



Appeal Decision

Site visit made on 1 December 2025

by C Coles MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2026

Appeal Ref: APP/C1435/W/25/3372124

Bircholt, Marlpits Lane, Ninfield, East Sussex TN33 9LD

- 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 Wayne Carley of Carley Developments Ltd against the decision of Wealden District Council.
 - The application reference is WD/2025/0316/F.
 - The development proposed is new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form and decision notice refer to the site as Bircholt. The appeal form refers to the site as Birch Holt. I have taken the site address as Bircholt and this was confirmed by my site visit.

Main Issues

3. The main issues are:
 - Whether the site represents a suitable location for a dwelling having regard to locational strategies in the development plan, and:
effect of the proposal on:
 - the character and appearance of the area, having particular regard to the location of the site within the High Weald National Landscape (HWNL);
 - protected trees and hedgerows;
 - protected species; and
 - land stability.

Reasons

4. The appeal site comprises an area of land associated with the former Bircholt Retirement Home which has subsequently been converted into a terrace of six dwellings. The site lies outside the development boundary of Ninfield within a countryside location. Access is taken from the existing access on Marlpits Lane serving the terrace.

5. The site is open to the north and backed by countryside, is steeply sloped and has been cleared of vegetation over the past year. There is a substantial difference in levels from the south to the north of the site and the site has previously been subject to land slippage. Trees screen the eastern boundary with some hedgerows and vegetation on the northern boundary. The site is readily visible from Marlpits Lane, the Public Right of Way to the north of the site (Public Footpath Ninfield 22) and from the north.

Location

6. It is common ground between the parties that the site lies outside the development boundary within a countryside location. Policies GD2 and DC17 of the Wealden Local Plan 1998 (WLP) resist new development in the countryside which is not essential for agriculture or forestry needs or has some other justification for a rural location. The proposal is not essential for agriculture or forestry and does not require a countryside location.
7. The proposal would be located at the end of existing residential development. Whilst the presence of residential development adjacent to the proposed site is noted, this formed the conversion of an existing building into dwellings and not the erection of a new dwelling, therefore the policy circumstances surrounding the conversion were different.
8. Ninfield is a local centre with a limited supply of social and economic infrastructure. The residents of the proposal would be able to walk to the village centre and bus stop, however, this would be on an unlit road with no pavement. Access to services would therefore be likely to be undertaken by car due to the lack of footpaths and narrow and unlit highways leading to the site.
9. The principle of the proposed development in this location would therefore be contrary to policies GD2, EN1 and DC17 of the WLP, Policy N1 of the Ninfield Neighbourhood Plan (NP), Objective SPO7 and Policies WCS13 and WCS14 of the Wealden District Core Strategy Local Plan 2013 (WDCCS). These policies seek to resist development outside development boundaries unless it is in accordance with specific policies in the plan and encourage the reduction in the need to travel by car.

High Weald National Landscape

10. The site is set within the HWNL, where great weight is given to conserving and enhancing its landscape and scenic beauty and it has the highest status of protection in relation to these issues as set out in paragraph 189 of the National Planning Policy Framework (the Framework) and Policy EN6 of the WLP. The primary purpose of National Landscape designation is to conserve and enhance natural beauty.
11. The Levelling-up and Regeneration Act (2023) amended Section 85 of the Countryside and Rights of Way (CROW) Act, to create a new duty on planning authorities to 'seek to further the purpose of conserving and enhancing the natural beauty of the area' when considering developments in National Landscapes. The new duty replaces the previous requirement for relevant authorities to 'have regard' to the purpose of National Landscapes and is intended as a more proactive and strengthened requirement.

12. The natural beauty of the HWNL is derived from the essentially rural landscape character. However, the HWNL is particularly vulnerable to development which fails to respect local distinctiveness in terms of materials, detailing and relationship to neighbouring buildings.
13. The High Weald AONB Management Plan was formally adopted in December 2024 and recommends that new development should be 'landscape-led' and consistent with the objectives set out in this Plan. These are expanded upon in the High Weald Housing Design Guide which aims to create schemes which contribute positively to the character and natural beauty of the HWNL.
14. It is acknowledged that the site would be adjacent to existing residential development and would not constitute an isolated dwelling. However, the proposal would be located in a prominent position at the edge of the ridge top. The openness of the site's boundaries varies, with a tree line to the east, however the site is open on approach from the south and long-range views exist from the road across to unspoilt countryside to the north due to the change in levels. The position of the proposal on the site adds prominence to the height of the proposal, especially when viewed from the Public Footpath and from far reaching views from the north.
15. The existing residential development adjacent to the site is linear and due to the sites location outside of the linear form of the existing development, the proposal would not appear as a natural infill site but would extend an urbanising residential use out into the HWNL. Given its position on a bend and at the top of a slope, the proposal would be unduly prominent.
16. Whilst planning permission has previously been approved for a triple bay garage on the site, this would not have required any of the retaining structures needed to support the proposal, define the residential curtilage or domestic paraphernalia associated with the proposal. The triple bay garage would also be single storey, not two-storey and would be orientated east-west and not north-south therefore not extending as far towards open countryside.
17. I have not been provided with details of the retaining infrastructure to enable me to accurately assess the impact on the HWNL, however, the retaining structures as well as the parking area and terracing, would have an urbanising effect on the rural qualities of the HWNL. As a result, the proposal would neither conserve nor enhance the wider natural and scenic beauty of the HWNL or further its purposes.
18. I note it would be possible to remove permitted development rights relating to built form on the site and obtain a landscaping scheme through condition. However, landscaping would take years to be mature and, on the information before me, it has not been demonstrated that planting would be sufficient to adequately minimise the adverse effect of the proposal on the HWNL due to the topography of the site, available long distance views and the fundamental urbanisation of the site. It is also the case that landscaping cannot be secured in perpetuity.
19. In conclusion, the proposed development would neither conserve nor enhance the HWNL or further the purposes of the HWNL and would result in harm to the rural character and appearance of the area. The proposed development would conflict with Policies EN6 and EN27 of the WLP, and Policy N10 of the NP. These policies seek to conserve or enhance the natural beauty and character of the landscape with particular care paid to the siting, scale, layout and design of development.

20. Policies EN19 of the WLP and SPO2 of the WDCS are referenced in the decision notice. However, these policies relate to the historic environment and also to tourist development and I have not been provided with evidence the site falls within a historic environment such as a conservation area or that the proposal is for tourist accommodation. I do not consider these policies relevant to the proposal.

Trees and Hedgerows

21. The site is largely screened by trees and hedgerows from Marlpits Lane to the east. These are prominent in the street scene and are positive features in the locality, contributing to the verdancy of the High Weald Landscape and being a typical characteristic of it. It is noted that a significant amount of site clearance has already taken place which is likely to have resulted in the loss of and damage to trees and undermined their longevity.
22. I have not been provided with substantive evidence that the arboricultural constraints on the site have been considered when the proposal was designed to ensure there would be no significant effect on the trees and hedgerows adjacent to the site or that any harm would be mitigated or compensated for. On the basis of the evidence before me I have considerable concerns the proposal would cause harm to the trees and hedgerows from the construction of the proposal or from future pressure from occupiers of the proposal due to the trees close proximity to the boundary of the site.
23. It has also not been clearly demonstrated that the proposal could be constructed using raft foundations due to the Preliminary Geotechnical Site Assessment submitted with the appeal suggesting piled foundations may be required which would have a greater impact on the roots of the trees.
24. In the absence of sufficient evidence demonstrating the trees and hedgerows would be able to be retained and would not be harmed by the proposal, I do not consider a condition requiring submission and approval of a detailed AIA and Tree Protection Plan would be enforceable, therefore meeting the test in the Framework, paragraph 57.
25. In conclusion, I have not been provided with sufficient information to demonstrate the proposed development would not result in harm to trees or protected hedgerows which have significant amenity value. The proposal would be contrary to Policies EN12 and EN14 of the WLP which seek to retain and enhance the contribution of trees and woodland areas to the landscape character of the District.

Protected Species

26. On the basis of the information submitted with this appeal, I have not been provided with sufficient information to have certainty that any potential impacts to Great Crested Newts (GCN) can be suitably mitigated. The appellant is aware of the need to undertake further surveys to understand the potential impact of the development on GCN or, in the absence of the surveys to obtain a District Level Licence (DLL). Whilst the appellant has confirmed they are in the process of obtaining a DLL, this has not yet been secured. In the absence of the DLL, it cannot be determined whether the proposal would lead to unacceptable and unmitigated harm to GCN. Without confirmation that there would be a reasonable prospect of mitigation being secured, it is not possible to be certain there would not be adverse impacts on GCN

and the conditioning of such would not meet the test of enforceability in the Framework, paragraph 57.

27. The appellants Preliminary Ecological Appraisal highlights the need for a ground level tree assessment to understand the impact of the proposed development on protected species (bats) and their habitat which has not been provided. The lack of information regarding the habitat value of the site prior to its clearance means that the sites previous ability to support protected species is missing and I am unable to conclude that there would be no harm to protected species or that this could be mitigated to ensure the favourable conservation status of the protected species and that the loss of habitat could be off-set. I am unable to secure appropriate mitigation through conditions without the missing information as no baseline has been established as a starting point.
28. In conclusion, on the basis of the information provided, insufficient information has been submitted to demonstrate the proposed development would not result in adverse impacts on protected species. The proposed development would be contrary to Policy WCS12 of the WDCS and the Conservation of Habitats and Species Regulations 2017 which seek to prevent a net loss of biodiversity and maximise opportunities to ensure habitats, biodiversity features and ecological features are maintained, restored and enhanced.

Land Stability

29. The appeal site has a history of land instability which brings into question the suitability of the site for the proposed development. It would appear that a substantial amount of regrading of the site would be required alongside the use of retaining walls, the detail of which is currently unknown. I am therefore unable to make an assessment of the effect of the retaining structures on the site and surrounding area or the site for residential development.
30. Whilst the Preliminary Geotechnical Site Assessment has concluded from a site walkover that the potential for instability on the site is considered low-medium risk with no evidence of ground movement, the site assessment recommends that prior to any future development an intrusive ground investigation is carried out. The assessment concludes that piled foundations may be required for the proposed development as is typical for sloping sites as well as active slope stabilisation measures to enhance the stability of the sloping garden. Due to the history of land instability at the site it is not considered the assessment provided is proportionate to the concerns over the ability of the site to be safely and acceptably developed.
31. The Assessment was not based on any intrusive site surveys. The completion of intrusive surveys could have an effect on the positioning and layout of the proposal on the site as well as the design of the dwelling, its foundations and any associated retaining features including landscaping. In light of the uncertainty regarding the land stability and the ability of the site to safely accommodate the proposed dwelling in its current format I am unable to condition the additional survey as a pre-commencement condition as the results may require alterations to the proposal.
32. In conclusion, I have not been provided with sufficient information to demonstrate the land is sufficiently stable to accommodate the proposed development and is therefore contrary to the Framework which requires that planning decisions ensure a site is suitable for its proposed use.

Other Matters

33. The Council addresses third party concerns in relation to the requirement for a Housing Needs Assessment, damage to the access road and the road network and pressure on the road network. I have no reason to take a different view from those expressed by the Council.
34. My attention has been drawn to application WD/2024/0733/F (0733), however, I have not been provided with substantive information about the case. Despite this, the Council refers to differences between the applications, the most significant of which being the location of 0733 outside of the HWNL, not within a prominent ridgetop location and being single storey. From the limited information before me I do not consider 0733 and the appeal to be comparable and it has not been determinative in my decision.
35. I have also been directed towards two appeal decisions¹. Whilst I have been provided with the appeal decision notices, I have not been given further details. Despite this, my reading of the appeals leads me to the conclusion they are not directly comparable due to the appeals not appearing prominent in wider and longer views from outside the site and thus having no significant harmful effects on the AONB (now National Landscape). In relation to this appeal I have identified harm to the HWNL from the appeal sites prominent location on the ridgetop with far reaching views from the north and south of the proposal. The two appeals were also located in a location with greater ease of access to goods, services and facilities and would make a greater impact on the housing land supply position than this appeal site. I note the appellant considers the key points in the appeals are planning principle and consistency of decision making. However, each application and appeal should be assessed on the individual merits of the case and this includes more than an assessment of the sites location but the physical context of the sites. The weight given to policies is a matter for the decision maker.
36. The appeal site lies more than 7km from the Ashdown Forest Special Protection Area (SPA). Visitor surveys have demonstrated that it is residents living within 7km of the Ashdown Forest that are likely to visit this European protected site. As such, the Council has taken the view that the evidence held does not indicate a pathway of effect for recreational disturbance.
37. Natural England's supplementary advice on conserving and restoring the Ashdown Forest Special Area of Conservation (SAC) explains that the heathland habitat of the Ashdown Forest is sensitive to changes in air quality. Exceedance of 'critical values' for air pollutants may modify its chemical substrate and cause the loss of typical heathland species. However, I understand that Natural England was satisfied that significant housing allocations in the emerging (but now withdrawn) local plan could be accommodated without the need for mitigation measures.
38. Having regard to this, the Council has taken the view that a single dwelling on the appeal site would not, alone or in combination with other plans and projects, have an adverse effect on the integrity of the SAC. Based on the information provided, I have no reason to take a different view. Given the above analysis, there would be

¹
APP/C1435/W/22/3298263 (3298263)
APP/C1435/W/20/3265449 (3265449)

no likely significant effect on European sites and an Appropriate Assessment, in accordance with Regulation 63 of the Habitats Regulations, is not required.

39. Whilst the proposal is for a self-build dwelling, I have not been provided with a suitable method of securing the proposal as a self-build. I note the Council have suggested a condition to secure the dwelling as a self-build, however this would not meet the tests in paragraph 57 of the Framework. If the proposal had been acceptable in all other respects, a S106 agreement or a Unilateral Undertaking would have been sought from the appellant to secure the dwelling as a self-build for Biodiversity Net Gain purposes.
40. I note the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

Planning Balance and Conclusion

41. The Council concedes that it is unable to demonstrate a five-year supply of deliverable housing sites. I am advised that the current supply position is 3.44 years and this is not contested. Paragraph 11d of the Framework indicates that where the requisite land supply cannot be demonstrated permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
42. The housing land supply position means that policies GD2 and DC17 would be deemed out-of-date for the purposes of the Framework. This limits the weight that can be afforded to the conflict arising from the position of the site outside of the settlement boundary. This factor is not, therefore, decisive.
43. Paragraph 11 d(i) indicates that the presumption in favour of sustainable development would not apply where the application of the policies in the Framework, as summarised in Footnote 7, provides a strong reason for refusing the development. National Landscapes are included within Footnote 7 and paragraph 189 of the Framework makes clear that great weight should be to conserving landscape and scenic beauty within such designations.
44. For the reasons identified above, I have identified harm to the HWNL from the proposal due to the prominent location of the proposal in wide and long distant views from the HWNL and the urbanising effect of the proposal and its associated retaining structures. I have also identified harm on the HWNL in relation to the potential effects on the trees, hedgerows and ecology. I also cannot be certain that alterations to the siting and design of the proposal and the retaining structures would not be required due to the potential for land instability. The proposal would not further the purposes of the National Landscape and together, these provide a strong reason for refusing the development. Consequently, the appeal scheme does not benefit from the presumption in favour of sustainable development.

45. The proposal conflicts with policies of the development plan in respect of the effect of the proposal on the HWNL, trees and hedgerows, protected species and land stability. I have taken account of the modest benefits of delivering an additional dwelling in the context of a significant housing shortfall. I have also taken account of the site's location which would provide opportunities for occupants of the development to access the limited services and facilities within the Ninfield local centre, and public transport, albeit along an unlit road with no pavement. However, these material considerations do not indicate a decision otherwise than in accordance with the development plan. For the reasons given above the appeal should be dismissed.

C Coles

INSPECTOR