

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

**OPENING SUBMISSIONS
ON BEHALF OF THE COUNCIL**

INTRODUCTION

1. Less than two years ago, on 12 October 2023, Planning Inspector Butcher dismissed an appeal (against non-determination) for a scheme comprising 290 dwellings, associated landscaping, informal open space and strategic SANG on this same application site.
2. The appeal was dismissed (CD14.3) for several reasons: loss or deterioration of ancient woodland and harm to protected species (paras 28-30); an unacceptable impact upon highway safety (para 39); deficiencies in the sequential test (para 45); and heritage impact. The Inspector found that the less than substantial harm to the significance of the designated heritage asset was not outweighed by the public benefits of the proposal (63-69).
3. The Inspector's 2023 decision is, by any measure, a weighty material consideration that must be afforded significant weight in this appeal.
4. At the point of lodging the current appeal against non-determination, the Council accepted that the revised scheme had overcome the previous concerns regarding ancient woodland and protected species. It also considered that the sequential test had been addressed in a policy-compliant manner. Accordingly, those matters are no longer pursued.
5. However, at the time the appeal was submitted, the Local Highway Authority maintained a strong objection regarding the safety of the proposed access. No road safety audit had been submitted with either the application or the appeal, nor had there been meaningful engagement with the Local Highway Authority to develop a safe access solution. The Council therefore identified two putative reasons for refusal. As detailed in the witness statement of Ms Kamboh, appended to Mr Redman's rebuttal statement, it was not until

May 2025 (following an adjournment of the original inquiry dates) that the Appellant agreed to revise the access arrangements sufficiently to address highway safety concerns. The Appellant subsequently made a Wheatcroft application to amend the access plans, which was accepted by the Inspector. In response, the Local Highway Authority withdrew its objection, and the Council confirmed that it no longer pursued highway safety as a reason for refusal (as recorded in the addendum SoCG at CD4.4).

6. For the Council, one of the principal reasons for dismissing the previous appeal remains unresolved. The proposal continues to result in considerable and weighty harm to the setting and significance of the Grade II listed Oasthouse. That harm is not outweighed by the public benefits of the development. This matter is addressed in more detail below.

HERITAGE

7. The 2023 appeal decision succinctly articulated the importance of the Oasthouse's setting in contributing to the asset's overall significance:

'57 The setting to the oasthouse contributes to its significance insofar as its historic use for drying hops and functional relationship with the surrounding fields which grew the hops can still be appreciated today. These fields remain open, undeveloped, and in use as pasture. Consequently, they enable the oasthouse to be appreciated in broadly its historic rural scene. These fields also provide for a qualitative understanding of the significance of the oasthouse derived from its setting as they provide a degree of quiet and tranquility which you would reasonably associate with such a rural, historic scene. Furthermore, the lack of development in these fields along with its elevated position above the town gives it a local landmark quality.'

8. It is within these very fields that the current appeal scheme is now proposed.
9. A key issue in this appeal is whether the lesser number of dwellings and the consequent areas of the site which require development would now tip the heritage balance in the Appellant's favour.
10. The revised proposals have been comprehensively assessed by Ms Tucker, whose evidence follows the methodology set out in Historic England's Good Practice Advice in Planning ('GPA2' CD7.8) and on the Setting of Heritage Assets ('GPA3', CD7.5).
11. Ms Tucker acknowledges that, compared to the 2023 scheme, the quantum of development has been reduced, enabling a different configuration. However, the illustrative site layout plan (CD1.6) and illustrative parameter/land use plan (CD1.8) continues to show built development projecting westward beyond the historic farmstead (both to the northwest and southwest) in the open setting of the Oasthouse. In addition, a large area of public open space with associated infrastructure (including landscaping, level changes, footpaths, street furniture, lighting and swales) is proposed to the west. Significant highway works are also

proposed, including the construction of a roundabout at the junction with the B2102 and associated road infrastructure works.

12. This development would, on any view, ‘significantly erode the rural setting of the heritage asset’ and result in a ‘substantial loss of the remaining ability to appreciate the significance of the Oasthouse in its historic rural setting and the diminishment of the relatively quiet and tranquil character of the setting of the Oasthouse’ (Ms Tucker’s proof paras 6.8-9).
13. Ms Tucker carefully identifies the specific elements of the proposal that would harm the setting and significance of the heritage asset. In summary:
 - a. The island of development behind the dwellings on Bird in Eye Hill would create a permanent and irreversible harmful visual impact on the setting of the Oasthouse, and would be visible in views from the Oasthouse itself;
 - b. Development to the southwest of the Oasthouse, which would be visible from the Oasthouse and prominent in views towards the Oasthouse, particularly from the west of the Hospital, adjacent residential development areas and from Framfield Road. The ‘appreciation of the visual and functional association of the heritage asset in an open rural landscape would be significantly impacted’;
 - c. The introduction of managed open space, including increased activity, lighting and associated infrastructure, would substantially alter the character of the land to the west of the Oasthouse, replacing its quiet, rural nature with a more formalised, suburban character;
 - d. The proposed roundabout and related highway works and infrastructure would materially alter the character and experience of the asset’s wider setting;
 - e. More broadly, the cumulative impact of urbanisation (including built development, engineered landscaping and associated infrastructure) would result in the loss of the Oasthouse’s open, rural and tranquil setting.
14. Ms Tucker does acknowledge that the removal of car parking from the immediate surroundings of the Oasthouse represents a small but positive change in heritage terms.
15. While it is agreed between the parties that this proposal would result in *less* harm to the Oasthouse than the 2023 appeal scheme, Ms Tucker concludes that ‘it is not considered the development area has been sufficiently adjusted to avoid or significantly reduce the harm set out by the Inspector in the previous scheme. It is still considered that the relatively quiet and tranquil character of the setting will be significantly diminished by the largescale residential development proposed along with the cumulative impact of the design and infrastructure of the proposed public open space to the west and the highway works’ (6.31).

16. Ms Tucker assesses the overall impact on the asset, taking into account both heritage benefits and harm, as falling within the ‘moderate’ category. However, it is critical to note that a finding of *moderate* harm does not equate to a moderate planning objection. The harm to the setting of a listed building must be given considerable importance and weight, in line with the statutory duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
17. Furthermore, as Ms Tucker and Mr Redman both note, some of the harm to the Oasthouse is avoidable. A large residential scheme could still be accommodated on this site by concentrating development to the east of the Oasthouse, thereby minimising the extent of encroachment into its sensitive rural setting. This is especially pertinent in the context of paragraph 208 of the NPPF, which requires that harm to heritage assets be avoided or, where not possible, minimised. A scheme with a lower quantum of development could omit development in the northwest portion of the site and reconfigure the southwestern development area, materially reducing the overall impact on the heritage asset.
18. The Appellant’s position, that the scheme would cause *no* harm to the Oasthouse, is untenable. Once the true significance of the asset, and the critical contribution made by its setting, is properly understood, it becomes clear that this conclusion is flawed. Notably, the Appellant appears to overlook the twin roles of setting, as set out in GPA3 (CD7.5, para 3): setting not only allows for the *appreciation* of an asset, but also contributes directly to its significance. The Appellant has largely disregarded the latter and taken much too narrow a view of the former such that it concludes that the ability of the open land to ‘maintain *an* appreciation of the *present context reflecting an earlier rural one*’¹ is sufficient to avoid harm. This is an incorrect approach.
19. In contrast, the Council’s evidence is robust and grounded in established national guidance. It should be preferred.
20. As the harm identified is less than substantial, it must be weighed against the public benefits of the proposal.
21. While it is acknowledged that the harm has been reduced relative to the 2023 scheme (albeit not significantly), many of the public benefits have also diminished, primarily because this proposal only delivers two-thirds of the housing quantum previously proposed. Nevertheless, as Mr Redman recognises, significant positive weight must still be afforded to the provision of housing in the context of the Council’s lack of a five-year housing land supply. Additional significant weight should be attributed to the delivery of 67 affordable homes and 10 self-build/custom-build plots. The scheme would also generate economic and ecological benefits. However, it must be noted that some of those ecological benefits, such as ancient woodland management and SANG delivery, are mitigation necessary to make the development acceptable in planning terms. Taken together, the public benefits attract

¹ Paragraph 6.29 of Dr Miele’s proof of evidence

substantial weight. However, as in 2023, they do not outweigh the permanent and irreversible harm to the Oasthouse.

22. Finally, in relation to benefits, the Appellant also claims improvements in highway safety and sustainability. The Council notes that these are not included in the Statement of Common Ground (CD4.2) between the Appellant and the Local Highway Authority and has requested that they be explored further at the highways round table session.

PLANNING BALANCE

23. Planning decisions should be taken in accordance with the development plan unless material considerations indicate otherwise. In this case, there is a clear conflict with the development plan, as a result of the location of development and the identified heritage harm to the Grade II listed Oasthouse.
24. The NPPF is clearly a weighty material consideration. Here paragraph 11(d) of the NPPF applies as the policies which are most important for determining the application are out-of-date due to the Council being unable to demonstrate a five-year supply of housing land. The application of policies in the NPPF provide a strong reason for refusing the development proposed. In short, the harm to the Oasthouse is not outweighed by the public benefits of the scheme particularly in circumstances where a reduction in dwelling numbers would materially reduce the harm to the Oasthouse. Therefore, permission should be refused. The tilted balance does not apply. Even if it did apply then the harm to the setting and significance of the Oasthouse would significantly and demonstrably outweigh the benefits of the proposal. Therefore, at the conclusion of this Inquiry, the Council will respectfully invite the Inspector to refuse permission for the appeal scheme.

Victoria Hutton

39 Essex Chambers

17 July 2025