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## Appeal Decision

Site visit made on 5 February 2025

by **D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2025

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**Appeal Ref: APP/U1430/W/24/3350056**

**Old Manor House, land to the South of - Udimore Road, Broad Oak, Brede, East Sussex, TN31 6DG**

- 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 Redwood Land Investments Ltd against the decision of Rother District Council.
  - The application Ref is RR/2023/1181/P.
  - The development proposed is the erection of 15 dwellings and associated parking on and to the south of Old Manor House. Affordable housing will be provided at 40% of the total to provide 6 houses. This is a re-application, following a refusal of a 20-house scheme.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal is made in outline form with only the matter of landscape reserved for future consideration. I have determined the appeal on this basis.
3. A legal agreement pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted to the appeal, dated 13 December 2024, and signed by all relevant persons and authorities. I have taken this into account in making my decision.

### Main Issues

4. The main issues for the appeal are the effects of the development upon:
  - the character and appearance of the area, including upon the High Weald National Landscape;
  - ecological interests on the site and its surroundings; and
  - flood risk and drainage.

### Reasons

#### *Character and appearance*

5. The appeal site and its surroundings fall outside of the settlement boundary for Broad Oak, falling within the High Weald National Landscape (HWNL). Paragraph 188 of the National Planning Policy Framework (the Framework) states great weight should be given to conserving and enhancing the landscape and scenic beauty of the National Landscape. Paragraph 190 states that permission should

be refused for major development other than in exceptional circumstances, and where it can be demonstrated the development is in the public interest.

6. The appeal site forms part of the grounds for the Manor House, which is a grade II listed building within the village of Broad Oak. The driveway for that property skirts the western boundary of the appeal site, whilst the recognised domestic gardens are to the north. The eastern and southern boundaries are formed with hedgerows and trees, with varying vegetation height and occasional gaps in their structure.
7. The area surrounding the appeal site is characterised by a patchwork of fields, most of which are enclosed by dense vegetation. These fields are largely undeveloped, with the odd agricultural structure or dwelling interspersed by scattered agricultural buildings and individual properties. It serves as a transition between Broad Oak and the open countryside, both verdant and semi-rural in character.
8. The proposal is a major development of 15 two-storey dwellings, a reduction of five units when compared to an earlier scheme for 20 dwellings that was recently refused and dismissed on appeal<sup>1</sup>. The resulting layout is looser and less intense than the previous scheme.
9. However, the proposed dwellings would still be considerable in both scale and mass, clearly incongruous with the verdant and semi-rural nature of this part of Broad Oak. The view directly into the appeal site from Kingswood Road would give the impression of a very urban environment, with pairs of semi-detached dwellings and on-street parking tightly packed around the first bend in the access road. This represents an intense urban situation with little space for greenness, contrary to the principles of the High Weald Area of Outstanding Natural Beauty Design Guide (HWDG).
10. Whilst landscaping could come forward to strengthen the field boundaries of the appeal site, I am not convinced that landscaping would conceal the scale and height of the proposed dwellings. In visual terms, I do not consider landscaping would be sufficient to minimise the intrusive urban form of the development. In spatial terms, there would be an evident erosion of the rural nature of both the site and the surroundings, serving only to extend the settlement southward into the largely undeveloped area of the HWNL.
11. I note that the HWDG discourages creating separate estates, favouring integrated design. In stark contrast, the clustering of dwellings in the manner proposed creates a confined community and runs contrary to the general historic linear pattern of development on the southern side of Udimore Road. The HWDG also advocates that semi-detached dwellings should be used sparingly, whereas the proposed development consists of 6 pairs, indicative of its urban character. Such design and layout choices erode the qualities and beauty of the HWNL, including the obscuring of the characteristic irregular field pattern of the HWNL.
12. I conclude the proposal would have a harmful effect on the character and appearance of the area, including the HWNL. This would be contrary to policy DHG7 of the Rother Development and Site Allocations Local Plan (RLP) and policies EN1 and EN3 of the Rother Local Plan Core Strategy (RCS). These

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<sup>1</sup> APP/U1430/W/23/3314485

policies seek to ensure well designed development respectful of its surroundings, as well as protecting the landscape and scenic beauty of the HWNL.

### *Ecology*

13. The application was accompanied by a preliminary ecological appraisal (PEA), which was dated November 2021. This was considered by the Council to be out-of-date, giving rise to a reason for refusal. The appellant updated the PEA in August 2024 in support of the appeal.
14. Having supplied the updated PEA, I observe that great crested newts (GCN) are expected to be in the locality given the presence of suitable habitat features. As a protected species, GCN require special handling and management to be adopted under licence.
15. The appellant suggests that further investigation into GCN and the acquiring of relevant licences could be achieved through planning conditions. However, Natural England's advice is clear that evidence should be provided to demonstrate that proposed developments pose no risk to great crested newts, or else where there is an identified risk, that this can be adequately mitigated. My attention is also drawn to other appeal decisions whereby the unquantified risk, impact and mitigation strategy for GCN has attracted rejections from Natural England and Inspectors.
16. There is no substantive evidence before me to demonstrate that GCN and their habitats would be protected. Therefore, taking a precautionary approach, I conclude the proposed development would be likely to have adverse effect on ecological interests in the locality, contrary to policy EN5 of the RCS and policy DEN4 of the RLP. The policies, taken together, seek to protect the natural environment and protected species from development.

### *Flood risk and Drainage*

17. The appeal site is gently sloping from north to south, with a steep embankment outside of its western boundary alongside Kings Wood Hill. Adjacent to the east and south are agricultural fields as well as the private gardens of the properties Millers Dale and Malvern Cottage.
18. It is proposed to manage surface water through the creation of a pond to the southwest corner of the appeal site as well as using permeable surfacing to allow infiltration. The appellant acknowledges that the final capacity of the pond and drainage system would be dependent upon testing a deep bore soakaway, though informs the appeal that nearby housing disposes of surface water via the mains sewer system.
19. I note the Council, whilst refusing on the basis of drainage information, concede that the matter of drainage was found acceptable in the previous appeal<sup>2</sup>, and that a suitably wording condition could resolve the problem.
20. I am not presented with any evidence to substantiate a claim that the development would give rise to increased flood risk elsewhere, nor that drainage matters are irredeemable via planning condition. I have no reason to doubt that this issue could be resolved through a reserved matters or conditional submission.

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<sup>2</sup> APP/U1430/W/23/3314485

21. On this basis, I conclude that the proposal would not have an adverse effect on the local hydrological environment. the proposed houses would be safe from flooding. The appeal proposal would comply with RCS policy EN7 and RLP policy DEN5 which indicate that flood risk will be taken into account at all stages in the planning process.
22. However, compliance with policy in terms of drainage and flood risk is expected from development proposals as standard and, as such, weigh neutrally in the planning balance. The fact this element of the proposal is found acceptable does not alter my view with respect the other main issues.

### **Other Matters**

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that my determination must be in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan
24. The main parties agree that there would be no adverse effect on the setting of the nearby Grade II listed buildings known as Old Manor House, Highlands and The Twitten. Based on the evidence before me and my observations on site, I have no reason to come to a different view.
25. The Officer's delegated report states the Council can only demonstrate a 3.09-year housing land supply at present. Therefore, the strategic housing policies for the Council are out of date and my attention is taken to paragraph 11(d) of the Framework.
26. In respect of whether 11(d)(i) or 11(d)(ii) is applicable, the appellant highlights that major development is permissible in the HWNL provided it meets the criteria in paragraph 190 of the Framework.
27. In turning my attention to 190(a), I consider that there would be a need for the development to meet local housing needs, framed against a national demand for additional housing and economic growth in the public interest.
28. With regards 190(b), the appellant has made the case that the vast majority of the district is covered by the HWNL designation and that, without releasing land from the HWNL, the Council would never be able to meet or deliver its housing targets. I am not presented with any substantive evidence to demonstrate why housing could not be delivered outside of the HWNL, or on brownfield sites in existing settlements, or why the policies for land outside the HWNL are any more prohibitive of development than the HWNL designation. The appellant draws attention to two allocated housing sites at Broad Oak that are both within the HWNL, and that these have under-delivered growth to date. This is however planned growth and does not justify the harms I have identified.
29. In respect of paragraph 190(c), I have already found the proposal to cause harm to the HWNL in respect of spatial and visual landscape harm, as well as impacts upon one of the identified special qualities.

30. I am not, therefore, presented with any justification that would amount to exceptional circumstances to allow development in the HWNL under paragraph 190 of the Framework. Given the proposal would neither conserve or enhance the HWNL, there would be direct conflict between the proposal and section 15 of the Framework.
31. In such circumstances, whilst the scheme would have benefits in terms of delivering market and affordable housing in a reasonably accessible location, the policies of the Framework provide a strong reason for refusing the development proposed. Under paragraph 11(d)(i), planning permission should be refused and, therefore, I do not need to consider or weigh the identified harms, including those conflicts with the development plan, against any of the proclaimed benefits of the proposal.
32. There are no material considerations that would warrant a decision otherwise than in accordance with the development plan.

### **Conclusion**

33. For the reasons given above the appeal should be dismissed.

*D Wallis*

INSPECTOR