



Appeal Decision

Site visit made on 30 April 2025

by **G Ellis BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 May 2025

Appeal Ref: APP/C1435/W/24/3355171

Land at Manor Park, Mark Cross Lane, Ripe

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by John Newton Developments Ltd against the decision of Wealden District Council.
 - The application Ref is WD/2024/0024/F.
 - The development proposed is for the demolition of a storage building, garage and all weather tennis court and the erection of 4no. dwellings
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Decision

1. The appeal is dismissed.

Procedural and Preliminary Matters

2. The appellant has submitted a set of amended plans as part of the appeal. I have carefully considered the implications of accepting these amendments in light of the Planning Inspectorate's Procedural Guide: Planning Appeals, England (2024) (the Procedural Guide) and the Holborn judgement¹. The Procedural Guide advises that the appeal process should not be used to evolve a scheme and that there are no provisions for the submission of amendments to be submitted. With regards to the Holborn judgement, it must be considered whether the proposed amendment involves a substantial difference or fundamental change to the application, and if any proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
3. The amendments are related to flood risk, and whilst there are no changes to the number and form of the proposed houses, they alter the extent of the site, which in turn alters the relationship with the existing buildings, with the barn being retained, and the proposed car barn omitted from the scheme. Notwithstanding the merits or otherwise of the revised scheme, and whilst the plans formed part of the appeal documentation, it is not clear if the relevant consultees and other interested parties have been consulted or are aware of the proposed changes. Representations from third parties to the planning application specifically include issues relating to flooding. As such, by accepting the amendments and the updated supporting documents, there would be potential procedural unfairness. I have therefore considered the appeal on the basis of the application plans on which the Council made its decision.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

4. As part of the appeal, a report relating to District Level Licensing for Great Crested Newts has been submitted pursuant to addressing reason for refusal 2.
5. Since the application was determined, a revised National Planning Policy Framework has been issued – December 2024. The decision notice referred to specific paragraphs. As part of the appeal process, the parties have had the opportunity to provide comments on the changes.

Main Issues

6. The main issues are: -
 - i) whether the proposal would be in a suitable location for housing;
 - ii) the effect of the development on the character and appearance of the area, including the setting of the Ripe Conservation Area and the Low Weald landscape;
 - iii) flood risk; and
 - iv) protected species

Reasons

Suitable Location

7. The appeal site is located within the open countryside. The village of Ripe is a short distance to the southeast but does not have a settlement boundary. Saved policy GD2 of the Wealden Local Plan 1998 (WLP) indicates that development outside the defined development boundaries will be resisted. While WLP policy DC17 does set out a number of exceptions for residential development in the countryside, there is no evidence before me to suggest that the proposal is promoted pursuant to or would comply with any of those listed exceptions.
8. The spatial strategy in policies SPO1 and WCS6 of the Wealden Core Strategy Local Plan 2013 (CS) and policy EN1 of the WLP directs development to the most sustainable locations in relation to the settlement hierarchy and reducing the need to travel. The Council's approach to residential development is therefore broadly consistent with the housing approach and objectives set out in the National Planning Policy Framework (the Framework).
9. Under CS policy WCS6 Ripe is defined as a 'neighbourhood centre' in the rural areas hierarchy, the lowest sustainable type of settlement, but where some residential development is to be expected. The village is formed primarily of residential properties. It has a village store with a cafe within the centre, but it does not offer a range of other facilities, and public transport is severely limited, with a single service one day a week.
10. The appeal is not isolated in terms of the Framework, with adjacent residential properties and approximately 0.4km to the centre of the village. It is, however, somewhat detached and access is via a relatively narrow road with no footways or street lighting, or alternatively along a nearby Public Right of Way (PRoW). While not being overly attractive to everyone, they offer some opportunities for walking and cycling. The Framework does recognise that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nonetheless, future occupiers would be heavily reliant on the private motor car to access day-to-day goods, services and for employment.

11. The site is therefore not a suitable location for residential development with particular regard to the policies aforementioned and accessibility to services and facilities. For the same reasons, it contravenes the objectives of the Framework in terms of promoting sustainable transport (section 9 and paragraph 83).

Character and Appearance

12. The appeal site comprises an existing tennis court, garage and a former agricultural building close to Mark Cross Lane. They are ancillary features associated with Manor Park which is set further back. While the site contains existing development, it does not have a significant massing; the buildings are single-storey structures, and the tennis court has an open design with views through.
13. The site is situated on the outskirts of the village and has a rural character, characterised by sporadic buildings. The proposal would form a courtyard of four, two-storey houses together with garaging. It is suggested that the form of the proposed development reflects the arrangement of agricultural buildings which previously occupied the area, prior to its current use. However, other than one building, which is to be removed, the physical and visual remnants of that agricultural form and setting are no longer present. Additionally, the design of the houses would be markedly different, appearing as a suburban cul de sac rather than a cluster of agricultural barns.
14. The properties are designed with vernacular materials, nonetheless, the layout and scale of the development are at odds with the rural character of the area, and also the prevailing linear form of residential development extending along the roads from the centre of Ripe. The proposal would result in a more intensive form of development, and in relation to its setting and location, on the very fringes of the village, it would introduce an incongruous form of development.
15. The site benefits from landscaping and tree coverage to the road. There are some views along the access drive, which curves around towards the appeal site, providing partial views of the existing tennis court. Accordingly, there would be views of the development which, due to the more extensive form and limited separation between the buildings, would be more noticeable and intrusive.
16. The area forms part of the Low Weald Landscape and, as set out in the Wealden Landscape and Settlement Character Assessment, is within character type 2 defined by its open character. WLP policy EN8 seeks to resist development that fails to conserve or enhance the low rolling agricultural character of the landscape. The appellant's Landscape and Visual Appraisal recognises the overall degree of change (post construction) on the landscape character of the site as substantial adverse, but other than from the road (viewpoint 4), and the field access PRoW (viewpoint 6), there would be no or negligible visual effects of the development. I accept, in line with the Council, that public visibility of the site is relatively limited and that the existing tennis court is not a positive feature of this landscape, yet it is not a wholly unusual association with a large property in the countryside. In contrast, the proposed development would take a more urban form, eroding the rural character and what is effectively a transitional zone between the village and the wider, open, and agricultural landscape.
17. The boundary of the Ripe Conservation Area is to the other side of Mark Cross Lane, opposite the site. Due to the landscaping and landform, there are no views directly into the Conservation Area. The Ripe Conservation Area primarily relates to

the historic core of the village, centred around The Manor House and the crossroads, but also includes the surrounding fields. The setting of the Conservation Area is not restricted to public views, and the trees and landscaping are features of the area, contributing to the verdant character of the village. However, in the vicinity of the appeal site, there is a level of containment with vegetation and the road curving around. As such, I do not find that the development of the site would directly impact the setting and significance of the Ripe Conservation Area.

18. Nonetheless, the development would be harmful to the character and appearance of the site and its rural location. The proposed form and design of the development would not positively respond to its context and would be harmful to the Low Weald landscape. It would therefore conflict with the WLP policies EN8 and EN27, which protect the agricultural character of the area, including the setting of settlements, and require the design of proposals to respect the character of the area in terms of scale, form, density and materials. There would also be conflict with section 12 of the Framework in relation to achieving well-designed places, especially 135(c) being sympathetic to local character, including the landscape setting.

Flood Risk

19. Part of the site around the existing barn and along Mark Cross Lane close to the entrance to the site, is shown on the Environment Agency Flood Map to be a medium flood risk area for surface water. The appellant has undertaken modelling work which indicates a reduced area, although there is no evidence before me that this has been agreed with the relevant flood authority. Notwithstanding this, it is acknowledged that some parts of the site would still be at risk. This includes areas of proposed built development. Therefore, the exception under paragraph 175 of the Framework is not applicable, and also relates to the site access and egress arrangements.
20. Paragraph 173 of the Framework requires that a Sequential Test should be undertaken for individual applications in areas known to be at risk now or in future from any form of flooding. The purpose of which is to steer new development to the areas of lowest risk, and the Framework is clear that development should not be permitted if there are other reasonably available sites in lower flood risk areas.
21. No information to support a Sequential Test has been provided. As outlined in the Planning Policy Guidance (PPG), which provides further advice on the sequential approach, even if a flood risk assessment indicates that the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test must still be satisfied. While the appellant's position is that there are no available sites as the Council does not have a 5-year housing supply, the PPG advises that the absence of such is not a relevant consideration for the sequential test for individual applications (paragraph 28). Consequently, the proposal does not accord with the requirements of the Framework, which seeks to manage flood risk.

Protected Species

22. The site lies within a red impact risk zone for Great Crested Newts with two ponds adjacent to the appeal site. A NatureSpace District Licence Report has been provided pursuant to the Great Crested Newt District Licensing Scheme and contains mandatory planning conditions to be attached to a planning permission,

which would enable a licence to be issued. However, and notwithstanding that the report indicates that the proposed works could be undertaken under licence, it clearly stipulates that if the planning application is refused and subsequently appealed, which is the case here, details would need to be reconfirmed by NatureSpace. From the documentation before me, this has not been expedited.

23. Without the necessary licensing requirements, the proposals would be contrary to CS policies SPO1, WCS12, and WCS14 in terms of ensuring that protected species are protected and supporting biodiversity. Given my findings on the other main issues, I have not pursued this aspect further as it would not be determinative.

Other Matters

24. The Council is unable to demonstrate a five-year supply of deliverable housing land. The Council's spatial strategy is not achieving the level of housing growth expected by national policy. Therefore, in accordance with paragraph 11(d) of the Framework, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 to paragraph 11(d) is clear that this includes areas at risk of flooding. The harm identified with regard to flood risk is such that the policies in the Framework relating to this matter provide a clear reason for refusing the development. As a result, the presumption in favour of sustainable development does not apply.
25. The appellant refers to paragraph 125c of the Framework and that substantial weight should be given to the use of the site as brownfield land. However, this provision is in relation to land within settlements, which this site is not.

Planning Balance and Conclusion

26. I have found that the appeal site is not a suitable location for residential development, the design would be out of keeping with the character of the area and would fail to protect the edge of the village setting and the character of the Low Weald. The development of this small site for housing would, however, make a positive, albeit modest, contribution towards boosting housing supply. There would also be some economic benefits during the construction phase and subsequently upon occupation.
27. The proposal, however, conflicts with the development plan when taken as a whole, and the requirements of the Framework with regard to flood risk. Therefore, while there are some benefits associated with the appeal proposal, neither they nor any other considerations outweigh that conflict.
28. The appeal is therefore dismissed.

G Ellis

INSPECTOR