



Appeal Decision

Site visit made on 27 January 2026

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 February 2026

Appeal Ref: APP/W4325/W/25/3373358

Land to the rear of 2 The Ridgeway, Meols CH47 9SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by The Ridgeway Exclusive Land Ltd against the decision of Wirral Metropolitan Borough Council.
 - The application Ref is OUT/21/02244.
 - The development proposed is outline approval (access and scale) for up to two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision notice and appeal form description of development included that the proposal was "*on land to the rear of No. 2 The Ridgeway.*" I have removed from the description above as it does not describe the development type. I have added it into the site address for best clarity, as the site has now been separated from and is in a different ownership to the dwelling at No. 2.
3. The original application form cited the appellant as Ms Owen. I have seen her written confirmation for The Ridgeway Exclusive Land Ltd to submit the appeal on her behalf, as cited on the appeal form.
4. The appeal is in outline with all matters reserved except for access and scale. The submitted plans are therefore illustrative only where they relate to appearance, landscaping, and layout. The proposal was originally for 3 dwellings, which the appellant reduced to two dormer bungalows during the determination period. I have therefore taken this extent of scale as the basis for my assessment.
5. The Council submitted an appeal decision as late evidence after the Final Comments stage¹, relating to the matters of securing financial contributions. The 'Procedural Guide – Planning Appeals, England' identifies that late evidence may be a relevant decision made on another case, and I accepted it into the evidence. I did not accept the Council's subsequent request to submit other such decisions, as further examples would not usefully expand on this as a point of principle. I address this further under 'Other Matters' below.
6. Policies from the Wirral Unitary Development Plan are cited on the decision notice, but were superseded on the 31 March 2025 by the adoption of the Wirral Local Plan 2022-2040 (LP).

¹ APP/W4325/W/25/3370855: 79 Grove Road, Rock Ferry, Wirral CH42 3XT

Main Issues

7. The main issues are:

- the effect of the proposed development on biodiversity;
- the effect of the proposed development on the character and appearance of the area;
- whether the proposed development would be in an appropriate location with regard to flood risk; and
- whether there would be suitable access to the highway.

Reasons

Biodiversity

8. This section considers the effect on trees, on priority habitats and species, and then provides an overall conclusion.

Effect on Trees

9. The site comprises an overgrown area of land to the rear of the dwelling of No. 2 The Ridgeway, accessed via a narrow track that along the rear of several Heron Road dwellings. It has been unmanaged for a prolonged period, leading to the colonisation of self-seeded pioneer species and overgrown garden remnants and scrub. Although landscaping is a reserved matter, the impact on trees results from the consideration of scale, and is therefore relevant. Trees are important for many reasons, including for biodiversity, tackling climate change, improving storm water management, air quality, and visual amenity.
10. The appeal was accompanied by a new Arboricultural Impact Assessment (AIA) and an Arboricultural Method Statement. The associated Preliminary Tree Constraints Plan identifies 10 trees and one tree group within the site, including one boundary tree, plus an overhanging tree just outside its boundary, and one tree group entirely outside of the site.
11. The proposal would remove all trees except T1 within the site, and T10 on its boundary, both being 'moderate value category B'. There would also be protection for category B tree T8 just outside of the site. All the trees for removal are 'low value category C', plus one category U (50% dead due to Ash dieback).
12. The site is not within a Conservation Area, and contains no Tree Preservation Orders. As statutory consent is not required before carrying out any proposed tree works, the appellant therefore concludes that the impact on trees should not have been a reason for refusal. Nonetheless, the trees currently exist, and their loss would be directly caused by the proposal sought. Development plan policies and guidance require tree protection or replacement, and these policies do not identify any specific exclusions for where trees have no statutory protection.
13. Moreover, although the statutory Biodiversity Net Gain (BNG) requirement does not apply because the application was submitted prior to it coming into force, BNG would apply to any future application on the site if I were to dismiss this appeal. Any vegetation loss after my decision would then be taken into account in future BNG calculations, at least in the short term. I therefore find the appellant's

argument relating to the lack of statutory consent is not a fallback position which negates my need to consider the trees as having existing protection.

14. The LP Policy WD1 states that in assessing the protection for trees on development sites, the Council will consider their health, structure, size, life expectancy, their visual and nature conservation value, and will require development to be sited in order to substantially preserve wooded character. It further identifies that where the loss of trees is to be permitted, replacement trees in a suitable location are normally required, having regard to the Council's Tree, Hedgerow and Woodland Strategy 2020-2023 ('the Tree Strategy'). The LP Policy WS7 similarly requires the protection and enhancement of existing trees and hedgerows in accordance with their value.
15. The Tree Strategy is cited on the decision notice. It forms guidance produced in conjunction with a wide range of stakeholders, and indicates the Council's aspirations to guide and influence tree and hedgerow planting across Wirral. Paragraph 3.1(v) states that where tree loss is unavoidable, replacement requirements for minor applications will be determined on a case-by-case basis, which considers the number, size, species, and value of the trees lost. Where provision of replacement trees on site is not reasonably possible, a financial contribution to achieve planting and maintenance of trees off-site on Council land should be considered.
16. The Supplementary Planning Guidance Note 10 'Backland Development' part (xii) also specifies that any development should retain as many trees as possible, particularly boundary trees. Paragraph 136 of the National Planning Policy Framework ('the Framework') (2024) also states that decisions should ensure that existing trees are retained wherever possible, and paragraph 187(b) reiterates that decisions should contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital and ecosystem services, including from trees. Overall, it is evident that trees have significant general protection within the development plan and relevant guidance.
17. Notwithstanding that the plans are indicative so as to allow for future layout and landscaping amendments, the site restrictions are such that any proposal for two dwellings would have a significant impact on vegetation. Protection of the remaining trees and any works to improve their health and longevity, would not address the above policy requirements. That the trees to be lost are all category C does not indicate they make no useful contribution, particularly when in this instance the extent of loss would be cumulative. The appeal makes no provision for any replacement trees, which would need to be secured off-site via a financial contribution. Due to the lack of information available to me on this matter, it would not be reasonable or sufficiently precise to defer consideration of this through the imposition of a condition.

Effect on Priority Habitats and Species

18. The UK Biodiversity Action Plan (UK BAP) sets a baseline list of habitats and species of national conservation importance (as transposed under section 41 of the Natural Environment and Rural Communities Act 2006). The North Merseyside Biodiversity Action Plan (NMBAP) lists key local species/habitats considered to be rare or declining in the area. The Preliminary Ecological Appraisal (PEA) identifies that the site contains UK BAP and NMBAP listed habitats of 'Ponds'. The site's pond is likely to host several invertebrate species, with the surrounding terrestrial

habitat being particularly favourable for amphibians. The site also contains the NMBAP listed habitat of 'Urban Green Infrastructure', which is habitat in an urban environment which holds significant value as refuge for rare or declining species.

19. The PEA also identifies the potential for several priority species to be using the site, the most probable being hedgehogs, toads, and birds. Black Bryony was recorded, being a north-west priority species. Other non-priority species such as common frogs and other birds are also likely.
20. The PEA recommends that a mixed-species native hedgerow should be planted along the new dwelling boundaries, to preserve the favourability of the site for wildlife and to retain it as a commuting corridor. Proposed biodiversity enhancements are swift and sparrow boxes, bee houses, and a hedgehog hibernaculum. The Ecological Conditions Report (Tyrer Ecological Consultants Ltd, June 2025) builds on the EA recommendations, and includes a Biodiversity Enhancement Plan as suggested mitigation. This also suggests additional native landscaping where feasible, and bat boxes.
21. If I allow the appeal then I could impose a condition requiring the retention or relocation of the Black Bryony within the site. Conditions could secure aspects such as ecological and tree protection during construction. I acknowledge that Wirral Wildlife did not object to the application.
22. Nonetheless, the large majority of the site's ecological value would still be lost. I am unconvinced that hedgerow around domestic gardens would replace the ecological value of the identified priority habitat types, particularly for breeding birds and amphibians. No specific pond habitat mitigation measures are identified, and areas available for native landscaping appear minimal, and may conflict with domestic garden use. I also note that the 5 'trees to be retained' shown on the Biodiversity Enhancement Plan do not align with those specified within the AIA. The hedgehog hibernaculum would be located outside of the site boundary, on land which the appellant does not appear to own.
23. Overall therefore, the proposal has insufficiently demonstrated biodiversity mitigation, which is particularly important due to the presence of priority habitats and likelihood of priority species. It would conflict with the LP Policy WD3 which reiterates the Framework Paragraph 193(a), whereby if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. The importance of biodiversity is further highlighted by the Framework paragraph 187(a) and (d) whereby decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity value, and minimising impacts on and providing net gains for biodiversity. Paragraph 193(d) additionally specifies that opportunities to improve biodiversity in and around developments should be integrated as part of their design.

Biodiversity Conclusion

24. Overall, the proposal would cause significant harm to the site's biodiversity, with inadequate mitigation. It would therefore conflict with the requirements as summarised above of the LP Policies WS7, WD1, WD3, the SPG10, and the Tree Strategy. The decision notice further cites conflict with the Supplementary Planning Document 4 'Parking Standards', but I do not find this directly relevant.

Character and Appearance

25. The proposal would only retain two trees within the site, with no proposed replacement planting at height. I have already responded above to the appellant's argument that the trees lack statutory protection. I find them to be an integral element of my assessment of the impact.
26. The proposal would introduce an urban form that sits within the established built surroundings. In isolation, the height, width, and length of each new dwelling would integrate well with the neighbouring properties. However, this scale cannot be viewed separately from the effect of those dwellings on the existing tree cover, and consequently, on the character and appearance of the wider area.
27. The existing trees make a positive contribution to breaking up the built massing of the surrounding properties. When viewed from The Ridgeway, they introduce a leafy character into the backland streetscene, especially due to their height. When viewed from Fornalls Green Lane, they form part of the length of thick tree and vegetation cover all along The Birket (the watercourse), and are one of its largest groupings. However, this stretch of vegetation as a whole does still allow for glimpses through to the built form beyond.
28. As such, the extent of tree loss would have a limited harmful effect on the character and appearance of the area. The proposal would conflict with the LP Policy WS7, whereby the function and appearance of development should be visually attractive, and positively enhance the character, appearance, and setting of the surrounding area.

Flood Risk

29. The appeal site predominantly lies within Flood Zone 3a, with a high probability of tidal flooding. The Framework paragraphs 173 to 179 and the LP Policy WD4 aim to direct development away from areas at highest flood risk, whereby development must be located in areas at lowest risk of flooding from all sources, unless the sequential test, and where appropriate the exception test, have been passed.
30. The main parties agree the sequential test area of search as the LP 'Settlement Area 6', but dispute the extent to which any such sites may be 'reasonably available' under the Framework paragraph 174. The Planning Practice Guidance (PPG) states that sites should be considered as such "*if their location is suitable for the type of development proposed, they are able to meet the same development needs and they have a reasonable prospect of being developed at the same time as the proposal.*"² The sequential test does not take account of likely comparative floor levels of finished dwellings.
31. The appellant's Sequential and Exception Tests report ('the Sequential Report') considers that alternative sites should not already have planning permission, because they are not available to develop. They cite that this approach has been agreed with the Environment Agency and councils across England. However, no compelling explanation or examples are provided, and I find this to be a matter of planning judgement. If development has not yet commenced, owners of sites with extant permission could implement their development, or sell their site. Importantly, I have not been directed to where the Framework or the PPG suggest such a preclusion of sites with extant permissions.

² Paragraph: 028 Reference ID: 7-028-20220825; Revision date 17 09 2025.

32. The Sequential Report further states that it is impractical to suggest that there are more suitable locations for this development elsewhere, because this is the only site in the ownership of the client and therefore the only site available to them to develop. The site proposals cannot be located in another site elsewhere. However, this directly contradicts the PPG paragraph 028 whereby *“alternative sites do not need to be owned by the applicant to be considered ‘reasonably available’.”*
33. The sequential test is also based on a minimum site size of approximately 0.10ha to accommodate 2 houses, and a maximum size of approximately 0.18ha to accommodate up to 5 houses. Again however, neither the Framework nor the PPG specifically discount sites in this way. Indeed, the PPG paragraph 028 refers to considering *“alternative lower-risk sites (which could, where relevant, be a series of two or more smaller sites)”*. It follows that a smaller site could also comprise part of a sub-divided larger site. This is the approach put forwards by the Council.
34. The appellant acknowledges that the development size could theoretically be included in some of the larger housing growth sites identified, but discounts them as not being consistent with the sustainability objectives to provide a small scale residential development within Settlement Area 6. However, all of the sequential test sites are within Area 6. There is no detailed explanation of how any such ‘sustainability objectives’ are only relevant to small sites. References to helping the growth of the regional economy, and providing direct and indirect employment opportunities, would equally apply to two dwellings within a larger site.
35. I therefore find that the sequential test should assess smaller and larger sites than as presented in the appellant’s evidence. Based on the Council’s comparison of some of the sites, including those discounted by the appellant predominantly due to their size or due to having an extant permission, I have not sufficiently confident that none are reasonably available. The proposed development has therefore not passed the sequential test on this basis.
36. The Sequential Report states that the Council has granted a number of planning permissions for dwellings within Flood Zone 3, such that they must have passed the sequential test. As these sites may be at a greater risk of flooding from all sources than the subject site, which is only subject to tidal flood risk, the principle of residential development within this area has already been decided, and the appeal site should also be deemed to have passed. However, no details are before me of these permissions, and how their sequential tests were considered. The extent of reasonably available sites will clearly vary over time, and I have to assess the proposal on its own merits.
37. The appellant’s submitted appeal example³ also does not lead me to a different conclusion on this matter. That much larger site had a medium risk annual probability of flooding from surface water, with reference to a SUDS system, amending the layout at reserved matters stage, and that the wider housing needs could not be fully met by sequentially preferable alternative sites. This is clearly a very different context to the appeal site.
38. As I have found that the proposal has not passed the sequential test, it is unnecessary to consider any further the next step specified by the Framework paragraph 177, as to whether the proposal would pass the exception test.

³ APP/P1615/W/25/3363981; Land North East of Grove Lane, Lydney

39. Overall, I am not assured that there are no reasonably available sites appropriate for two dwellings within the local area at a lower risk of flooding. The sequential test has not been sufficiently demonstrated, and so the proposed development would not be in an appropriate location having regard to matters of flood risk. I find this would be moderately harmful. It would conflict with the LP Policy WD4, and with guidance in the Framework section 14 relating to flood risk.

Highway Access

40. The access track off The Ridgeway is bisected by the red line around the appeal site, with its full width being needed for access. The Council considers that reasonable control over access is undemonstrated, because although the track is unregistered land, part could be in the ownership of Heron Road properties. Moreover, the Council advised that the appellant should have therefore provided Certificate B for the application, and served notice on those landowners.
41. It does not automatically follow that a failure to complete the correct Certificate invalidates the application or appeal, including because I consider that no party has been prejudiced by any such failure, and with no clear evidence that a Certificate was incorrectly completed or served in a deliberate or reckless manner. During the appeal determination process, and as a result of discussions between the parties, the appellant completed a Certificate D and served the relevant Notice via an advertisement in the press. This allowed 21 days for any owners of the land to make representations, and my decision falls outside of this period. On this basis, I have no outstanding procedural concerns.
42. The appellant identifies that their land title includes rights of access over the track, but did not provide these plans at Final Comments stage due to the inability to introduce any late evidence. However, as covenants attached to land registry titles are private law rights, they are not a material planning consideration. These access rights in this instance are a civil matter which has therefore had no direct bearing on my determination.
43. Overall, I therefore find no material issue in the proposed use of the track to access the site from the adopted highway. The proposal would comply with the LP Policy WS7 and the SPG10, as cited on the decision notice, which together and amongst other matters, require an appropriate standard of highway access.

Other Matters

44. The LP Policy WD24 and associated Appendix 10 requires new residential development to contribute to the improvement and enhancement of open space, and appropriate facilities for outdoor sport and recreation. WD24 was not cited within the reasons for refusal. However, the application was refused prior to the LP adoption, and the Council's Statement of Case identifies that it is now relevant. Whether or not this may form unreasonable behaviour is not a matter for this decision. I must determine the appeal against the adopted development plan.
45. As on-site provision would not be possible within the appeal site, the Council considers an equivalent financial contribution is required to secure improvements to existing local facilities, and/or access to and delivery of strategic provision within the catchment. This comes to a total contribution of £9,656.12. The dismissed appeal decision submitted by the Council as discussed in my Preliminary Matters confirms that this approach was recently accepted by another Inspector.

46. The appellant's contests the necessity for any financial obligation, with no S106 legal agreement provided. In early February they did query whether I would accept any late evidence such as a viability assessment or S106 Agreement. I declined this due to the timescale which had passed since the matter was first raised by the Council, and as it would cause more delay. Nonetheless, as I am dismissing the appeal on other grounds, I find no need to consider the implications any further, as it is not determinative to my decision.

Planning Balance and Conclusion

47. The Framework seeks to significantly boost the supply of homes and make effective use of land. The benefits from two additional dwellings in a sustainable location would be a modest contribution to the housing land supply. However, I have not been presented with any evidence that there is a local under-supply of housing. There would also be modest social and economic benefits from local construction employment opportunities, and from the new occupiers increasing local expenditure and demand for local services. The Framework Paragraph 73 does further identify that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and gives specific support to the development of windfall sites. There is no objection to the principle of residential development in this location. Overall, I give moderate weight to the benefits of the proposed new dwellings.
48. However, the proposal would also cause significant harm to biodiversity including to a priority habitat, limited harm to the character and appearance of the area, and moderate harm due to its risk of flooding and the impact on flood risk elsewhere. This brings it into conflict with several development policies and guidance documents, and the Framework. I find this harm outweighs the benefits.
49. In conclusion therefore, the proposed development would conflict with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR