



Appeal Decision

Site visit made on 7 May 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2025

Appeal Ref: APP/C1435/W/24/3352818

Granary, New Pond Hill, Cross in Hand, Heathfield, East Sussex TN21 0LX

- 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 Ms Elizabeth Shambrook against the decision of Wealden District Council.
 - The application Ref is WD/2024/0748/F.
 - The development proposed is erection of three detached houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the proposed development would be in a suitable location, having regard to the local development strategy;
 - the effect of the proposed development on the character and appearance of the area, with particular regard to the landscape and scenic beauty of the High Weald National Landscape;
 - the effect of the proposed development on protected species;
 - whether other material considerations outweigh any harm identified such as to justify the development.

Reasons

Whether in a suitable location

3. The appeal site is adjacent to dwelling, 'Granary', and abuts the highway of New Pond Hill. Groups of dwellings along New Pond Hill are interspersed by agricultural land. The site is therefore in a rural location.
4. The site lies between the village of Cross in Hand and town of Heathfield. Policy WCS6 of the Wealden District Core Strategy Local Plan 2013 (CSLP) provides a strategy for the distribution of growth across the rural area which identifies Heathfield as a 'service centre' and allocates additional housing development at Cross in Hand. However, the site is separate from the main built area of either settlement and is outside any development boundary.
5. The supporting text to Policy WCS6 indicates that outside settlements identified for growth, development will normally be restricted to that required to meet an

essential rural need. Policies GD2 and DC17 of the Wealden Local Plan 1998 (WLP) generally resist new development outside of development boundaries for the purpose of conserving and enhancing the rural environment.

6. CSLP Spatial Planning Objective (SPO) 7 encourages a reduction in car travel by concentrating development where it can more closely relate to public transport opportunities, improve the offer of towns in terms of retail, leisure, and recreation, and make it easier to travel by sustainable modes of transport with improvements in journey quality for trips on foot, bicycle or public transport.
7. Similarly, paragraph 83 of the National Planning Policy Framework (the Framework) promotes sustainable development in rural areas through locating housing where it will enhance or maintain the vitality of rural communities. In addition, Framework paragraph 110 indicates significant development should be focused on locations which are or can be made sustainable through limiting need to travel and offering genuine choice of transport modes to reduce congestion and emissions and improve air quality and health, whilst recognising opportunities to maximise sustainable transport solutions vary between urban and rural areas.
8. The proposed dwellings would be situated 1.6km from Heathfield's town centre and 950m from the nearest bus stop offering regular services. Therefore, day-to-day services and facilities are located outside of a convenient walking distance.
9. New Pond Hill provides a route toward Heathfield. However, it is a rural lane with a national speed limit and no pedestrian footway or lighting, and therefore does not offer a safe route for all users. Whilst the public right of way network offers an alternative route to Heathfield, its footpaths have unmade surfaces, are unlit, and would be inconvenient in poor weather or after dark.
10. The appellant suggests New Pond Hill is regularly used by dog walkers, runners, and cyclists, including in wet weather. However, the site is distant from services, and in the absence of segregated pedestrian or cycle infrastructure the proposed development would not offer safe, suitable access for all users at all times of day.
11. Even taking into account the differences in accessibility between urban and rural areas, the proposed development would not be located so as to encourage walking, cycling or public transport use, and future occupants would generally be dependent on private motor vehicles to meet their day-to-day needs.
12. Paragraph 125(c) of the Framework give substantial weight to the value of using suitable brownfield land within settlements for homes. The parties disagree whether the site is residential curtilage or agricultural land. However, even if I were to consider the site to comprise brownfield land, the site is not within a settlement.
13. Planning permission has been granted for residential development nearby at Olives Farm and Springfield Nursery. However, those sites are within an area of ribbon development of dwellings with a 30mph speed limit and are closer to facilities at Cross in Hand, and therefore differ significantly from the appeal site.
14. As set out above, the proposal would not be located so as to encourage a reduction in the need to travel by car. The proposed dwellings would be outside the development boundary where WLP Policies GD2 and DC17 generally restrict development. Therefore, there are no policies which positively favour a development of this type in the proposed location.

Character and appearance of National Landscape

15. The site is currently maintained as a mown area of grassland interspersed with trees and in use as a domestic garden, implying a strong relationship between the site and existing dwelling. A tree belt runs along the site's southwest boundary, providing separation from adjacent grassland. The appeal site and dwelling sit behind a gated access, close boarded fence, and hedgerow with mature trees, providing separation from the carriageway of New Pond Hill. The site is generally well-screened from the highway.
16. The host dwelling is a large home of traditional appearance, set back from the highway behind a group of outbuildings with a vernacular barn form. To the southeast side of New Pond Hill is a row of dwellings of more modest scale, set close to the carriageway's edge. However, housing in the area can generally be characterised as large homes set in generous plots. The surrounding area therefore has a spacious and organic development pattern.
17. Beyond the rear of the site are groups of trees and the dense canopy of the ancient woodland. This provides a strong visual backdrop to the site, and together with the tree belts at the front and side boundaries contributes structure to the landscape. Along the highway are strongly vegetated frontages, with mature tree belts and hedges. These landscape features contribute a verdant, green character.
18. The appeal site is within the High Weald National Landscape (HWNL)¹. The statutory purpose of National Landscapes is to conserve and enhance the natural beauty of the area. Section 245 of the Levelling-up and Regeneration Act 2023 amended the duty on relevant authorities in respect of their functions which affect land in National Landscapes, requiring relevant authorities "seek to further" the HWNL's statutory purpose.
19. The development plan broadly reflects the statutory and national significance of the HWNL. CSLP Policy SPO1 protects distinct and nationally designated landscapes, and WLP Policy EN6 supports development within the HWNL only where it conserves or enhances the landscape's natural beauty and character.
20. The purpose of the HWNL is not to restrict all development within the area, and the appellant has identified other schemes in which planning permission has been granted within the HWNL. However, Framework paragraph 189 makes clear that development in the area should be limited in scale and extent.
21. The High Weald Area of Outstanding Natural Beauty Management Plan 2024-29 (HWMP) provides evidence of the area's value and special characteristics that contribute to the HWNL's natural beauty. Such features include the area's settlements comprising villages of medieval origin along ridge top roads, with historic routeways and field systems providing separation between settlements.
22. Paragraph 2.7 of the Wealden Design Guide notes a significant issue within the HWNL is the erosion or loss of characteristic established landscape features. Objective S1 of the HWMP seeks to protect the historic pattern and character of settlements so as to protect the distinctive character and landscape settings of towns, villages, hamlets and farmsteads, remove despoiling influences and maintain the hinterlands and other relationships (including separation and green

¹ Formerly "Area of Outstanding Natural Beauty"

- infrastructure) between settlements that contribute to local identity. Historic maps suggest the site comprises undeveloped land formerly within a historic farmstead.
23. The proposed development would comprise three, five-bedroom, detached dwellings. The dwellings would have a two-storey form, and the plot three dwelling would also include living accommodation in the roof space.
 24. The design has drawn inspiration from buildings at New Pond Hill and the High Weald Design Guide and has sought to avoid a homogeneous appearance. The sloping topography would provide variation in ridge height. Materials would include local stock face brick and plain clay tiles to reflect vernacular buildings. The plot one and two dwellings would have external chimney stacks and forward projecting gables to provide symmetry, and the plot three dwelling would have a central feature window column to provide visual interest and off-white render accents.
 25. However, the proposed dwellings would have a large footprint and would be substantial in scale and mass and would appear bulky within the context of the host dwelling and outbuildings. Whilst viewed alongside a cluster of existing dwellings, the development would assimilate poorly with nearby development.
 26. The proposed dwellings would introduce large areas of hardstanding for the driveway access and parking spaces and would include other domestic features such as bin stores and boundary treatments. The site would have the suburban appearance of a cul-de-sac development, out of keeping with the rural location and would significantly erode the site's open character.
 27. The proposed dwellings would be set back from the highway and would be broadly aligned with an existing outbuilding. The dwellings would be spaced approximately 3.5m apart, permitting views through gaps to the countryside beyond. However, the layout would appear regular and uniform, and out of keeping with the host dwelling which has the organic pattern of a traditional farmstead.
 28. The proposed development would involve works close to boundary trees. The plot three dwelling would be constructed within the root protection area (RPA) of trees T007, T008, and T009, which the tree survey plan² identifies as Category A trees of high quality with an estimated remaining life expectancy of at least 40 years.
 29. In addition, it is unclear if hardstanding would encroach by more than 20% into the RPAs of trees situated along the site's front boundary, which are Category B trees of moderate quality with estimated remaining life expectancy of at least 20 years.
 30. The Arboricultural Method Statement & Tree Protection Plan concludes that, despite incursions into RPAs, the proposed development is achievable with recommended engineering solutions. For example, the plot three dwelling would require a pile and beam floating foundation to minimise root disturbance.
 31. However, the siting of the development close to trees within the RPA and area of canopy spread would create pressure for tree removal from future occupants. Whilst the parties disagree on the species and life expectancy of the site's trees, the assessment provided by the Arboricultural Method Statement & Tree Protection Plan suggests affected trees are of high and moderate quality with significant remaining life expectancy. Therefore, the proposed development would

² Drawing no. spe - 0294 110 site plan - elevations(2)

threaten the longevity of trees, which would erode characteristic and established landscape features of the HWNL.

32. The proposed dwellings would be set back from the front boundary. The shared vehicular access would retain existing boundary vegetation, and additional planting would be provided. However, the proposed dwellings would be visible from the highway above the fences as filtered views through gaps in vegetation.
33. The scale and layout of the proposed dwellings would be out of keeping with the HWNL's distinctive settlement pattern, and the development would have a harmful urbanising effect upon the HWNL. It would place pressure on high and moderate quality trees which contribute positively to the HWNL's character. The proposal would fail to conserve and enhance the natural beauty of the HWNL and therefore would be counter to the duty to seek to further the HWNL's statutory purpose.
34. The proposal would therefore conflict with WLP Policies EN6 and EN27 which support development within the HWNL only where it conserves or enhances the natural beauty and character of the landscape, having particular regard to the HWNL's identified landscape characteristics, and requires siting, scale, layout, and design respect the character of adjoining development and promote local distinctiveness. In addition, the proposal would fail to comply with WLP Policy EN12 which retains and enhances the contribution of trees to landscape character.

Protected species

35. The proposal includes a Preliminary Ecological Appraisal (PEA) which recommends avoidance and mitigation measures in respect of great crested newts, other amphibian species, and hazel dormice.
36. Great crested newts and hazel dormice are European Protected Species afforded protection by the Conservation of Habitats and Species Regulations 2019 (as amended) (the Habitats Regulations) and the Wildlife and Countryside Act, 1981 (as amended). In addition, great crested newts, common toads, and dormice are Species of Principal Importance under the Natural Environment and Rural Communities Act 2006.

Great crested newts and other amphibians

37. The site is within an amber impact risk zone for great crested newts. A pond was identified within the site, and the PEA identifies a further four waterbodies within a 250m radius of the site. The on-site waterbody is of poor habitat suitability and the PEA does not anticipate the development would have direct impacts on suitable waterbodies for breeding great crested newts.
38. However, the PEA identified suitable terrestrial habitat between the site and waterbodies WB2 and 4, and indicates the site supports suitable semi-improved neutral grassland, hedgerow, treeline, mixed scattered trees and mixed plantation woodland which provide foraging, commuting and hibernating opportunities for great crested newts and other amphibians during their terrestrial lifecycle phase.
39. The PEA concludes the development could result in adverse direct and indirect impacts on great crested newts and other amphibians, resulting in death or injury, disturbance during terrestrial phase, or damage or destruction of resting places.

40. The PEA recommends a great crested newt habitat suitability index assessment of waterbodies WB2 and WB4, with a potential need for further survey techniques and mitigation licence depending on the assessment's outcome. The proposal does not contain the additional surveys recommended by the PEA.
41. Rather, the proposal would utilise the District Level Licensing (DLL) scheme as an alternative to traditional surveys, mitigation and compensation. This is a strategic approach to deliver habitat compensation elsewhere in the district, and requires developers pay a fee based on the estimated impact on great crested newts.
42. The appellant has provided a copy of a DLL application and quotation issued by the DLL administrator and suggests a planning condition could ensure no development takes place until a mitigation scheme has been approved by the Council. However, paragraph 99 of Circular 06/2005³ states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
43. No detailed report or certificate has been provided to confirm the appellant has entered into the DLL. In the absence of this report there is a lack of certainty that mitigation would be secured. Therefore, the proposal does not demonstrate effects on great crested newts and other amphibians would be adequately mitigated.

Hazel Dormice

44. The site supports suitable semi-natural habitat for dormice comprising of mixed plantation woodland, treelines and hedgerow. The PEA identifies limited food sources and nesting materials within the site. The site has arboreal connectivity to other more suitable dormouse habitat within the wider environment, notably the ancient woodland located to the north via treelines and hedgerows within the site.
45. The habitat proposed to be removed to facilitate the development is disconnected from suitable dormouse habitat, and hedgerows and treelines are anticipated to be retained throughout all phases of the proposed development. Therefore, the PEA considers the development would be unlikely to result in death or injury of dormice or damage or destruction of resting places, breeding site, or habitat loss.
46. However, as dormice presence cannot be completely ruled within the suitable habitat surrounding the site, the PEA recommends measures to avoid indirect adverse impacts, such as from light and particulate pollution and disturbance.
47. As a precaution against disturbance, the PEA recommends provision of a minimum 10m buffer from any suitable dormouse habitat, notably the treeline and hedgerow on the southwest and southeast site boundaries. The PEA recommends that works should not take place within the buffer, including storage of materials, vehicle usage, and excavations.
48. The plot three dwelling, its parking space and the vehicular access route would be within 10m of those boundaries. Therefore, the proposed site layout fails to

³ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, 16 August 2005

incorporate the recommended minimum buffer. The development would therefore result in excavation and vehicle usage near the southwest and southeast site boundaries, with potential disturbance to dormouse habitat.

49. The appellant's statement contains additional information on the habitats and activity of dormice and asserts foraging in the site is unlikely as superior habitat is available within the area of ancient woodland. However, any disturbance would amount to significant harm to this protected species.
50. Paragraph 187 of the Framework requires planning decisions contribute to and enhance the natural and local environment, such as through minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species. Paragraph 193 of the Framework makes clear that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
51. Furthermore, regulation 9(3) of the Habitats Regulations requires the competent authority have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European Protected Species under Article 12(1)⁴. As set out above, the proposal fails to demonstrate it would not result in adverse direct and indirect impacts on protected species.
52. The proposal would conflict with CSLP Policy WCS12 and SPO1 which seeks to prevent a net loss of biodiversity, ensure a comprehensive network of habitats, and work with partners to maximise opportunities to ensure habitats, biodiversity features and ecological networks are maintained, restored, and enhanced.

Other considerations

53. The proposal would provide three dwellings, and therefore would contribute positively to the supply of housing in the area.

Planning Balance

54. CSLP Policy WCS14 sets out an approach to decision-making which supports the Framework's presumption in favour of sustainable development. In addition, WLP Policy EN1 seeks to pursue sustainable development having regard to the principles contained in government guidance. The appellant has provided examples of decisions where the presumption in favour of sustainable development has been applied, resulting in planning permission being granted.
55. The Council estimates it has a housing land supply of 4.45 years. It therefore does not fulfil the requirement for a demonstrable five-year supply of specific deliverable housing sites, as set out at paragraph 78 of the Framework.
56. In this circumstance, paragraph 11(d)(i) of the Framework instructs that permission should be granted, unless policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development. Such policies include those relating to National Landscapes.

⁴ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Directive)

57. As set out above, I have found the proposal would fail to conserve and enhance the natural beauty of the HWNL. The proposal would therefore conflict with paragraph 189 of the Framework which instructs that great weight be given to conserving and enhancing the landscape and scenic beauty of National Landscapes which have the highest status of protection in relation to these issues.
58. Therefore, the Framework's policies which protect areas of particular importance provide a strong reason for refusing the development. Consequently, there are no material considerations which indicate a decision other than in accordance with the development plan.

Conclusion

59. The proposal would conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

E Dade

INSPECTOR