

---

# Appeal Decision

Site visit made on 17 January 2023

**by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI**  
an Inspector appointed by the Secretary of State

**Decision date: 6 March 2023**

---

## **Appeal Ref: APP/Z3825/D/22/3304724**

### **'Silver Birches', Bashurst Hill, Itchingfield, Horsham RH13 0NY**

- 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 Yorke against the decision of Horsham District Council.
  - The application, Ref. DC/21/0535, dated 7 March 2021 was refused by notice dated 23 May 2022.
  - The development proposed is the creation of a new access for a private driveway.
- 

## **Decision**

1. The appeal is allowed and planning permission is granted for the creation of a new access for a private driveway at 'Silver Birches', Bashurst Hill, Itchingfield, Horsham in accordance with the terms of the application, Ref. DC/21/0535, dated 7 March 2021 and subject to the following conditions:
  - 1) The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this Decision;
  - 2) The development hereby permitted shall be carried out in full accordance with an Arboricultural Method Statement ('AMS') first submitted to and approved in writing by the Local Planning Authority;
  - 3) Unless the already submitted details are superseded by, or inconsistent with, the approved AMS, the development hereby permitted shall be carried out in accordance with the following approved plans: OS Based Location Plan; Drawing Nos. SB (SP) 001 PL1 Existing Site Plan; SB (SP) 001 PL1 Proposed Site Plan; SB (EX) 100 PL1; SB (GA) 100 PL1; 5636/001 Rev. A;
  - 4) No use of the proposed vehicular access shall take place until such time as it has been constructed in accordance with the details shown on 'Drawing No. SB (SP) 001 PL1: Proposed Site Plan', including the provision of visibility splays of 2.4 metres by 62.3 metres to the south and 2.4 metres by 70.1 metres to the north. Once provided, the splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metres above the carriageway of Bashurst Hill.

## **Main Issue**

2. The main issue is the effect of the proposed access on an area within the curtilage of 'Silver Birches' designated as Ancient Woodland.
-

## Reasons

3. The Council's Notice of Refusal refers to the siting and scale of the proposed access track which is considered would result in the loss of, and damage to, an area of Ancient Woodland, together with the provision of insufficient information to justify this effect. The Officer's Report on the application also refers to objections from the Woodland Trust and the Council's Arboricultural Officer.
4. The designation of this area as Ancient Woodland is derived from its inclusion within the Revision of the Ancient Woodland Inventory for West Sussex published in January 2010. The existence of this designation requires the Council to assess the proposed development (which other than the new access to Bashurst Hill on highway land comprises a 2m width gravel drive to the house to avoid use of the shared driveway with Willow Cottage) having regard to the relevant local and national policies.
5. As regards the development plan the Officer's Report cites Policy 31: 'Green Infrastructure and Biodiversity' of the Horsham District Planning Framework 2015 ('the HDPF'). The relevant Government policy is in paragraphs 179 & 180 of the National Planning Policy Framework 2021 ('the Framework').
6. I have given careful attention to the Report's analysis of the appeal proposal, which with the assistance of the Council's Arboricultural Officer concludes that the proposed gravel drive would damage the Ancient Woodland and therefore be in harmful conflict with, in particular, HDPF Policy 31(4)(b)(ii) and the Framework's paragraphs 179(b) and 180(a) & (c).
7. However, in my view the Council's assessment and conclusions, and the objection by the Woodland Trust are materially offset by the grounds of appeal and in particular three principal considerations. These are firstly the contextual evidence of the land's designation as part of the aforementioned Inventory in 2010; secondly the qualitative assessment of the woodland in terms of both its existing condition and the effect of the construction of the gravel drive, and thirdly the safeguards against harm that would be secured by a condition on a permission requiring the works to be carried out in full accordance with an AMS to be first agreed by the Council.
8. On the first consideration, the appellant has been in occupation of Silver Birches since 1981 and did not become aware of the existence of the Ancient Woodland Designation until the making of this appeal application in March 2021. In these circumstances and with no access to the site sought at any time during the compilation of the Inventory, it is clear that the status as Ancient Woodland was conferred on the basis of a Desktop Study, albeit no doubt supported by historical evidence including old Ordnance Survey maps.
9. As regards the second consideration, I carried out a site inspection which included walking along the full length of the proposed driveway. I have also had regard to photographs reproduced in the appellant's evidence and the detailed information of the events that resulted in significant changes to the woodland in 2008, two years before the designation as Ancient Woodland.
10. These changes were the result of works within the property's garden but for the most part outside the (since) designated area of Ancient Woodland, comprising the demolition of a garage outbuilding; levelling and regrading around the

construction of L-shaped timber outbuildings, and excavation works to create a large garden pond. The consequential changes of 2008 to the area now designated Ancient Woodland were the deposition of rubble and extensive amounts of clay spoil, with the amount sufficient to raise surface levels by a depth of up to 2 metres. The fact that the now existing levels are significantly different to the original is demonstrably evident from my site inspection, not least the sight of tree trunks with deposited spoil well above the root spread.

11. In addition, there was a 14 metre length of deep trench to redirect overhead services underground (along the now proposed route of the drive); the layering and covering of drainage pipes, and the temporary construction of a rubble, timber and earth bridge from the road across the stream. The appellant also says that since 2008 the area has been used for bonfires and the dumping of leaves, grass cuttings and other garden rubbish.
12. From all that I have seen and read I am satisfied that these are the facts in this case. Accordingly, it is appropriate to give significant weight to the altered landform and condition of the designated area in appraising the development against local and national policy. As regards the reference in the Officer's Report to the importance of a seed bank and the presence of Ancient Woodland indicator plant species, I consider it improbable that the thick layer of clay spoil does anything other than effectively nullify the seed bank and inhibit the prospering of plant growth and biodiversity. As suggested for the appellant, the presence of the clearing itself is an indicator of sorts, but one of its inclusion within a domestic garden for about nine decades, the after-effects of the fundamental change in levels 15 years ago and its subsequent use as a garden working and storage area.
13. Whether the appellant is correct to suggest that the land should no longer be designated as Ancient Woodland is not a matter for me to evaluate and determine in this appeal. However, I am persuaded that subject to the adequacy of the further safeguards outlined in paragraph 14 below, the construction of a gravel drive and its use for access to a single dwelling would not have anything other than a benign effect on the ecological integrity of the site. Gravel is a natural material and with only a few vehicular movements daily confined within a 2 metre wide strip the ecology of the woodland is unlikely to be adversely affected, least of all the outcome of 'significant harm' referred to in paragraph 180(a) of the Framework.
14. The third principal material consideration is that the appeal scheme can be implemented within the constraints and opportunities set out within an AMS. I acknowledge that this does not go to the crux of the main issue, but in my view it remains important. Whilst much of the work on an AMS has already been carried out as part of the appellant's evidence, a condition on a permission can be imposed that further secures the retention and protection of the existing trees and the site's remaining ecological value. A requirement for the AMS to be first agreed with the Council will provide the basis for ensuring that the loss and damage feared does not actually occur.

## **Conclusion**

15. The Council has justified its refusal of this householder application on the basis of a loss of and damage to an area of Ancient Woodland and in so doing

referred to a significant conflict with HDPF Policy 31 and the Habitats and biodiversity paragraphs in the Framework. However, in the particular circumstances of this case I do not consider that the proposal and its effects can be reasonably and fairly tested against the full weight of the provisions and objectives of these local and national policies.

16. I shall therefore allow the appeal. Conditions in respect of the appeal scheme complying with the AMS and the approved plans are needed to protect the existing landscape and ecological value of the site and for the avoidance of doubt in the interests of proper planning. A condition requiring the full construction of the access to Bashurst Hill and the maintenance of visibility splays are needed for highway safety.

*Martin Andrews*

INSPECTOR