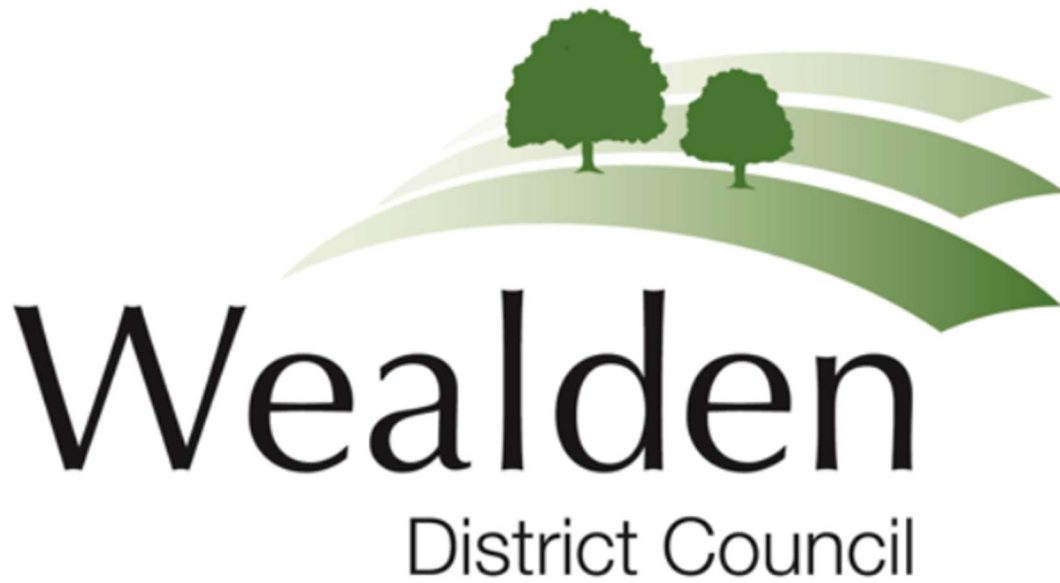




## **Town and Country Planning Act 1990**

Appeal by Croudace Homes Ltd c/o Woolf Bond Planning LLP

Land at Bird in Eye Farm, South of Bird in Eye Hill, Framfield, TN22 5HA

Wealden District Council Ref:

WD/2024/1799/MAO

Appeal Ref:

APP/C1435/W/24/3356658

---

**REBUTTAL TO APPELLANT'S PLANNING PROOF OF EVIDENCE**

---

# Contents

|          |                                                    |          |
|----------|----------------------------------------------------|----------|
| <b>1</b> | <b>Introduction .....</b>                          | <b>1</b> |
| <b>2</b> | <b>The Previous Inspector's Decision.....</b>      | <b>2</b> |
| <b>3</b> | <b>Engagement and Pre-Application Advice .....</b> | <b>2</b> |
| <b>4</b> | <b>Section 70A Consideration .....</b>             | <b>3</b> |
| <b>5</b> | <b>Highways .....</b>                              | <b>4</b> |
| <b>6</b> | <b>Heritage Grounds.....</b>                       | <b>6</b> |
| <b>7</b> | <b>Conclusion.....</b>                             | <b>7</b> |

# 1 Introduction

- 1.1 My name is Declan Redman. I hold a Master's degree in Urban and Regional Planning and I am a Licentiate Member of the Royal Town Planning Institute (RTPI). I have over eight years of experience at Wealden District Council, working across both the Planning Enforcement and Development Management departments. I currently serve as the Assistant Team Leader in the Major and Strategic Sites team, where I oversee complex planning applications and strategic developments.
- 1.2 This rebuttal has been prepared in response to certain allegations made by the Appellant in the Planning Proof of Evidence of Mr Brown. The Appellant contends that Wealden District Council (the Local Planning Authority, or LPA) acted unreasonably and caused the Appellant to incur unnecessary or wasted expense during the appeal process. While formal submissions will be made on the Council's behalf in response to any cost's application submitted by the Appellant, the purpose of this rebuttal is to present evidence addressing and refuting the specific claims made in Mr Brown's statement.
- 1.3 I had no professional involvement with the site or the submitted application until after the appeal had been lodged. Accordingly, my evidence draws upon and is supported by the appended witness statements of Mr Stacey Robins, Head of Planning and Environmental Services at Wealden District Council (Appendix 1), and Ms Kal Kamboh, Strategic Sites Transport Advisor at East Sussex County Council (Appendix 2). Both witnesses have provided up-to-date and comprehensive accounts of the chronology and engagement between the Council, the Appellant, and the Local Highway Authority (LHA). I rely upon these statements.

## **2 The Previous Inspector's Decision**

- 2.1 On 12 October 2023, the Planning Inspectorate dismissed an appeal for up to 290 dwellings and a SANG on the site (APP/C1435/W/22/3307820), citing individually significant and collectively substantial harm relating to ancient woodland, highway safety, flood risk and heritage. The Inspector found these harms outweighed the scheme's substantial benefits and that the proposal conflicted with the development plan.
- 2.2 Notably, and relevant to the current appeal, issues of highway safety and heritage impact were stand-alone reasons why the appeal was dismissed.

## **3 Engagement and Pre-Application Advice**

- 3.1 In May 2024, the Appellant sought pre-application advice from the LPA for a revised proposal of up to 235 dwellings and a reduced SANG. The Council issued a comprehensive written response on 4 June 2024 (Appendix 3). This letter raised a number of concerns including heritage impacts and made clear that the changes proposed did not represent a material reduction in harm sufficient to overcome the reasons for the previous refusal. It also noted the need for further assessment of flood risk and the implications for ancient woodland.
- 3.2 The LPA engaged constructively with the Appellant at the pre-application meeting held on 23 May 2024. At that meeting, the Appellant's planning consultant confirmed they were engaging separately with the LHA. Accordingly, the LPA reasonably deferred detailed highway discussion, expecting these matters to be addressed directly with the LHA.
- 3.3 However, as Ms Kamboh's statement confirms, there was no meaningful or formal pre-application engagement with the LHA prior to submission. While the Appellant expressed a desire to engage as early as December 2023, a formal pre-application fee was not paid until 8 September 2024 – well after the

planning application was submitted on 2 August 2024. Even then, the Appellant did not respond to comments made by the LHA in September 2024 prior to making its appeal.

- 3.3 The Council's pre-application letter gave clear advice on the need to reduce the harm to the setting of the listed oast house and the importance of securing a layout and access arrangement that protected key trees and respected heritage assets. No follow-up pre-application discussions were pursued by the Appellant, nor was any revised layout shared with the LPA prior to submission.

## **4 Section 70A Consideration**

- 4.1 Given the recent dismissal of a materially similar scheme, the Council considered whether to exercise its discretion under Section 70A of the Town and Country Planning Act 1990 to decline to determine the revised application. This is explained in the statement of Mr Robbins.
- 4.2 On 19 August 2024, the Council wrote to the Appellant inviting comments on this course of action. The Appellant responded on 23 August with legal advice. The Council took its own advice<sup>1</sup>. There was further contact and correspondence between the Appellant and the Council on this issue as set out in Mr Robbins' statement. As Mr Robbins explains, this process was transparent, fair and procedurally appropriate. To the extent necessary, the Council will make legal submissions in relation to any costs application to explain why it was reasonable for the Council to consider exercising its discretion under s70A.
- 4.3 Before any decision could be made, the Appellant lodged an appeal against non-determination on 20 December 2024. In doing so, they prevented the Council from taking a decision under s70A. As confirmed by Mr Robbins, the timeline was not driven by delay on the part of the LPA, but by the Appellant's choice to appeal.

---

<sup>1</sup> For the avoidance of doubt, privilege is not waived over this advice.

## 5 Highways

- 5.1 The application was submitted without essential supporting documentation, including a Road Safety Audit or Designer's Response. This was despite the fact that highway safety had been one of the main reasons for the refusal and dismissal of the previous appeal.
- 5.2 Further, as confirmed by Ms Kamboh, although initial contact was made with the LHA in early 2024, no technical engagement took place until after submission of the application. The Appellant only paid the pre-application fee to the LHA in September 2024 and did not provide the necessary documents until mid-August.
- 5.3 Although the LHA remained willing to engage following the submission of the application, the Appellant failed to respond to the LHA's comments provided in September 2024 prior to lodging the appeal three months later. Moreover, the appeal documents did not seek to address or resolve the issues previously raised by the LHA.
- 5.4 The lack of meaningful engagement with the LHA resulted in fundamental highway issues remaining unresolved at the time the appeal was submitted. At the first Case Management Conference, held on 11 February 2025, the Inspector acknowledged these shortcomings and took the significant step of postponing the Inquiry until July 2025 to allow the Appellant time to address the outstanding matters with the LHA. The necessity of such a delay underscores that the scheme, as submitted at the application stage and subsequently appealed, was not sufficiently developed to demonstrate that safe and suitable access could be achieved.
- 5.5 In the end, it was the LHA that had to lead and drive the process in order to arrive at an access solution that was not considered unsafe. As set out in the statement of Ms Kamboh, this involved the LHA reviewing seven iterations of the access drawings. This process culminated in a Wheatcroft submission in

May 2025 and the agreement of a Statement of Common Ground on highways dated 21 May 2025.

- 5.6 The timing and extent of these revisions make it clear that, if any party has behaved unreasonably, it is the Appellant. The Appellant failed to secure the support of the LHA for its access design at either the point of submitting the planning application or the subsequent appeal. Critically, it did not submit a Road Safety Audit in support of its access proposals at either stage.
- 5.7 Moreover, meaningful engagement with the LHA did not begin until after the appeal had been lodged. The Appellant only agreed to amend the scheme to reflect the LHA's concerns regarding the speed limit as late as April 2025. The inadequacy of the original access arrangements is underlined by the fact that the Appellant no longer seeks to pursue them and instead had to submit a revised access under the Wheatcroft procedure.
- 5.8 Mr Brown asserts that, had the Council validated the planning application and undertaken consultation, the Appellant could and would have reached agreement with the LHA during the application stage. I do not agree that such an outcome was likely, and I note that this view is shared by Ms Kamboh on behalf of the LHA. In particular, I note the following:
- a. The Appellant did not undertake meaningful pre-application discussions with the LHA prior to issuing its application;
  - b. The Appellant did not respond to the LHA's initial comments (September 2024) on the access design but chose to submit the appeal three months after those comments had been given;
  - c. When submitting the appeal, the Appellant did not address the LHA's comments which had been given in 2024;
  - d. It was necessary for the LHA to drive discussions in the context of the appeal which ultimately led to agreement with regards to the access;
  - e. It was only in April 2025 that the Appellant accepted the LHA's position with regards to the 40mph speed limit and provided plans which had been designed on that basis.

- 5.9 I therefore do not consider it reasonable to suggest that the Appellant would have reached agreement with the LHA at the application stage had the application been validated and consulted upon. On the contrary, it is highly likely that highways issues would have remained unresolved, even if the Council had determined the application. In such circumstances, the Council would have been justified in refusing the application on highway grounds, as reflected in the reasons for refusal set out in its Statement of Case (CD3.3).

## **6 Heritage Grounds**

- 6.1 Had the application been determined by the Council, it would have been refused on the grounds of both heritage impact and highway safety, as outlined in the Council's Statement of Case (CD3.3). For the avoidance of doubt, in accordance with the Council's Constitution and Scheme of Delegation, the application would have been refused under delegated powers and would not have been reported to Members of the Planning Committee.
- 6.2 The Appellant alleges that the Council's continued reliance on the heritage reason for refusal is unreasonable and motivated by a desire to protect its costs position. This allegation is without foundation, and I confirm that it is not the case.
- 6.3 The revised scheme for up to 190 dwellings failed to address the Council's heritage concerns, particularly regarding development in the north-western and south-western parts of the site, which would harm the rural setting of the Grade II listed oast house. These concerns were clearly identified in the Council's pre-application advice but were not resolved in the submitted proposal.
- 6.4 As a result, the Council included heritage impact as a reason for refusal (putative reason for refusal 3) in its Statement of Case. This matter is explained in greater detail in the statement of Mr Robins. The heritage objection is, and

remains, a stand-alone and substantive reason why the appeal should be dismissed.

6.5 In brief, the LPA's Planning and Heritage Proofs of Evidence demonstrate that the level of harm has not significantly diminished from that identified by the Inspector in the 2023 appeal. Although the quantum of development has been reduced, key elements that contribute to heritage harm remain. Furthermore, the public benefits of the scheme – against which the harm must be weighed – have also diminished. The resulting heritage harm leads to conflict with the development plan. As the public benefits do not outweigh the harm, there is a strong reason for refusal, and the tilted balance is not engaged. I do not repeat the evidence of Ms Tucker or my own planning evidence here.

6.6 While the Appellant may disagree with the planning judgment exercised by the Council, this does not render the Council's position unreasonable. The Council maintains that the appeal should be dismissed for the reasons set out in its main Proofs of Evidence, which are not repeated here.

## **7 Conclusion**

7.1 The Council has acted professionally, reasonably, and transparently throughout the planning and appeal process. It provided clear advice, remained open to engagement and sought to support the evolution of a more appropriate scheme.

7.2 The Council's consideration of Section 70A of the Town and Country Planning Act 1990 was appropriate, procedurally sound and a proportionate response to the recent refusal of a substantially similar proposal.

7.3 Had the Council determined the application, it would have refused permission on both highway safety and heritage grounds. It is not credible for the Appellant to assert that highway matters would have been resolved had the application been determined by the LPA.

- 7.4 There is no basis for the Appellant's allegation that the Council is improperly maintaining its heritage reason for refusal. As set out in the Council's Statement of Case and the Proofs of Evidence of Ms Tucker and myself, the heritage objection is a legitimate and stand-alone reason for dismissal. This reflects the professional planning judgment of the Council and myself who is giving evidence in support of its position.
- 7.5 Accordingly, there is no justification for a claim of unreasonable behaviour under the Planning Practice Guidance. Should the Appellant submit an application for costs against the Council, it will be robustly resisted.