



Appeal Decision

Site visit made on 30 August 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 8th September 2025

Appeal Ref: APP/C1435/C/23/3316604

Land at Millennium Way and Centenary Drive, Heathfield, East Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the “1990 Act”).
- The appeal is made by D Gallagher on behalf of Matthew Homes Limited against an enforcement notice issued by the Wealden District Council.
- The enforcement notice was issued on 12 January 2023.
- The breach of planning control as alleged is the excavation of a trench and the installation of a surface water drainage channel and the erection of a fence.
- The requirements of the enforcement notice are to: (1) Remove the surface water drainage channel. (2) Infill the area from where the surface water drainage channel has been removed, by filling in the trench with soil, covering the area with topsoil and seeding with grass seed to marry in with the contours of adjacent green amenity space. (3) Demolish, dismantle and remove all fencing associated with the development, and (4) remove all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements, (5) permanently connect the surface water drainage to the existing surface water drainage as shown on plan 17510-HEA-5-203-B dated August 2015 approved pursuant to planning application WD/2015/1782/MRM, and (6) remove all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirement.
- The period for compliance with requirements (1) to (4) is 3 months and steps (5) to (6) is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the 1990 Act.

Decision

1. The appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Ground (a)

2. The surface water drainage channel and fence are in a residential development scheme the majority of which is complete and occupied. Outline and full planning permission were granted for the residential scheme subject to several conditions¹.
3. The Council alleges the surface water drainage scheme, as shown on drawing no. 17510-HEA-5-203-B, dated August 2015 and is part of the approved drainage technical note 1 (4 February 2016) identified in condition 8), has not been fully implemented. This is because the as built surface water drainage channel does not accord with the approved details and drawing. The appellant disagrees and provides several technical reports and supporting statements in the bundle of evidence. Together, these documents and statements provide a detailed and elaborate explanation as to why the surface water drainage channel, and protective fence, has been built contrary to the approved scheme. There is no need for me to rehearse those arguments here.

¹ Council ref: WD/2015/1782/MRM granted on 2 June 2016 for reserved matters application pursuant to WD/2013/0635/MEA - erection of 115 new residential dwellings of which 40% are to be affordable. The outline permission imposed a similar condition requiring a surface water drainage scheme.

4. The reasons for issuing the notice refer to the potential effect of the surface water drainage channel and the erection of a fence on trees and the ancient woodland. Against that background, the **main issue** is the effect of the development on the health and well-being of the trees and the ancient woodland.
5. The residential scheme relates to a large site located to the northwest of Heathfield town centre. It is situated to the rear of residential properties that front a highway. The residential development formed a single parcel roughly aligned in a north-to-south direction. Obviously, development of this kind and scale has an urbanising visual effect, but the site slopes downwards in a northerly direction and its northern edge falls within the High Weald Area of Outstanding Natural Beauty, which is a designated landscape. A particular feature of the area's character is mature trees and ancient semi natural woodland, which are irreplaceable habitats.
6. The quantum of the company's evidence is that surface water is likely to follow the area's topography and unlikely to harm trees or the woodland. The channel is designed to drain surface water and technical reports refer to it as part of a sustainable drainage system. The argument is the drain is designed to carry offsite water, and it is connected to a highway drain: it is sleeved, and there are no drainage runs from the site. It is contended that diversion of any off-site drainage water into the existing estate drainage network would impact the functioning of the existing attenuation pond. On the other hand, the Council say the pond could hold the additional surface water and it has not operated at full capacity.
7. The potential effects from climate change should not be overlooked. The expectation is that frequent flash flooding is likely to be a feature of our weather systems with high intensity/propensity rainfall in short periods. Given the amount of hard surfaced areas in the immediate vicinity combined with the area's natural topography, the ditch's location and positioning suggest it is designed to carry considerable quantity of surface water.
8. The open drain follows a natural depression, and I appreciate that the area's geology does not permit infiltration. The updated surveys explain the trees and woodland remain in good health. Nonetheless, the overall layout, fall and location of the ditch results in water flowing towards the ancient woodland. The approved scheme proposed mitigation thereby reducing the effect on the habitat, but it has not been fully implemented. The as built channel effectively bypasses the approved scheme. In addition, the channel unacceptably penetrates the root protection zone of nearby trees, which, to my mind, severely undermines their health, because soil disturbance can significantly affect the trees stability and moisture uptake. Consequently, the channel's location adversely affects the health of the trees, and its layout and design have the potential to affect the ancient woodland.
9. An alternative proposition is to amend the scheme thus avoiding connection to the existing estate drainage system. The suggestion is that the offsite highway drainage pipe be extended and set below ground level, outside of the root protection areas of the trees within the open space and to discharge into the existing ditch on the northern boundary. I have given careful thought to granting planning permission subject to conditions requiring details to be submitted for approval. However, I am not satisfied that, based on the available information, such an alternative scheme can be fully implemented via this appeal. This is because the scheme proposed appears to require detailed technical information, drawings and

assessment on the potential effects to the existing drainage system and attenuation pond. Perhaps this is a matter for the appeal parties to explore.

10. The refusal of retrospective planning permission is likely to be disappointing. I am cognisant of the argument that the local flood lead agreed the location of the unauthorised channel, which suggests an apparent lack of communication within the Council. Nevertheless, the local flood lead's assessment would have been subject to other statutory provisions and considerations. The approval did not amount to a grant of planning permission from the local planning authority for a materially different drainage scheme. I give these arguments limited weight.
11. Drawing all the above points together, I find that the development has the potential to unacceptably harm the long-term health and wellbeing of trees and ancient woodland which, in turn, would undermine the rural character of the surrounding landscape. The location and design of the surface water channel and protective fence is contrary to saved policies GD2, EN1, EN6, EN13 and EN27 of the Wealden Local Plan 1998, and fails to meet with policies SPO13 and WCS14 of the Wealden Core Strategy Local Plan 2013, which are broadly consistent with paragraph 187 and 193 of the National Planning Policy Framework.

Ground (f)

12. The challenge is that the steps required exceed what is necessary to remedy the breach. The appellant company suggests that the steps required should be altered to avoid the connection to the existing estate drainage system on the site. The suggestion is that requirements should state that the offsite highway drainage pipe be extended and set below ground level, outside of the root protection areas of the trees within the open space and to discharge into the existing ditch on the northern boundary. This would, it considers, be reasonable and address the Council's concerns at less expense and disruption.
13. I have already considered elsewhere the merits of granting planning permission for the alternative scheme. Remedial work might also have some impact on the trees, but only for a short period while work is done to comply with the notice. To my mind, the notice seeks to remedy the breach of planning control by making the development comply with the terms of the planning permission, which falls within its scope. That can only happen by full compliance with its steps, which are reasonable and proportionate. I find that the requirements do not exceed what is necessary to remedy the breach. Ground (f) fails.

Overall conclusions

14. For the above reasons and having regard to all other matters raised, I conclude that the deemed application on ground (a) fails, and planning permission is refused on the deemed application. Ground (f) also fails.

A U Ghafoor

INSPECTOR