
Appeal Decision

Site visit made on 21 July 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/X0360/W/19/3243042

Plot 7, The Coombes, Coombes Lane, Barkham, Wokingham, Berkshire RG41 4SJ

- 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 Jeb Cooper against the decision of Wokingham Borough Council.
 - The application Ref: 192529, dated 24 September 2019, was refused by notice dated 22 November 2019.
 - The development proposed was originally described as "Planning application QWCJC01 for essential post & rail paddock fencing (formerly permitted development)".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Jeb Cooper against Wokingham Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. Since the Council took its decision and the appeal was made, the Arborfield and Barkham Neighbourhood Plan was made. The main parties have been given an opportunity to comment on this neighbourhood plan, and I have taken it into account in reaching my decision. Furthermore, since the appeal was made, it has been brought to my attention that the appeal site has been added to Natural England's Ancient Woodland Inventory. The main parties have been given an opportunity to comment on this, and I have determined the appeal on this basis.

Main Issues

4. The main issues are the effect of the proposal on:
 - Protected trees;
 - Biodiversity including protected species; and
 - The character and appearance of the area

Reasons

Effect on protected trees

5. The appeal site forms part of the wider Coombes woodland, which has recently been subdivided into plots and sold at auction. The appeal site is bounded to the north and east by existing public rights of way. The Council made a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015, as amended, which came into force on 23 January 2019. This restricts certain permitted development rights, which includes the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure and requires such development to first obtain planning consent from the Council.
6. The appeal proposal is for the installation of a timber post and rail fence around the appeal site. From the submitted plans, the proposed fence would be approximately 1.2metres high. The trees within the appeal site are protected by Woodland Tree Preservation Order No.1684/2019. Paragraph 011 of the Planning Policy Guidance (PPG) states that orders covering a woodland protect the trees and saplings of whatever size within the identified area¹. Paragraph 028 further states that a woodland category TPO's purpose is to safeguard the woodland as a whole². In addition to the woodland TPO; the appeal site has been added to Natural England's Ancient Woodland Inventory. Paragraph 175 of the National Planning Policy Framework (the Framework) states that development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodland should be refused, unless there are wholly exceptional reasons.
7. The Council has raised concerns that the appellant has failed to demonstrate that the proposal would not cause harm to protected trees within this woodland. It was apparent from my site visit that the appeal site is very heavily vegetated, with a number of mature trees. The plans submitted as part of the planning application comprise a plan showing the extent of the appeal site, and a simple diagram of the proposed fencing.
8. From this submitted information, it is not clear how the proposed fence would be positioned in relation to the existing trees on site. No arboricultural assessment was submitted as part of the application, nor as part of the appeal. In this instance, an arboricultural report would clearly show the positioning of the trees within the site, and the position of the fence in relation to these existing trees. It is not clear from the evidence whether any trees would need to be removed or damaged as part of the proposal. In the absence of any formal assessment to demonstrate the extent of the works, or the positioning of the proposed fence in relation to the existing trees on site, I am unable to determine whether the proposal would harm the protected trees.
9. The appellant has indicated that a pre-commencement condition could be imposed to require the submission of an arboricultural impact/method statement. I do not agree since the contents of this report would have an effect on the acceptability or not of the principle of the development. As such it would not be appropriate to be secured by a planning condition.
10. The appellant contends that no trees would be removed or damaged by the installation of the fencing, as it would be fitted by hand and involves no excavated groundwork. It has also been put to me that that the proposed fence would be freestanding, and thus would not be fixed to any trees. Furthermore,

¹ Paragraph 011 reference ID:36-011-20140306 Revision date 06 03 2014

² Paragraph 028 reference ID:36-028-20140306 Revision date 06 03 2014

no protected trees would be cut, removed or damaged either above ground or within their root zone. The proposed purpose of the fence is to protect the trees within the appeal site and I appreciate that the appellant does not consider that the proposal would risk harm to trees. However, based on my observations made during my site visit and the information submitted as part of the application and appeal I cannot be certain that no trees would be harmed. Beyond the assertions made by the appellant, I have been presented with no evidence which supports this conclusion and in the absence of this assessment I cannot be certain the proposal would not harm protected trees.

11. While I note the appellant's concerns regarding the appeal site being added to Natural England's Ancient Woodland Inventory, and whether the appeal site meets the criteria to be included within this inventory, the site nevertheless is now subject to this designation and I must deal with the appeal on that basis. Paragraph 175 of the Framework states that development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodland should be refused, unless there are wholly exceptional reasons.
12. Accordingly, notwithstanding the appellant's involvement in woodland management, including the planting of trees, I consider the proposal would conflict with policy CP3 of the Wokingham Borough Core Strategy 2010 (CS), policy CC03 of the Managing Development Delivery Local Plan 2014 (LP) and policy IRS31 of the Arborfield & Barkham Neighbourhood Plan. Together these policies seek, amongst other things, that development protects and retains existing trees, hedges and other landscape features, and conserves natural assets.
13. I also identify conflict with criteria G1 of the Borough Design Guide Supplementary Planning Document 2012 (SPD), which seeks, amongst other things that development responds positively to mature trees and hedges. There is conflict with paragraph 175 of the Framework, which seeks amongst other things that development should not cause the loss or deterioration of ancient woodland.
14. The Councils reason for refusal makes reference to policies CP1 and CP11 of the CS. I do not find these directly relevant to this main issue, as they relate to the principle of sustainable development and proposals outside of the development limits. The reasons for refusal also makes reference to policy TB21 of the LP. I do not find this directly relevant to this main issue as it relates to landscape character.

Biodiversity and protected species

15. The appeal site is located within a Local Wildlife Site, a Bat Consultation Zone, and a Badger Setts Consultation Zone. The Council's ecologist has been consulted as part of the planning application and states that there are records of badgers within the wider Coombes woodland, and as such there is a potential that the proposed fence may impact badger setts. In addition, other protected species including nesting birds and bats could be impacted if any vegetation clearance was necessary.
16. Paragraph 99 of Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and Their impact Within the Planning System states that it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established

before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances. It further states that bearing in mind the delay and costs that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.

17. In this instance the Council have indicated that badger activity has been recorded with 1km of the appeal site, and given the woodland nature of the appeal site I find that there is a reasonable likelihood of badgers being present on site. I note that the appellant considers during their pre-application assessment there was no evidence of badgers on the site, which includes no evidence of badger setts. However, there is no assessment to corroborate that assertion, and I cannot be certain that the appellant is suitably qualified to reach a definitive conclusion on the matter.
18. As part of the planning application, the appellant submitted a Wildlife and Geology "trigger" form which seeks to inform whether a wildlife report would be required in support of any planning application. I am unsure of the origin of this form, as it makes several references to biodiversity within Devon. Furthermore, several of the assumptions made on this form appear to be incorrect, with the form indicating the site is not greater than 0.1 hectares in size, and is not located within a woodland. This limits the weight I can give this submission.
19. I note that the appellant contends that the Council did not specifically require an ecological survey to be undertaken during the application process. Nevertheless, the appellant has not provided any information with the appeal regarding the presence or otherwise of protected species.
20. The appellant has drawn my attention to an ecological appraisal³ which has been produced to appraise the ecology in respects of plots 5, 8 and 10 within Coombe Woodlands. Whilst I note the findings of this report, it carries little weight as the assessment does not cover the appeal site. In the absence of any assessment for the appeal site, I am unable to reach a view on whether the proposal would result in disturbance or harm to any protected species. I note that the appellant has indicated a willingness to undertake additional assessment, which would form part of a planning condition. However, a planning condition would not be appropriate in this instance as the contents of any ecological assessment could require additional mitigation. Therefore, the results of any such assessment would have an effect on the acceptability or not of the principle of the development. Furthermore, such an approach would be clearly contrary to the advice within Circular 06/2005.
21. I note that the appellant contends that the proposed fence would create a sanctuary or preserve wildlife within the woodland. Reference has been made to the proposed fencing acting as a perch for predatory species. However, no evidence to support this assertion has been provided by the appellant which limits the weight I can give this in favour of the proposal. I note that an interested party has commented that the proposal could protect wildlife by stopping dogs from entering the site. However, given the design of the

³ The Coombes Ecological Appraisal prepared by Ecological Planning & Research Ltd dated April 2020

proposed fencing, I am not convinced that a simple post and rail fence would provide a barrier to dogs entering the site.

22. Consequently, in the absence of any cogent evidence by the appellant to confirm that the proposal would not harm protected species, I find conflict with policies CP3 and CP7 of the CS. Together these policies seek, amongst other things, that development would have no detrimental impact upon important ecological features. It would also be contrary to Chapter 15 of the Framework, which seeks amongst other things to protect and enhance biodiversity.

Character and appearance

23. The appeal site is situated within the countryside, and is located within the Landscape Character Area (L1) 'Bearwood Wood Sand and Gravel Hills'. The Landscape Character Assessment (LCA) describes the key characteristics including, amongst other things heavily wooded forested character comprising large blocks of distinctive coniferous planting interconnected with swathes of mixed and deciduous woodlands. Coombes Wood is specifically identified within the LCA, and its importance as a woodlands is reiterated. The overall strategy of the area is to conserve and strengthen the existing character, with the key characteristics to be conserved including the woodland and the features associated with the historic landscape. The appeal site is heavily vegetated and was clearly wooded in character.
24. The Council has raised concerns that the proposal would unnecessarily fragment the area and would be harmful to the character of the area. I do not agree. It was apparent from my site visit that there are a number of fences of varying types in close proximity to the appeal site. These integrated well within the rural nature of the woodland setting, and did not appear as incongruous additions. The proposal is for a relatively modest fence, and its appearance would sit well within the local environ. The proposal would likely be a discrete addition to the woodland, and its design and relatively low height would be unobtrusive.
25. The LCA states that due to the wooded context and private secluded character, some changes can be accommodated without being visually apparent. Whilst I recognise that the woodland itself is an important feature of the landscape which is visible across long distances, the impact of the proposal before me would be localised to the immediate locality of the appeal site. Given the dense vegetation immediately around the appeal site, the proposal would not be readily visible. Consequently, I am satisfied that the proposal would conserve the key characteristics of the woodland, and would not harm the character and appearance of the area.
26. I note that the Council have raised concerns about the cumulative effect with other proposals in the immediate area, which could lead to a proliferation of boundary fences and other development. However, in respect of the proposals before me I have found no harm to the character and appearance of the area. In any event, each application and appeal must be considered on its own planning merits, which is what I have done in this case.
27. Consequently, I find that the proposal would not harm the character and appearance of the area. There would be no conflict with policies CP1, CP3 and CP11 of the CS, and policy TB21 of the LP. I find no conflict with policy IRS1 of the NP. Together these policies seek, amongst other things, that development

maintains or enhances the quality of the environment and has no detrimental impact upon important landscapes, and preserves the character and appearance of the countryside. I find no conflict with criteria G1 of the SPD. This seeks, amongst other things, that development should respond positively to its local context.

Other matters

28. I note that the appellant has indicated that they require the development in order to protect the appeal site from trespassers, and to provide additional security from theft. The appellant has indicated that they intend to keep livestock on site, which would require fencing for their security. Whilst I appreciate the need for additional security, the proposal is for a relatively low fence and I question the effectiveness of this as a security measure. Furthermore, I have been presented with no cogent evidence that trespassing and theft is an inherent problem in this location. This limits the weight I can give this in my determination of the appeal.
29. The appeal site is located within the 7km buffer of the Thames Basin Heath Special Protection Area (SPA). However, there is no need for me to consider the implications of the development on the SPA because the scheme is unacceptable for other reasons.
30. The appellant has drawn my attention to an appeal at a neighbouring plot⁴. In that appeal the inspector concluded that the proposal would not harm the character and appearance of the area, but identified harm to both protected trees and protected species. In any event, all appeals and applications must be determined on their own planning merits, which is what I have done in this case.

Planning balance and Conclusions

31. I have found that the proposal would not harm the character and appearance of the area, I cannot be certain that the proposal would not harm protected trees or protected species. The lack of harm in respect of character and appearance is a neutral factor in my consideration of the appeal, and does not outweigh the other harm identified.
32. For the reasons given above, the appeal is dismissed.

S Shapland

INSPECTOR

⁴ APP/X0360/W/19/3238448