



Appeal Decision

Site visit made on 24 August 2023

by Stewart Glassar BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/C1435/D/23/3321208

42 Fermor Way, Crowborough TN6 3BE

- 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 Anatolie Alas against the decision of Wealden District Council.
 - The application Ref WD/2022/2681/FR, dated 16 October 2022, was refused by notice dated 10 February 2023.
 - The development proposed is rear garden – gazebo.
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Decision

1. The appeal is allowed and planning permission is granted for rear garden - gazebo at 42 Fermor Way, Crowborough TN6 3BE in accordance with the terms of the application, Ref WD/2022/2681/FR, dated 16 October 2022, subject to the conditions listed in the schedule below.

Preliminary Matters

2. I have taken the description of development from the Council's decision notice and appellant's appeal form as it more clearly describes that for which permission is sought. I have omitted the word 'retrospective' as that is not an act of development.
3. At the time of my site visit, there was an enclosed room/store attached to the rear of the gazebo. Some photographs submitted with the planning application show this ground area as already being tiled. For the avoidance of doubt, I have based my decision on the drawings and details submitted with the application and upon which the Council would have made their decision.
4. A revised National Planning Policy Framework (the Framework) was published by the Government after the determination of the planning application. It does not raise any new considerations in relation to this appeal.

Main Issue

5. The main issue is the effect of the proposed development on Ancient Woodland.

Reasons

6. 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 and a suitable compensation strategy exists. Natural England and Forestry Commission guidance (known as standing advice) is that there should be a buffer zone of at least 15m around an Ancient Woodland, to protect both the woodland as a whole and individual ancient or veteran trees.

7. The gazebo is within the rear garden of the appellant's house. The rear garden backs onto an Ancient Woodland and so is within the 15m buffer zone. Ordinarily houses and their gardens would not be within a buffer zone.
8. The foundations of the four wooden posts supporting the main gazebo structure are said to have been engineered to specifically reduce the amount of intrusive excavation. It was evident from my site visit that the floor tiles under the main gazebo structure sit on a concrete base. The appellant's appeal statement asserts that no trees have been damaged as a result of the works. However, I have no substantive details as to the exact nature of the excavation or works that were undertaken.
9. The majority of a tree's roots are generally in the top 600mm of soil and fully mature trees may die if 5-10% of their roots are damaged. Damage can be caused by cutting the roots or by compaction of the soil structure through the siting of heavy items under the tree canopies. Soil compaction can in turn adversely affect drainage, gas exchange, nutrient uptake and organic content, thereby serving to impede or restrict root growth. As such, the Council's concerns over likely deterioration of the Ancient Woodland have merit. Without an arboricultural impact assessment or soil survey, it is difficult to substantiate the counter assertions of the appeal statement.
10. However, the works are in a residential back garden and there is no evidence before me to suggest that permitted development rights have been removed from the appeal site or neighbouring properties. Indeed, I saw on my site visit where neighbouring occupiers had erected outbuildings in their own rear gardens. I have no details of these buildings, the extent of any excavations or whether they were permitted development, but they are clearly within the 15m buffer zone.
11. The above situation clearly demonstrates the difficulty in having a residential garden within a buffer zone and that some conflict with the Ancient Woodland can very easily arise as a result. Indeed, there is no guarantee that further outbuildings would not be erected under permitted development within the buffer, on either this or other sites, regardless of the outcome of this appeal. I also note that in this case had the gazebo been positioned more centrally within the rear garden it is likely that the same works could have been undertaken as permitted development. However, were that to have been the case, it seems to me that any effect from the construction works on the Ancient Woodland would have been very similar to the actual siting of the gazebo.
12. The Standing Advice is clear that even if I were to conclude that all of the above constitutes exceptional circumstances, in this situation a compensation scheme is required as it wouldn't now be possible to mitigate the effect of any damage. However, this is on the basis that there is loss or deterioration of the Ancient Woodland.
13. Without knowing the extent of the works or their implications it is difficult to be certain as to what, if any loss or deterioration, has occurred. The appellant claims none has occurred as a direct result of the development. I noted on my site visit that a tree near the gazebo had been removed but I have no evidence to indicate whether or not this was related to the gazebo's presence.
14. Therefore, in this particular instance, given the scale of the gazebo and, if the appellant's assertions as to the limited extent of the ground works are correct,

it seems to me that it would be possible for suitably qualified personnel to establish the nature and extent of the works; undertake a survey to establish if the development has had an effect on the Ancient Woodland and if so, clarify the nature and extent of any compensation required. On balance, and in the circumstances of this case, such an approach would be reasonable and if undertaken correctly, would achieve any necessary redress.

15. Indirect impacts on the Ancient Woodland such as light pollution that could affect associated biodiversity can be suitably mitigated by a condition to control the use of external lighting on the gazebo. Given that the site has already been used intensively as part of the residential curtilage of No. 42, I also accept that any modest intensification of activity using the path in association with the proposal is unlikely to have an appreciable impact on the Ancient Woodland habitat.
16. Having regard to all of the above and the particular circumstances of this case, I conclude that the development can be permitted, subject to the imposition of conditions. As such, this outweighs any conflict with the guidance provided in the form of standing advice from Natural England and the Forestry Commission.
17. On this basis the proposal would comply with Policy EN13 of the Wealden Local Plan 1998 and Policy WCS12 of the Wealden Core Strategy Local Plan 2013 which, amongst other things, seek to protect sensitive habitats and resist development that results in harm to Ancient Woodland. Similar provisions within the Framework would be met.

Conditions

18. A condition listing the approved plans is required in the interests of certainty.
19. For the reasons given above, a condition requiring a survey to be undertaken by a qualified ecologist is necessary and reasonable in order to provide any appropriate compensation.
20. A condition to control external lighting for the gazebo is necessary in the interest of mitigation of any indirect effects on the Ancient Woodland.

Conclusion

21. I conclude that the appeal can be allowed and planning permission granted as set out in the formal decision and subject to the conditions in the attached schedule.

Stewart Glassar

INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed below:
 - 1:1250 Site Plan
 - 1:500 Block Plan
 - Photo - Gazebo Dimensions
 - Photo - Left Side Elevation
 - Photo - Rear Elevation
 - Photo - Right Side Elevation
- 2) Within 6 months of the date of this permission, a suitably qualified ecologist, that is an ecologist who is a professional member of the Suitable Qualified Ecologist (SQE) scheme operated by the Building Research Establishment (BRE) shall be employed to survey the site and prepare a compensation scheme (including timetable) to address any loss of Ancient Woodland and/or damage caused to it from the construction or use of the gazebo. Upon conclusion of the survey and any compensation scheme the resultant report shall be submitted to the local planning authority for subsequent written approval. Any approved compensation scheme shall be implemented in full in accordance with the timetable set out in the compensation scheme.
- 3) Within 6 months of the date of this permission, details of any external lighting, including the details of the position, height and type of lights, shall be submitted to and agreed in writing by the local planning authority. The external lighting, or any subsequent variations to it as agreed by the local planning authority, shall be installed and operated in accordance with the approved details thereafter.

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