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## Appeal Decision

Inquiry Held on 11 -13 June 2019

Site visit made on 11 June 2019

**by G D Grindey MSc MRTPI Tech Cert Arb**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8<sup>th</sup> July 2019**

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**Appeal Ref: APP/F1040/W/18/3217891**

**Boden's Sticks, Cropper Lane, Osleston, Ashbourne, Derbyshire DE6 5BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs R Lewis against the decision of South Derbyshire District Council.
  - The application Ref 9/2017/0786, dated 21 July 2017, was refused by notice dated 6 June 2018.
  - The development proposed is the change of use of existing woodland to a site for the location of six log cabin holiday letting units falling within the definition of caravans.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the Inquiry an application for costs was made by each party against the other. These applications are the subject of separate decisions.

### Background matters

3. A pre-inquiry meeting (PIM) was held on 2 April 2019 to briefly discuss procedural and administrative matters. At that meeting, the Council stated that they needed to screen the proposed development under Regulation 7 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. They later provided a Screening Opinion dated 17 April 2019, to confirm that they did not consider the scheme to be EIA development and that it would not require the submission of an Environmental Statement in accordance with the Regulations.
4. At the beginning of the inquiry the appellants stated that, at the time of the application, the appeal site was owned by their Directors' Pension Fund but that lately it had been transferred into their private ownership.

### The scheme applied for

5. The full application was made for "six **log cabin** holiday letting units falling within the definition of caravans<sup>1</sup>" [my emphasis]. Units falling within the definition of 'caravans' (in the Caravan Sites Act 1968) have a maximum size

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<sup>1</sup> The application form, question 3, CD1.1

and must be capable of transportation to the site. To my mind a “log cabin” is not usually a caravan in the conventional sense. Mrs Lewis refers to “lodges” repeatedly in her statement; one of the Ecological Surveys refers to “glamping pods”. The statement of Market Demand<sup>2</sup> talks of “timber lodges”.

6. Thus there is ambiguity in the description of development and I sought clarification, both at the PIM and at the inquiry. Mrs Lewis stated that there are twin-unit caravans which are produced pre-clad in timber which can be fitted together on site and it is this type of unit she plans to station here. I appreciate that stationing a caravan is a use of land and thus a caravan unit can be replaced with any other unit. However, as I said at the PIM, it would have been helpful to have some literature or drawings of a typical timber-clad unit, just for information as to intentions and to add flesh to the proposals.
7. The Phase 1 Habitat Survey<sup>3</sup> was prepared in 2015 but is only valid for 2 years<sup>4</sup> and so is out-of-date (a matter I raised at the PIM). In any event, the report states that the survey was conducted outside of the optimum season and also suggests other surveys are required. It is of limited value now and Mr Mellor, for the appellants, agreed it was out of date. Some later surveys were carried out, mainly in 2016, so they are also rather dated.
8. The Planning Statement<sup>5</sup> refers to 2 septic tanks to be located in the “the clearing away from the root system of mature trees”. This was not shown on any of the submitted plans even though Planning Policy Guidance (PPG) states that “applications for development relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment”<sup>6</sup>. The application should contain full details. This location was contradicted by Mrs Lewis’s statement that the septic tank, and/or the drainage field, could be located within an adjacent field, although that would then place it outside the application site edged red. On the second day of the inquiry a drawing was produced<sup>7</sup>, for the first time, of possible sites for 2 tanks within the woodland, leading to a rectangular drainage/soak-away area outwith the application site.
9. Given the belated production of this plan in the inquiry, I doubt that porosity tests have been done, or that the appellants have any idea whether these would work in practice. The underlying impermeable clay nature of the soil at the appeal site was obvious at our site inspection and also from the photographs in the Ecological Survey June 2016<sup>8</sup> and comments in appeal documents.
10. The Planning Statement talks of the existing hedgerow on the western boundary and lists an objective “to maintain and enhance the existing species-rich hedgerow”. An application plan contradicts this and shows the removal of some of this hedgerow and re-planting to the rear of visibility splays. During the course of the inquiry, the appellants referred to the comments of the highway authority<sup>9</sup> and their response to the standard consultation on an earlier application. The appellants interpret the highway’s comment: “In view

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<sup>2</sup> CD1.7

<sup>3</sup> CD1.11

<sup>4</sup> CD1.11 paragraph 3.6

<sup>5</sup> CD1.5

<sup>6</sup> Planning Policy Guidance paragraph 020 Ref ID: 34-020-20140306

<sup>7</sup> APP1

<sup>8</sup> CD1.12

<sup>9</sup> Letter of 21 November 2016, CD1.21

of this and that the plans show that visibility sightlines of 2.4m x 120m can be achieved, there are no highway objections” as meaning that, provided the existing hedgerow is reduced to 0.6m high and regularly maintained at that height, it could remain. The appellants then withdrew the visibility splay drawing from consideration on the second day of the inquiry.

11. I am by no means certain that the highway authority did mean they were content with a reduced-height hedgerow only. They refer to “the plans” which, at that time, would have included whatever plans were submitted with the earlier application. They also suggest a condition be attached to any permission granted that requires the new vehicular access to be created in accordance with the application plans.
12. In any event, this late change of intention conflicts with the proposals as set out in the Biodiversity Management Plan<sup>10</sup> (BMP). This states that the hedge will be laid and then left unmanaged for two to three years and then left at a height of 2m. The Biodiversity Management Plan states that “continual annual trimming will lead to deterioration”, although to retain the hedgerow at 0.6m continual trimming must be required. We had no way of testing this interpretation of the highway authority’s position at the inquiry as no highway authority persons were present and, obviously, the appellants can choose to present their case as they wish.
13. Overall, I find there is a lack of clarity and detail and some contradiction with the proposals as described in some of the documents submitted with this scheme. It should have been obvious, from my lead at the PIM that I was asking for clarity and certainty so that we saved inquiry time. Instead we had to waste inquiry time sorting out, as best as I was able, as to what was under consideration.
14. For the avoidance of doubt I shall deal with the appeal as for 6 caravans in the locations shown on drawing ref no L70/1b and with the existing hedgerow reduced to and retained at 0.6m in height. I will deal with the septic tanks and soak-away in general terms and the visibility plan as withdrawn.

## **Main Issues**

15. From the representation made at the inquiry and in writing and from my inspection of the site and surroundings I find that there are two main issues. These are (i) whether the scheme would have a detrimental impact on the protected woodland and thus on the landscape character and (ii) whether the scheme would have an adverse impact on the integrity of the woodland priority habitat and on protected species.

## **Reasons**

*Issue (i) whether the scheme would have a detrimental impact on the protected woodland and thus on the landscape character*

16. My starting point must be the development plan. The South Derbyshire Local Plan 2016 (LP) states, at policy BNE4, that the character, local distinctiveness and quality of South Derbyshire’s landscape will be protected and enhanced through the careful design and sensitive implementation of new development. Policy BNE7 seeks to ensure that the felling of protected woodland is

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<sup>10</sup> 1.13

considered in accordance with national guidance taking into account the amenity, ecological, landscape and historic value. Policy INF10 is generally permissive and encouraging of tourist development unless it is likely to give rise to undue impacts of the local landscape or natural environment.

17. The appeal woodland is a broadly rectangular parcel of 2.64 ha on the east side of a largely single width lane running approximately north to south. In brief, the woodland is mixed deciduous in character, dense and impenetrable in places and with an understorey of snowberry and immature trees<sup>11</sup>. There is a path, which we used for access during my site inspection, apparently created as a local hunt trail; it was muddy and waterlogged. This broadly passes to the north of the area shown for the caravan locations; it leads to a clearing. The parcel of land abuts Cropper Lane and thus is highly visible to passers by; there is a hedgerow on the outer limits of the woodland parcel and a grass verge.
18. I found at my site inspections that the woodland has considerable visibility from public viewpoints in Cropper Lane as well as from the public footpaths to the south and east. Although individual trees are not readily distinguished there is no doubt that their combined canopies add a natural and softening effect to the locality and form a skyline feature. The woodland contributes to the pleasantness of the locality and adds maturity to the character and appearance of the area. The locality is generally agricultural fields with hedgerows and hedgerow trees but I did not see any other woodland in the immediate vicinity.
19. The works would entail the introduction of a 'tar bound'<sup>12</sup> surfaced driveway at the entrance, leading to an access into the woodland variously described as of "traditional construction methods or the use of no dig"<sup>13</sup>. This generally means a cellular confinement system forming a stiffened layer above the root zone capable of spreading the load of vehicles passing along it while protecting the roots and soils below. This would pass through the southern area of the woodland, leading to a "communal parking area" – referred to in the Planning Statement although the location is unknown and onwards to 6 sites for caravans sited along the main driveway.
20. The roadside hedge on the west side of the woodland is described, variously, as 'species rich'<sup>14</sup> or of 'limited value'<sup>15</sup> by the appellants. At my accompanied site inspection we found Wych Elm, Ash, Hawthorn, Elder, Blackthorn, Dogrose, Hazel, Bramble, Field Maple and Snowberry to be present. It was thick and in full growth at the time of the inspection; this would need to be reduced in height to provide the required 2.4m x 120m visibility splays. I suspect it would be an onerous task to keep a growing and vigorous hedge to this height in perpetuity.
21. The introduction of the new access would inevitably change the nature of the lane at this point, both visually and in practical terms. The appearance of the lane at present is entirely rural, with scattered dwellings along it. The scheme would introduce a vehicle-width, surfaced, splayed and inevitably more suburban aspect to the appearance of the lane at this point. There would be

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<sup>11</sup> Biodiversity Management Plan CD1.13

<sup>12</sup> CD1.5, Planning Statement

<sup>13</sup> Mr Murat's evidence paragraph 4.19

<sup>14</sup> CD1.11 Phase 1 Habitat Survey paragraph 5.2.5

<sup>15</sup> Mr Murat's evidence paragraph 4.06

- signs and possibly some illumination visible. The hedgerow would be continually trimmed back to 0.6m in height, leading to a manicured and 'domestic' appearance; retained trees would need some crown lifting to permit movement underneath. These are the first adverse impacts.
22. A percentage figure of 5.5% of the area of woodland vegetation loss to facilitate the proposal has been quoted by the appellants; the Council calculated this to be 8%<sup>16</sup>. Whichever is correct, both these figures only calculate the footprints of the access road and caravan standings. The appellants made numerous assurances that they intended only to remove vegetation where necessary to station the caravans and their intention is to have vegetation immediately outside and all around the caravans and the access drive. I find this implausible and impractical – that the caravans would have vegetation up to and abutting the windows/walls on 3 sides.
23. I consider that there would be a much greater loss than the 5.5% quoted, not least to permit occupiers to spill out, move around the caravans, sit outside and have some illumination from the windows. Practically I simply cannot accept that woodland growth would be tolerated right up against the caravans, preventing maintenance and promoting damp and mossy conditions on the fabric of the caravans over time. While I can understand that the appellants unique selling point is that customers would be attracted to a holiday in a woodland setting, I consider that most people would not want the woodland right up against their caravan walls and windows.
24. The limited 5.5% - 8% minimum vegetation clearance claimed would be so restrictive to typical expectations of normal human activity. There is absolutely nothing that the occupants could do within the woodland, except to move in and out along the driveway. There would be nowhere to sit outside, walk, cycle or play, no destination other than leaving the site altogether. However, the Planning Statement says that "by definition a rural escape would not be seeking to indulge in travelling to other destinations". This statement, therefore, suggests that visitors would stay within this very small woodland, constrained even further by dense and impenetrable vegetation; this is most unlikely. Mrs Lewis, in answer to my question, stated that visitors could bring cycles and join a nearby cycle route, which conflicts with the Planning Statement quoted above.
25. Mr Murat mentioned the Rosliston Forestry Centre as a place with lodges within woodland and with no evidence that visitors there generate pressure for tree removal or other pressures on the environment. However there is simply no comparison with that destination and the proposals here on 2.6ha. Rosliston is about 62ha, and has a shop, a cycling and footpath network, environmental education, a café, cycle hire and soft play. The photographs at LPA 8 show the individual lodges have outside decking, seating areas and are set within mown glades. It seems to me that visitors there have activities on-site and plenty of space in which to move about, unlike the appeal scheme.
26. While Mrs Lewis said that there could be timber boardwalks/woodchip paths, it is unclear where these would be, as the Planning Statement says that the proposal "leaves the largest part of the woodland undisturbed". I take that to mean that the northern part would have no public access. The Biodiversity

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<sup>16</sup> LPA5.

Management Plan (BMP)<sup>17</sup> talks of raised walkways that will “not impact on mature trees”, although I am not aware of much evidence of what routes these might follow so it is hard to see how this assurance can be given any weight.

27. The BMP also states that “the main walkway along the hunt track will be managed as a ride and the open central area will be managed as a glade with graded diverse edge habitat”. Two points here then: (i) the use of the term “main” suggests there will be more than one walkway, although there are no plans which show where any of these might be and (ii) 2/3rds of the the existing hunt track lies to the north of the proposed vehicular access, so surfacing this and creating a timber boardwalk would encroach into the supposedly undisturbed northern area. Mr Mellor also referred to open areas in the central and southern woodland areas<sup>18</sup> to be managed as glades although he agreed, at the inquiry, that these were not shown on any plan.
28. Possibly, therefore, this existing track is to be utilised for visitor entertainment, although it only goes to the eastern edge of the wood and it would be a matter of minutes to walk from one end to the other; it has no other possible destination. Whilst trying to view this positively, I find this would probably not be a memorable or valued visitor attraction. Any walkways and boardwalks would, of course, add a further, unknown, vegetation clearance figure. Mrs Lewis also said that she would do whatever she was advised to do – her intentions were fluid and a ‘moveable feast’. There is a frustrating lack of information here and I find it unsafe to rely on dated and contradictory information.
29. All in all, I find the Council’s alternative calculations of 14% or possibly 27% woodland loss to be far more likely, if not inevitable, simply to facilitate normal visitor expectations, bearing in mind these figures do not even take into account boardwalks.
30. I note that the Morfe Valley Arboriculture<sup>19</sup> report suggests that a cellular confinement “no dig” system for the access driveway may not work under such wet conditions as are found on the appeal site. The track might move and distort making it unsuitable for vehicle use and leading to more invasive solutions. Further, the report also suggests that changes in hydrology of the woodland could lead to tree loss, particularly mature trees.
31. While a plan was produced as to foul drainage and septic tank locations late in the inquiry, I am still no clearer as to a route for electricity and drinking water entering the site and supplying the units. I have to assume both would be available in the lane and could be brought in along the route of the access driveway. Mrs Lewis states in her evidence that all these excavations would be done with a mini-digger. The Planning Statement refers to the need for these to generate “incursion into the soil” but details are unclear; there may be additional associated vegetation loss.
32. At this point it is useful to consider the inherent nature of trees in woodland. On the appeal site (as is often the case with woodland trees) individually, they are far from perfect, many are poor shapes or are suppressed. The closely

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<sup>17</sup> CD1.13

<sup>18</sup> Mr Mellor’s evidence, appendix 11 paragraph 3

<sup>19</sup> CD1.19 page 9

- growing trees have been 'pulled up' to reach the light, but most appeared to me to be growing well; they had come into entirely typical leaf for this season.
33. Little of this arboricultural detail is visible from public viewpoints however; overall the appearance is of a pleasing deciduous woodland area. Many of the trees are spindly; it would be inevitable that, if some trees are felled for the development, then others remaining will be exposed to wind throw as they are exposed to gusts from which they were formerly protected. Thus there may well be unexpected tree loss in addition to that necessary for the development, whatever percentage is accepted.
34. Any areas to which the public will have access will have to be the subject of a risk assessment and routine arboricultural examinations. Mr Murat and Mr Northrop both agreed, in answer to my questions, that the surveys, of themselves, do not need to be an onerous burden and I agree, as the overall woodland area is small. Nevertheless, the surveys will generate requirements to fell or 'tidy up' trees for safety reasons. At the inquiry we discussed the publication Common Sense Risk Management of Trees<sup>20</sup>.
35. It is clear that the trees would be an asset to the business and would be seen to add to the enjoyment of the visitors, so there would be an incentive to preserve them. However, meeting the most basic of a balanced tree safety management regime would mean that poor quality woodland trees would need to be assessed for any hazards and defects. In a woodland with no public access their retention would not be a problem, no matter what the defects. This would not be the case with public access, when those responsible must be able to make a balanced judgement of risk and benefits. I consider this to be another reason why there would be greater clearance than the appellants claim.
36. Mrs Lewis was not clear about how or whether visitors would be excluded from the remainder of the wood, again she simply stated she would do whatever she was advised to do. The appendix to her statement suggested proposed rules for visitors to the caravans, with compliance enforced by a financial loss if visitors create noise, enter protected areas that are "fenced off"<sup>21</sup> or behave otherwise inappropriately. As there would be no manager on site however this would tend to be an "after-the-event" response and damage might have been done before it is noticed by the management.
37. I agree with Mr Northrop that visitors are unlikely to feel welcome if they are within a fenced compound limited to the immediate areas around the access drive and the 6 caravans. Part of the unique selling point of the proposal is a "luxurious escape in a beautiful and unique place," to sample the simple joys of countryside living<sup>22</sup>. But I return to my previously stated puzzlement as to what the visitors will do with themselves if all they are able to do is journey up and down a short access driveway. I am hampered by the failure to identify specific visitor activities, visitor management measures or contradictions therein.
38. But, if a whole-wood pathway is created then there would be a need for further risk assessment, inevitably leading to a general tidying and removal of

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<sup>20</sup> National Tree Safety Group

<sup>21</sup> Suggested Rule for visitors number 15

<sup>22</sup> Mrs Lewis's statement

defective or risky trees and regular clearing of vegetation away from the paths to prevent over-growing (we could hardly get through the existing path at my site inspection).

39. While I have no doubt that the intentions of the appellants are to proceed with a 'sensitive implementation' of new development, as the policy requires, I find the concept of all the access driveway and caravan standings being cleared and created with "hand held tools" to be unlikely in the extreme. The job is just too large; twin-unit caravans are delivered on large, heavy haulage vehicles which would require a durable road surface to turn and to enter the appeal site and deliver the units. I somehow doubt that they could be unloaded in the lane and then towed into place with a tractor as Mrs Lewis suggested, in answer to my question, not least because the wheels/tyres are not designed for road use.
40. While it could be arranged that the boundary trees are kept intact, I consider that there would be a significant reduction in density of trees within the internal area. Mr Northrop calculated that some 350 – 400 trees would be lost within the hatched area alone on the plan showing the minimum extent of development. While this figure was disputed, it seems to me that the various figures referred to slightly miss the point.
41. It should not be forgotten that, with a woodland TPO all trees are protected, at whatever stage of their life. The purpose of a woodland TPO is to safeguard a woodland as a whole.<sup>23</sup> So it follows that while some existing trees may lack individual merit, or may not be very big today, all trees within the wood are protected. Trees and saplings which grew naturally, after the Order is made are also protected by the Order.
42. So, while BS 5837:2012 states that, for a survey, all trees with a stem diameter over 75mm and, within woodland, only trees with stem diameters of over 150mm might need to be plotted, that is advice for a different situation than here. It seems to me that a rough calculation of 'trees that might be lost' should not just count the existing large ones, but also recognise the small ones that will become the woodland of the future. Similarly, arguments that trees to be lost are category C, or low quality trees, is also not particularly helpful since all of them add to the woodland as a whole. The argument that a Felling Licence offers further control also misses this point.
43. It seems to me more important that the areas where genuine, unconstrained woodland would be able to continue to grow must be very much reduced as a result of this scheme. Initially, the canopy would be absent or less dense over the developed area and possibly over the associated pathways too. In the longer term the woodland would be less likely to be able to develop "as a whole", as continual cutting back, tidying and clearance would reduce the numbers of young trees. I think this would have an appreciable effect on the inherent character and appearance of the protected woodland, and the landscape, in that it would no longer be wild and undisturbed. Also, viewed from public viewpoints outside it, and particularly at the entrance point it would appear more domestic and tamed in character and appearance and quite obviously less dense.
44. Woodland is not a prominent characteristic of the South Derbyshire Claylands Landscape area, the description of the area states that "woodlands are few".

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<sup>23</sup> Planning Policy Guidance para 028 ref ID 36-028-20140306

The Claylands Area Action Plan<sup>24</sup> shows woodland to be just 2.5% of the total area, thus a reduction in area would be a significant loss.

45. In addition to some reduction in the canopy and woodland density there may well be some illumination perceptible from outside the woodland, and an increase in general activity around the site. I find an in-principle objection to a scheme which would result in the loss of a significant part of a woodland protected by a TPO. It would simply not be 'preserved' in the ordinary meaning of the word. The scheme would not accord with Local Plan policy BNE4, in that the character, local distinctiveness and quality of South Derbyshire's landscape would not be protected and enhanced. The scheme is vague and unformed and so I do not find that it could be described as a 'careful design' as the policy states.
46. Pulling all these threads together, I now total up the likely vegetation loss: the actual footprints of the 6 caravans and the access road, plus unknown circulation space around the units, plus unknown walkways, plus unknown but inevitable tree-loss for risk management and safety reasons, plus unknown tree loss for water/electricity and foul drainage routes, plus unknown damage and possible tree loss if the cellular confinement system on the access track fails to work and a more invasive solution is required, plus unknown tree loss flowing from the use of machinery within the woodland in pursuing these works.
47. Policy BNE7 seeks to ensure that the felling of protected woodland is considered in accordance with national guidance taking into account the amenity, ecological, landscape and historic value. The scheme would involve the clearing of a large proportion, certainly over 14% (and probably much more than that) of the existing woodland. I have seen nothing that convinces me that any re-planting proposed could make up for this loss as there simply is no vacant land to be planted up. The scheme would adversely affect the integrity of the woodland as a whole and the amenity, and landscape value of this woodland and the requirements of policy BNE7 would not be met.
48. While policy INF10 is generally permissive and encouraging of tourist development this scheme would give rise to undue impacts of the local landscape and thus would not meet the requirements of the policy.

*Issue (ii) whether the scheme would have an adverse impact on the integrity of the woodland priority habitat and on protected species.*

49. The woodland is a lowland deciduous woodland priority habitat selected as a type of habitat of principal importance for the conservation of biodiversity in England, originally under the Natural Environment and Rural Communities Act 2006. The woodland is also habitat for Great Crest Newt (GCN), badger, bats and 4 bird priority species: Song Thrush, Marsh Tit, Bullfinch and Dunnock. Government policy is given more detail and structure by later publications principally Biodiversity 2020 and carried into planning policy in the revised NPPF; decisions should recognise that some undeveloped land can perform many functions such as for wildlife, recreation or carbon storage<sup>25</sup>.
50. Paragraph 170 states that decisions should minimise impacts on, and provide net gains for, biodiversity. Paragraph 174 sets out the requirement for plans to

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<sup>24</sup> Mr Taylor's evidence, appendix 1

<sup>25</sup> NPPF paragraph 118

promote the conservation, restoration and enhancement of priority habitats and the protection and recovery of priority species, which is reflected in Local Plan policy BNE3. This states that proposals that could have direct or indirect effects on sites, including priority habitats and species, will need to be supported by appropriate surveys, sufficient to fully understand the likely impacts of the scheme and the mitigation proposed. Where mitigation cannot sufficiently offset significant harm then permission should be refused. The policy is consistent with the revised framework.

51. At the outset, it should be clear from my conclusions on the first issue that I find there to be a significant loss of woodland priority habitat; in conflict with the objectives of Biodiversity 2020 and the NPPF; I need not deal with this further.
52. Following the PIM and at my request, the Ecologists helpfully sought to narrow the issues between them, agreeing that the botanical survey data, supplemented by their joint findings in April 2019, was to a satisfactory standard. At their survey certain species were identified that met the standardised site selection criteria for designation as a Local Wildlife Site. The Council's witness stated that the site would be presented to the appropriate panel in October this year<sup>26</sup>. I bear this in mind but can give this only limited weight at present.
53. One main difference between the parties are varying approaches to GCN and the need or otherwise for a licence. GCNs, their eggs, breeding sites and resting places are protected by law. The somewhat dated survey work found 2 juvenile GCNs in the transient pond P1 to the south of the site, and 3 adult GCNs were found in a second pond to the NW of the appeal site.
54. The appellants' out of date Phase 1 Habitat Survey states that the woodland "possesses optimum terrestrial habitat for resting, hibernation, commuting and foraging GCNs." The appellants GCN Method Statement of October 2016 states that the juvenile newts found are "likely to use the scrub and woodland edge for shelter and possibly overwintering". Thus while pond P1 is just outside the application site, the appeal site habitat of the woodland is found by the ecologists to be useful to GCNs.
55. Mr Mellor, for the appellants, was dismissive of pond P1, saying it dries out and there is no aquatic vegetation on which GCNs could lay eggs. Mr Taylor, for the Council, pointed out that GCNs are long lived creatures and even if a pond is dry one year that would not necessarily have a long-term impact on breeding success. It was also pointed out that they can lay eggs on fallen leaves, old logs, roots, stones and debris such as plastic bags<sup>27</sup>, they do not necessarily exclusively require aquatic plants on which to place eggs. Lastly, a practical question – if juvenile GCNs are found in pond P1 and, this is not a breeding pond, then what were they doing there and where had they come from? Common sense seems to lead me to P1 most likely being a breeding pond in some years. The appellants' own Phase 1 Habitat Survey recommended that all ponds deemed suitable be subjected to survey at the appropriate time of year.<sup>28</sup>

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<sup>26</sup> Mr Taylor's proof, paragraph 5.12

<sup>27</sup> Great Crested Newt Conservation Handbook, LPA2

<sup>28</sup> CD1.11 paragraph 7.7

56. Notwithstanding these contradictory arguments, all I can know with certainty from the evidence provided to me are that some adults are about; GCNs are breeding somewhere in the vicinity (since juveniles have been found) and that the woodland is 'optimum terrestrial habitat' for GCNs.
57. The Council submitted that further terrestrial surveys should be undertaken to inform a mitigation strategy and that, in line with government advice, this information should be considered as part of the decision-making process and cannot be considered afterwards or dealt with by conditions. I agree.
58. The appellants argued that the Natural England (NE) Risk Assessment Tool indicates that an offence is highly unlikely provided that no more than 0.5ha of land within 100m – 250m of a breeding pond is lost or damaged<sup>29</sup>. My problem with this submission is that the exact location of the breeding pond is unknown (and there must be one) and the habitat area that would be lost is not known (see my paragraph 46 above) but would be significantly greater than 0.5ha by my rough calculation.
59. Mr Mellor gave great weight to NE's publication of a Method Statement for Licence Applications and NE's concern about a trend towards increasingly precautionary applications. However, NE's advice is still based upon an expectation of being able to identify core, intermediate and distant habitats from breeding ponds. I cannot say with certainty where the breeding pond is, the survey information is, in any event, dated, so it cannot be said that the scheme would not be harmful to maintaining the population at a favourable conservation status in its natural range. Thus I cannot state that the two tests of the Habitat Regulations would be met.
60. While I am aware that mitigation is offered in the form of the construction of a new pond within the woodland area, this is to be constructed with a mini-digger according to the BMP<sup>30</sup>, in the northern section of the woodland. Thus this would involve mechanical incursion into the northern area, inevitably causing some further loss of priority woodland habitat for the footprint of the pond and the route to it.
61. I have already referred to the hedgerow on the west side of the site in dealing with issue (i) in character and appearance terms. The appellants' belated proposal of maintaining the existing hedgerow at 0.6m in height would require constant trimming all through the growing season which is also the nesting season. The appellants' BMP<sup>31</sup> states at 3.3.3 that continual annual trimming leads to deterioration and what the appellants now propose would be more frequent than annual. Further, the same document advises trimming only in January and February, to avoid the nesting season and to allow a berry crop. The Plan, which is a part of the appellants' case, advises an entirely different management regime that seeks to develop a thick bushy structure to maximise its value for nesting birds. The appellants abrupt change of course during the inquiry goes directly against their own case at this point.
62. Other species that may be affected include the badgers; there is a sett within the woodland and paths leading through the area to be developed to the edge of the woodland and out to adjacent pasture where they will forage. While the

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<sup>29</sup> CD1.14 GCN Method Statement Mitigation Strategy & Enhancement October 2016

<sup>30</sup> CD1.13 paragraph 3.3.2

<sup>31</sup> CD1.13

sett would not be affected, it is likely that there would be some disturbance to the animals from noise, disturbance and human activity; the long term outcome is simply not known.

63. The Statement of Common Ground agreed that, "as mature trees are to be retained", and subject to suitable lighting and arboricultural requirements in relation to bat roost features, there would be no likely significant adverse effects on the conservation status of bats. While acknowledging the limitations of this agreement, it seems to me that so much is uncertain as to what development is going where, and what the extent of public access might be throughout the woodland, it is difficult to state with certainty that defective trees, likely to be more attractive to bats, could be retained. However, it is possible that some favourable scheme could be reached.
64. As regard the 4 priority bird species Song Thrush, Marsh Tit, Bullfinch and Dunnock, it is clear that they find the woodland, in its present state, a place to breed as they have been recorded there. The appellants have given various vague and conflicting statements as to the extent of public access and the works possibly planned for the northern area. I think it likely that the sheer disturbance and human activity, and the inevitable clearance of vegetation and loss of seclusion that I discuss under issue (i) would limit the attractiveness to these species, if they find the present dense vegetation attractive. Given the small proportion of woodland in the area and in the Claylands generally, there would be nowhere for displaced creatures to move to.

*Balancing the positive benefits*

65. I have considered carefully the weight that I might attach to the proposed benefits offered by the scheme. The appellants intend to "achieve economic growth in our area and undoubtedly there will be a ripple effect into neighbouring locations".<sup>32</sup> Short holiday breaks in the UK are a popular element now and the appellants argued that the scheme would cater for the known demand in woodland holidays, while creating a draw away from the Peak District hotspots.
66. I have already expressed my puzzlement as to the likely activities of visitors. I have conflicting evidence that rural escapees would not be seeking to indulge in travelling to other destinations as the Planning Statement says, but would also go out and add to the local economy by cycling from the site, eating out and making local purchases. I conclude that visitors to this very small woodland, constrained by dense and impenetrable vegetation, would have no obvious activity available to them except to leave the site, so there probably would be a modest spend elsewhere.
67. Mrs Lewis argued that the woodland was in need of "extensive management" and that sympathetic economic activity could be used to "restore" the woodland and manage it for enjoyment by subsequent generations. The BMP sets out that, generally, woodlands which are structurally diverse and have a range of habitats within them, glades, coppices etc, tend to support more biodiversity.
68. A range of actions are proposed at paragraph 3.3.1, such as clearing around mature trees to reduce competition for light and nutrients, thinning of

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<sup>32</sup> Mrs Lewis's evidence.

overcrowded immature trees, trimming and coppicing of shrubs in the woodland edges, tree planting and the removal of invasive species. All these suggestions sit alongside the statement that "the interior of the woodland will not be overly managed but retain areas of dense undergrowth." Given the likely extent of the development footprint, together with the possible boardwalks and the proposed pond, there seems to me to be little space left over, within the overall woodland appeal site, for an undisturbed northern area in addition to the creation of this new habitat by all these means.

69. Rather, it seems to me to represent the displacement of much of the present habitat and the replacement with another. This may be more biodiverse, but I do not have the evidence that there would be "measurable net gains for biodiversity" as the NPPF states. The scheme would conflict with policy BNE3 since it does not represent development which contributes to the protection and enhancement of biodiversity or deliver net gains in biodiversity. The policy continues that, regarding priority habitats and species, applications need to be supported by sufficient surveys so that the likely impact can be understood. Where mitigation measures cannot sufficiently offset the significant harm then permission will be refused. Such is the case here.

#### *Other matters*

70. All the neighbours who wrote in about the scheme were concerned about the additional traffic on a minor lane, among other issues. This was not a reason for refusal and, as I intend to dismiss the appeal, I need not deal with the matter further.

#### *Conclusions*

71. The NPPF at paragraph 2 requires applications for planning permissions to be "*determined in accordance with the development plan unless material considerations indicate otherwise*". The scheme would be in conflict with Local Plan policies BNE3, BNE4 and BNE7. It would result in landscape, character and appearance harm and the loss of priority woodland habitat and most probably harm to protected and priority species.
72. I acknowledge that the proposal would provide some novel holiday accommodation, together with modest economic benefits to the locality in terms of visitors eating out and making local purchases to which I attach a little weight. However having carefully weighed these benefits, they do not outweigh the harm I have identified above. Accordingly the proposal would conflict with local and national policy and the appeal is dismissed.

*Gyllian D Grindley*

Inspector

## **APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Smyth Barrister No 5 Chambers

He called

Mr T Taylor BSc(Hons) ACIEEM  
Mr C Nash BSc(Hons) MRTPI  
Mr N Northrop BA(Hons)

FOR THE APPELLANTS

Mr J Steedman

He called

Mrs C Lewis  
Mr I Murat MSc MCIEEM  
Mr R Mellor BA(Hons) MSc CIEEM

## **DOCUMENTS**

CD1.1 – 1.26; 2.1 – 2.6; 3.1 – 3.12; 4.1 – 4.5 as listed previously in prepared Core Documents file plus Statement of Common Ground signed on 7 June 2019

Handed in at the inquiry:

LPA1 - CIEEM advice note

LPA2 - extract from Great Crested Newt Conservation Handbook

LPA3 - Extract Hedgerow Survey Handbook

LPA4 - not used

LPA5 - Area impact calculation 8%

LPA6 - Area impact calculation 14%

LPA7 - Area impact calculation 27%

LPA8 – Rosliston photographs

LPA9 – Landscape Character Descriptions Derbyshire Claylands

LPA10 – emails Taylor/Mellor May 2019

LPA11 Opening by Mr Smyth

LPA12 Closing submissions of Mr Smyth

LPA13 Costs application

APP1 –application plan L70/1b with position of foul drainage, septic tanks and drainage field added on, parts outwith application site edged red

APP2 – extract from Building Regulations re wastewater treatment

APP3 plan given to Mr Murat by Mr Smyth to show areas for re-planting

APP4 Closing submissions of Mr Steedman