
Appeal Decision

Site visit made on 10 May 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd May 2022

Appeal Ref: APP/U2235/W/21/3278941

The Finches, Chartway Street, East Sutton, Maidstone, Kent ME17 3DN

- 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 Robert Schroeder against the decision of Maidstone Borough Council.
 - The application Ref 20/502117/FULL, dated 29 April 2020, was refused by notice dated 29 January 2021.
 - The development proposed is a change of use of land and the stationing of 12 no. holiday cabins, landscaping and access.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A number of touring caravans were on the appeal site. Some were in places shown in the appeal plans for holiday cabins, others were not. These parts of the site included recently cut vegetation and some stumps of removed trees grubbed out to ground level. A grass track, broadly following the route shown in the appeal plans, was also present.

Main Issues

3. The main issues are:
 - whether the proposed development would result in the loss or deterioration of irreplaceable habitat, in this case ancient woodland; and
 - whether any harm to irreplaceable habitat would be clearly outweighed by other matters, so as to amount to wholly exceptional reasons necessary to justify the development.

Reasons

Irreplaceable habitat

4. Most of the appeal site, about 1.7 hectares, is undeveloped land next to The Finches Caravan and Camping Park. It is designated as semi-natural ancient woodland which is an irreplaceable habitat. In 2004 it was entirely wooded as a Sweet Chestnut coppice plantation, typical of other adjoining ancient woodland. Following tree felling without a licence and unauthorised clearance of the site, The Forestry Commission (the FC) took enforcement action and issued a restocking notice in 2012 seeking to restore the woodland to its former condition, including leaving up to 20% of the land as open space.

5. A previous Inspector¹ found that replanting of the site in compliance with this notice had taken place by November 2015 and in March 2019 native deciduous tree species were present throughout the site, as confirmed by contemporary site surveys. It now consists of young trees of varying density scattered in areas of grass, bracken, nettle and bramble.
6. The cabins would be small-scale, basic buildings erected on site and placed on timber supports without foundations. Services to each cabin would not require any ground disturbance. They would be in cleared pockets of land, spread over the length of the site with access through The Finches. There is no evidence that the proposal would entail any additional tree removals. I have not been informed that any of the trees on the site are ancient or veteran trees and other species present on the site, such as I refer to above, are not ancient woodland species.
7. Notwithstanding the above, the National Planning Policy Framework (the Framework) recognises that irreplaceable habitat is technically very difficult, or takes a very significant time, to restore, recreate or replace once destroyed².
8. That the former coppice was a non-native species does not diminish the designation of the site as ancient woodland. While periodic clearance and open areas are important aspects of ancient woodland, there is no evidence that trees on the site were previously or recently cleared for commercial forestry reasons; ie with on-going coppicing in mind and with such clearance and re-planting otherwise falling within the NE Standing Advice of 'wooded continuously'. Nor has it been suggested that the cleared land and resulting open space was crafted purely to complement the biodiversity of the adjoining ancient woodland off-site.
9. It seems to me that some trees have been removed to facilitate the current use of the site for stationing touring caravans. This would also be convenient for the construction phase of the proposed development. Nevertheless, the soil is largely undisturbed. Such soil 'harbours dormant seeds of ancient woodland plants, sometimes for many decades' and ancient woodland soil is therefore 'as worthy of conservation as the above-ground woodland'. Moreover, there is no suggestion that the replanted or self-seeded trees present on the site are not suitable or appropriate to maintain ancient woodland and a small number of other ancient woodland indicator species are present on parts of the site.
10. Indeed, the proposal otherwise promotes the creation of ancient woodland on parts of the site and other parts (previously cleared of trees and rendered as grassland) have since become more ruderal in nature as the replanted and self-seeded trees have grown. Despite what has occurred on the land historically and recently, the land remains designated as ancient woodland and is in the process of restoration and regeneration. There is no evidence that habitat present on the site above or below ground does not remain suitable to establish or maintain ancient woodland.
11. While most of the site would be retained in its existing, natural condition, including the remaining trees, the cabins would be present on the land year round in the most conspicuous (cleared) positions. In addition, vehicles or trailers could be temporarily or permanently parked next to, or near, the cabins

¹ APP/U2235/A/14/2229243

² Framework Annex 2: Glossary

and outdoor activity by holiday-makers, including in amenity space, could take place for 11 months of the year. In these respects, the loss of ancient woodland 'habitat' (ie including soils) would, therefore, be 'direct and permanent during the operational phase' of the proposed use of the site.

12. While there would be no public views of the development or significant effect on the general character and appearance of the wider countryside, the proposal would, nonetheless, manifestly alter the innate visual, spatial or physical nature of the land. It would permanently change the use of the site from agriculture or forestry to leisure and recreation.
13. Although in small pockets, it would nevertheless prevent or disrupt managed or natural regeneration of ancient woodland over a significant part of the site, including where the cabins would be sited. There is no evidence that existing or proposed open spaces would result in any meaningful functional benefit to ancient woodland equivalent to the arrangement or extent of open space envisaged by the FC restocking notice. Moreover, the resulting fragmentation of woodland across the site, and nature of proposed human activity and use, would unduly erode a purpose of the site as a buffer to the off-site trees. This would detract from the overall integrity of this entire parcel of ancient woodland.
14. Accordingly, the proposal would fundamentally be incompatible with what the Council's development plan seeks to achieve in these regards, would seriously undermine the objectives of the FC in this case and negative effects would not be avoided, contrary to NE Standing Advice.
15. While the proposal is for fewer holiday cabins than in previous planning applications, the description of development specified by the appellant is 12 cabins. It would not, therefore, be reasonable to seek to 'moderate' the degree of impact through a condition to specify a lesser number of cabins (if indeed that would be an outcome of reduced development).
16. Taking all of the above into account, I find that the proposed development would result in significant harm by loss and deterioration of irreplaceable habitat, in this case ancient woodland. Consequently, it would not comply with Policy DM3 of the Maidstone Borough Local Plan 2017. This policy includes that development should protect ancient woodland and avoid significant adverse impacts on it, including by consideration of alternative sites.
17. It would also be inconsistent with objectives of the Framework outlined above to conserve and enhance the natural environment, with particular regard to habitats and biodiversity and, specifically, ancient woodland (including paragraphs 174 a), b) and d)).

Wholly exceptional reasons

18. The Framework states that development resulting in the loss or deterioration of irreplaceable habitat, such as ancient woodland, should be refused unless there are wholly exceptional reasons for it (paragraph 180 c)).

Tourism

19. The type of tourist accommodation would be compatible with the Council's development plan and relevant objectives of the Framework. It would bring related public benefits, including to the rural economy and during construction

works. It would likely also support The Finches business, which the appellant owns, and is conveniently located next to the appeal site which has been owned and managed by the appellant's family for over 100 years.

20. However, even if there is a need to allow more holidays in England and of this type, there is no evident reason why it is necessary for the proposed development to take place on land that is irreplaceable habitat. Nor is it clear why the stationing of holiday cabins would 'permit' more intensive woodland management, than would otherwise be the case absent the development; or would provide 'control of non-ancient woodland species', other than where a cabin happened to be sited.
21. I accept that the FC may have many holiday chalets 'in its woodland' and that a mutual symbiotic relationship can result in public benefits, including of cultural or recreational value. However, there is no actual objective evidence before me that the FC does entertain holiday chalets on land that is an irreplaceable habitat, including ancient woodland. But, even if it does, there is no evidence that those circumstances are comparable to the proposal or this site. I have not been informed that the FC support the proposal or that it has acknowledged public benefits in this appeal.
22. I am therefore not satisfied that the appellant has demonstrated (in accordance with NE Standing Advice) that the proposal for tourist accommodation would inherently 'enhance the condition of the existing ancient woodland'. Nor that to do so by this means would be 'appropriate' in this case and beyond what could result from natural regeneration (despite fallen trees which would not be unexpected or unusual in a woodland).
23. Accordingly, I give limited weight to these tourism related considerations.

Fall-back position

24. Some temporary activity could take place on the site with the consent of the appellant and by the exercise of permitted development rights³, especially in its present condition and appearance. Given its proximity to The Finches this could include camping. It could also be used for horse grazing, including by travellers.
25. However, the proposal includes operational development for the erection and permanent siting of buildings on the land. Accordingly, even if other uses took place on the site for the periods referred to by the appellant, they would not have the same immediate or longer term adverse effect on the irreplaceable habitat as the appeal proposal, either by duration or nature of impact. It also seems to me that the opportunity for such other use of the site has arisen, at least in part, as a result of the previous and some recent tree removals.
26. There is no objective evidence that if this appeal is unsuccessful the site would become 'unviable', that the proposal is enabling development or that it is part of a planned rural enterprise diversification programme. Nor has it been shown that there is a reasonable prospect that the site would be sold or that its sale would lead to inappropriate use or management of the land, especially considering that the Council or the FC could exercise enforcement powers.
27. I therefore give little weight to these fall-back positions.

³ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

Other reasons

28. The proposal would not adversely affect the living conditions of existing occupiers of any dwellings, would be satisfactory in traffic generation and have a safe and suitable means of access. There would be no harm to any heritage asset and no flood risk and while the site is within a minerals safeguarding area, there is no evidence that it is ever likely to be excavated for this purpose. In these respects, the absence of harm and compliance with the Council's development plan are neutral factors in my decision.
29. The reasons outlined above and promoted in support of the proposal would not, therefore, individually or collectively clearly outweigh the harm by loss and deterioration of the irreplaceable habitat that I have identified in the first main issue above. I give substantial weight to this issue. Consequently, the appellant has not demonstrated a wholly exceptional reason to justify the development.

Other Matters

30. The proposal would incorporate planting and biodiversity compensation measures. However, I have found that there is no wholly exceptional reason for the development. Having regard to Framework paragraph 180 c) and NE Standing Advice (that compensation measures should not be considered as part of the assessment of the merits of a development proposal) there is, therefore, no need for me to reach a finding on this matter because it would not alter my decision.

Planning Balance and Conclusion

31. The proposed development would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
32. For the reasons given above, I therefore conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR