



Appeal Decision

Site visit made on 7 October 2019

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 14th October 2019

Appeal Ref: APP/E2205/W/19/3228638

Little Criol Wood, Criol Lane, Shadoxhurst, Ashford, Kent TN26 1AQ

- 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 Josh Hilden against the decision of Ashford Borough Council.
 - The application Ref 18/01389/AS, dated 14 September 2018, was refused by notice dated 28 March 2019.
 - The development proposed is described as "*residential development for travellers, resubmission of 18/00370/AS*".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development set out in the header above is taken from the planning application form. It is apparent, however, that, prior to the determination of the application, the description changed to "*erection of two detached chalet style bungalows*". Consultation took place on this basis and I see no reason why anyone would be prejudiced by such a change, which more accurately reflects the development proposed. I have determined the appeal on that basis.

Main Issues

3. The main issues are:
 - the effect of the proposed development on designated ancient woodland/protected trees;
 - the effect of the proposed development on the character and appearance of the area; and
 - whether, having regard to local planning policy for the location of new housing, the appeal site is an appropriate location for the proposed development.

Reasons

Ancient Woodland

4. The appeal site lies wholly within an area designated as ancient woodland, covered by a blanket Tree Preservation Order (TPO). It is, in essence, a

- clearing within the woodland¹ containing a number of mature (albeit still young in relative terms) oak trees. It was clearly in use as a recreational area, although there does not appear to be planning permission in place for such use. The appeal scheme would, therefore, result in the loss of an area of ancient woodland.
5. The positioning of the proposed dwellings in relation to the protected trees is not entirely clear, in so far as the submitted block plan does not tie up with the plans contained within the appellant's Tree Survey.
 6. It was also evident from my site visit that the block plan fails to portray a number of relevant trees. Those that it does map are shown as being of uniform size and with uniform Root Protection Areas (RPAs). This does not accurately reflect the situation on the ground (which appeared to be better reflected by the Tree Survey plans).
 7. This inaccuracy is, of itself, a cause for concern. If the proposed dwellings were located as per the block plan, they would, almost undoubtedly, intrude into the RPAs of several of the protected trees. This could not, in my view, fail to cause harm to the trees in particular and, by default, to the woodland in general.
 8. The situation would be little better if Tree Survey plan Arbtech SP 01 was used. The footprint of the proposed dwellings would not be within the RPAs² and it may be that this would be sufficient for the individual trees to be unaffected by the buildings' construction (albeit that one tree is proposed for felling). Little consideration appears to have been given, however, to the impact of servicing the dwellings with water, drainage and energy or to the impacts of yet more hard surfacing for vehicular access.
 9. Indeed, even without dwellings on the site, the Tree Survey notes that trees have sustained, in some cases serious, damage arising from current/previous activity on the site³.
 10. Irrespective of that, I noted the presence of a large, six wheel tipper truck parked further into the woodland beyond the site, beside a substantial pile of rocks. In addition, two large wooden cable drums were stacked under one of the trees on site and there was clear evidence of activity within the main woodland itself, with building detritus⁴ and a shed present. I have noted above, the use of the site for recreational purposes. This was clear from the presence of goalposts, a zip wire between two of the trees, and some large wooden play equipment under another.
 11. In this overall context, I consider that a precautionary approach to further development within the woodland is warranted. In other words, I am not persuaded that the proposed development (or, indeed, any development), or its aftermath, would be in the best interests of the protected trees and ancient woodland. In my judgement, there is a very strong likelihood that the intensification of development, and human activity, upon the site would lead to the further deterioration of the woodland and trees.

¹ N.B. Natural England's Standing Advice on Ancient Woodland notes that "*Open space, both temporary and permanent, is an important component of ancient woodlands*".

² Albeit by very slim margins.

³ Including the severing of a major root in order to install a power box; root plate compaction; extensive bark wounds; and zipwire choking.

⁴ Including drain pipes and long metal bars.

12. In reaching this view, I am mindful of policy set out in the National Planning Policy Framework (the Framework)⁵, which is a significant material consideration. This states that:

"development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists."

13. There is nothing before me that would lead me to the view that "*wholly exceptional*" reasons exist such that the appeal proposal would be justified. I also note that, even if they did, no suitable compensation strategy exists. Any comments that the appeal scheme would enhance biodiversity on the site must be considered as assertion, at best. It might be that (if wholly exceptional reasons did exist) a compensation strategy could be conditioned, but I consider that it would be negligent to grant planning permission without first having established whether any such strategy was appropriate and realistic.

14. I also note Natural England's Standing Advice on Ancient Woodland. Coming as it does from the Government's adviser on such features, this is also a material consideration to which I afford significant weight. It states that:

"Where a proposal involves the loss of ancient woodland, you should not take account of the existing condition of the ancient woodland when you assess the merits of the development proposal. Its existing condition is not a reason to give permission for development".

15. In addition, it states that "*for ancient woodlands, you should have a buffer zone of at least 15 metres to avoid root damage*". It is not disputed that this is not achieved by the appeal scheme. I note that the Tree Survey very specifically does not take account of the protected status of the trees or of the site's location within ancient woodland when reaching its findings as to the impacts of development.

16. Finally, the implications of the juxtaposition between the trees and the proposed dwellings would extend beyond the harm to the trees. The relationship of one with the other would be such that there would be a very high likelihood of adverse effects upon daylight/sunlight to, and outlook from, the dwellings⁶. This being so, it is reasonable to consider that there would be pressure from future occupiers for the felling of additional protected trees on the site, to address overshadowing, maintenance issues⁷ and safety concerns⁸. This would very likely be harmful to the ancient woodland and to the character of the area.

17. The Ashford Local Plan (the Local Plan), which was only adopted in February 2019, is clear at policy ENV5 that all development in the rural areas of the borough shall protect *inter alia* ancient woodland and semi-natural woodland. Policy ENV1 states that proposals should safeguard features of nature conservation interest and should include measures to retain, conserve and enhance habitats, including ancient woodland. The appeal proposal would conflict with these policies, as well as with the Framework and Natural

⁵ Paragraph 175

⁶ Even ignoring the fact that the southernmost dwelling would face a tall evergreen hedge at very close quarters.

⁷ E.g. blocked gutters from falling leaves.

⁸ E.g. from falling branches and/or entire trees

England's Standing Advice on Ancient Woodland. I conclude that it would have an adverse effect on designated ancient woodland/protected trees.

Character and Appearance

18. As noted, the appeal site is an open area within ancient woodland, which itself lies within open countryside beyond the village of Shadoxhurst. Although compromised by an incongruous gate and close boarded fencing, it retains a sense of sylvan rurality. Although one is conscious of extant pitches beyond the appeal site, the structures are set well back from the road such that they are not *too* intrusive.
19. Two substantial dwellings, and their accompanying paraphernalia, would sit very uncomfortably in this context, bringing development much further forward and undermining the wooded character of the immediate area. Even with more appropriate boundary landscaping, the dwellings would still be visible from the public realm, through the trees, notably in the autumn/winter months. They would be at odds with this otherwise undeveloped frontage of Criol Lane, which itself features only very limited development in the form of current and historic agricultural buildings and their associated dwellings.
20. It is suggested that the appeal proposal would mask the mobile homes, resulting in considerable visual improvement, with the acknowledgement that the extant development is "*more incongruous than the permanent quality ... dwellings proposed*". This is rather the point. The extant development on the site is unsympathetic to its surroundings. Additional development would only exacerbate, rather than mitigate, this. That aside, there are considerably more sympathetic and low impact ways of screening development than building two large dwellings in front of it.
21. I conclude that the appeal proposal would have an adverse impact upon the character and appearance of the area. It would conflict with Local Plan policies HOU16 and ENV3a. These require, among other things, that new traveller accommodation does not adversely affect the visual or other essential qualities of *inter alia* ancient woodland and that development proposals demonstrate particular regard to the pattern and composition of trees and woodlands, and the presence and pattern of historic landscape features.

Whether an appropriate location for the proposed development

22. Taken as a whole, the Local Plan sets out a clear strategy for the location of new residential development in the borough. It has been very recently adopted.
23. Local Plan policy HOU5 allows for residential development adjoining or close to the existing built up confines of a number of settlements, including Shadoxhurst. In my judgement, the appeal site could reasonably be regarded as meeting the second criterion, in that it is "close" to Shadoxhurst. If this first hurdle is jumped, development proposals must also meet a number of other criteria set out in the policy.
24. In this context, I share the Council's concern about the lack of a footway into Shadoxhurst from the site, in relation to criterion c). That said, the Council does not appear to dispute that it has granted planning permission for dwellings elsewhere with a comparable (lack of) pedestrian access. Such is the nature of rural settlements.

25. The route from the site into Shadoxhurst is relatively short, with grass verges either side of the road. Once into Shadoxhurst, any pedestrians from the appeal site would be in the same situation as those living in the village, in so far as the lack of footways (in places) is concerned. Given that Shadoxhurst is identified in the Local Plan as a suitable location for windfall residential development, it is reasonable to consider that the Council finds such a situation within the village to be tolerable.
26. This being so, while noting the Council's specific concern about safe pedestrian access I do not consider that this is, of itself, a reason to refuse planning permission.
27. That said, the proposal would still fail to meet criteria e) and f) of policy HOU5, which require new development to conserve and enhance the natural environment and to sit sympathetically within the wider landscape, preserving the setting of the nearest settlement.
28. I conclude, therefore, that having regard to local policy for the location of new housing, the appeal site is not an appropriate location for the proposed development.

Other Matters

29. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant shares a protected characteristic for the purposes of the PSED and I consider below matters raised by the appellant in this context. In short, however, overall there is nothing in the evidence before me to indicate an inequality of housing opportunity for Gypsies arising from the dismissal of the appeal.
30. My attention was drawn to another planning permission for a new house in the borough. The appellant has suggested that the Council, in refusing planning permission for the appeal scheme but granting permission for the other, has discriminated against the gypsy and traveller community.
31. This argument is not at all persuasive. It is very clear from the Officer's report that careful consideration has been given to the effects of the appeal scheme and to its accordance with adopted planning policy. Notwithstanding that, the example cited is contextually very different to the appeal proposal, as it appears to be for a single replacement dwelling not two new houses. I give it very little weight as any kind of precedent.
32. Reference is also made to a previous application for the site. This appears, however, to have been considered under now superseded planning policies. It has little, if any, relevance to the scheme before me, which must be judged with reference to current planning policy, current representations and other relevant current material considerations.
33. Planning application 17/00295/AS is referred to. No detail is provided in relation to this and I cannot comment further, other than to note that every application must be determined on its own merits. Judging from the reference number, suggesting a 2017 date, it would appear that that this application was also determined under a previous planning policy regime in any case.

34. No substantive evidence was provided in support of the claim that the appeal site is a brownfield site. Other than the access track, which runs through the site to the pitches beyond, the site is very clearly a green, open space in a woodland. Taking, for the sake of argument, the position that the site was once developed, it has clearly regenerated or been regenerated such that any brownfield status it may once have had is no longer applicable.
35. My attention was drawn to documents highlighting the presence of a large number of gypsies and travellers in the south east. A deficiency of gypsy and traveller pitches in the borough was alleged in this context (although no substantive evidence has been provided in support of this). I also note that the Council has yet to produce its Gypsy and Traveller Development Plan Document.
36. The application is not, however, for gypsy and traveller pitches but for two houses. No shortage of such is alleged, or evidenced, notably with regard to the Council's five year supply of deliverable housing sites. Nor is there any evidence to suggest that Gypsies and Travellers face any greater difficulty in acquiring 'bricks and mortar' housing than members of the settled population.
37. Indeed, the rationale behind national planning policy for gypsy and traveller sites⁹ is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life while respecting the interests of the settled community. Thus, the entire thrust of such policy is to facilitate the delivery of *pitches* in appropriate locations, being reflective of the difficulties faced by some members of the community in securing such, coupled with a cultural aversion to bricks and mortar.
38. The reference in national planning policy for gypsy and traveller sites to "*rural exception sites*" relates very clearly to traveller sites, not to bricks and mortar dwellings for the settled. Any assessment of planning applications for houses should be considered in relation to planning policies for bricks and mortar residential development.
39. I note the appellant's reference to the Planning Practice Guidance on rural housing. This must be read, however, in the context of the adopted development plan, which does not support the appeal proposal.
40. There is no evidence to support the assertion that there is no permanent dwelling that the appellant could purchase with his (undisclosed) budget. Notwithstanding, first, that the construction of two new houses would itself be significant financial undertaking, indicative of the availability of not insubstantial funds and, second, it does not appear to be the appellant who would reside in the dwellings, an inability to purchase a house is not close to being "*wholly exceptional*". As with the settled community, there are other options available to secure a house beyond building two new dwellings¹⁰.
41. It is indicated that renewable energy and/or recycled materials are being considered for the proposal. As such language suggests, however, there is no significant detail or commitment provided in relation to such factors and very little weight is afforded to them.

⁹ Planning Policy for Traveller Sites (August 2015)

¹⁰ For example, renting; applying for social housing; and national Affordable Home Ownership Schemes.

42. Reference is made by the appellant to Local Plan policies HOU7, HOU16 and HOU17. I have referenced HOU16 above. HOU7 refers to replacement dwellings in the countryside and, as such, is not relevant here. HOU17 refers to safeguarding existing traveller sites. As the appeal proposal would not result in the loss of a traveller site, this policy has no bearing.
43. Reference is also made to a number of Framework paragraphs. Their relevance to the appeal proposal appears limited at best.
44. The appellant makes reference to Human Rights matters, alleging that the Council's decision:
- "represents an inappropriate and unacceptable balance between the interests and rights of the applicant to enjoy his land subject to reasonable and proportionate controls by a public authority and the interests and rights of those potentially affected by the proposal, in respect of the home and peaceful enjoyment of their property and the wider public interest"*.
45. It is not entirely clear what is being claimed here, but it does not seem to me that the decision to refuse planning permission interferes with the appellant's rights under Article 8. There would be no evident adverse consequences for the appellant or, indeed for anyone else. In addition, as noted above, there are other options available in relation to securing bricks and mortar housing.
46. Any interference would be in accordance with the law and in pursuance of a well-established, legitimate and proportionate aim, namely the protection of ancient woodland/TPO trees and the character and appearance of the wider area.

Conclusion

47. For the reasons given above, and taking all other matters into consideration, I conclude that the proposal conflicts with the development plan taken as a whole. There are no material considerations that would warrant a decision other than in accordance with the development plan. The appeal is dismissed.

Richard Schofield

INSPECTOR