



Appeal Decision

Site visit made on 26 September 2025

by **P Burley BA (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 October 2025

Appeal Ref: APP/M2270/W/25/3368358

Land adjacent to Liptraps Lane, Royal Tunbridge Wells, Kent TN2 3AB

- 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 Peter Bancroft (PB Abbey Ltd) against the decision of Tunbridge Wells Borough Council.
 - The application Ref is 24/03175/FULL.
 - The development proposed is the erection of residential dwelling with associated parking, garden and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of residential dwelling with associated parking, garden and landscaping at land adjacent to Liptraps Lane, Royal Tunbridge Wells TN2 3AB in accordance with the terms of the application, Ref 24/03175/FULL, and subject to the conditions in the attached schedule.

Preliminary Matters

2. The Council has noted that the appeal site was cleared of trees, hedges and woodland which contributed positively to the area and resulted in the loss of ecological and biodiversity value prior to the submission of the application. The appellant has said that the works were part of a cycle of growth and clearance of vegetation on the site and has noted that clearance also took place in previous years. Whilst the Council accepts that levels of vegetation on the site have varied to a degree over recent decades and has not suggested that any unauthorised works or unlawful activity has taken place, it has said that on the balance of probability these works occurred to facilitate the potential development of the site and therefore they should form part of the assessment of the application.
3. I consider that I do not have sufficient evidence to draw a conclusion, even on the balance of probabilities, in respect of the appellant's motivations for clearing the site. In any event, I must base my assessment on the situation at the time of my decision and, therefore, the pre-application clearance works cannot form part of my assessment of the appeal application.
4. The Council has said that in the event that I reached that conclusion, the clearance works would no longer form part of the first reason for refusal, although this reason would still be relevant in part due to the visual impact of the proposal within a designated Area of Landscape Importance (ALI), and that the third reason for refusal would be no longer relevant as the application would comply with the statutory biodiversity net gain (BNG) requirements. Having reviewed the

appellant's submissions I agree with the Council's conclusions in relation to BNG and, therefore, I have determined the appeal on that basis.

Main Issues

5. The main issues are:

- the effect of the appeal scheme on the character and appearance of the area;
- whether there would be acceptable living conditions for the future occupiers of the appeal scheme, with specific regard to natural light and privacy; and
- the effect of the appeal scheme on the living conditions of occupiers of nearby residential properties, with specific regard to the outlook of 11A, 13 and 15 Birken Road.

Reasons

Character and Appearance

6. The appeal site is in an ALI, designated because the trees within it help to define neighbourhood boundaries and because it is locally important in views from surrounding areas. Policy EN22 of the Tunbridge Wells Borough Local Plan (2006) (LP) requires that proposals for development affecting ALI will only be permitted where no significant harm would be caused to the appearance or landscape character of the designated area and the development would not materially detract from the contribution which that area makes to the locality. Emerging Policy EN16 of the Tunbridge Wells Borough Submission Local Plan (2021) (SLP) sets out similar provisions.
7. Whilst the site has been cleared of trees and other vegetation, the appeal scheme would remove the potential for the whole site becoming re-established with trees / vegetation. Although landscaping is proposed to soften the visual impact of the proposed development, there would nevertheless be harm to the contribution that the site would make to the ALI which is a natural 'break' between neighbourhood areas and which, prior to clearance, was used by local wildlife. Such harm would be particularly apparent to users of the adjacent public right of way (PRoW).
8. However, the appeal site is a small, enclosed parcel at the edge of the ALI, physically and visually related to surrounding residential plots, and screened by woodland to the west. The proposed dwellinghouse has been designed to be subservient to and respectful of the landscape and whilst modern in style it would not be at odds with the wider area where there is not a uniform design or character. Despite the small size of the site, the design responds positively to the sloping land and would not appear to be cramped, contrived or incongruous. Although the appeal scheme might represent a change in users' experiences of the PRoW, this ought to be seen in the context of the small part of the PRoW that would be affected.
9. Therefore, whilst there may be a detrimental impact to the character of the local area as a result of development on an ALI, the appeal scheme would not result in significant harm and therefore the appeal scheme would not be contrary to LP Policies EN1 and EN22, Core Policy 4 of the Tunbridge Wells Borough Core Strategy (2010), and emerging Policies EN1 and EN16 of the SLP which together seek development that responds appropriately to its context and which does not

result in significant harm to the appearance and character of an ALI. Although the Council has referred to SLP Policy EN12 in the reason for refusal relating to character and appearance, that draft policy relates to the removal of trees and I do not consider it to be directly relevant to this issue.

Living Conditions – Proposed Dwellinghouse

10. In respect of natural light, the Council has acknowledged that the daylight and sunlight assessment that has been submitted as part of the appeal demonstrates that the proposal would comply with the Building Research Establishment Guidelines 'Site Layout Planning for Daylight & Sunlight. A Guide to Good Practice' (BR 209 2022 Edition) and therefore the part of the second reason for refusal relating to inadequate natural light has been overcome.
11. The Appellant's Privacy and Overlooking Analysis illustrates that the combination of separation distances, level changes, boundary fencing and planting would mean that the rear amenity area of the appeal scheme would not be directly overlooked by 11A, 13, and 15 Birken Road. The appellant has also said that there would be no direct line of sight into the first-floor rear windows of the proposed dwellinghouse and that any views into those windows would be limited and largely obstructed, and confined to the very upper portion of the glazing above head height. The Council has disputed this, saying that the proposed dwelling would be significantly overlooked by properties along Birken Road and that while a degree of overlooking is to be somewhat expected in residential areas, given how close these dwellings are situated, there is likely to be a harmful relationship.
12. Having regard to the evidence provided by the appellant, I consider that there would be potential for some degree of overlooking from the properties on Birken Road. However, some degree of overlooking is not unusual in urban areas and I do not find that the degree of overlooking in this case to be unacceptable. Therefore, I consider that the appeal scheme complies with LP Policy EN1, emerging Policy EN1 of the SLP, and the general guidance in the Council's Alterations and Extensions SPD 2006 which together say that proposals should provide adequate residential amenities for future occupiers of the development, including in respect of privacy.

Living Conditions – Existing Dwellinghouses on Birken Road

13. The appeal scheme would change the rear outlook for 11A, 13, and 15 Birken Road. Although the Council has said that this change would be significant, would block off the view of much of the ALI and therefore that it would result in an unacceptable loss of outlook, it has acknowledged that the planning system does not give neighbours a right to a view.
14. Whilst there would be a change in the outlook from 11A, 13, and 15 Birken Road, the appeal scheme would be at a lower elevation than those properties and there would be a satisfactory degree of separation between the existing and proposed dwellings. As such the appeal scheme would not be overbearing or oppressive and therefore accords with LP Policy EN1 as well as with emerging Policy EN1 of the SLP which seek to avoid significant harm to adjoining occupiers, including in terms of outlook.

Other Matters

15. An interested party has noted that the site is close to a busy road junction and that increased traffic, as well as plant and construction vehicle access, could result in significant disruption and heightened danger to pedestrians using the PRoW. However, given that this would be a small-scale development of a single dwellinghouse, I consider it unlikely that there would be any unmanageable effects.
16. An objector has said that the appeal scheme would place additional strain on already-overstretched infrastructure, including sewage systems, water supply, electricity, and telecommunications networks, all of which are under considerable demand, and that access to essential services such as schools and GP surgeries is already a concern for existing residents, and this development would exacerbate those pressures. However, the Council has not indicated that any contributions should be sought from the appellant to make the development acceptable and, therefore, I do not find that these matters should weigh against the appeal scheme.
17. It has also been noted by an objector that the appeal scheme would result in a net loss of biodiversity and ecological value, with no clear or credible measures to compensate for this deficit, that there is insufficient evidence to demonstrate that protected species would not be adversely affected or that adequate habitat mitigation would be provided. However, and based on the appeal application, I am satisfied that there would not be an adverse effect on protected species and note that the standard biodiversity net gain condition, per schedule 7A of the Town and Country Planning Act 1990 (as amended), would apply to the appeal scheme.

Conditions

18. I have reviewed the conditions proposed by the Council, all of which the appellant has agreed to, in light of the tests in the National Planning Policy Framework (the Framework) and advice in the Planning Practice Guidance.
19. In addition to the standard time condition, I have imposed a condition requiring that the development be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. Similarly, and in the interests of certainty, I have attached a condition requiring that the materials are as specified in the application.
20. A further condition requiring details of any boundary treatment, and of landscaping are also necessary, in the interests of the character and appearance of the area.
21. Given the nature of the site and the surrounding area I have also attached a condition which removes a number of permitted development rights in the interests of the character and appearance of the area and to maintain the living conditions of occupiers of nearby residential properties.
22. In the interests of highway safety, a condition requiring provision from the outset and retention of the approved car parking is required.
23. Conditions relating to the protection of trees during construction, to ensure that the habitats of protected species are safeguarded and maintained, and to ensure that biodiversity net gain proposals are appropriate, are necessary in the

interests of the local environment and biodiversity. In addition, given that ground conditions are not known, a condition to deal with any unexpected contamination that may be encountered is necessary.

24. Whilst an objector raised concerns about construction-related impacts, given the size of the proposed development I consider that a condition requiring a construction management plan would not be necessary.

Planning Balance and Conclusion

25. Although I have identified that the appeal scheme would result in a small amount of harm to an ALI, the harm would not be significant which is the threshold for unacceptability in the relevant development plan policy. I have not identified any other conflicts with development plan policy. Overall, therefore, I find that the appeal scheme complies with the relevant LP policies. It also complies with the relevant emerging policies of the SLP.
26. The Council does not have a five-year supply of housing land and, accordingly, paragraph 11 d) of the Framework is engaged. The appeal scheme would result in the delivery of a single dwellinghouse, a benefit to which I attach significant weight given the Council's housing land supply position. I have not identified any impacts that would significantly and demonstrably outweigh that benefit.
27. I conclude that the appeal scheme accords with the development plan taken as a whole such that it should be allowed, and that there are no other material considerations which suggest that an alternative conclusion should be reached.

P Burley

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Proposed Site Plan – A102 – Rev 1;
 - Proposed Floor Plans – A103 – Rev 1;
 - Proposed North and West Elevations – A201 – Rev 1;
 - Proposed South and East Elevations – A202 – Rev 1;
 - Proposed Site Sections – A301 – Rev 1;
 - Proposed 3D Renders – A303 – Rev 1;
 - Proposed Façade Details – A601 – Rev 1; and
 - Proposed Landscape Plan – A104 – Rev 1.
- 3) The development shall be carried out in strict accordance with the details of external materials specified in the application.
- 4) The area shown on drawing number 'Proposed Site Plan – A102 – Rev 1' as a vehicle parking space shall be provided, surfaced, and drained in accordance with the details hereby approved before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of and visitors to the development for the lifetime of the development. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to the reserved parking spaces.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and/or re-enacting that Order), no development shall be carried out within Classes A, B, C, D, E and F of Part 1 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order), without prior planning permission of the Local Planning Authority.
- 6) The development shall be carried out in accordance with the tree protection details contained within the submitted Arboricultural Impact Assessment and Method Statement (Dated 25/03/2024) and the 'Tree Protection Plan – TPP-101 – Rev C'. All trees to be retained must be protected by barriers and / or ground protection in accordance with the current edition of BS 5837 throughout the construction and development phase.
- 7) The development shall be carried out in strict accordance with the mitigation sections of the submitted Preliminary Ecological Appraisal (Updated 26/06/2024), Badger Survey (Updated 26/06/2024) and Badger Presence and Mitigation Plan (Dated 26/06/2024) throughout the construction and development phase.
- 8) Prior to the first occupation of the development hereby approved, details of fencing or boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out in accordance with the approved details and shall be maintained thereafter. No further fencing or other means of enclosure shall be erected within the site.

- 9) A landscaping scheme for the site shall be submitted to and approved in writing by the Local Planning Authority before the development is first occupied. Thereafter, the approved landscaping / tree planting scheme shall be carried out fully within 12 months of the completion of the development. Any trees or other plants which within a period of five 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 unless the Local Planning Authority give prior written permission to any variation.
- 10) If during construction / demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.
- Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of:
- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
 - b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
 - c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.
- 11) Prior to any construction works above damp-course level, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall take account of any protected species that have been identified on the site, and in addition shall have regard to the enhancement of biodiversity generally. The scheme shall be implemented in accordance with the approved proposals and shall be carried out for the lifetime of the development.

End of Conditions