



Appeal Decisions

Site visit made on 22 July 2025

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2025

Appeal A Ref: APP/C1435/C/24/3349106

Land adjoining Brooks Farm, Boreham Lane, Wartling, East Sussex BN2T 1RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Daniel Clay against an enforcement notice issued by Wealden District Council.
- The notice was issued on 11 July 2024.
- The breach of planning control as alleged in the notice is *without planning permission, the excavation of ponds ("the Ponds") in the approximate positions shown coloured green on the attached plan, and the associated excavation of trenches and laying of pipework to the Ponds ("the Pipework's") in the approximate position shown by a green line on the attached plan.*
- The requirements of the notice are:
 - (i) *Drain and empty the water from the Ponds.*
 - (ii) *Remove all Pipeworks from the Land.*
 - (iii) *Backfill the areas from where the Ponds and Pipeworks have been drained, emptied and removed.*
 - (iv) *Cover the top soil and seed with grass seed those areas from where the Ponds and Pipeworks have been drained, emptied and removed to marry in with the contours of the adjacent undisturbed land.*
 - (v) *Remove from the land all materials, rubble, rubbish, debris, tools, machinery and equipment arising from compliance with the above requirements.*
- The period for compliance with the requirements is: *six months after this notice takes effect*
- The appeal is proceeding on the ground[s] set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/C1435/W/24/3349105

Land adjoining Brooks Farm, Boreham Lane, Wartling, East Sussex BN2T 1RS

- 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 Mr Daniel Clay against the decision of Wealden District Council.
- The application Ref is WD/2023/2633/FR.
- The development proposed is described as an application for private ponds.

Summary of decision: The appeal is allowed, and planning permission is granted in the terms set out below in the Formal Decision.

Formal Decisions

Appeal A

1. The appeal is allowed, the enforcement notice (EN) is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the excavation of the Ponds and the associated excavation of trenches and laying of the Pipework's in the approximate position shown on the plan

attached to the notice at Land adjoining Brooks Farm, Boreham Lane, Wartling, East Sussex BN2T 1RS, subject to the conditions in the attached schedule.

Appeal B

2. The appeal is allowed, and planning permission is granted for the application for private ponds at Land adjoining Brooks Farm, Boreham Lane, Wartling, East Sussex BN2T 1RS in accordance with the terms of the application, Ref WD/2023/2633/FR subject to the conditions in the attached schedule.

Preliminary Matters

3. I have amended the description of development under Appeal B and removed the superfluous wording “proposed retrospective planning permission” as these are not necessary here. I am satisfied that no injustice would be caused to either party by doing so.

Matters concerning the enforcement notice

4. The EN is directed at three ponds and the associated pipeworks both shown in green on the plan attached to the EN. Following my site visit it appears that there are additional pipeworks attached to the ponds that are not shown on the attached plan. Caselaw¹ provides that an inaccurate plan can be deleted without offending the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, so long as the site is or can precisely be described in words alone, which is the case here. Given that I am allowing the appeals and thus quashing the EN, both the notice and the plan cease to have effect. I am therefore satisfied that the deletion of the plan and/or correction to the EN are not necessary, and there would be no prejudice to either party.
5. Section 5 of the EN provides the requirements of the notice. I find that parts (iii) and (iv) of the EN are imprecise and overly prescriptive. In regard to part (iii) whilst the appellant is required to backfill the ponds and areas where pipeworks were to be removed, the replacement materials have not been specified. As such, the EN is considered vague and uncertain, such that the recipient would not know how to comply, leading to a the potential nullity of the EN. Furthermore, part (iv) in regard to the restoration of the site, appears overly onerous and prescriptive in its requirements, and could be considered an improvement to the land. There is no provision for an EN to require additional improvements to the land. Nevertheless, as I am allowing the appeals and quashing the notice, there again would be no prejudice to either party.

Appeal A on ground (a), the deemed planning application and Appeal B

Main issues

6. Ground (a) is that planning permission should be granted for the matters alleged in the EN. The main issues therefore are the effect of the development on i) the suitability of its location and the character and appearance of the area; ii) flood risk and iii) ecology and biodiversity.

Reasons

Suitability of location and character and appearance of the area

¹ Wiesenfeld v SSE & Brent LBC [1992] JPL 556

7. The site is located within the Low Weald landscape character area and close to the Pevensey Levels Special Area of Conservation (SAC), Site of Special Scientific Interest (SSSI) and RAMSAR site. Thus, the appeal site has a sensitive relationship within the existing environment. The surrounding area has a strong rural feel, with several sporadic residential dwellings and farm buildings providing an intermittent arrangement to the built environment in the immediate vicinity.
8. The appeal site forms part of an agricultural holding known as Brooks Farm. The site is located adjoining Boreham Lane, and whilst within a relatively open location, views of the site are limited from public vantage points by the established hedges and trees that line the roadside. The site consists of a large pond and associated pipeworks and drainage channelling. There are also two smaller ponds located to the northeast of the main pond which are subject to the EN under Appeal A.
9. Saved Policy EN8 of the Wealden Local Plan (WLP), adopted December 1998 seeks development within the Low Weald to conserve the low rolling agricultural character of the landscape. The Low Weald landscape character area consists of broad, low-lying, gently undulating clay vales. The Low Weald boasts an intricate mix of woodlands and copses which includes lines of riparian trees along watercourses. The area also contains small rivers, streams, watercourses, wet woodland, and ponds.
10. The positioning of the ponds has been located within existing grassed fields which have no special character and does not make a significant contribution to the wider Low Weald landscape. The appeal site is located on private land, and has limited views from public vantage points, given its low level appearance and location amongst existing vegetation including a well-established treed area adjoining Boreham Lane to the southeast. The provision of the ponds provides a natural feature (albeit man-made) within the existing rural environment.
11. During the site visit I noted several water bodies within the area, thus the provision of the ponds is not out of keeping or unexpected in the rural context. Whilst it is acknowledged that the shape of the ponds have an engineered appearance, opposed to other more natural occurring water features, the positioning and intervening landscaping provides screening and ensures that the scheme is not prominent or out of keeping in the landscape. Furthermore, the colonisation and planting of reeds, grasses and other flora has resulted in the ponds receding into the surrounding landscape.
12. The provision of the spoil resulting from the excavation of the ponds, has created a contoured bund between the ponds, which has become seeded and provides visual interest and a green barrier which softens the appearance of the ponds and blends into the rural location. Subject to conditions in respect to additional planting of native species the scheme could provide visual and ecological benefits to the surrounding area.
13. Given its rural location the site is located outside of any defined development boundary and WLP policy GD2 seeks to restrict development outside these areas unless it meets with specific plan policies. Neither party has highlighted a specific policy in the WLP relating to the provision of water bodies, however policy EN1 of the WLP seeks to provide sustainable development, which reflects the aims and objectives of the National Planning Policy Framework (the Framework), which could include the provision of a waterbody for conservation purposes.

14. From the information before me, the ponds have been created to alleviate flooding issues and to encourage wildlife and provide habitats for birds, amphibians, invertebrates and plant species. Should the ponds be used for an alternative purpose, such as a commercial fishery or alike, it would be incumbent for the appellant to seek any relevant planning permission where necessary. Nevertheless, it would be prudent to attach a condition to ensure that the ponds are retained for their intended conservation purposes.
15. Overall, the development would accord with the relevant sections of saved policies GD2, EN1, EN8, EN27 and DC3 of the WLP and policies SPO1, SPO13, WCS12 and WCS14 of the Wealden District Core Strategy (WCS) Local Plan 2013, which collectively seek to manage countryside resources and distinct landscapes including the character of the Low Weald landscape, and ensures that development integrates within the existing landscape, as far as practicable, not to detract from local amenities, amongst other things.

Flood risk

16. The Framework advises that development should be directed away from areas at the highest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Based on the evidence before me the appeal site is in Flood Zone 1, indicating low risk of fluvial flooding. The Council also identify the site as at low risk of surface water flooding in accordance with the Environment Agency's Flood Map.
17. The ponds are located in an open space and in use for nature conservation and biodiversity purposes, thus the National Planning Practice Guidance (PPG) would classify this scheme as "water-compatible development"². Consequently, neither the sequential nor exception tests are applicable here. Nor would the development meet the requirements for a site specific flood risk assessment as set out in footnote 63 of the Framework.
18. Furthermore, East Sussex County Council as the Lead Local Flood Authority (LLFA) have indicated that the scheme is deemed as a minor application and subsequently has provided no comments. Nevertheless, the appellants own evidence highlights that the area has been prone to flooding in the winter months, which has been partly through issues associated with the existing stream becoming silted up, hence the need for the ponds to provide additional attenuation measures at the appellants' land.
19. Conditions can be used to ensure that otherwise unacceptable development could be made acceptable, for example on receipt of further detailed technical information. Given the appeal scheme consists of a water-compatible development within flood zone 1 and is at low risk of surface water flooding, it is unlikely to increase flood risk. Nevertheless, it would be prudent in this case to attach a condition to an approval to provide details of the drainage strategy to ensure that flood risk is mitigated, given the issues associated with silting at the site in the past.
20. Subject to suitable conditions, the scheme accords with the relevant provisions of WLP policy CS2 and the Framework which seek to direct development away from

² Flood Risk and coastal change: Annex 3: Flood risk vulnerability classification

areas at the highest risk of flooding and make adequate provision for drainage by avoiding the risk of flooding including surface water run-off into water courses, amongst other things.

Ecology and biodiversity

21. Whilst located in close proximity to the Pevensey Levels SAC, SSSI and RAMSAR, the appeal site is nonetheless outside these designated habitats. Natural England have been consulted on Appeal B and have raised no objection as the development does not have any significant adverse impacts on the statutory protected nature conservation sites, subject to their standing advice.
22. Ideally, prior to the commencement of development, a competent ecological survey should have accompanied the planning application, in order to accurately establish a baseline against which the effects of the development proposal could have been judged. However, the scheme subject to these appeals has been undertaken to specifically encourage wildlife and provide habitats for birds, amphibians, invertebrates and plant species. Since the ponds have been constructed, and as confirmed on my site visit, the area has been subject to significant colonisation by various flora and fauna including protected species, thus providing an ecological enhancement in the vicinity.
23. Given its retrospective nature, it is likely that the requirements of the EN, which include the draining and emptying of the ponds, would provide a significant loss to the habitats and species currently inhabiting the ponds and the surrounding area. This approach would be problematic and likely to cause additional harm to the existing ecological value of the site. This approach would therefore be contrary to the Framework and the WLP which collectively seek proposals to contribute to and enhance the natural and local environment, minimise impacts on, and provide net gains for biodiversity, which include establishing coherent ecological networks that are more resilient to current and future pressures.
24. The scheme therefore complies with the relevant sections of WCS policies SPO1, SPO13, WCS12 and WCS14, which together safeguard designated nature conservation sites by resisting development which would be likely to adversely affect their nature conservation value. In addition, in this regard, the proposal would satisfy the relevant provisions of WLP Policy EN1 and the Framework which requires schemes to pursue sustainable development.

Conditions

25. The Council has provided a list of suggested conditions that it considers would be appropriate. I have assessed those with reference to the advice in the Framework and PPG and have amended the wording of some without altering their fundamental aims.
26. Given that the permission is being granted retrospectively, in this instance it is not necessary to attach the standard time limit condition or approved plans.
27. To reduce risk of flooding and protect water quality and habitats, a condition requiring submission of details of the drainage strategy is necessary. I have therefore amended the condition to reflect the small scale of the proposal.
28. In the ecological interests of the site, including the conservation of protected and priority species, I have included a condition requiring details of a native planting

scheme to be submitted to the local planning authority. In addition, to conserve biodiversity and the rural character of the area, I have included a condition requiring submission of details of any external lighting to be installed.

Conclusion

29. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The EN will be quashed.
30. For the reasons given above, Appeal B should also be allowed.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

1. The ponds shall be retained for wildlife conservation purposes and/or agricultural purposes associated with the remaining landholding only and not for the keeping of fish or other aquatic or amphibious animals, other than native species, that may colonise the site. The site shall not be open to the public or used for business/trade purposes.
2. Within 6 months of the date of this decision, details of a drainage strategy shall be submitted in writing to the Local Planning Authority for approval. The drainage strategy shall include details of controls of the rate of outflow of water from the pond, controls of the water quality of outflow from the pond, and measures to manage exceedance flows. The approved scheme shall be implemented within 3 months in accordance with the approved details and maintained in accordance with that scheme thereafter.
3. Within 6 months of the date of this decision, details of a scheme of landscaping including planting native flora shall be submitted in writing to the Local Planning Authority. The scheme shall also include details of all existing species to be retained and measures for their protection. The landscaping works shall be carried out within 3 months in accordance with the approved details and maintained in accordance with that scheme thereafter.
4. No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated at the ponds, unless a scheme has been submitted to and approved by the local planning authority detailing that any lighting is to be low level, hooded and directional. The scheme shall be implemented in accordance with the approved details and retained thereafter.