development needs. The particularly weighty material considerations in favour of this Appeal are clearly sufficient to outweigh the limited conflict with the out-of-date development plan.

S.38(6) the Development Plan

- 1.40. The development plan consists of the saved policies of the Wealden Local Plan (1998) (policies saved 2007), Wealden Core Strategy (2013) and the Affordable Housing Delivery Local Plan (2013).
- 1.41. The Core Strategy is a strategic level plan for the whole District, providing a strategic policy framework to guide development in the period to 2027. Its housing requirement was based on the 2007 Strategic Housing Market Assessment and consequently pre-dates the standard method required by the current NPPF (or indeed any methodology calculated to meet the post-2012 policy requirement to “boost significantly” the supply of new homes).
- 1.42. Policy WCS1 (Provision of Homes and Jobs 2006 – 2027) makes provision for some 4,525 net additional dwellings within the District reflecting the findings of the 2007 Strategic Housing Market Assessment. Policy WCS2 (Distribution of Housing Growth 2006 – 2027) seeks to allocate those additional dwellings throughout the District with Uckfield

earmarked for 1,000 new allocations in addition to the 742 already committed or built.

- 1.43. Policies WCS1 and WCS2 Policy WVS4 set out a number of strategic development areas; with SD1 (Land at West Uckfield) seeking to allocate the 1000 dwellings in one strategic area.
- 1.44. It is nevertheless highly material that the housing provision figure within Policy WCS2, and subsequently WCS4, do not represent full objectively assessed need when assessed against the annual requirement set by the standard methodology ("SM") which is 1,186dpa. When the 20% buffer is applied, this equates to 1,423dpa as confirmed in the Council's assessment of housing land supply for April 2024 (published September 2024).
- 1.45. As set out in the consultation draft NPPF, the revised approach to the calculation of the SM identifies a need for 1,397 dwellings per annum to be met in Wealden. When the 20% buffer is applied, this equates to a total of 1,676dpa and a five year requirement totalling 8,380 dwellings.
- 1.46. In the circumstances, it is evident therefore that Policies WCS1, WCS2 and WCS4 are out of date and that significant additional housing is required on greenfield sites, an issue accepted by the Council in the Core Strategy. This is confirmed in paragraph 5.8 which states "**it is inevitable that there will have to be a substantial use of greenfield land to meet existing and future housing needs....**" This has been further accepted in the decisions by the Council and through appeals on subsequent applications.
- 1.47. As accepted by the Council, the development plan is not based upon a NPPF compliant assessment of housing need and cannot be said to be up to date in respect of its housing requirement or in relation to policies that seek to restrict development within the defined settlement boundaries.

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- 1.48. Its content pre-dates the publication of the NPPF and the NPPG together with the Hunston and Solihull High Court Judgments; which require LPA to undertake an assessment of the objectively assessed housing need. Accordingly, and even at the point of adoption, the Core Strategy did not meet the objectively assessed need for housing during the plan period, which represents a clear conflict with paragraph 60 of the NPPF to significantly boost the supply of homes.
- 1.49. By operation of paragraph 225 of the NPPF, it is the Appellant's case that the weight to be attached to the development plan must be reduced on account of its inconsistency with the approach in the NPPF to meeting identified housing needs.
- 1.50. As confirmed by the Council in numerous Officer Reports to Planning Committee, and as confirmed in various appeal decisions, on account of
- 1.51. (i) the spatial application of the policies for the supply of housing being out of date (the need to breach settlement boundaries in the CS to meet identified needs): and
- (ii) the lack of a sufficient supply of deliverable housing land means the local plan policies that are most important for determining planning applications for housing carry less weight, and the NPPF's presumption in favour of sustainable development will apply to decision making².
- 1.52. Although there is a conflict between the Appeal Scheme and Development Plan, the Appellant has gone on to assess whether there are material considerations which justify the grant of planning permission.
- 1.53. The Site is not identified within the development plan as forming any part of a valued landscape.

² Examples include but are not limited to WD/2021/1637/MAO, WD/2021/2356/MAO (PINS Ref: APP/C1435/W/22/3297371); and WD/2020/2509/MAO (PINS Ref: APP/C1435/W/22/3296579)

- 1.54. As to the footnote 7 considerations set out in the NPPF, the heritage assessment of the Appeal Scheme, finding less than substantial harm within the lowest level of the less than substantial scale, engages the 'heritage balance' at paragraph 208 of the NPPF. This requires any harm to be weighed against the public benefits of the proposal.
- 1.55. It is the case for the Appellant that the many public benefits (economic, social and environmental), demonstrably outweigh that harm.
- 1.56. The Scheme is also acceptable in terms of flooding and drainage considerations, including on account of the conclusions contained in the sequential test undertaken in support of the proposal. The findings in the Mead judgment³ are also applicable.
- 1.57. Overall, in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Appellant has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. This will be explained in evidence.
- 1.58. As to the benefits, the material considerations are considerable in number and include the requirement to determine the Appeal Scheme within the prism of the titled balance, along with the substantial social, economic and environmental benefits, that justify the grant of planning permission.
- 1.59. The Appeal Scheme is promoted in the context of the operation of paragraph 11(d) of the NPPF and the housing need to be met in WDC.

³ *Mead Realisations and Redrow Homes Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 279.

Overarching Summary

1.60. Having regard to the relevant planning policy and material considerations, the acceptability of the Appeal Scheme may be summarised as follows:

- i. The development of the Appeal Site for a sustainable form of development should now be considered favourably in accordance with the approach at paragraph 8 of the NPPF, having regard to the economic, social and environmental objectives of the planning system.
- ii. The Council's spatial strategy is out of date and cannot meet its identified housing need without breaching the settlement boundaries identified in the development plan.
- iii. In the content of the consultation draft NPPF, the Council accepts it cannot demonstrate an up-to-date five year supply of deliverable sites for housing.
- iv. In accordance with paragraph 11(d) NPPF, the most important policies (including those relating to settlement boundaries) are to be regarded as out of date and the presumption in paragraph 11(d) of the NPPF applies.
- v. The Scheme represents a sustainable form of development and the Appeal Scheme involves the provision of significant benefits, including the delivery of the sports and recreation facilities.
- vi. Not only are there no adverse impacts which significantly and demonstrably outweigh the benefits, but there are in fact significant benefits which justify the grant of planning permission.

- vii. The Appeal Scheme is submitted in accordance with the NPPF and the Scheme should be allowed so as to permit a sustainable form of much needed new market and affordable housing in helping to meet the District's housing needs.

2.0 PLANNING HISTORY

General

- 2.1. The Site's planning history is summarised in section 2 of the Planning Statement (July 2024).
- 2.2. An outline planning application on a larger site was made in 2021, but subsequently dismissed at appeal in October 2023 (LPA Ref: WD/2021/2198/MAO and PINS Ref: 3307820).
- 2.3. The 2021 Application related to a larger site than the current proposal, as it comprised up to 290 dwellings, on a circa 41ha Site, which included land to the south of Bird in Eye Shaw as a strategic SANG.
- 2.4. Although the Appeal was dismissed, the Inspector found the Site to be a suitable location for development in terms of accessibility (paragraphs 49-53 of the Appeal Decision).
- 2.5. The Inspector dismissed the Appeal in relation to the following technical matters:
 - Highway Safety (DL paragraph 39), principally relating to the junction design of the larger scheme.
 - Heritage (DL Paragraphs 54 – 62).
 - Ancient Woodland (DL Paragraphs 15-30).
 - Flood Risk (DL Paragraphs 40-45) in respect of the pedestrian and cycle access outside flood zone 1 and thus engaging the sequential test.
- 2.6. Notwithstanding, the Inspector concluded in relation to the public benefits secured by the Scheme at paragraph 63 of the Appeal Decision as follows:

“...would include economic benefits derived from the provision of up to 290 homes of which 35% would be affordable housing and 5% self-build homes, in an area where there is an agreed and long-standing shortfall of housing land supply, the current figure being 3.92 years. These homes would drive economic growth in the area through the associated expenditure and job creation that new housing provides. Appropriate conditions also mean this development could come forward relatively quickly.”

- 2.7. However, the Inspector concluded at paragraph 72 of the decision that *“the matters which weigh in favour of the proposal, whilst substantial, do not outweigh the totality of the harm that I have found.”*
- 2.8. The Inspector’s conclusions have informed the current proposals for up to 190 dwellings, which matters were also explored with the LPA through a considered pre-application process.

3.0 THE DEVELOPMENT PLAN AND MATERIAL CONSIDERATIONS

General

- 3.1. Whilst the detailed policy position will be set out in evidence, this section summarises the planning policy position, against which the acceptability of the Appeal Scheme falls to be determined.
- 3.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the Development Plan unless other material considerations indicate otherwise. This represents the s.38(6) 'balance'.
- 3.3. The first test, and the statutory starting point is whether the application is *'in accordance with the plan as a whole'*.
- 3.4. It is the Appellant's case that the Appeal Scheme accords with the spatial and development management policies of the development plan, save for the location of the site beyond the out of date adopted settlement/development boundary for Uckfield. However, and in so far as the settlement/development boundary relates to an out of date housing need, the weight to be attached to this policy conflict is significantly reduced.
- 3.5. In the circumstances, where the only development plan conflict is the location of the site adjacent to but beyond the settlement policy for Uckfield, in a scenario where the Council is unable to demonstrate a five-year supply of deliverable housing land, the most important policies for determining the application are out of date.
- 3.6. The Appellant's case is the heritage assessment undertaken pursuant to the requirement at paragraph 208 of the NPPF does not provide a clear reason for refusing the development. In addition, and as explained, the adverse impacts of granting permission comprising the loss of countryside and minor degree of heritage harm, cannot be said to demonstrably, let alone significantly, outweigh the many benefits. In the circumstances, planning permission should be granted.

- 3.7. The Council also acknowledges it is unable to demonstrate a five-year supply of deliverable housing land, and whilst the Site is beyond the settlement policy boundary for Uckfield, as defined in the development plan, the Council nevertheless assess the Site as being potentially suitable in a previous version of its HELAA. This no doubt informed the LPA's original advice for the Appellant to advance a planning application for development of the Site.
- 3.8. For the reasons explained, the material considerations clearly tilt the balance in support of the grant of planning permission, including the Council's acceptance that they cannot demonstrate a five year supply of deliverable housing land, the significant need for housing, the grant of planning permission by the Council and at appeal for housing on land beyond the settlement boundaries as defined in the Development Plan, the proposed review of the settlement boundaries as per of the emerging Local Plan Review; and the content of the current (2023) and emerging (2024) NPPF.
- 3.9. Section 39 of the 2004 Act identifies the requirement for decision makers to exercise their functions with the objective of contributing to the achievement of sustainable development. These requirements must be considered in light of the NPPF, including the 3 roles of sustainability set out at paragraph 8 (economic, social and environmental). However, and as set out at paragraph 9 of the NPPF, the three roles are not a checklist and their values are considered in light of that context.

The Development Plan

General

- 3.10. The Development Plan comprises the following:
- Wealden Local Plan Saved Policies (1998) (saved 2007)
 - Wealden Core Strategy Local Plan (2013)
 - Affordable Housing Delivery Local Plan (2013)

- 3.11. The settlement boundaries as set out within the Proposals Map for the Wealden District were identified to meet the housing needs from Policy WCS1 of the Core Strategy.
- 3.12. The boundaries were drawn at that time to meet a need for at least 9,440 dwellings over the period 2006 to 2027. This equates to 450dpa within that part of the District outside of the SDNP. This was the level of growth set for the district in policy H1 of the former South East Plan (2009).
- 3.13. In so far as the Core Strategy is more than five years old, and in accordance with the requirements in paragraph 74 and footnote 39 of the NPPF, the housing requirement falls to be determined by the local housing need derived from the application of the standard method.
- 3.14. The Council's Five-Year Housing Land Supply Statement for April 2024 identifies that the District's local housing need figure (derived from the application of the Standard Method ("SM") is 1,186dpa. When the 20% buffer is applied, this equates to 1,423dpa.
- 3.15. This represents a significant uplift on the 450dpa figure in the adopted Core Strategy.
- 3.16. However, and as set out in the consultation draft NPPF, the revised approach to the calculation of the SM identifies a need for 1,397 dwellings per annum to be met in Wealden. When the 20% buffer is applied, this equates to a total of 1,676dpa and a five year requirement totalling 8,380 dwellings.
- 3.17. The Council is not able to show a sufficient supply of deliverable housing land.
- 3.18. In so far as the settlement boundaries were not identified in relation to the current housing need, they operate as a constraint to development. Moreover, and in so far as the housing requirement on which the settlement boundaries were defined cannot be said to be consistent with

the NPPF, the weight to be attached to any conflict with them can and should be reduced. Indeed, as Lord Gill observed in **Hopkins Homes Ltd v SSCLG** [2017] UKSC 37 at [83]:

“If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated”

- 3.19. The Council acknowledges that the settlement boundaries defined in the development plan are out of date.
- 3.20. This has recently been confirmed in an Officer Report to the Council’s Planning Committee North (7 Nov 2024) in relation to a scheme for up to 145 dwellings on land north of Eastbourne Road, Uckfield (LPA Ref: WD/2022/2785/MAO) where the Report records as follows:

“WCS14 of the WCSLP is also clear that decisions should apply a presumption in favour of sustainable development. This reflects the provision under NPPF. Policy WCS14 similarly states where the most relevant policies are out of date consent should be granted unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole or where specific policies in the framework indicate consent should be refused.

*The Council can demonstrate in excess of a 4 year housing land supply, which would be a sufficient housing supply figure under para 226 of the NPPF (having concluded a Reg 18 consultation) and therefore the relevant policies are not to be regarded as being out-of-date as a consequence of the housing land supply position (footnote 8 to Paragraph 11(d)). This however, is not the only consideration relating to whether or not the policies are out of date. **It is accepted that the strategic housing policies and development boundaries in the WCSLP and WLP (GD2 and DC17 of the WLP and WCS1 and WCS2 of the WCSLP) are out of date given the age of the Local Plan policies coupled with the significantly lower housing need figures those policies were based on.**” (Emphasis added in bold)*

Core Strategy

- 3.21. The Core Strategy was adopted in February 2013 and covers the period 2006 to 2027.
- 3.22. Policy WCS1 (Provision of Homes and Jobs 2006 – 2027) makes provision for some 4,525 net additional dwellings within the district reflecting the findings of the 2007 Strategic Housing Market Assessment alongside the requirements of policy H1 of the former South East Plan⁴. Policy WCS2 (Distribution of Housing Growth 2006 – 2027) seeks to allocate those additional dwellings throughout the district with Uckfield earmarked for 1,000 dwellings as new allocations in addition to the 742 already committed or built).
- 3.23. Policy WCS4 set out a number of strategy development areas with SD1 (Land at West Uckfield) seeking to allocate the 1,000 dwellings in one strategic area.
- 3.24. As referenced in paragraphs 3.11 to 3.16, it is highly material that the housing provision figure within Policy WCS2, and subsequently WCS4, do not represent full objectively assessed need when assessed against the annual requirement set by the standard methodology.
- 3.25. It is evident therefore that Policies WCS1, WCS2 and WCS4 are out of date and that significant additional housing is required on greenfield sites. This is confirmed in paragraph 5.8 which states “**it is inevitable that there will have to be a substantial use of greenfield land to meet existing and future housing needs....**” This has been further accepted in the decisions by the Council and through appeals on subsequent applications.
- 3.26. In so far as the housing requirement of Core Strategy Policy WCS1 is expressed as a minimum, the appeal scheme is in accordance with it.

⁴ This required 450dpa within the district from 2006 to 2026

- 3.27. Policy WCS2 sets out the spatial approach to the distribution of the housing requirement identified in WCS1. It indicates that at least 1,742 dwellings are to be delivered at Uckfield, including 1,000 dwellings on allocations. The allocations are set by policy WCS4.
- 3.28. Other applicable policy considerations from the Core Strategy which evidence for the Appellant will explain the scheme is in accordance with, include Policies WCS8 (Affordable Housing), WCS12 (Biodiversity), WCS13 (Green Infrastructure) and WCS14 (Presumption in Favour of Sustainable Development).
- 3.29. At this outline stage, it is considered that the Appeal Scheme accords with all of the relevant Core Strategy policies so far as they can be considered at this stage:
- **SP02 – Spatial Planning Objective 2: Historic Environment**
 - **WCS1 – Provision of Homes and Jobs**
 - **WCS2 – Distribution of Housing Growth**
 - WCS4 – Strategic Development Areas
 - WCS5 – Managing the Release of Housing Land
 - WCS8 – Affordable Housing
 - WCS12 – Biodiversity
 - WCS13 – Green Infrastructure
 - WCS14 – Presumption in Favour of Sustainable Development
- 3.30. The policies in bold represent those considered by the Appellant to be the most important for determining the application, and which are considered to be out of date.
- 3.31. In ***Hopkins Homes Ltd v SSCLG*** [2017] UKSC 37 Lord Carnwath said [63] the inspector was “clearly entitled” to reduce the weight to be attached to restrictive policies, such as countryside and landscape policies, can be reduced where they are derived from settlement boundaries that in turn reflect out of date housing requirements. There are obvious parallels with Wealden District.
- 3.32. In addition, the Council cannot demonstrate an up-to-date five year supply of deliverable sites for housing. As such, and in accordance with paragraph 11(d) and footnote 8 of the NPPF, the most important policies

(including those relating to settlement boundaries) are to be regarded as out of date.

- 3.33. In the case of Wealden District, the Council has been granting planning permissions for housing development outside of settlement boundaries that are in breach of countryside and landscape policies to meet market and affordable housing needs and maintain a rolling five-year land supply⁵. Schemes have also been allowed at appeal. In **Wokingham BC v SSCLG** [2019] EWHC 3158 (Admin) Lang J held at [60] that the fact that a settlement boundary had been set to an out of date housing requirement figure was a relevant consideration when determining the weight to attach to a conflict with it, even if there were a temporary five-year land supply by virtue of breaching those boundaries.
- 3.34. Consequently, the countryside and landscape policies are not meeting current housing needs based on the definition of built-up areas as defined in the development plan.
- 3.35. On this basis, and as accepted by the Council, reduced weight applies to any conflict with saved policies GD2 and DC17 of the Wealden Local Plan.
- 3.36. As an overarching assessment, it is worth pausing to note the following considerations:
1. The spatial policies for the supply of housing do not meet current housing needs; and the Council has been granting planning permissions for the development of sites for housing beyond the settlement boundaries as defined in the Core Strategy.

⁵ Including since January 2020, resolutions of the Council with respect of applications off Walshes Road, Crowborough (WD/2020/0743/MAO and WC/2020/0596/MAO), At Straight Half Mile, Maresfield (WD/2017/0694/MAO), east of Benhall Mill Road, Tunbridge Wells (WD/2017/0143/MAJ), Friday Street Farm, Oak Tree Lane, Eastbourne (WD/2020/1391/MAO), land at Park Farm East, Hellingly (WD/2022/0294/MAO), and Hesmonds Stud, Waldron Road, East Hoathly (WD/2022/0341/MAJ)

-
2. Accordingly, the settlement boundaries defined under GD1 and GD2 are not sufficient to meet current housing need and the weight to be given to the conflict with this policy is reduced.
 3. Although the Appeal Site is within the countryside, it is not a valued landscape nor are there any other constraints on site that would preclude such a development as proposed.
 4. The Scheme provides a safe means of access.
 5. The Site is in a sustainable location.
 6. The loss of subgrade 3b agricultural land should be afforded no more than limited weight.
 7. The Appeal Scheme results in no heritage harm.
 8. The requisite mitigation measures are secured by condition and/or through the planning obligation such that the impacts of the scheme can be adequately mitigated.
- 3.37. It is therefore concluded that the proposal is consistent with the aims of the development plan and that development would be in accordance with Saved Local Plan Policies and Core Strategy policies when considered on the whole, having regard to the Council's accepted approach that limited weight applies to the conflict with policies GD2 and DC17.
- 3.38. As with Saved Policies GD2 and DC17 of the Local Plan Policies WCS2 and WCS4 of the Core Strategy are also inconsistent with the requirement in the Framework to boost significantly the supply of housing land as they are based on housing projections which are out of date. As such, the weight given to these policies in the overall planning balance must logically be significantly reduced, reflecting the approach endorsed at paragraphs 63 and 83 of the **Hopkins** judgment (above).

Wealden Local Plan 1998 Saved Policies

- 3.39. Policy GD2 of the Local Plan states development outside the settlement boundaries will be resisted unless it accords with specific policies in the Plan. It has been set out above, and as acknowledged by the Council this policy is to be afforded limited weight as it inconsistent with the

NPPF. As Garnham J held in ***Eastleigh BC v SSCLG*** [2019] EWHC 1862 (Admin) at [62], the NPPF adopts a more nuanced approach to the countryside than such policies. Where a local plan policy which pre-dates the NPPF does not reflect that more nuanced approach, the inspector is **“fully entitled to conclude that ... reduced weight [should be] attributed to the retained policies”**.

- 3.40. However, as summarised below the appeal proposal does accord with certain policies in the plan.
- 3.41. Policy EN1 ensures the Council will pursue sustainable development with regard to the location, layout and design of development.
- 3.42. As set out in the reports submitted with the Appeal Scheme, the proposal will bring about a sustainable form of development in relation to the location, layout and design of the proposal and when considered against the definition in paragraph 8 of the NPPF.
- 3.43. Policy EN7 refers to the specific requirements for protecting the Ashdown Forest.
- 3.44. The table below summarises the main Core Strategy policies of relevance to the Appeal proposal.

	Most important policies for the determination	Consistent with NPPF	Weight to be afforded	Scheme accords with policy
Wealden Core Strategy (2013)				
SP02 - Spatial Planning Objective 2: Historic Environment	✓	✓	Full	✓
WCS1 – Provision of Homes and Jobs 2006 - 2027	✓	×	Limited	×
WCS2 – Distribution of Housing Growth	✓	×	Limited	×
WCS4 – Strategic Development Areas	✓	×	Limited	×
WCS5 – Managing the Release of Housing Land	×	×	Limited	×
WCS8 – Affordable Housing	×	✓	Full	✓
WCS12 - Biodiversity	×	✓	Full	✓
WCS13 – Green Infrastructure	×	✓	Full	✓
WCS14 – Presumption in Favour of Sustainable Development	✓	✓	Full	✓
Wealden Local Plan (Saved Policies)				
GD2 - Development Proposals Outside Development Boundaries	✓	×	Limited	×
DC17 - Housing development in the countryside	✓	×	Limited	×
EN1 - Sustainable Development	✓	✓	Moderate	✓
EN2 - Sustainable Locations	✓	✓	Full	✓
EN7 - Ashdown Forest	✓	✓	Full	✓
EN12 - Trees and Woodlands	✓	✓	Full	✓
EN13 - Ancient Woodland	×	✓	Full	✓
EN27 - Design	×	✓	Full	✓
HG5 - Dwelling Mix	×	✓	Full	✓

	Most important policies for the determination	Consistent with NPPF	Weight to be afforded	Scheme accords with policy
HG6 - Crime Prevention	×	✓	Full	✓
UC1 - Uckfield	×	×	Limited	×

Summary

3.45. As set out in the above table, the Appeal Scheme is in conflict with saved Local Plan policies GD2 and UC1. It is also in conflict with Core Strategy policies WCS1, WCS2, WCS4 and WCS5.

3.46. However, the conclusions drawn from recent committee reports, and from a review of the current development plan policies are set out below:

- Countryside policy (GD2) of the Local Plan is too restrictive when considered against the requirements of the NPPF and as such should be afforded significantly less weight;
- The Core Strategy Policies related to housing provision do not provide for an NPPF consistent objectively assessed housing need and as such the settlement limits set in the Saved Local Plan Policies are out of date.
- The corresponding weight to be attached to such policies is therefore reduced.
- The Council cannot currently demonstrate an up to date 5 year housing land supply;
- The Council's own Core Strategy accepts the need to use greenfield sites to accommodate additional housing needs; which is exacerbated as since the Core Strategy was adopted the need for housing has increased further still.

3.47. The Council has accepted that limited weight applies to the conflict proposals with Development Plan policies GD2 and DC17. Furthermore, it has been established above that the suite of most important policies is to be considered out of date as they are inconsistent with the NPPF in conjunction with the lack of a deliverable five-year supply of housing land. It is considered that whilst the scheme does not strictly accord with

certain countryside policies these are out of date and attract limited weight. As such, the numerous benefits, particularly in increasing the supply of market and affordable houses and enhancing the setting of the unique Oasthouse.

- 3.48. It is considered that whilst the scheme does not strictly accord with certain countryside policies these are out of date and attract limited weight. As such, the numerous benefits, particularly in increasing the supply of market and affordable houses and enhancing the setting of the unique Oasthouse heritage asset, clearly outweigh any minor dis-benefit.

Material Considerations

National Planning Policy Framework

- 3.49. The National Planning Policy Framework (NPPF) was most recently updated in December 2023. It is a material consideration of particular standing in the determination of planning applications.
- 3.50. The content of the NPPF as it relates to the proposed development of the Appeal Site is addressed in the Planning Statement (July 2024) and will be expanded on in evidence, including in relation to the requirements from the consultation draft NPPF (July 2024) (which is expected to be published in its final form soon after the Appeal is lodged).

4. ACCEPTABILITY OF THE APPEAL SCHEME: THE CASE FOR THE APPELLANT

General

4.1. The acceptability of the Appeal Scheme is explained in section 7 of the Planning Statement (July 2024), and expanded upon throughout this Statement of Case.

4.2. The main issues are considered to comprise the following:

1. Principle
2. Highways & Transport
3. Drainage
4. Housing Mix and Tenure
5. Character and Landscape
6. Heritage
7. Ashdown Forest, SANG Provision and Ecology
8. Agricultural Land Quality
9. Sustainability
10. Planning Obligations
11. Development Plan Compliance and Overall Planning Balance

4.3. At the time of writing, the Appellant expects to call a total of 5 no. witnesses to deal with these main issues (town planning (including housing land supply), drainage, heritage, highways and ecology). Section 6 below refers.

Planning Balance

4.4. A planning balance exercise has been carried out in accordance with the guidance at paragraph 9 of the NPPF and sets out a combined analysis in relation to the sustainability roles (economic, social and environmental).

4.5. The planning balance relating to the harms and benefits arising from the Appeal Scheme is summarised below.

Harms
Outside settlement boundary – limited weight
Loss of greenfield site in the countryside - limited weight
Loss of Grade 3b agricultural land – limited weight
Benefits
Provision of 123 market homes – substantial weight
Provision of 67 affordable homes – substantial weight
Creation of jobs during the construction phase and increased spend during the operational phase – moderate weight
Provision of recreational open space – moderate weight
Providing for development in a sustainable location – moderate weight
Providing BNG – moderate weight

5. SUMMARY AND CONCLUSION

Development Plan Compliance

- 5.1. This section of the Statement of Case supersedes the content at section 8 of the submitted Planning Statement (July 2024).
- 5.2. The Appeal Scheme proposes a residential development in outline form, on land at Bird in Eye Farm, South of Bird in Eye Hill, Uckfield (Framfield Parish), for up to 190 dwellings, associated landscaping, informal open space and SANG, with access from the B2102.
- 5.3. The spatial policies for the supply of housing do not meet current housing needs; and the Council has been granting planning permissions for the development of sites for housing beyond the settlement boundaries as defined in the Core Strategy.
- 5.4. Accordingly, the settlement boundaries defined under GD1 and GD2 are not sufficient to meet current housing need and the weight to be given to the conflict with this policy is reduced.
- 5.5. Although the Appeal Site is within the countryside, it is not a valued landscape nor are there any other constraints on site that would preclude such a development as proposed.
- 5.6. The Appeal Scheme has been informed by the findings in relation to an earlier dismissed appeal on a larger site for up to 290 dwellings and a strategic SANG. This revised and reduced scheme fully addresses all of these harms:
 - The proposed site access has been redesigned to ensure all types of road user can manoeuvre safely when entering and leaving the site (without any conflict with through traffic on the B2102, Bird in Eye Hill). Key junctions in Uckfield will remain below capacity, however, it is still proposed that the applicant make a S.106 contribution towards improving these junctions.

- The development no longer requires footpaths through the belt of ancient woodland (as it now forms the southern boundary of the reduced site, rather than dividing the development in two). Buffer zones have been created so that there is no development within 50m of the ancient woodland and no SANG footpaths within 15m. As a result, the potential for harm to the ancient woodland has been removed.
 - The Site boundary has been amended to include land around the listed Oast house building to enable improvements to its setting to be made as part of this application. Buildings and access roads have been removed from the view corridor to the west of the Oast house. As a result views of the Oast house from Uckfield will be improved by the implementation of this development, resulting in a heritage betterment, rather than heritage harm.
 - The Appeal Site is wholly within Flood Zone 1, where there is a low probability of flooding. The accompanying FRA justifies the acceptability of the Scheme in relation to drainage, surface water and foul drainage.
 - The supporting FRA demonstrates that the proposals are consistent with the aims of the NPPF and the Planning Practice Guidance to the NPPF along with the aims of local flood risk policy. The Site will not be at significant risk of flooding or increase the flood risk to others. Further, the surface water drainage strategy will reduce flood risk by restricting surface water flows.
- 5.7. There are a number of material considerations which still weigh significantly in favour of the application being permitted, including the Council's lack of a five-year supply of land for housing and with other policies are not seeking to deliver an NPPF consistent objectively assessed need.

-
- 5.8. Whilst the Appeal Site is outside the settlement policy boundary for Uckfield as defined in the Local Plan, it is inevitable that the Council will have to use greenfield sites to provide for increased housing provision; with the Core Strategy itself seeking to provide a below compliant level of housing. Consequently, it is considered that those policies are to be afforded limited weight and, pursuant to the presumption in favour of sustainable development, the application scheme represents a sustainable form of development in its own right.
- 5.9. The Appeal Scheme will secure an area of SANG that will ensure there are no indirect impact upon the integrity of the Ashdown Forest through increased visitor numbers generated by the Appeal Scheme.
- 5.10. In the planning balance it is considered that the material considerations in favour of the scheme (provision of market and affordable housing, economic benefits, biodiversity benefits, landscape enhancement, heritage enhancement) outweigh the conflict with an out-of-date settlement boundary, and loss of Subgrade 3b agricultural land.
- 5.11. The Appeal Site provides a sustainable location for housing, within walking distance to local serves and facilities in Uckfield town centre.
- 5.12. It represents a sustainable location for housing development to meet identified needs and development of the site in the manner proposed would result in a well-designed scheme that would contribute positively to residents' social well-being.
- 5.13. The Appeal Scheme can provide a mix housing types and tenures, including 35% affordable housing, helping to meet the identified need for new homes in Wealden District.
- 5.14. The Scheme satisfies the economic, social and environmental roles of the NPPF and has been advanced following pre-application consultation with the Council and has been amended to respond to the advice received.
- 5.15. Importantly, the Appeal Scheme has addressed the issues raised by the previous Appeal Inspector, whilst also responding to the issues raised by

the Council during the pre-application process.

- 5.16. There are no adverse impacts that could even be considered to significantly and demonstrably outweigh the many benefits arising from the proposal.
- 5.17. This is demonstrably a case where the weight to be attached to conflict with the development plan (on account of the location of the site beyond the defined settlement boundary for Uckfield) can be reduced on account of the need to breach the settlement boundaries identified in the development plan to meet development needs. The weighty material considerations in favour of the Appeal Scheme are clearly sufficient to outweigh the identified conflict with a single development plan policy.
- 5.18. Either of (i) the lack of consistency between the housing requirement and settlement boundaries with the NPPF (including the need to breach the defined settlement boundaries in helping to meet identified housing needs); or (ii) the lack of a deliverable five year supply of deliverable housing land⁶ triggers the presumption in favour of sustainable development at paragraph 11(d) of the NPPF.
- 5.19. On the basis of the foregoing, whilst under the application of 38(6), there is a *prima facie* conflict with development plan in terms of the location of the Appeal Site beyond the defined settlement policy boundary for Uckfield, the settlement boundaries upon which the spatial policies operate are out of date by virtue of having been drawn to accommodate non-NPPF compliant development needs, quite apart from issues of five-year land supply. All this goes to reduce the weight of any breach identified.
- 5.20. On the basis of the foregoing, the weight to be attached to the conflict between the Appeal Site and its location adjoining but ultimately beyond the settlement policy boundary for Uckfield is significantly reduced.

⁶ Which is the test set out on the consultation draft NPPF (which is expected to be published in December 2024 and on which basis evidence for the inquiry is to be prepared)

Summary

- 5.21. The benefits are many and manifest, not least the provision of housing and affordable housing when the Country and the District faces a housing crisis, which government policy is seeking to address. The Site is sustainably located and will also deliver qualitative and quantitative improvements to recreation and BNG within Uckfield and improve access into the town centre, which benefits both existing and future residents.
- 5.22. When carrying out the overall planning balance, in the context of the presumption in favour of sustainable development at paragraph 11(d) of the NPPF, the material considerations in favour of the Scheme (provision of market and affordable housing, economic benefits, social benefits and environmental benefits) outweigh the conflict with an out of date settlement boundary, loss of Grade 3b agricultural and localised change to the landscape.
- 5.23. For the reasons set out above, the Appellant will be requesting that the Appeal should be allowed.

6.0 JUSTIFICATION FOR THE INQUIRY PROCEDURE

6.1. In accordance with the provisions set out in the PINS Guidance 'Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals' (August 2024) (as amended and updated), an Inquiry will be the most appropriate procedure in this instance because:

- There is expected to be a need for the evidence on heritage, ecology, highways, drainage, town planning (and potentially housing land supply) to be tested through formal questioning by an advocate;
- The issues are complex; and
- The Appeal is expected to generate substantial local interest, sufficient to warrant an inquiry.

6.2. The issues which need to be assessed in the determination of the Appeal are complex and evidence will need to be presented by professional witnesses, particularly in dealing with matters relating to:

- The application of **local and national policy**.
- The extent and materiality of the shortfall in the **four/five year housing land supply position** having regard to the overall planning balance.
- The need for and benefits of **affordable housing**.
- The acceptability of the Scheme in **ecology** terms.
- The impact of the Appeal Scheme in relation to **highway impact and safety**.
- The suitability of the Appeal Scheme in **flooding/drainage** terms.
- The acceptability of the scheme in **heritage** terms, having regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (and the requirement to pay special regard to the desirability of preserving those listed buildings potentially affected by

the proposals, or their settings or any features of special architectural or historic interest which they may possess.

- The judgment to be taken in carrying out the overall **planning balance**.

- 6.3. The Appellant and the Council are both expected to call up to 5 witnesses to deal with the issues above. There is also expected to be significant local public interest. As such, it is envisaged that the Appeal is likely to require up to 8 days for the evidence to be considered in full.
- 6.4. Material facts and matters of opinion are expected to be in dispute on a wide range of technical issues, such that evidence will need to be tested through formal questioning by an advocate.
- 6.5. Finally, legal submissions will need to be made in relation to a range of matters, including the application of the NPPF and the section 38(6) test.

WB1

OUR REF: WD/2024/1799/O
ASK FOR: Technical Team Tel: [REDACTED]
DATE: 05 August 2024
PLANNING PORTAL REF: PP-13278976_O



Woolf Bond Planning LLP
The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Head of Planning and Environmental Services

Dear Mr Brown

Receipt of Application

I write to confirm receipt of your application for BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA. This has been allocated application number WD/2024/1799/O and has been forwarded onto our Technical Team for validation.

Your application will be checked and the Technical Team will be in contact with you as soon as possible but we ask that you do not telephone the Technical Team as this causes further delays.

If you have not heard from us within the next 15 working days please email planning@wealden.gov.uk to check the progress of your application.

PLEASE NOTE:

When submitting an application, in most cases there will be a planning application fee. However for some types of consent, such as listed building consent and planning permission for relevant demolition in a conservation area no application fee is required.

If you are unsure if a fee is due for your application you can wait for us to contact you or you can calculate the appropriate fee yourself by using the planning portals online fee calculator <https://1app.planningportal.co.uk/FeeCalculator/Standalone>

If after using the online tool you believe a fee is applicable (and this has not already been paid), payment can be made by the following methods:-

- By paying online at our website by debit/credit card, the address of which is:-

<https://www.wealden.gov.uk/planning-and-building-control/planning-services-online/online-payments/>

In the **Type of Payment** field select:



Planning Application Fee and in the **Your Reference** field enter the planning application number excluding the suffix (e.g. **WD/yyyy/nnnn**).

- By telephoning 01323 443322 or 01892 653311 and paying by debit/credit card - please ensure you have the application number to hand

If you require any further advice, then please contact the Technical Team on 01892 602010 or email planning@wealden.gov.uk

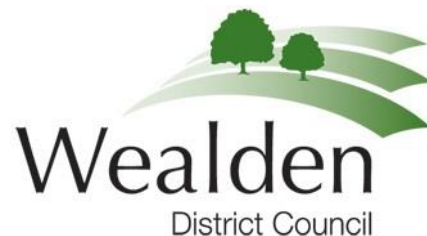
Yours faithfully

Stacey Robins

Head of Planning and Environmental Services

WB2

OUR REF: WD/2024/1799/
ASK FOR: Stacey Robins
DATE: 19 August 2024
YOUR REF: SB/7336



Woolf Bond Planning LLP
The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Head of Planning and Environmental Services

Dear Mr. Brown,

WD/2024/1799/

**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
BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA**

I refer to the above application, received by us 5 August 2024. I see you have chased this on the 12 and 18 August 2024, but we promised a response by the 20 August 2024.

You will be aware that s70 of the Town and Country 1990 (as amended) empowers a local planning authority to decline to determine an application. In our view, the qualifying criteria in s70 is applicable and we are considering our position.

If your client has any comments to make about s70(a), then please do so on before **16:00 on Friday 23 August 2024.**

As you know, a fee is payable for an application in the normal way before the Local Planning Authority come under any duty to determine it. The fee you have submitted (also on the 5 August 2024), is the correct fee for the scheme we have given reference WD/2024/1799/ and described above. s70 of the Town and Country Planning Act 1990 (as amended) does not provide for a refund of the applicant's fees in the event of the authority deciding to decline to determine the application. Please advise your client accordingly.

Yours sincerely

Stacey Robins
Head of Planning & Environmental Services



WB3 A

Steven Brown

From: Steven Brown
Sent: 23 August 2024 07:57
To: Stacey Robins
Cc: planning
Subject: RE: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA
Attachments: BIES.opinion.august 2024.pdf

Morning Stacey

Please see the attached Opinion, responding to the issue raised in your letter dated 19th August 2024.

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd
The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



Woolf Bond Plan

From: Steven Brown
Sent: Monday, August 19, 2024 5:36 PM
To: Stacey Robins <Stacey.Robins@wealden.gov.uk>
Cc: planning <planning@wealden.gov.uk>
Subject: RE: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Hi Stacey

Email and letter received.

I am taking instructions and I will revert.

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd

The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



Woolf Bond Plan

From: Stacey Robins <Stacey.Robins@wealden.gov.uk>

Sent: Monday, August 19, 2024 5:10 PM

To: Steven Brown <S.brown@woolfbond.co.uk>

Cc: planning <planning@wealden.gov.uk>

Subject: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Dear Steven

Please see attached letter.

with Kind Regards,

Stacey Robins | Head of Planning & Environmental Services

Wealden District Council | Vicarage Lane | Hailsham | BN27 2AX

01892 602 518 | planning@wealden.gov.uk

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WB3 B

BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD

OPINION

INTRODUCTION and SUMMARY

- 1 I am instructed by Croudace Homes Ltd (“Croudace”). On 31 July 2024, Croudace submitted a planning application [WD/2024/1799/O] (“**the Application**”) to the local planning authority (Wealden District Council (“**the Council**”)) in respect of land at Bird in Eye Farm 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. By letter dated 19 August 2024, the Council invited Croudace to comment on whether it could and should decline to determine the Application pursuant to section 70A of the Town and Country Planning Act 1990 (“**TCPA**”)¹.

- 2 The Council’s invitation to comment on possible exercise of section 70A powers presumably arises from an appeal decision dated 12 October 2023 (appeal ref: APP/C1435/W/22/3307820) relating to a site encompassing most (but not all) of, and otherwise far more extensive than, the Application site, and proposing erection of up to 290 homes, associated landscaping, informal open space and strategic SANG, with access from the B2102. The Inspector dismissed Croudace’s non-determination appeal and, on a number of scheme-specific grounds, refused planning consent for the “**Refused Application**”. The appeal decision cannot reasonably be construed as being founded on an “in principle” objection to an appropriately scaled and justified residential development at Bird in Eye Farm, indeed it can be noted that there was no landscape objection to the Refused Application and that the Inspector concluded that the site was or was capable of being made locationally sustainable for residential

¹ TCPA contains various other grounds on which a local planning authority may decline to determine a planning application, but it appears to be common ground these powers are not even potentially engaged. They are not therefore considered further in this Opinion.

development given proximity and connections to Uckfield. The Application reflects a revised scheme intended to address the Inspector's concerns. A pre-application process was engaged in with the Council in respect of a possible application for up to 235 new homes, resulting in a 4 June 2024 letter of advice from the Council. That letter did not indicate that the Council had any "section 70A concerns", and the Application scheme has been further reduced in scale from the pre-application scheme with a view to addressing points made in the Council's letter.

- 3 In these circumstances, I am asked to advise whether a decision by the Council to decline to determine the Application would be lawful. In my view, any such decision to decline to determine the Application would be unlawful and amenable to a quashing order on an application for judicial review. In particular:

- 3.1 It cannot rationally be concluded that the Application and the Refused Application are "similar" (as defined at section 70A(8)).
- 3.2 It cannot rationally be concluded that "there has been no significant change in the relevant considerations" since the appeal decision (sections 70A(1)(b) and 70A(6)).
- 3.3 There are material considerations arising from national Government policy which must be taken into account in relation to any exercise of a discretion to decline, and on available information it is not possible to identify a rational basis on which genuinely taking account of such material considerations could be consistent with a decision to decline. Further or alternatively, the relevant material considerations create a legitimate expectation that determination of the Application will not be declined, and there is no rational basis on which a departure from that legitimate expectation and the ensuing unfairness to Croudace could be justified.

LEGAL CONTEXT and RELEVANT POLICY GUIDANCE

4 So far as presently material, section 70A of the TCPA provides as follows:

- “(1) A local planning authority may decline to determine a relevant application if:
 - a. Any of the conditions in subsections (2) to (4) is satisfied, and
 - b. The authority think there has been no significant change in the relevant considerations since the relevant event.

- “(2) The condition is that in the period of two years ending with the date on which the application mentioned in subsection (1) is received the Secretary of State has refused a similar application made to the Secretary of State under section 62A or referred to him under section 76A or 77.

- “(3) The condition is that in that period the Secretary of State has dismissed an appeal:
 - a. Against the refusal of a similar application, or
 - b. Under section 78(2) in respect of a similar application.

- “(4) The condition is that:
 - a. In that period the local planning authority have refused more than one similar application, and
 - b. There has been no appeal to the Secretary of State against any such refusal or, if there has been such an appeal, it has been withdrawn.

- “(4A) A local planning authority in England may also decline to determine a relevant application if:
 - a. The condition in subsection (4B) is satisfied, and
 - b. The authority think there has been no significant change in the relevant considerations since the relevant event.

- “(4B) The condition is that:
 - a. In the period of two years ending with the date on which the application mentioned in subsection (4A) is received the Secretary of State has refused a similar application,
 - b. The similar application was an application deemed to have been made by section 177(5), and
 - c. The land to which the application mentioned in subsection (4A) and the similar application relate is in England.

- “(5) A relevant application is:
 - a. An application for planning permission for the development of any land
 - ...

- “(6) The relevant considerations are:
 - a. The development plan so far as material to the application;
 - b. Any other material considerations.

- “(7) The relevant event is:
- a. For the purposes of subsections (2), (4) and (4B) the refusal of the similar application;
 - b. For the purposes of subsection (3) the dismissal of the appeal.
- “(8) ... an application is similar to another application if (and only if) the local planning authority think that the development and the land to which the applications relate are the same or substantially the same.”

- 5 So far as I am aware, there is no basis on which it could be suggested that any of the conditions in subsections (2), (4) or (4B) is satisfied. As regards the condition in subsection (3), dismissal on appeal of the Refused Application occurred in the last 2 years and disposed of an appeal under s78(2) of TCPA. Accordingly, questions as to similarity of application; significant change in relevant considerations; and discretion to decline to determine need to be considered.
- 6 As regards national policy on the exercise of discretion to decline to determine an application, since the NPPG was introduced (March 2014) it has contained the following at what is paragraph 14-058-20140306:

“Must a local planning authority decline to determine repeat planning applications?”

Where an authority considers that an application is similar, it is not automatically obliged to decline to determine the application. The purpose of these powers is to inhibit the use of ‘repeat’ applications that the local planning authority believes are submitted with the intention of, over time, wearing down opposition to proposed developments. They are, however, designed to be flexible and to give local planning authorities the discretion to entertain ‘repeat’ planning applications where they are satisfied that a genuine attempt has been made to overcome the planning objections which led to rejection of the previous proposal or there has been a material change in circumstances.”

- 7 In *Jeeves v Gravesham BC* [2007] 1 P&CR 15, Collins J considered, in a case where he had concluded that the LPA had lawfully assessed there had been “no significant change in the relevant considerations”, the terms of para 5 of Circular 14/91, which set out (albeit in slightly different language) a comparable approach and policy justification to PPG 14-058 as to when any discretion to decline should be exercised (and when not). Collins J concluded at [32-33] that the LPA’s claim to have taken account of the relevant policy was not justified where, despite claiming to have taken it into account, in reality

and in substance what the LPA had done was emphasise the similarity of the various applications as distinct from identifying any basis on which the most recent application was abusive and/or submitted to wear down opposition rather than comprising a bona fide attempt to address previous objections.

- 8 At [35], Collins J explained the relevance of this to the lawfulness of a decision to decline to determine an application:

“What then is the effect of that? The guidance, of course, does not and cannot override the terms of the statute. On the other hand, the purpose behind the guidance is to indicate to local planning authorities how they should exercise the discretion that they have with a view to ensuring that there is a consistent approach countrywide to applications for permission. It is clear that in reaching a decision under s.70A the existence of and the terms of the guidance are a material consideration which the relevant authority should take into account. Here, as it seems to me, Mr Gilbert [the relevant planning officer] purported, according to his statement, to take it into account but was wrong in his approach. He misconstrued the guidance and what he did was not in accordance with that guidance. The claimant was entitled to expect that there would be compliance with the guidance. To put it in terms which are familiar to judicial review cases, he had a legitimate expectation that that guidance would be applied. Of course, if a particular authority takes the view that it wishes to modify its approach, it may be that it would be entitled to do so, but only if it made it clear in advance that that is what it was going to do.”

- 9 Collins J accordingly quashed the LPA’s decision. I return to the *Jeeves* judgment below.

LEGAL ANALYSIS

[1] Is the Application “similar” to the Refused Application?

- 10 Similarity for relevant purposes is defined at s70A(8) as “if (and only if) the local planning authority think that the development and the land to which the applications relate are the same or substantially the same”. As recognized by Collins J in *Jeeves*, a statutory formulation of this nature provides a measure of latitude to the Council, but this is subject to ordinary judicial review principles, in particular to take account of material considerations (and ignore immaterial ones) and to reach a conclusion which

is within rational bounds (ie, which a reasonable LPA, acting rationally, could reach on the material before it).

- 11 It should also be noted that both the “development” and “the land” must rationally be concluded to be the same or substantially so.
- 12 In my view, when comparing the Refused Application and the Application, it cannot rationally be concluded that either the “development” or “the land” are the same or substantially the same.
- 13 As regards “the development”, they are plainly not “the same or substantially the same” where:
 - 13.1 The number of homes proposed is reduced by around one third from a maximum of 290 to a maximum of 190. By itself, this is a fundamental change in the development proposed.
 - 13.2 The Application proposes c8.7ha of SANG, principally to address the needs of the development (although in spatial terms the scheme exceeds minimum requirements by a respectable margin, as explained in the supporting reports). By contrast, the Refused Application was fundamentally different. It proposed a strategic SANG of 26.17ha, intended to be made available for an additional 1073 new homes over and above the 290 homes proposed. The SANG car park proposed in the Refused Application also does not feature in the Application, having been replaced by the LEAP (which, in the Refused Application, was due west of the Oast House).
 - 13.3 The Application proposes vehicular access by way of a new roundabout, a materially different physical arrangement to that which formed part of the Refused Application.
- 14 As regards “the land”, they are also plainly not “the same or substantially the same”. The Refused Application’s redline boundary extended to c41 hectares (42.7ha less the excluded Bird In Eye Farm area). By contrast, the Application’s redline boundary

extends to c20 hectares, a 50% reduction. While the different redlines principally reflect reductions for purposes of the Application, the Application now incorporates an extension into Bird in Eye Farm (around the Oast House) in order to facilitate setting improvements to the immediate context of the listed building. In addition, it can be noted that the Application proposes no works within the ancient woodland (unlike the Refused Application's proposed path/replacement bridge). Further, the development area for residential and associated infrastructure is much reduced, reflecting the c33% reduction in new homes proposed, at 6.2ha in the Application (down from 8.65ha in the Refused Application).

- 15 In my view, it would be demonstrably insufficient simply to identify that the Application proposes housing and SANG (with associated infrastructure). Scale of development and extent of land-take are plainly material. Here the differences are so significant that there cannot, in my opinion, be a rational (and hence lawful) determination that the Refused Application and the Application are “the same or substantially the same” in relation to either “development” or “land”.

[2] Has there been a significant change in “relevant considerations”?

- 16 Even if (contrary to my view) the “similarity” test were surmounted, the s70A discretion does not arise unless the Council “think there has been no significant change in the relevant considerations since the” appeal was dismissed, with “relevant considerations” defined to include (as well as the development plan) “any other material considerations”: see sections 70A(1)b and 70A(6).
- 17 Again, in my view, and notwithstanding the measure of appreciation available to the decision-maker where opinions could reasonably differ, the Council cannot rationally conclude that this test is satisfied.
- 18 In this context, it is most convenient to consider how the Application has sought to address each of the adverse conclusions in the appeal decision:

- 18.1 Highway safety. The Application includes a fundamentally different access proposal, prepared by new consultants. Instead of the T-junction proposal criticized by the Inspector at DL31-36, a roundabout (with cyclists accommodated appropriately) is proposed. As explained in the Transport Assessment accompanying the Application, the new highway consultants regard this scheme as safe and suitable, and as addressing the deficiencies of the earlier scheme. Whether this is determined to be so will need to be considered in the course of the Application's assessment. But there are plainly new significant material considerations put forward in consequence of the genuine attempt made by Croudace to address these aspects of the Inspector's decision letter.
- 18.2 Heritage (impact on setting of the Oast House). The Inspector's conclusions as to the Refused Application's impact on the Oast House's setting are (as evident from a comparison of the various illustrative/parameter plans and the Heritage Report submitted in support of the Application) sought to be addressed in a number of ways. Without listing all such considerations, relevant changes include (a) the substantial stepping back of the development envelope to the west and south-west of the Oast House thereby creating an extensive and (for the first time) publicly accessible viewing corridor across a wide vista, and (b) proposed improvements in the immediate setting of the Oast House (to its north and west) involving the replacement of existing gravel and concrete areas with green landscaping. These matters are, of themselves, significant changes in circumstances. Croudace's new heritage consultants (Montagu Evans) consider that the revised scheme preserves the setting of the Oast House such that there is no relevant harm. Alternatively, even if there is LTSH, it is at the lower end of the scale (per Montagu Evans), and Croudace considers that the new heritage balance (NPPF, §208) for the Application falls to be answered favourably (from its perspective). For present purposes, it suffices to note that a genuine attempt is being made to surmount the Inspector's relevant adverse conclusions on the basis of the revised specifics and circumstances of the Application. These, in my view, demonstrably amount to new and significant material considerations, and the contrary cannot rationally be concluded.

- 18.3 Impact on ancient woodland and ecological interests. The Application responds to DL15-30 of the appeal decision in a number of ways. Notably, (a) the proposal for a path through the ancient woodland is abandoned, so that these potential direct impacts on the woodland itself and protected species within it fall away, (b) the buffer between the ancient woodland and built development has increased so that at all points it is at least 50m (to the edge of the nearest road), a material increase on the c28m equivalent minimum buffer proposed for the Refused Application, and (c) the part of the buffer which is the closest 15m to the ancient woodland will contain no footways (again, a change from the Refused Application). Once more, there is plainly a genuine attempt to engage with and respond to the Inspector's concerns. The Application is a fundamentally revised proposal in material respects.
- 18.4 Flooding sequential test. DL41 concluded that a sequential test was required and that the submitted sequential test was inadequate. The Application seeks to address this conclusion with the submission of a new sequential test assessment prepared by RPS², specifically tailored to the relevant circumstances and specifics of the Application and fundamentally different from the document considered by the Inspector. Again, there are plainly new significant material considerations and a genuine attempt to address the Inspector's concern in the context of what is proposed in the Application.
- 19 Accordingly, it cannot in my judgment credibly be suggested that there has not been a genuine attempt to engage with and respond to the various adverse conclusions in the appeal decision. On this basis, it is impossible rationally to conclude other than that "material considerations" have significantly changed, and the revised scheme and associated justifications need to be appraised and adjudicated on their merits.

² The RPS report was referenced in the Planning Statement at §3.1, but may have inadvertently been omitted from the documents submitted to the Council with the rest of the planning application. I am informed that this was rectified, and the RPS report provided (or re-provided) to the Council, at 11.21am on 22 August 2024.

[3] Are there other relevant considerations material to any exercise of discretion (should it arise)?

- 20 Even if my responses to questions 1 and 2 above are wrong, the Council would not be compelled to decline to determine the Application, but it would need to consider in its discretion whether to do so. As is clear from *Jeeves*, considerations material to that exercise of discretion need to be taken into account. These would include matters such as (a) the Council's affordable housing need position, (b) the Council's housing supply position more generally, taking account of the fact that it is common ground that greenfield sites will be required to meet future housing needs, (c) the draft NPPF currently being consulted on, in particular proposals to roll back provisions such as NPPF §226 (as the new Government's election manifesto proposed), (d) the absence of an in principle objection to residential development at Bird In Eye Farm, and the Inspector's conclusion that the site is or can be made locationally sustainable, and (e) what good reason there would be to decline to determine the Application now, when a resubmission in 14 months would fall outside the temporal parameters of section 70A.
- 21 In addition, the policy explained at PPG 14-058 must be grappled with. (I have not been made aware of the Council having consulted on and adopted some departure from this policy.) Consistent with Collins J's approach in *Jeeves*, failure to provide a coherent reason why the policy is inapplicable or a compelling justification as to why Croudace's legitimate expectation that it would be applied should be overridden notwithstanding the unfairness this would demonstrably cause (see generally De Smith's Judicial Review [9th Ed] at 7-054ff) would make a decision to decline to determine unlawful.
- 22 In my view, on available information, and taking account of what is said above in this Opinion:
- 22.1 The policy at PPG 14-058 is engaged and is to the effect that the Application must be determined on its merits. It would be preposterous to suggest that the Application is an abusive repeat application intended to wear down opposition, or anything other than a "genuine attempt" to address the reasons why the Refused Application failed.

- 22.2 There is no reason whatsoever that could justify overriding Croudace's legitimate expectation that the policy in question should be followed and applied.
- 23 For these reasons, it is not presently possible to see how any discretion under section 70A (if arising) could rationally (and thus lawfully) be exercised in favour of declining to determine the Application.

CONCLUSION

- 24 My views on the principal issues arising are summarised at paragraph 3 above. A decision by the Council to decline to determine the Application would, in my judgment, be unlawful, and amenable to a quashing order on an application for judicial review.
- 25 For completeness, I note that the Council's 19 August 2024 letter suggests that the Council would be entitled to retain the fee for the Application even while declining to determine the same. This is not correct. While TCPA does not provide expressly either way whether the fee is returnable or forfeit, on ordinary equitable principles the money would be returnable in the event of a total failure of consideration. However, in light of the clear conclusion I have reached as to whether a decision to decline to determine would be lawful, this does not arise.

ANDREW TABACHNIK KC
39 ESSEX CHAMBERS
LONDON
22 August 2024

WB4

Steven Brown

From: Steven Brown
Sent: 10 October 2024 15:32
To: Stacey Robins
Cc: planning@wealden.gov.uk
Subject: RE: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Afternoon Stacey

Thank you for your time on the phone yesterday afternoon.

During our call, you stated 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 your words “not without some risk”.

You advised that over what is roughly the 7 week period since our 23 August 2024 response on section 70A, you have been in contact with your counsel on a number of occasions, and that counsel has reviewed a ‘decline to determine report’ concerning the application. You further advised that a decision is to be taken on the grounds of trees, heritage, design and matters raised (albeit in a limited way) by East Sussex County Council. You 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.

You advised that should the Applicant withdraw the application by this Friday (11 Oct 2024), the Council would be willing to enter into discussions to discuss a further revised scheme to address the Council’s concerns. I asked if (without determining the Council’s final position) you could advise as to the changes that would be deemed necessary to address your concerns. You advised 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. You intimated that development to the east of the commercial buildings was likely to be acceptable.

You 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 £48,000) and issue a report on its decision to decline to determine it. You stated the Applicant has until this Friday (11th October) 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 proposes to retain the fee when declining to determine the application.

The Applicant considers that the Council’s proposed course of action is both legally flawed and demonstrably unfair.

The background to our call is as follows:

- 31 July – planning application submitted, following pre-application process (which included the payment of a pre-app fee for the advice and which raised no section 70A issue).
- 2 August – planning application released by the planning portal to the Council.
- 5 August – Acknowledgement letter received from the council confirming receipt of the planning application (LPA Ref: WD/2024/1799/O)
- 19 August – letter from the Council raising s70A as an issue, and requesting comments upon the Council’s intention to decline to determine the application, by 1600 on Friday 23rd of August (giving the Applicant just four days to respond).
- The Applicant responded with a legal opinion just before 0800 on the morning of Friday 23rd August.

- We did not hear substantively from the Council until our conversation yesterday, almost seven weeks after the submission of our legal opinion. We have now been given less than two days to confirm if the Applicant is prepared to withdraw the planning application.

The Applicant considers that is a clearly unfair manner in which to proceed, and is unable to understand the concerns that both trigger section 70A and justify the exercise of its discretion to decline the Council thinks it has (though noting that the Council itself is of the view such a decision is “not without some risk”). The Council should afford the Applicant a proper opportunity to consider and comment on the decline to determine report while it is in draft. It would not prejudice the Council in any way to do so.

The Applicant invites the Council (1) to provide at once 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 October (or until earlier receipt of any comments which the Applicant wishes to make, or confirmation that it does not wish to do so).

I trust the above is clear and look forward to hearing from you.

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd
The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



From: Steven Brown
Sent: 07 October 2024 08:09
To: Stacey Robins <Stacey.Robins@wealden.gov.uk>
Cc: planning <planning@wealden.gov.uk>
Subject: RE: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Morning Stacey.

I hope you had a good weekend.

I'd welcome an update please.

Thank you.

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd

The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



From: Steven Brown

Sent: 02 October 2024 17:44

To: Stacey Robins <Stacey.Robins@wealden.gov.uk>

Cc: planning <planning@wealden.gov.uk>

Subject: RE: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Hi Stacey

I tried calling yesterday and left a VM.

I am available between meetings tomorrow if you would like to discuss.

I look forward to hearing from you.

Thanks.

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd
The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



From: Steven Brown

Sent: 01 October 2024 13:44

To: Stacey Robins <Stacey.Robins@wealden.gov.uk>

Cc: planning <planning@wealden.gov.uk>

Subject: Re: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

I'll try you shortly...

Sent from my iPhone

On 1 Oct 2024, at 11:15, Steven Brown <S.brown@woolfbond.co.uk> wrote:

Hi Stacey

That should work as a lunch break is scheduled for that time..!

I do have a call booked in for 1330.

Do call my mobile and if I miss you I will call back.

That OK?

Thanks

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd
The Mitfords
Basingstoke Road
Three Mile Cross
Reading
RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



From: Stacey Robins <Stacey.Robins@wealden.gov.uk>

Sent: 01 October 2024 11:12

To: Steven Brown <S.brown@woolfbond.co.uk>

Cc: planning <planning@wealden.gov.uk>

Subject: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Steven

I called the office but understand you are out at a conference most of the day but might have a slot 13:00-14:00

If you are free can call, could you?

Thanks

with Kind Regards,

Stacey Robins | Head of Planning & Environmental Services

Wealden District Council | Vicarage Lane | Hailsham | BN27 2AX
01892 602 518 | planning@wealden.gov.uk

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WB5 A

Steven Brown

From: Steven Brown
Sent: 23 October 2024 17:39
To: Stacey Robins
Subject: RE: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA
Attachments: Planning Resource - High Court - s70A.pdf; P Evans v Bridgend County BC [2024] EWHC 2607 Admin.pdf

Afternoon Stacey

I hope all is well.

Has the Council come to a view yet?

I also thought I would draw your attention to the attached judgment (and article from 'Planning Resource'), where it was considered that new applications for roughly half the earlier scheme on roughly half the site were not similar in terms of site or development.

That supports Croudace's view that any purported declination decision would be irrational.

I look forward to hearing from you.

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd
The Mitfords
Basingstoke Road
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Reading
RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



Woolf Bond Plan

From: Steven Brown
Sent: 11 October 2024 12:57
To: Stacey Robins <Stacey.Robins@wealden.gov.uk>
Subject: Re: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Hi Stacey

Croudace's view is that any decision to decline to determine the planning application would be unlawful.

We invite the Council to again review its position.

For the avoidance of doubt, the invitation in my email sent yesterday stands.

Any other rights and remedies of Croudace are fully reserved.

Best wishes

Sent from my iPhone

On 11 Oct 2024, at 12:42, Stacey Robins <Stacey.Robins@wealden.gov.uk> wrote:

Hi Steven

So I can be clear, can you set out exactly it is that Croudace intends to litigate?

I had understood it would be a decision to decline to determine the case, but your email implies something different

Could you kindly clarify?

Thank you

with Kind Regards,

Stacey Robins | Head of Planning & Environmental Services
Wealden District Council | Vicarage Lane | Hailsham | BN27 2AX
01892 602 518 | planning@wealden.gov.uk

X [@WDC Planning](#)  [@wealden](#)  [@wealdendc](#)



From: Steven Brown <S.brown@woolfbond.co.uk>

Sent: 11 October 2024 12:34

To: Stacey Robins <Stacey.Robins@wealden.gov.uk>

Subject: RE: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

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Afternoon Stacey

Thanks for your reply.

I have discussed with Croudace. In short, they consider the extension of time does not assist without full appreciation of the Council's case in written form.

If the Council is not able to issue a copy of the requested documents, the extension of time is not necessary and Croudace will proceed to litigation.

The Council's unwillingness to share the requested documents is unfortunate.

I look forward to hearing from you.

Best wishes

Steven Brown BSc Hons DipTP MRTPI

Woolf Bond Planning Ltd
The Mitfords
Basingstoke Road
Three Mile Cross
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RG7 1AT

Tel: 01189 884923

Mobile: 07909 532675



From: Stacey Robins <Stacey.Robins@wealden.gov.uk>

Sent: 11 October 2024 07:49

To: Steven Brown <S.brown@woolfbond.co.uk>

Subject: Re: Planning Application WD/2024/1799/ - BIRD IN EYE FARM, BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Dear Stephen,

Thank you for your email 10 October 2024.

In hindsight the deadline given is short and without notice to your client. You are absolutely right to push back and as such, we will hold off issuing a decision. You have asked for next Friday and that is fine.

However, I am not sending you our advice nor draft report. We have spoken about it in our call 9 October and I recall that in several places in our call you sought clarification 'to be clear' and 'so you understand clearly'.

You have our position and I understand it.

Best wishes

Stacey

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WB5 B

High Court overturns council's refusal to consider developer's 'hopeless' planning applications

A developer has succeeded in overturning a council's decision to refuse to consider two planning applications for new homes on a greenfield site, after a judge ruled that the right of the local authority to make such a choice does not allow it to dismiss a proposal "on the basis that one officer regards the application as hopeless".

by [Michael Donnelly](#) 22 October 2024



Cardiff Civil Justice Centre (pic: cc-by-sa/2.0 - © Jaggery - geograph.org.uk/p/2818427/) Emma Austin

In 2023, Paul Evans made two applications for outline planning permission to Bridgend County Borough Council for the construction of homes on land north of Underhill Cottages, Tondur Road in the town of Bridgend in south Wales.

One application was for the construction of nine dwellings on what was termed parcel A of the site. The other was for the construction of nine dwellings on the remainder of the site, referred to as parcel B.

Evans had previously submitted six unsuccessful planning applications to develop the site with housing, his latest being in 2021, which sought consent for 15 homes. This was refused by the council and again on appeal.

According to the court judgment, the inspector had noted that the previous two appeals in respect of the site had been dismissed for similar reasons, including the “effect of the proposed development on the character and appearance of the area; the effect of the proposed development on the living conditions of future occupants; whether the development would result in the unacceptable loss of trees and features of importance for local ecology; and the effect of the proposed development upon highway and pedestrian safety”.

In January this year, the council notified Evans that it was declining to determine both applications.

“This local planning authority is exercising its right under section 70A of the Town and Country Planning Act 1990 (as amended) to decline to determine this application as a similar proposal has recently been refused by Bridgend County Borough Council and dismissed on appeal by Planning and Environment Decisions Wales (PEDW). The local authority is of the view that there has been no significant change in the development plan (so far as relevant to the application) nor any other material considerations since the similar application was refused and dismissed on appeal,” the council said in a letter.

Evans argued that it was “irrational of the [council] to form the opinion, in each case, that the development and the land to which the application related were the same or substantially the same as the development and the land to which the 2021 application related”.

In considering this, Judge Jarman concluded that the 2023 applications “could and should have been addressed separately”.

He continued that there was “no rational basis for concluding that either of them, each involving nine dwellings on part only of the site, was similar to the 2021 application which involved 15 dwellings over the whole of the site”.

The judge said he agreed with previous case law that “section 70A does not give the power to dismiss an application for planning permission on the basis that one officer regards the application as hopeless”.

Judge Jarman said that, in his judgment, “an application for outline permission for nine dwellings on approximately half of the area of the site cannot sensibly be regarded as substantially the same as an application for outline permission for 15 dwellings over the whole site”.

The judgment said that the differences between the 2023 applications and the 2021 application “may be such as to impact upon the reasons for refusal in respect of those and previous applications in respect of the whole site”.

The judge added that “whether they do or not will be a matter of detailed consideration on their own merits by the authority, but on the facts of this case in my judgment it is not legitimate to avoid such consideration by treating the two applications as one and then to use section 70A of the 1990 Act so as not to determine them.”

The judge concluded: “In my judgment, the high threshold of irrationality is met in this case. The decisions set out in the letters dated 21 January 2023 are quashed which means that the authority must determine them.”

[*Evans v Bridgend County Borough Council \[2024\] EWHC 2607 \(Admin\)*](#)

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WB5 C



Neutral Citation Number: [2024] EWHC 2607 (Admin)

Case No: AC-2024-CDF-000038
AC-2024-CDF-000039

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF64 2UA

Date: 18/10/2024

Before :

HIS HONOUR JUDGE JARMAN KC

Sitting as a judge of the High Court

Between :

PAUL EVANS

Claimant

- and -

BRIDGEND COUNTY BOROUGH COUNCIL

Defendant

The **claimant** appeared in person
Mr Wayne Beglan (instructed by **Legal Services**) for the **defendant**

Hearing dates: 12 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 18 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The claimant in 2023 made two applications for outline planning permission for the construction of dwellings on a green space known as land North of Underhill Cottages, Tondu Road, Bridgend (the site). One application was for the construction of nine dwellings on what was termed parcel A of the site. The other was for the construction of nine dwellings on the remainder of the site, referred to as parcel B.
2. The defendant planning authority (the authority) by letters dated 23 January 2024 notified the claimant that it declined to determine both applications. Each letter was signed by Rhodri Davies as the authority's development and building control manager. In respect of both parcels, the letter said this:

“This Local Planning Authority is exercising its right under Section 70A of the Town and Country Planning Act 1990 (as amended) to decline to determine this application as a similar proposal has recently been refused by Bridgend County Borough Council and dismissed on appeal by Planning and Environment Decisions Wales (PEDW).

The Local Authority is of the view that there has been no significant change in the development plan (so far as relevant to the application) nor any other material considerations since the similar application was refused and dismissed on appeal.”

3. The claimant commenced separate judicial review claims in respect of each parcel seeking on five grounds orders quashing each decision, mandatory orders that the authority determine each application, and damages. In May 2024, on the direction of Holgate J, as he then was, the claims were consolidated. His Honour Judge Keyser KC gave permission to bring the claims on just one ground, which he articulated as follows:

“That it was irrational of the Defendant to form the opinion, in each case, that the development and the land to which the application related were the same or substantially the same as the development and the land to which the 2021 application related.”

4. Judge Keyser, when granting limited permission, observed as follows:

“The real issue, spread across five grounds in the Statement of Facts and Grounds, is (in my view) whether it was open to the defendant to form the opinion in section 70A(2). To a large extent this comes down to a matter of planning judgement, with which the court will not normally interfere. The arguable point (in my view) is whether the defendant was entitled to invoke section 70A on the basis, in effect, that the division of the

development into two separate applications was a mere ruse to circumvent section 70A. The land and development in each of the present applications were, it would seem, significantly different from those in the 2021 application; the similarity comes from viewing the two present applications together. However, it would have been open to the defendant, in principle, to grant one application but not the other. It is not immediately apparent (though on detailed argument it might possibly become so) that this could not be a practical possibility and that the division into two applications had no effect other than to seek to circumvent section 70A. It is arguable that the "abuse of process" argument in paragraph 48 of Mr Davies's witness statement in 000038 goes beyond the limits of section 70A."

5. There was no renewed application for permission in respect of any other ground. Insofar as the claimant, in his written and oral submissions at the substantive hearing, sought to go beyond the confines of the ground upon which permission was given, then in my judgment such extension is impermissible. I confine myself to the consideration of that ground.
6. The 2021 application referred to is an application made by the claimant in 2021 for the development of the site for housing, his sixth such application, which had all been refused by the authority. Two appeals had been dismissed. The 2021 application was also refused, and also dismissed by an inspector on appeal in the decision letter dated 2 August 2023. That inspector described the site as a linear parcel of land located on the south-western side of the A4063 Tondu Road with a relatively steep gradient and comprising a largely wooded area incorporating a number of mature trees.
7. The description of the development with which the inspector was dealing was outline consent for the erection of 15 dwellings with approval for access on land off Tondu Road, Bridgend, with other matters such as appearance, landscaping, layout and scale reserved for future consideration. The 2021 application sought approval for vehicular access onto the site within the red line of the site and included on site car parking provision of 15 car spaces, plus 3 visitor car spaces and bin collection points.
8. The authority refused the application in a decision dated 22 April 2022 for four reasons. First, it was said that the proposal would constitute an overdevelopment of the site as it is too restricted to accommodate the number of dwellings consistent with accepted standards of space contrary to Policy SP2 of the Bridgend Local Development Plan (BLDP) and advice contained within Planning Policy Wales (PPW). Second, the site is not accessible by a range of different transport modes and will rely on the use of the private motor vehicle and therefor does not accord with PPW. Third, there would be no satisfactory means of access for generated traffic and a likelihood of U turns to or from the A4063 Tondu Road, contrary to policies SP2, SP3 and PLA5 of the BLDP and PPW. Fourth, because of the need to fell protected trees, the development would adversely affect the amenity of the area and biodiversity of the site and the identified Site of Importance for Nature Conservation (SINC) known as Cefn Glass Wood (Graig-y-Casnewydd,) contrary to policies ENV4, ENV5 and ENV6 of the BLDP and Supplementary Planning Guidance 19 (Biodiversity and Development).

9. In the subsequent decision on appeal, the inspector noted at [5] that the previous two appeals in respect of the site had been dismissed for similar reasons. At [6] four main issues were identified: the effect of the proposed development on the character and appearance of the area; the effect of the proposed development on the living conditions of future occupants; whether the development would result in the unacceptable loss of trees and features of importance for local ecology; and the effect of the proposed development upon highway and pedestrian safety.
10. The inspector determined each of those issues against the claimant in dismissing the appeal. Taking the issues in turn, the inspector concluded at [10] that two separate blocks of dwellings on the scale proposed would occupy much of the site frontage in what is otherwise a predominantly verdant wooded setting. In terms of living conditions the inspector at [15] was not satisfied from the limited details before her that there would be sufficient space of a reasonable quality provided for each dwelling that would meet the day-to-day needs of the future occupants. At [20] the inspector dealt with the loss of trees as follows:

“Even with the removal of a number of trees on account of their condition, I consider those that would remain would contribute to the green backdrop to the urban form that forms part of a wider dense, planted belt alongside the A4063 and is highly visible from a number of public vantage points. They provide a verdant setting to this part of the urban area and contribute positively to the wider locality, playing a significant part in softening public views of the built environment.”
11. The inspector went on to deal with ecology and at [25] noted the previous inspector’s conclusion that no protected species or other notable habitats were recorded at the time of a survey undertaken in 2020, outside the optimum period, but observed that it was not known the extent to which that had been reassessed. At [28] she indicated that she could not conclude on the basis of the submitted evidence that the proposal would not have an adverse impact on a protected species.
12. Finally, on highway issues, at [30] the inspector noted that unlike the previous applications and appeals, approval of access is sought, as part of the outline application, from the A4063, which is subject to a speed limit of 50 mph. At [39] she concluded that it had not been shown that a satisfactory means of access to serve the traffic generated can be achieved and it is likely to generate vehicular U-turn movements to or from the public highway thereby creating further traffic hazards to the detriment of highway safety along the adjoining A4063. At [41], the inspector observed that even if appropriately designed pedestrian footway links could be achieved, the proposal did not incorporate any cycle friendly infrastructure to link with existing facilities in the area. At [43] she acknowledged that there are bus stops in reasonably close proximity to the site, but in the absence of proposals for footways and safe crossing points to enable pedestrians and cyclists to negotiate a dual carriageway, she considered that the proposal would be detrimental to highway and pedestrian safety.
13. The claimant points to several differences between the 2021 application and the 2023 applications. These include that the red line site areas of the 2023 applications are 0.07 hectares and 0.1 hectares respectively. The site area of the 2021 application was

0.1737 ha. Highway issues and access arrangements in the 2021 application involved vehicular access into the site with parking spaces. Each of the 2023 applications involved only pedestrian and cycle access into the site and a vehicular drop off point adjacent to Tondu Road and outside each of the red lines in the applications. The height of the buildings in the 2023 applications are limited to the height of the adjoining properties at Underhill Cottages. The green backdrop was replicated alongside those cottages. Revised living conditions and garden spaces are shown on the illustrative layout in the 2023 applications. Finally, a bat survey and protected species report was submitted in support of the latter applications.

14. Mr Davies has filed witness statements in these proceedings in which he sets out the factors which he took into account in deciding that the 2023 applications were similar to the 2021 application. In doing so, it is clear that he considered the two applications as one. Indeed he considered that the division of the site was illogical and simply a ruse to circumvent the application of section 70A of the 1990 Act. He referred to this as an abuse of process. Taking the two 2023 applications together, such factors included the proposed land use, the illogical subdivision of the site, the outline form of the applications, the SINC issues, the serious access issues with no policy compliant solution, the similar number of dwellings, the design / amenity issues, and evidence showing the parcels in the 2023 applications being considered as one site. Such evidence included surveys in support of the applications which considered the site as a whole, for example surveys relating to topography, ecology, trees and bats.
15. Mr Davies also set out what he considered as the impracticality of deciding the 2023 applications separately. This included a vehicular pickup and drop off point just off Tondu Road which point was shown on plans in each application as serving that parcel. These applications allowed only pedestrian and cycle access within the respective parcels. This arrangement was the subject of a supportive road safety audit obtained by the claimant. The other points relied upon by Mr Davies in concluding that there was such impracticability were consecutive numbering of dwellings across the two parcels, the absence of any coherent planning justification for the separation of the parcels, and the view that no serious or realistic attempts had been made to overcome previous reasons for refusal.
16. Section 70A of the 1990 Act, as it applies in Wales, provides:

“(1) A local planning authority may decline to determine an application for planning permission for the development of any land if—

(a) within the period of two years ending with the date on which the application is received, the Welsh Ministers have refused a similar application made to them under section 62D, 62F, 62M or 62O, or referred to them under section 77, or have dismissed an appeal against the refusal of a similar application: and

(b) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as

material to the application, or in any other material considerations.

(2) For the purposes of this section an application for planning permission for the development of any land shall only be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the local planning authority the same or substantially the same.

(3) The reference in subsection (1)(a) to an appeal against the refusal of an application includes an appeal under section 78(2) in respect of an application.”

17. Guidance, and it is only guidance, as to the implementation of the power set out above is given in Welsh Circular 44/91 (Welsh Office), Annex 2. At [5] it is stated that the government’s intention behind the section:

“... is to prevent repeated planning applications from being used to wear down the resistance of local communities. Authorities should use the power only when they believe that the applicant is intending to exert pressure by submitting repeated similar applications.”

18. At [8], in doubtful cases, it is stated that authorities should give the benefit of the doubt to the applicant and determine the application. It is noteworthy that in his witness statements Mr Davies does not directly or expressly address the issue whether the claimant in submitting the 2023 applications was intending to exert pressure.

19. The power to decline to determine can be appropriately used in cases where an applicant is misusing the right to apply for planning permission. In *R. (on the application of Jeeves and Baker) v Gravesham BC* [2006] EWHC 1249 [2006] J.P.L. 1743, Collins J dealt with the issue of similarity in this context and said at [17]:

“So far as similarity is concerned, Mr Willers accepts, and rightly accepts, that he cannot argue that the applications are not similar. They are both, of course, for permission to site a residential caravan or caravans for the purpose of providing a home for gypsies. Of course, the details differ and the parties differ, but that does not prevent the applications being similar. The statute does not require them to be identical; it would clearly be an abuse of language to suggest that they were not similar.”

20. In *R (Harrison) v Richmond-upon-Thames LBC* [2013] EWHC 1677 (Admin) Nicholas Paines KC sitting as a deputy High Court Judge said at [4]:

“Mrs Harriet Townsend for Mr Harrison submitted, correctly, that this did not amount to a power to determine an application on the grounds that the local authority thinks the application will fail. To be clear, it is not the planning equivalent of a summary judgment dismissing a hopeless application. The

section does not lead to the consequence that an applicant can never make a fresh application after a refusal, merely that he can be subjected to a moratorium of 2 years. Nevertheless, the merits are not wholly irrelevant. The background to the application of section 70A is that the application being considered under the section is similar to a previous application which was refused because of a lack of merit and the Circular refers at paragraph 4, for example, to undesirable developments and to the question of whether objections have been addressed”

21. At [38], the deputy judge said:

“The fact that, as in this case, a fresh application shares with the old one a characteristic that was judged fatal to the success of the previous application is, in my view, a relevant point of similarity.”

22. He then dealt with the relevant circular applicable in England and concluded at [45]:

“The clearest message I get from the Circular is that the power is to be used to counter repeated applications submitted with the intention of reducing opposition to undesirable development.”

23. At [46] he said this:

“An application that has been amended in a genuine attempt to accommodate objections is an example of an application that is not designed to wear down opposition to an undesirable development. But even in a case where, as here, objections have not been accommodated but are dealt with in a different way, the question whether the application is an attempt to wear down opposition to a development still remains for decision”

24. In my judgment none of the reasons given by Mr Davies as to why it is not a practical possibility to consider each of the 2023 applications separately is good in law. Whilst the plans accompanying each of the applications show the vehicular drop off and pick up point as capable of serving both parcels, the point is not within the red line of either parcel. That the plans show consecutive numbering does not go to the practicability of considering the applications for outline permissions separately. Neither does the view that there is no coherent planning reason for submitting two applications in respect of the site or that no attempts have been made to address previous reasons for refusal. Those matters may show the approach of the authority to the applications but cannot impact on the practicability of considering each one on its own merits.
25. In my judgment the 2023 applications could and should have been addressed separately. That being so, there is no rational basis for concluding that either of them, each involving nine dwellings on part only of the site, was similar to the 2021 application which involved 15 dwellings over the whole of the site. I agree with Mr Paines KC in *Harrison* that section 70A does not give the power to dismiss an

application for planning permission on the basis that one officer regards the application as hopeless. Mr Davies in his witness statements goes into detail as to why in his view certain aspects of the 2023 applications, such as the car free nature of the proposed development, is in breach of national and local plan policies, a theme which was taken up by Mr Beglan, for the authority, in his written and oral submissions. However, in my judgment that focusses on whether the applications are hopeless, rather than upon the question whether either of the applications is the same or substantially the same as one made in the previous two years and whether the claimant's intention in submitting the 2023 applications was to exert pressure by submitting repeat applications.

26. In my judgment an application for outline permission for nine dwellings on approximately half of the area of the site cannot sensibly be regarded as substantially the same as an application for outline permission for 15 dwellings over the whole site. To the extent that planning merits are relevant, it may be, and that is all I need say for present purposes, that either of the 2023 applications cannot be said to be hopeless because the differences between either of them and the 2021 application may be such as to impact upon the reasons for refusal in respect of those and previous applications in respect of the whole site. Whether they do or not will be a matter of detailed consideration on their own merits by the authority, but on the facts of this case in my judgment it is not legitimate to avoid such consideration by treating the two applications as one and then to use section 70A of the 1990 Act so as not to determine them.
27. Mr Beglan submits that the court must consider if section 31 Supreme Court Act 1981 applies, and that even if the authority was not lawfully entitled to take into account the factors identified, having regard to *Jeeves* and *Harrison*, it is highly likely that the result would be the same. The only change caused to the land area (in each case) was a change of under 0.1 ha. It would have been open to the authority to find such a change to mean that the land was still substantially the same. The reasoning as explained by Mr Davies shows that the other criteria of section 70A would have been met, in the opinion of authority, and that it would have exercised its power to decline to determine the applications.
28. For reasons which I hope emerge from the discussion above, I am not persuaded that it is highly likely that the result would have been the same.
29. In my judgment, the high threshold of irrationality is met in this case. The decisions set out in the letters dated 21 January 2023 are quashed which means that the authority must determine them. Nothing I say in this judgment should be taken as any indication as to how they may be determined, which is a matter for the authority.
30. The claimant also claims damages and financial compensation in the sum of £28,876.78. He cites *Harrison*. The sum particularised by the claimant is the precise sum ordered in that case, but by way of costs, not damages or compensation. I cannot see any basis for awarding damages.
31. I invite the parties to file a draft order, agreed as far as possible including on the issue of costs, within 14 days of hand down of this judgment. Any disagreement can be the subject of written submissions, to be filed and exchanged by the same time. Any such issues will then be determined on the basis of any such submissions.

WB6

Steven Brown

From: Matthew Norris <matthew.norris@croudace.co.uk>
Sent: 01 November 2024 13:29
To: Chris Bending
Cc: Fraser Campbell; Emily Chapman; Stacey Robins
Subject: RE: Bird in Eye Farm, Uckfield

Dear Chris,

Many thanks for your response.

I would first like to emphasise that the planning application scheme has indeed been informed by the pre-application advice received from the LPA whereby, following the usual process, the scheme has been revised to incorporate officers' comments, with such matters clearly set out in the Design and Access Statement submitted with the application particulars. This included a substantial revision to the proposed layout and the overall number of dwellings.

We have sought to engage with the LPA throughout the pre-application and application stage and, as such, our position remains that we will not be withdrawing the planning application, as communicated to Stacey Robins in recent emails. We note that you are considering your position and we look forward to hearing from you on this in due course.

In the meantime, we would be very happy to have a meeting with the LPA, to include those officers that participated in the previous pre-application meeting in order to discuss the specifics of any particular planning points you wish to communicate with us. To that end, we look forward to receiving suggested dates from you for a meeting.

Regards,

Matthew Norris MEng (Hons) CEng MICE
Managing Director

Caterham Office

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From: Chris Bending <Chris.Bending@wealden.gov.uk>

Sent: 25 October 2024 10:00

To: Matthew Norris <matthew.norris@croudace.co.uk>

Cc: Fraser Campbell <Fraser.Campbell@croudace.co.uk>; Emily Chapman <Emily.Chapman@croudace.co.uk>; Stacey Robins <Stacey.Robins@wealden.gov.uk>

Subject: RE: Bird in Eye Farm, Uckfield

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Dear Matthew,

Thank you for your email 11 October 2024, my apologies for the delayed reply, but whilst I know this site and recent history in the appeal, I am not close to the specific detail of this new application.

I am aware of the scheme for 290 that was dismissed at appeal. The scheme the subject of the pre-application discussion was for 235 dwellings and I see our team wrote to your agent with comments, making it clear that the indicative scheme did not provide sufficient change from the dismissed scheme to indicate a positive resolution is possible. Heritage was noted as major factor in this but there were other matters relating to the need to pass a sequential test and deal with Ancient Woodland impacts which at that stage, still required further work. Our letter was clear that any submission would need to demonstrate how development would be prevented from causing loss or deterioration of the irreplaceable habitat as they were identified independently from the path through the Ancient Woodland as matters that could cause some deleterious impacts.

There was no further engagement from your team between our letter 4 June 2024 and the submission of the planning application. This was a surprise to our team, not least as our letter made it clear that further work was required on issues and as we were prepared and open to discussion on matters “to assist” and “to avoid [you] carrying our abortive work”.

Faced with a formal application, lodged for determination, we are considering options. That includes decline to determine and, on that matter, I note you have sought legal advice as have we. It has taken some time but we are working through matters.

You are correct that we did not signal any intension to decline to determination at pre-application stage, but with respect, if you read back our letter it was clear we were signalling more work was required and also that we wanted to engage on shaping the extent of changes. Your decision not to engage further has given us cause to consider our position.

We take no pleasure in entering into litigation, but will do so if required to defend our position. If you want to avoid that, I would urge you to withdraw the current submission and work with us. We asked for that collaboration in June 2024 and it was your team who decided to submit without any further liaison.

I note your suggestion of a meeting. Your team will no doubt have told you that at least two weeks ago, Stacey (Head of Planning & Environmental Services) here suggested this to Steven Brown at Wolf Bond. This was under the banner of withdrawal of the submitted application, but Steven felt

unable or was unwilling to agree to that. If your collective position on this has changed, then please let me know and Stacey and team will be only too happy to meet.

Kind regards

Chris

Chris Bending | Director of Place

Wealden District Council

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From: Matthew Norris <matthew.norris@croudace.co.uk>

Sent: 11 October 2024 17:27

To: Chris Bending <Chris.Bending@wealden.gov.uk>

Cc: Fraser Campbell <Fraser.Campbell@croudace.co.uk>; Emily Chapman <Emily.Chapman@croudace.co.uk>

Subject: Bird in Eye Farm, Uckfield

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Dear Chris,

As I'm sure you are aware Croudace Homes South Thames recently (end of July) submitted a planning application for 190 units at Bird in Eye Farm, Uckfield. This followed an unsuccessful appeal for 290 units to the Planning Inspectorate in 2023 and sought to address the issues raised both by Wealden District Council and the Planning Inspector. We also undertook a pre app with officers of the Wealden Planning department for the reduced scheme earlier this year which led to a vast number of changes being undertaken not least the removal of 100 units from the scheme.

Unfortunately following this submission and following correspondence with Stacey Robins we have been informed that WDC planning department will be refusing to determine the application, an issue that was not raised at the pre app meeting nor the subsequent written advice. This has come as a surprise to us given the substantial changes and unfortunately leaves only a Judicial Review as a recourse should this remain the stance of WDC.

We of course would like to avoid what seems to be an unnecessary litigation scenario and I would welcome a chance to meet and perhaps discuss a way that this could be addressed if at all possible.

Kind regards.

Matthew

Matthew Norris MEng (Hons) CEng MICE
Managing Director

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