



Appeal Decision

Site visit made on 13 October 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/M2270/W/22/3311274

Reed Wood Farm, Mill Street, Iden Green, Cranbrook, Easting (x) 579870, Northing (y) 131498

- 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 Marshall against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/00967/FULL, dated 18 March 2021, was refused by notice dated 17 May 2022.
 - The development proposed is described as 'Retention of a forestry building, retention of a mobile welfare unit in situ, retention of lean-to and proposed works to repair and maintain an existing access track (Part Retrospective)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development is taken from the Council's decision notice, as the original application form did not include an appropriately detailed description. This description has also been used in the appellant's appeal documentation.
3. As indicated by the description above, the works are partly retrospective. The appellant contested whether the mobile welfare unit required planning permission but nevertheless proposed its retention under the original application/appeal. However, at the time of my site visit the mobile welfare unit and associated lean-to was no longer on site having been removed due to fire damage. The appellant has instead suggested that welfare facilities (e.g. toilet and mess area) could be provided within the main forestry building and dealt with via way of a planning condition in the event that permission is granted.
4. The appellant has indicated that the works to maintain the existing track can be undertaken through permitted development rights, albeit this has been disputed by the Council. It is not the purpose of the appeal to determine whether the works require planning permission, which could instead be dealt with through an application for a certificate of lawful use or development. In any case, the works have been outlined as part of the appeal proposal and I am required to consider the scheme as a whole.
5. In November 2023, all designated Areas of Outstanding Natural Beauty (AONB) in England and Wales became "National Landscapes". The legal designation and policy status of AONBs remained unchanged, but I have replaced reference to

the High Weald AONB with the High Weald National Landscape (HWNL) in my decision to reflect this change.

6. In December 2023, the National Planning Policy Framework (the Framework) was updated. No fundamental changes were made to the Framework in respect of matters raised by the appellant or the Council, it has therefore not been necessary to seek the views of the parties.

Background and Main Issues

7. The appeal development sits within a cleared area of woodland to the south-west of the village of Iden Green. Vehicular access is available along a private, unmade, access track from Mill Road. The site measures approximately 30 acres comprising a mix of broadleaf woodland and pastureland. I understand that the appellant manages the woodland on a 10-year coppicing cycle.
8. Works on the main forestry building have largely been complete, save for additional enclosure/treatment of some elevations.
9. From the evidence before me, it seems likely that a significant level of mature woodland was cleared to facilitate the development. This was seemingly undertaken by the appellant without the benefit of an active felling license¹, albeit no remedial action was sought by the Forestry Commission.
10. Subsequently, the Forestry Commission has issued the appellant a felling license that relates to surrounding woodland. A Woodland Management Plan (WMP), relating to the on-going management of Reed Wood has also been reviewed and agreed to by the Forestry Commission.
11. The Council, on the advice of the Forestry Commission, considered the appeal site to be ancient woodland and this formed part of its reasons for refusing the planning application. The site's status as ancient woodland is, however, contested by the appellant.
12. The Council has also indicated that the development appears to include elements of a commercial woodyard operation, this belief seemingly stems from allegedly imported wood being found at the site. As such, this also formed part of the Council's third reason for refusal in relation to the effect of the development on the HWNL. The operation of a commercial woodyard at the site has also been refuted by the appellant.
13. Irrespective of whether commercial activities have been taking place, the appeal scheme does not seek permission for the use of the site as a commercial wood yard. Nonetheless, the effects of the built development on the HWNL must still be considered. While Section 85(1) of the Countryside and Rights of Way Act 2000 requires that my decision has regard to the purpose of conserving and enhancing the special qualities, distinctive character, and key features of the HWNL.
14. Having regard to the above, the main issues are:

¹ It is put to me that the appellant was only undertaking forestry work in line with a historic felling license that had been issued to a previous owner of the site and as part of an exemption license, however, I have no robust evidence to verify this.

- Whether the development affects ancient woodland, and if so, whether there are wholly exceptional reasons and a suitable compensation strategy for the development;
- The effect of the development on the character and appearance of the area, including the High Weald National Landscape (HWNL); and
- The effect of the development on biodiversity interest.

Reasons

Whether the proposal affects ancient woodland

15. Ancient woodland is an irreplaceable habitat as defined in both the Framework and the Standing Advice of Natural England and the Forestry Commission (the 'standing advice'). The Framework advises that development resulting in the loss or deterioration of ancient woodland should be refused unless there are wholly exceptional reasons and that a suitable compensation strategy exists.
16. The appeal site lies between two areas of ancient woodland identified by Defra², namely, Plum Tree Wood (approx. 50m to the north) and Reed Wood (approx. 180m to the south). The Forestry Commission has identified that the appeal site revealed large numbers of ancient woodland species (namely English Bluebells and Dog Mercury), whilst also shared similar soil profiles to the above nearby ancient woodlands. Be that as it may, this does not conclusively result in the site also being ancient woodland, younger woodlands may also be capable of containing such species and characteristics.
17. Ancient woodland is defined in the Glossary to the NPPF as an area that has been wooded continuously since at least 1600 AD. The standing advice provides further guidance on what constitutes ancient woodland. Notably it identifies that 'wooded continuously' does not mean that there's been continuous tree cover across the whole site, while not all trees in the woodland have to be old. Open ground, both temporary and permanent is an important component of ancient woodlands.
18. There is no statutory procedure for designation of ancient woodlands. The Provisional Inventory of Ancient Woodland (PIAW) mapping provides a provisional list of ancient woodland sites that is based upon desktop studies, aerial photographs, and site surveys. However, this is not a definitive designation/list of all potential areas of ancient woodland. As such, the fact that the appeal site is not included on the PIAW or Defra GIS mapping does not preclude it from being ancient woodland.
19. A key test therefore in determining the status of ancient woodland is whether it can be demonstrated that the land has been wooded continuously since at least 1600AD. Extracts of the Kent County Council's Historic Maps demonstrate that woodland nearby to the appeal site at Reed Wood and Plum Tree Wood historically existed. However, the appeal site is not identified as woodland on historic maps from 1871, 1897 or 1907, with woodland first being identified on a 1929 map. This aligns with commentary of the Council's biodiversity officer, who identified that the site appeared to have been woodland since at least the 1930s.

² DEFRA Magic Map GIS Software

20. I am also mindful that the Tunbridge Wells Ancient Woodland Inventory was revised in 2007 through a partnership of several key organisations in this sector. I understand that the updated inventory identified an additional 672ha of ancient woodland across an additional 573 captured sites in the area, but did not include the appeal site. The inventory was updated using several identifying factors including the use of desk-based mapping. Notably, the Ordnance Survey Maps for Kent in 1858-73 were used as a key dataset to eliminate more recent secondary woodland, with the maps being deemed to be a highly accurate source. An extract of the relevant map again demonstrates a lack of wooded area on the appeal site.
21. That the appeal site was not identified through the 2007 updates to the Tunbridge Wells Ancient Woodland Inventory, again, does not preclude the appeal site from being ancient woodland, albeit it adds further weight to the argument against it.
22. The Woodland Management Plan submitted as part of the original application, that was subsequently approved by the Forestry Commission, also does not identify the site as an area of ancient woodland.
23. Overall, based on the evidence before me, particularly historic mapping, I do not consider the appeal site to have been wooded continuously since at least 1600AD. I therefore do not consider it to comprise ancient woodland.
24. Accordingly, I do not find saved Policy EN13 of the Tunbridge Wells Local Plan (adopted 2006) (the Local Plan) to be relevant to the appeal. The Policy specifically relates to development that would damage or destroy trees protected by a tree preservation order, identified as ancient woodland or located in a conservation area. Nor do I find the policies of the Framework in respect of the protection of ancient woodland to be applicable in this instance.

High Weald National Landscape (HWNL)

25. The appeal site along with much of the surrounding area is located within the HWNL. The Framework sets out that great weight should be given to conserving and enhancing the landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues.
26. A defining characteristic of the HWNL is the presence of woodland, with the High Weald Area of Outstanding Natural Beauty Management Plan (2019 – 2024) setting out that the landscape comprises a detailed agricultural tapestry of fields, woodlands, and farmsteads.
27. Meanwhile, the Tunbridge Wells Borough Council Landscape Character Area Assessment Supplementary Planning Document (SPD) categorises the site as being within the 'Beneden Wooded Farmland' Local Character Area (LCA). The SPD identifies that the LCA has "*A peaceful rural landscape of rolling hills with scattered farmsteads and rural dwellings, often concealed by woodlands and the topography, but representing a rich built heritage. The interconnected wooded framework, created by the ecologically-valuable incised ghylls and field boundary shaws, is one of the defining features of the area*".
28. From my observations, the appeal site appears to align with many of the key landscape characteristics of the HWNL and the LCA. Given the retrospective nature of the appeal, and in the absence of detailed arboricultural information as to the type and nature of trees that have been lost from the appeal site, it is

difficult to assess the precise impact that the development has had. Nevertheless, evidence of the Council's arboricultural and biodiversity officers, and the consultation response of the Forestry Commission indicates that several species of mature trees are likely to have been felled to enable the development. This is deemed to have likely included silver birch, Scots pine and sweet chestnut. This evidence also highlights that the trees affected would likely have required a felling license that was not in place.

29. The appellant argues that only limited felling of trees took place, without breaching forestry regulations, and therefore could have occurred regardless of whether or not the appeal infrastructure was to be provided on site. However, there is a lack of robust evidence before me to verify this and so it is a matter to which I attach little weight.
30. Notably, the fact that the Forestry Commission did not take action against the appellant does not demonstrate that all trees previously removed from the site would have been permissible. Indeed, the Forestry Commission's consultation response to the planning application, stated "*The size of the cut stumps would suggest that a felling licence should have been applied for from the Forestry Commission before these were removed, and at present there is no active felling licence in place, nor any recently-expired licence. However, due to the time elapsed since the felling, we can take no further action*". Additionally, the consultation response also highlighted concerns with the accuracy of information provided by the appellant as to the nature of trees/vegetation removed from the site to enable the development of the forestry building.
31. Similarly, the subsequent granting of a felling license and a Woodland Management Plan (WMP) again does not satisfactorily demonstrate that the trees/woodland lost through the development could have in any case been removed. Indeed, the approved felling license does not appear to cover works to trees in the area in which the appeal scheme sits.
32. From the evidence before me, I consider that prior to the development taking place the appeal site would have comprised more mature woodland that would have more positively contributed to the landscape character of the HWNL than in its current condition. In this respect the loss of woodland and the development of a substantial, rather isolated building, within the woodland clearing cannot be deemed to have preserved or enhanced the special qualities, distinctive character, and key features of the HWNL.
33. I appreciate that the appeal site is well screened from public vantage points, such that the loss of trees/woodland and the forestry building are not highly apparent. However, it remains that woodland is an integral and positive feature of the HWNL. Indeed, maintaining the existing extent of woodland is a key objective of the High Weald AONB Management Plan (2019 – 2024). As such, despite the site's lack of prominence, it remains that the appeal scheme has resulted in harm to the character and appearance of the area and the HWNL.
34. Additionally, I recognise that agriculture and forestry buildings are a common feature of the countryside landscape. I am also mindful that Core Policy 14 of the Tunbridge Wells Borough Core Strategy (adopted 2010) (the Core Strategy and the High Weald AONB Management Plan both provide support for development that facilitates management of the countryside. This includes where development increases the output of sustainably produced high-quality timber and underwood for local markets. However, this is not regardless of the

impacts of such development, including compliance with other policy objectives.

35. Notably in this instance, there appears to be more suitable location for the proposed development on the appellant's land to the north-east of the site, whereby there are existing redundant agricultural buildings. Siting the appeal scheme in this location would have enabled the development to be more closely related to existing built form and would not have entailed the significant loss of woodland.
36. The appellant states that due to the size and condition of the redundant agricultural buildings they are not suitable for re-use, whilst they may be required for the future storage of livestock or poultry. Be that as it may, there appears to have been little consideration as to the feasibility of repairing, converting, or potentially adding development adjacent to these buildings, as is encourage under saved Policy EN25 of the Local Plan. This policy seeks to strictly control development outside of the limits of built development to protect the rural landscape of the Borough.
37. I also note the appellant's arguments that the siting of the forestry building is more conveniently located for forestry activities than the area to the north-east. From my observations on site and the information before me, this appears likely to provide only a very marginal benefit to the appellant's operations and not one that would justify the siting of the appeal proposal. I am also not convinced that any uneven access to this part of the appellant's landholding could not be suitably addressed to enable a forestry building in this location.
38. I appreciate that there have been several thefts from the existing agricultural buildings in the past and this has influenced the siting of the appeal building, which is more discretely located. However, there is no indication of whether any other alternative security measures could instead of been advanced other than the siting of the building, whilst I am not entirely convinced that the location of the appeal building results in it being significantly more secure.
39. Finally, in respect of this main issue, the submitted WMP seeks to ensure the landscape, historic and amenity values of the woodland at Reed Wood are maintained in the future. As part of this, the WMP proposes to increase the extent of woodland in the area by planting sweet chestnut, European larch, and oak trees on part of an adjacent pasture field. The trees are proposed to be protected under the WMP until fully established, whereby they would also provide additional timber for manufacturing in the longer term. Compliance with the WMP could be a condition attached to the grant of a planning permission. However, in the context of the appeal scheme and the effects of the development on the character and appearance of the area and the HWNL, I am not convinced that this compensatory planting would result in a suitable level and form of mitigation.
40. Overall, I find that the development has caused unjustified harm to the character and appearance of the area, including harm to the HWNL, through loss of trees and woodland and the development of the forestry building within the woodland clearing. The development therefore does not conserve and enhance the HWNL, contrary to the expectations of S85 of the Countryside and Rights of Way Act. The appeal scheme also conflicts with Core Policies 4 and 14 of the Core Strategy, saved Policies EN1 and EN25 of the Local Plan and the

aims of the SPD and the High Weald AONB Management Plan (2019 – 2024). Together, amongst other matters, these policies and guidance seek to secure development that protects the landscape character of the borough, including preserving or enhancing the designated HWNL.

41. The proposal is also contrary to the aims of the Framework in respect of promoting development that conserves and enhances the landscape and scenic beauty in AONBs.
42. Although reference was made by the Council to saved Local Plan Policy LBD1 in its reason for refusal relating to the loss of ancient woodland, I find it is instead relevant to this main matter. This policy seeks to prevent development outside of the limits of built development boundaries, unless it accords with all other relevant policies of the Local Plan. Given the findings on the above main issue, the appeal scheme is therefore also in conflict with Policy LBD1.

Trees, woodland and biodiversity interests

43. Notwithstanding that the appeal site is not ancient woodland, the evidence before me indicates that the development has entailed the loss of several mature trees/woodland.
44. Woodland is included within the list of UK Biodiversity Action Plan Priority Habitats, as set out under the Natural Environment and Rural Communities Act 2006 (as amended). The woodland at the appeal site is therefore likely to have supported several notable or protected species. Indeed, the Planning Practice Guidance (PPG) sets out that woodland is likely to support species of bats, breeding birds, badgers, dormice, invertebrates, great crested newts, reptiles, and protected plants.
45. The appellant has not provided any details of a Phase 1 Preliminary Ecological Assessment (PEA) of the site or any related survey work as part of the original application or the appeal. Instead, it is advanced that through the compilation of the WMP³ no records of protected species at the site were found. However, this is not supported by information as to whether appropriate record searches have been undertaken. In any case, a lack of records of protected species at the site does not itself indicate the absence of such species but instead can be due to a lack of relevant survey work.
46. Despite the retrospective nature of the appeal, given the potential of the site to support priority habitat and species, more detailed evidence such as a PEA (by a suitably qualified professional) should have been complete, alongside any subsequent related survey work. In the absence of such information, the likely baseline conditions of the site and the effects of the development upon biodiversity cannot be appropriately evaluated.
47. The appellant further advances that the WMP and acceptance of the felling licence promotes good woodland management that will encourage biodiversity. For example, coppicing and the removal of invasive *Rhododendron* will introduce light to the forest floor growth thereby encouraging a wider range of species and insects. Whilst the additional planting of approximately half an acre of new native woodland outlined in the WMP may also lead to biodiversity benefits.

³ As approved by the Forestry Commission in consultation with further relevant bodies.

48. Although the WMP's objective to '*maintain and where practical enhance species and habitat biodiversity in the woodland*' is commendable, and the plan may provide some biodiversity enhancements, including those outlined above, there is a general lack of detail in terms of the quantifiable biodiversity benefits that it would deliver. Together, with the lack of detail of the baseline conditions of the appeal site and the likely effects of the development, I am unconvinced that the measures outline within the WMP will suitably mitigate the appeal scheme's biodiversity impacts.
49. Having regard to the advice of the PPG and Government Circular 06/2005, in this instance, I am also not satisfied that it would be appropriate to grant planning permission subject to a condition(s) requiring relevant survey work and any necessary biodiversity mitigation measure to be complete. As it is important that the impacts of the proposal on protected species are clear before permission is granted.
50. In reaching the above view, I note the appellant's reference to an appeal⁴ whereby bio-diversity mitigation measures could be provided as part of a planning condition. I have only limited details of that case, however, it does not appear to be directly relevant to the proposals before me. Notably, that scheme was not retrospective in nature and related to issues of nutrient neutrality in relation of a single proposed dwelling. The Inspector deemed that concerns surrounding nutrient neutrality could be dealt with via a pre-commencement condition, despite the Council's concerns with this approach due to a lack of sufficient information/mitigation up front. Notwithstanding wider differences in context, a pre-commencement condition to consider the effects on biodiversity and any required package of mitigation could not be used in this current instance, given that the development has largely been undertaken.
51. I am also conscious that due to the largely retrospective nature of the appeal, there is limited operational development still to be undertaken. As such, any harm that the development may cause to priority habitats/species at the site will have likely already occurred. I recognise therefore that some form of mitigation, even if it cannot be suitably demonstrated to entirely address the development's effects, may still prove beneficial. However, I do not consider this to be suitable justification to allow development that would otherwise not be appropriate.
52. While there may be no policy requirement for the appeal scheme to demonstrate a bio-diversity net gain, it remains that there is a lack of robust evidence before me to allow an understanding of how priority habitat and species may have been affected. Based on the evidence before me, I cannot conclude that the development has not caused harm to biodiversity, nor can I determine whether the extent of any such impacts could be suitably mitigated through a planning condition. Accordingly, I find the appeal scheme to conflict with Core Strategy Policies 4 and 14 and saved policies EN1 and LBD1 of the Local Plan. These policies, amongst other matters, seek to protect and where possible enhance biodiversity. The appeal scheme also conflicts with the aims of the Framework in respect of protecting and enhancing biodiversity.

⁴ APP/L2630/W21/3289198

53. The Council has also quoted saved Policy EN25 of the Local Plan in its second reason for refusal in relation to biodiversity matters. However, I have not found this to be relevant in respect of this main issue.

Other Matters

54. I note the comments of the Parish Council and third parties in respect of supporting rural enterprises, particularly the forestry industry, while I appreciate that the development provides economic benefits including through employment opportunities. However, this does not overcome my above concerns.

55. It is put to me that the appeal development could be advanced on another part of the site via permitted development rights under Schedule 2, Part 6 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This allows for various forestry developments subject to conditions including the requirement to submit an application to the local planning authority to determine whether prior approval is required. However, based on the information before me, I cannot be satisfied that such a development would benefit from the permitted development rights, including whether or not prior approval would be required or indeed granted. Accordingly, my decision does not turn on this matter.

56. No concerns were raised by the Council in relation to the works to the access track, but it remains that the development as a whole is unacceptable.

Conclusion

57. The appeal scheme conflicts with the development plan as a whole and there are no other considerations, including the Framework's provisions, which outweigh this finding. Therefore, for the reasons given above and considering all other matters raised, the appeal is dismissed.

Lewis Condé

INSPECTOR