



Appeal Decision

Site visit made on 20 April 2022

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH May 2022

Appeal Ref: APP/C1435/D/22/3293125

Little Annan, Lewes Road, Framfield, TN22 5RE

- 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 Ronald Hammond against the decision of Wealden District Council.
 - The application Ref WD/2021/1768/F, dated 1 July 2021, was refused by notice dated 13 December 2021.
 - The development proposed is for a single storey rear extension with associated internal alterations and the addition of steps to the garden from the side and rear of the dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The appellant has referred to two potential alternative ways to extend the dwelling, which are both materially different to the proposed scheme. As such they fall outside the scope of this appeal and I am unable to take them into consideration in the determination of this appeal.

Main Issue

3. The main issue is the effect of the proposal on the character, natural beauty, ecosystem, soil translocation and tree roots of the adjacent area of Ancient Woodland.

Reasons

4. The appeal site is located in an area of countryside in the Low Weald Landscape Character Area, where there is an abundance of woodland and groups of trees. The land adjacent to the northeast and southeast boundaries of the appeal site is identified as an area of ancient woodland on the MAGIC website (Slays Wood). Much of this area is also the subject of a blanket Tree Preservation Order (No. 23.1997).
5. The area of Slays Wood, immediately to the northeast boundary of the appeal site, has been owned by the appellant for some 37 years. During this period planning permission/approval has been granted for the felling of a number of trees, together with various building and engineering operations on the land. The appellant and his family have used this land for domestic recreational and

storage purposes, along with the rearing of ducks and pheasants and the stabling of a horse.

6. From the information submitted, it appears that the above planning decisions were granted prior to the adoption of the current development plan, the publication of the National Planning Policy Framework 2021 (the Framework), the standing advice relating to ancient woodland and various statutory obligations and requirements relating to wildlife habitats and protected species. As stated in paragraph 2 of the Framework, planning law requires that applications for planning permission be determined in accordance with the prevailing development plan, unless material considerations determine otherwise. The Framework itself is a material consideration in planning decisions and decisions must also reflect relevant international obligations and statutory requirements.
7. Current Government guidance, including the standing advice issued by the Forestry Commission & Natural England applies to areas of ancient woodland whether or not they are included in the Ancient Woodland Inventory. It advises that ancient woodland includes any area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland mainly made up of trees and shrubs native to the site, usually arising from natural regeneration. It advises that the term 'Wooded continuously' does not mean there's been continuous tree cover across the whole of the site. Not all trees have to be old and open ground both temporary and permanent, is an important component of ancient woodlands.
8. The guidance states that ancient woodland is a valuable natural asset important for wildlife, soils, carbon capture and storage, its contribution to the seed bank, recreation, wellbeing and cultural, historical and landscape value. In assessing development proposals their direct and indirect effects on ancient woodland should be assessed. This includes the wildlife it supports both within and near to the ancient woodland.
9. The current buffer zone recommendation for ancient woodlands is that new development should be sited at least 15 metres from the boundary of the woodland to avoid root damage. Larger buffer zones are required where assessment shows that other impacts are likely to extend beyond this distance, this includes wildlife habitats associated with ancient woodlands. The standing advice on protected species and development is that ancient woodlands, woodlands, hedges, buildings with suitable features and large rural gardens provide likely habitats for bats, breeding birds and dormice, reptiles, etc. Ecological surveys should be undertaken to support development proposals where there is suitable habitat on site to support protected species and where protected species are likely to be present and could be affected by the proposal.
10. Paragraph 174 of the Framework states that planning decisions should contribute to and enhance the natural and local environment, minimising impacts on and providing net gains for biodiversity. Paragraph 180 of the Framework states that when determining planning applications development resulting in the loss or deterioration of irreplaceable habitats, such as ancient woodlands should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.

11. Spatial Planning Objective SPO1 of the Wealden Core Strategy Local Plan 2013 (CS) seeks to help manage countryside resources and to protect and enhance recognised biodiversity and geodiversity and to enhance and manage distinct landscapes. Consistent with this, CS Policies WCS12 & WCS14 promote sustainable development and seek to prevent the net loss of biodiversity and maintain, restore and enhance habitats, biodiversity features and ecological networks.
12. Policy GD2, of the Wealden Local Plan 1998 (LP), seeks to restrict development outside the development boundaries to that which is allowed by specific policies in the LP. Together LP Policies EN6 & EN12 require new development to conserve or enhance the natural beauty and character of the landscape and to retain and enhance the contribution of trees and woodland areas to the landscape value of the District. LP Policy EN13 states that the Council will resist development proposals that would prejudice the ecology of Ancient Semi-natural woodlands, as defined by English Nature.
13. Chapters 2 & 3 of the Wealden Design Guide 2008 (SPD) deal with wooded areas and ancient woodlands. They advise that wooded areas form an important natural network across the District, which provide habitats for over 50% of the District's protected species. Accordingly, the Council seeks to ensure that suitable buffer zones are employed to protect them. Minimum British standards should be applied when considering the impact of development on trees and hedges and biodiversity issues should be appropriately addressed.
14. The appeal dwelling is located towards the front of the appeal site and sits on an area of land that is slightly elevated above the gardens to the northwest and northeast. The dwelling comprises an 'L' shaped chalet bungalow, with dormer windows on its side roof slopes.
15. The proposed extension would be located on the northeast side of the dwelling and would respect the form and design of the existing dwelling. Subject to the use of matching external materials it would respect the character and appearance of the dwelling. The proposed extension would be partially screened from the lane by the existing dwelling and boundary planting and would not impact on the living conditions of the occupiers of nearby properties.
16. As a result of its use and development over the past 37 years the appellant states that the land beyond the northeast boundary of the appeal site is not ancient woodland and that the ancient woodland mapping is incorrect. To amend the boundary of the ancient woodland falls outside the scope of this appeal. It is a matter that would need to be pursued through Natural England.
17. Irrespective of this, the appellant has submitted insufficient evidence to demonstrate that the area of identified ancient woodland they own does not warrant ancient woodland status. In particular, insufficient evidence has been submitted to demonstrate that the site is not integral to the ancient woodlands ecosystem.
18. Currently this area of Slays Wood is primarily laid to grass, with scattered woodland trees, clumps of low planting, various structures, log store, hardstanding and some freestanding play equipment. It is separated from the adjacent area of Slays Wood by a post and wire fence. Tree canopies cover a material proportion of the area of identified ancient woodland owned by the

appellant. This cover is provided by the woodland trees on the appellant's land and the overhanging canopies of trees within the adjacent identified ancient woodland.

19. As stated by the Council the existing dwelling is already less than 13 metres from the area of identified ancient woodland owned by the appellant. With the proposal the extension would project less than seven metres from the identified ancient woodland and the patio would be even closer. As a result, the proposed extension and raised patio area would fall well below the minimum recommended 15 metre buffer zone for ancient woodland. The necessary space around the proposed extension that would be required during the construction period would bring the works extremely close to the boundary of the identified area of ancient woodland.
20. The appellant's arboriculturalist has confirmed that, in accordance with British Standard BS.5837:2012, the proposed extension would fall outside the root protection zones of all trees on or adjacent to the application site. This is based on circular root protection zones only. As stated in BS.5837:2012 where pre-existing site conditions or other factors indicate that rooting has occurred asymmetrically, a polygon of equivalent area should be produced. It should reflect a soundly based arboricultural assessment of root protection. Account should be taken of the morphology and disposition of the roots when influenced by past and existing conditions; topography and drainage; soil type and structure; and the likely tolerance of the tree to root disturbance or damage.
21. T8, is a 15 metre high Common Oak tree which is both within the identified area of ancient woodland and covered by TPO 23/1997. It is located immediately adjacent to the existing outbuilding and within the parking area. No evidence has been submitted to demonstrate whether these structures have affected the root patterns of the tree and no soil assessment details have been submitted despite the sensitive location of the extension. Similarly, there is no assessment of the space required for the future growth of this tree which is categorised as a young tree with a life expectancy of 20 – 40 years, or assessment of other physical factors such as overshadowing and safety. As a consequence, it has not been demonstrated that the proposal would not result in the deterioration of this tree either during construction or in the future.
22. As stated by the Council, ancient woodlands have their own local soil, environment, wildlife and cultural history. Very little evidence has been submitted in relation to the impact of the proposal, both during and after the construction stage, on the local soil, environment and wildlife which contribute to and/or benefit from the existing ecosystem.
23. Overall, based on the limited evidence submitted, the appellant has failed to demonstrate that the proposal would not result in a material deterioration of the character and natural beauty of the surrounding ancient woodland and its ecosystems, including local soils, environment and wildlife. No exceptional reasons for allowing the proposed extension have been cited and the proposal does not include any compensation measures to address impacts arising from the proposal. The concerns relating to these matters clearly outweigh the benefits for the appellant and their family that would result from the increased living accommodation.
24. I conclude that, on the basis of the information submitted, the proposal would have an unacceptable impact on the character and natural beauty of the

surrounding ancient woodland and its ecosystems. Accordingly, it would conflict with LP policies GD2, EN6, EN12 & EN13, CS objective SPO1, CS Policies WCS12 & WCS14, chapters 2 & 3 of the SPD, paragraph 180 of the Framework.

Other matter

25. The appeal site is located in a well wooded area and as stated in the SPD, wooded areas form an important natural network across the District and provide habitats for over 50% of the District's protected species. The proposed extension is close to a large area of ancient woodland and involves alterations to the roof of the existing dwelling. Accordingly, the adjacent area of identified ancient woodland, appeal site and the roof of the existing dwelling have the potential to provide habitats for protected species such as bats and various birds and reptiles.
26. Circular 06/2005 states that the presence of a protected species is a material planning consideration and that it is essential that the presence or otherwise of protected species and the extent to which they may be affected by a proposal is established before planning permission is granted. Otherwise, all material considerations may not have been addressed in making the decision. Government advice relating to ancient woodlands similarly requires the submission of ecological surveys where appropriate. In view of the proximity of the appeal site to the ancient woodland, together with its rural setting and the abundance of trees and hedges within and adjoining the appeal site, this is not a matter that could be satisfactorily dealt with by condition.
27. Accordingly, had I found in favour of the appellant in relation to the main issue this is a matter about which I would have sought further views from the appellant and the district council regarding the possible impact of the proposal on protected species.

Conclusion

28. The conclusion on the main issue amounts to a compelling reason to dismiss this appeal, which the imposition of conditions would not satisfactorily address.

Elizabeth Lawrence

INSPECTOR