



Appeal Decision

Site visit made on 15 July 2025

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th August 2025

Appeal Ref: APP/H2265/W/25/3362549

Land adjoining The Bungalow, 139 Offham Road, West Malling, Kent ME19 6RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Carl Thomason against Tonbridge and Malling Borough Council.
 - The application Ref is 24/01066/PA.
 - The development proposed is the relocation of an existing garden field access.
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Decision

1. The appeal is allowed and planning permission is granted for the relocation of an existing garden field access at Land adjoining The Bungalow, 139 Offham Road, West Malling, Kent ME19 6RE in accordance with the terms of the application, Ref 24/01066/PA, subject to the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Carl Thomason against Tonbridge and Malling Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. The address is indicated on the application form as 'The Bungalow, 139 Offham Road, West Malling, Kent ME19 6RE'. The appeal form cites the address as 'Land adjoining The Bungalow, 139 Offham Road, West Malling, Kent ME19 6RE' which I have used in the banner above as this is a more accurate description of the address.
4. The appellant submitted revised plans to the Council in November 2024 showing a reduced access width and reduction in the junction radii. These were not accepted by the Council due to its policy of not accepting amendments at that time. However, these are included in Appendix D of the Transport Technical Note submitted with the application and the plans have been provided as part of the appeal. Given the nature of the changes, my consideration of the revised plans would not cause procedural unfairness or prejudice to interested parties. Thus, I have had regard to the amended plans in my determination of the appeal.

Background and Reasons

5. The appellant submitted the planning application around 3 July 2024. A period of consultation with interested parties then followed. The Council failed to determine the application in the prescribed time. Therefore, the appellant lodged an appeal on 18 March 2025 against the Council's failure to determine the application.

6. The Council has submitted an appeal statement which confirms that, had it been in a position to do so, it would have approved the planning application subject to several planning conditions. As such, both the Council and the appellant are of the view that the appeal should be allowed.
7. In light of all that I have seen and read, I concur with the appellant and the Council that the impacts of the appeal scheme would be acceptable and that there would be no conflict with the relevant policies of the development plan for the reasons set out in their statements. I have no reason to dispute the conclusions they have reached. I have therefore allowed the appeal.

Other Matters

Highway safety

8. Interested parties are concerned about the impact of the proposal on road traffic safety on a stretch of road where the national speed limit applies. The Transport Technical Note found a low local accident incidence rate and low average traffic speeds within the vicinity of the site, concluding that the existing access provides restricted visibility to oncoming eastbound traffic and is too narrow for emergency vehicles.
9. In contrast, the proposed access would comply with the minimum access width in the Manual for Streets and provide visibility splays which meet the Kent Design Guide requirements. On this basis, the Highway Authority does not object to the appeal scheme. Conditions requiring the provision and maintenance of the visibility splays, closure of the existing access and details of surfacing and surface water drainage would ensure that the scheme would cause no harm to road users.

Character and appearance, including impacts on heritage assets

10. The trees around the proposed access contribute significantly to the character and appearance of the area and are protected by a Tree Preservation Order (TPO). Since the application was submitted to the Council, two oak trees and a larch have been felled which were not included in the TPO. The Arboricultural Impact Assessment (AIA) indicates that these were in poor condition or terminal decline, confirmed by the Council's Tree Officer who inspected them before their removal.
11. The AIA was written to support another planning application with a different access location. As such, the Council's Tree Officer states that there are uncertainties about the current impact of the proposal on trees, including effects on root protection areas and the extent of tree pruning required.
12. Nevertheless, the Council's Tree Officer considers that suitable construction methodologies and tree protection measures would be put in place and the proposed access could be constructed without undue damage to the retained trees. Further, the AIA indicates that replacement planting would form part of the landscaping for the development. Pre-commencement conditions requiring an updated tree protection plan, arboricultural method statement, detailed felling and pruning specification and landscape scheme would ensure that the proposal would not harm the verdant character and appearance of the area.
13. The West Malling Conservation Area (CA) lies around 100m to the east and south of the appeal site. The proposed development would include a new access, surfacing, matching fences and a new gate but no buildings. Given the nature of

the proposal and its distance from the CA, the scheme would not affect the character or appearance and hence the significance of this heritage asset.

Ecology

14. The felled trees provided potential habitat for birds and roosting bats. To compensate for the loss of trees, a condition would secure the submission, approval and implementation of bat and bird enhancements on the site.

Green belt

15. There is concern that the proposal would allow for the development of the site for housing in the Green Belt. Paragraph 154 of the National Planning Policy Framework (the Framework) lists the types of development that are not inappropriate in the Green Belt. The proposal would introduce a new area of hardstanding and an entrance gate at the proposed field entrance and would not change the use of the field from its current agricultural use. As such, the appeal scheme would be an engineering operation which would preserve the openness of the Green Belt and not conflict with the purposes of including land within it, one of the exceptions allowed by paragraph 154(h) of the Framework.

Conditions

16. I have had regard to the Council's suggested conditions and considered them against the statutory tests outlined in the Framework and the advice in the Planning Practice Guidance. I have made minor amendments, where necessary, to ensure that the conditions comply with these documents. I have added a condition requiring details of surface water drainage and surfacing given the response from the Highways Authority.
17. In addition to the standard time limit condition (1), I have imposed a condition requiring that the development is carried out in accordance with the approved plans (2). This is in the interest of certainty.
18. Pre-commencement conditions requiring tree protection and appropriate working methods (3), detailed tree felling and pruning specification (4), a landscape scheme (5) and a surface water drainage scheme and details of surfacing (6) are necessary to protect the character and appearance of the area and the highway network. The appellant has agreed to these.
19. Conditions requiring details of the closure of the existing access onto Offham Road (7), provision of visibility splays (8) and completion of the access in accordance with the approved plans (9) are imposed in the interests of highway safety.
20. I have imposed a condition requiring biodiversity enhancement for bats and birds (10) to ensure benefits for these species.
21. Based on the information available, the proposal is subject to statutory biodiversity net gain (BNG). The submitted details indicate that the proposed scheme would lead to the loss of habitat, but the Council is satisfied that there are sufficient areas within the site to achieve 10% BNG and I concur. It is not necessary to impose a condition requiring the submission of a biodiversity gain plan (BGP) as the deemed biodiversity gain condition, under paragraph 13 of Schedule 7A of the Town and Country Planning Act ensures that the development cannot commence until a BGP has been submitted to and approved by the local planning authority. Further details

on BNG and the applicable deemed biodiversity gain condition are in informative 03 of the Council's appeal statement and the Planning Practice Guidance.

Conclusion

22. I conclude that the proposal would accord with the development plan and there are no material considerations that outweigh this finding. Accordingly, the appeal is allowed, and planning permission is granted.

A Wright

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2021-S278-101B Rev. D and 13177_100 Rev. P1.
- 3) No site clearance, preparatory work or development shall commence until an updated scheme for the protection of retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS5837: Trees in relation to design, demolition and construction – Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 4) No site clearance, preparatory work or development shall commence until a detailed tree felling and pruning specification has been submitted to and approved in writing by the local planning authority. All tree felling and pruning works shall be carried out in accordance with the approved specifications and the British Standard BS3998: Tree work: Recommendations (or an equivalent British Standard if replaced).
- 5) No development shall commence until a landscape scheme, including details of existing trees to be retained and the quantity, size, species, positions and densities of all trees and shrubs to be planted, has been submitted to and approved in writing by the local planning authority. All planting in the approved landscape scheme shall be carried out in the first planting season following completion of the development. Any retained tree or trees or shrubs to be planted as part of the approved landscape scheme which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 6) No development shall commence until a surface water drainage scheme and details of surfacing for the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme and details.
- 7) Prior to commencement of use of the new access onto Offham Road, details of the closure of the existing access onto Offham Road shall be submitted to and approved in writing by the local planning authority. The existing access shall be closed in accordance with the approved details prior to first use of the access onto Offham Road hereby permitted.
- 8) The access onto Offham Road hereby permitted shall not be used until the area of land within the proposed access visibility splays shown on approved plan 13177_100 Rev P1 has been reduced in level as necessary and cleared of any obstruction exceeding a height of 1.05 metres above the level of the nearest part of the carriageway. The visibility splays so created shall be retained at all times thereafter.

- 9) The access onto Offham Road hereby permitted shall be completed in accordance with the approved plan 13177_100 Rev. P1. The access shall be retained at all times thereafter.
- 10) Within 3 months of the date of this decision, details of how the development will enhance biodiversity for bats and birds, including a timescale for implementation, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved details and thereafter retained.