



Appeal Decisions

Site visit made on 20 December 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal A Ref: APP/C1435/C/23/3328359

Land at The Bungalow, Bowhill, The Drive, Hellingly, East Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Bowhill Homes Ltd against an enforcement notice issued by Wealden District Council.
- The notice was issued on 19 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a sloped wrap-around brick driveway; erection of an adjoining retaining wall; erection of a side and rear patio; in the approximate position shown coloured green on the attached plan.
- The requirements of the notice are set out in Appendix A to this decision.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/C1435/C/23/3328360

Land at The Bungalow, Bowhill, The Drive, Hellingly, East Sussex

- The appeal is made under section 174 of the Act. The appeal is made by Bowhill Homes Ltd against an enforcement notice issued by Wealden District Council.
- The notice was issued on 19 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, change of use of that part of the Land shown coloured blue on the attached plan from Ancient and Semi-Natural woodland (ANSW) and Buffer zone to residential, and the associated erection within that area of domestic structures including chicken sheds and pens, garden shed, wood store and patio area.
- The requirements of the notice are set out in Appendix B to this decision.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matter

1. The Government published a revised National Planning Policy Framework (the Framework) after submissions had been made on the appeals. I have not considered it necessary to consult parties on those revisions, but have taken the Framework, as revised, into account when reaching my decisions.

The Notices

2. For clarity, I shall refer to the enforcement notice in Appeal A as 'Notice A' and the enforcement notice in Appeal B as 'Notice B'.

3. Notice A refers to an area of land in the approximate position coloured green on a plan attached to the notice. The copy of the plan attached to Notice A received by the appellant failed to include any green colouring. The descriptions of the alleged breaches of planning control stated in Notice A are sufficiently detailed to ensure the allegation is clear, even in the absence of any green colouring. The Council's copy of Notice A includes the green colouring referred to, confirming that the error is on the copy of the notice received by the appellant, and potentially those received by other parties. Notice A is not therefore defective on its face, and it is not a nullity.
4. It is incumbent on me to get the notices in order. Under the provisions of section 176 of the Act, I can correct and/or vary the notices where necessary, if I am satisfied that doing so would not cause injustice to any parties.
5. The breach of planning control stated in Notice B refers to a change of use of land. A change of use of land does not comprise development requiring planning permission unless it is a material change of use, as set out at section 55 of the Act. I shall correct the description of the breach of planning control in Notice B so that it refers to a material change of use without causing injustice to any parties.
6. Notwithstanding the claims made as part of the appeal under ground (f) in respect of Notice B, the steps required to be taken by the notices lack clarity. For example, it is imprecise to stipulate that works should 'ideally' be carried out in a particular manner 'if necessary'. I have been advised that root protection areas of nearby trees have been identified as part of previous planning applications. I can therefore vary the notices to require the land to be restored to its condition before the breaches of planning control took place, with those works carried out in accordance with British Standard 'BS 3998:2010 Tree work – recommendations' where they fall within root protection areas. Doing so would not cause injustice to any parties, as this would remedy the breaches of planning control in a more precise manner.
7. In addition, steps (iii) and (v) of Notice A require further development to be carried out which is not necessary to remedy the breaches of planning control; and steps (viii) and (ix), and (ii)(c) and (ii)(d) of Notice A and Notice B respectively add restrictions on the site which are unnecessary to remedy the breaches of planning control. It would be a matter for the appellant to consider whether to carry out other development approved by any planning permission.
8. I can vary the steps required to be taken by both notices to address the above issues without causing injustice to any parties. Specifically, I shall delete steps (iii) and (v) to (x) of Notice A and steps (a) to (e) of the second requirement of Notice B and replace them with the requirement described above.

Ground (a) and the deemed applications for planning permission

9. Appeals under ground (a) have been made in respect of both notices and I shall deal with them together. The main issue in both appeals is the effect of the development on irreplaceable habitats, with particular regard to Ancient Semi-Natural Woodland (ASNW).
10. The appeal site is the same in both appeals. It is an area of land containing a bungalow and ASNW. Operational development has been carried out within an area shown to comprise a 15 metre buffer zone between the boundary of the

bungalow and the ASNW in plans¹ approved as part of planning permissions² which authorised the bungalow. Land which has undergone a material change of use is within that buffer zone and the ASNW itself.

11. Irreplaceable habitats are defined in the Framework as habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ASNW. Paragraph 186(c) of the Framework explains that development resulting in the loss or deterioration of irreplaceable habitats should be refused planning permission, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
12. Standing advice³ from Natural England and the Forestry Commission sets out how buffer zones can protect ancient woodland from development and provide valuable habitat for woodland wildlife. It explains that a buffer zone of at least 15 metres between woodland and development would be appropriate to avoid root damage, and that buffer zones should consist of semi-natural habitats such as woodland or a mix of scrub, grassland, heathland and wetland. The advice explicitly states that development proposals, including gardens, should not be permitted within a buffer zone and that compensation measures are always a last resort as they can only partially compensate for loss or damage.
13. A gas pipe has been laid approximately 2 metres below ground level within the 15 metre buffer zone, between the bungalow and the ASNW. It has not been demonstrated that this negates or has otherwise reduced the effectiveness of the buffer zone as a means to protect irreplaceable habitats within the ASNW.
14. The appellant's ecological and arboricultural advice⁴ is that the development the subject of both notices has had a negligible effect on the ecology of the area. It sets out that it is of paramount importance that the buffer zone is reinstated, and damage is compensated for, or that compensation with additional enhancement for both trees and ecology is implemented elsewhere in the wider ownership boundary.
15. Non-native species are present within the ASNW, such as laurel, rhododendron and bamboo, and there is scope for improvement of part of the ASNW within the appellant's ownership. However, there are no detailed compensation or enhancement proposals before me. The appellant has suggested a condition which could require the approval of a detailed landscape enhancement strategy within a specific period. In its suggested form, that condition would not be sufficiently precise and enforceable to effectively avoid any loss or deterioration of irreplaceable habitats.
16. A condition could require the removal of the development and cessation of the residential use specified in the notices if a detailed landscape enhancement strategy is not approved and implemented within specific periods. However, this approach would still leave a great deal of uncertainty as to the long-term effect of development on irreplaceable habitats created by the ASNW. I reach this conclusion in the knowledge that the appellant's ecological and arboricultural advice is that the effect of the development on the ecology of the area at present is negligible. Due to the potential complexity and unknown

¹ Proposed site layout plan 2017-03-02, proposed access & layout plans 2017-03-06

² The Council's references: WD/2017/0096/O, WD/2019/0520/RM and WD/2020/1176/FA

³ Ancient woodland, ancient trees and veteran trees: advice for making planning decisions (2022)

⁴ Letter report DKS/1164.1 by Arborweald Environmental Planning Consultancy dated 11 August 2023

extent of necessary compensatory and enhancement measures, I do not consider these could be secured in an effective manner by a condition which would meet the tests set out at paragraph 56 of the Framework.

17. The above guidance and standing advice are clear, but I have also read other advice provided by Natural England⁵. This explains that where ancient woodland has an unmanaged appearance with many non-native introductions amongst native plants and trees, or those trees and plants have been destroyed but have the opportunity to grow back, much of its value still exists beneath the surface.
18. The area of buffer zone affected is very small compared to the extent of the adjacent ASNW, which has been described as exceeding 100 hectares in area. This does not, however, convince me that it is any less important to retain the buffer zone shown in the plans previously approved for the purposes of protecting irreplaceable habitats in accordance with the above guidance.
19. Compliance with the notices, as varied, would leave the bungalow with much smaller parking and outside amenity areas. They would be commensurate to the size of the dwelling and appropriate for its location and particular circumstances. This would not harm the character or appearance of the area. The approved parking area would not harm the living conditions of any residents due to its distance from windows and the likely frequency of use in the context of other nearby parking and outside amenity areas.
20. Taking all matters raised into account, the evidence indicates that the development is likely to lead to the deterioration of irreplaceable habitats which would be harmful to biodiversity, and there are no wholly exceptional reasons and a suitable compensation strategy to justify that harm. The development is therefore contrary to Saved Policies GD2 and EN13 of the Council's Local Plan (1998) and Policies SPO1 and WCS12 of the Council's Core Strategy Local Plan (2013). These seek to resist, amongst other things, development which would prejudice the ecology of ASNW or otherwise fail to protect habitats and biodiversity. As set out above, the development would also conflict with the Framework and the advice of Natural England and the Forestry Commission.
21. Therefore, for the reasons given, the appeals under ground (a) should not succeed and the deemed applications for planning permission should be refused.

Ground (f)

22. An appeal under this ground of appeal has been made in respect of Notice B only. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
23. The notice requires the site to stop being used for residential purposes, and the demolition of domestic structures on the land coloured blue on the plan attached to the notice. Its purpose is to remedy the breach of planning control, rather than any injury to amenity.

⁵ Email dated 28 September 2023 from Neil Ford, Natural England, to Paul Bowler

24. It is claimed that the area of land coloured blue on the plan attached to Notice B covers a greater area of land than that which is used for residential purposes and where domestic structures have been constructed. Even if that is correct, it does not mean the requirements of the notice are any more onerous. Remedial works required by the notice are confined to those necessary to restore the land to its condition before the breaches of planning control took place.
25. The land edged in red on the plan attached to Notice B includes the bungalow and its boundary shown on the plans referred to at footnote 1 above. It is excessive for the notice to require that land, which is not coloured blue, to cease being used for residential purposes. I shall therefore vary the first requirement of Notice B so that it refers to the land coloured blue. If a residential use is not taking place on any parts of the area coloured blue, or if structures are not located within parts of the land coloured blue, then no remedial action is required in those areas. This is not excessive for the purposes of remedying the breaches of planning control.
26. The appeal under ground (f) therefore succeeds in part, insofar as I shall vary the first requirement of the notice as outlined above.

Ground (g)

27. Appeals under ground (g) have been made in respect of both notices and I shall deal with them together. To succeed under this ground of appeal the appellant would need to demonstrate that the periods specified in the notices for their steps to be completed fall short of what should reasonably be allowed. Notice A specifies that its steps should be completed within 6 months; it is requested that this is varied to 12 months. Notice B specifies 3 months; it is requested that this is varied to 6 months.
28. The appellant may want to appoint specialist contractors to undertake remedial works. However, I have not been provided with any persuasive evidence that periods in excess of those specified in the notices would be reasonable or necessary for the works to be completed, even where works are required within root protection areas or to be undertaken by hand. On the evidence available, the notices provide reasonable periods for their steps to be completed in an appropriate manner.
29. The appeals under ground (g) therefore fail.

Conclusions

30. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold Notice A with variations and Notice B with a correction and variations and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

Appeal A

31. It is directed that the enforcement notice is varied by:

- (I) deleting the text 'iii) Construct the front parking and vehicle turning areas in accordance with the approved plan 2017-03-02 Rev F dated 21st August 2019, and Materials Schedule 2017-03-MS dated 30th August 2019, approved pursuant to the planning permission ("the

- Planning Permission”) granted under reference WD/2020/1176/FA dated 28th August 2020’ at section 5 of the enforcement notice;
- (II) deleting the text ‘iv) Demolish, dismantle and remove the side and rear patios, save for those parts of the patios approved pursuant to the Planning Permission shown on approved plan 2017-03-06 Rev F dated 30th August 2019’ at section 5 of the enforcement notice and the substitution of the text ‘iii) Demolish, dismantle and remove the side and rear patios, save for those parts of the patios approved pursuant to planning permission reference WD/2020/1176/FA dated 28 August 2020 shown on approved plan 2017-03-06 Rev F dated 30th August 2019’;
 - (III) deleting the text ‘v) Erect the 1.3m high close boarded boundary fence in the position shown on approved plan 2017-03-06 Rev F dated 30th August 2019’ at section 5 of the enforcement notice;
 - (IV) deleting the text ‘vi) Works to demolish, dismantle and remove these items should be carried out from outside of the tree Root Protection Areas (RPAs), ideally by hand or if necessary by appropriate plant machinery with sufficiently long reach but this must be sited outside of the root protection area of all trees at all times, unless on suitable ground protection. Where plant machinery would result in damage (through soil compaction or physical damage to trees) demolition activities should be carried out by hand’ at section 5 of the enforcement notice;
 - (V) deleting the text ‘vii) Hard surfacing removed is to be pulled away from the edge of the ASNW in a methodical manor with all arisings stock piled outside of the ASNW RPA. Arisings should be removed promptly to avoid leaching into the ASNW’ at section 5 of the enforcement notice;
 - (VI) deleting the text ‘viii) No fires shall be lit in a position where the flames would extend to within 5 metres of the foliage, branches or trunks of the ASNW’ at section 5 of the enforcement notice;
 - (VII) deleting the text ‘ix) No materials or equipment shall be stored within the RPA of the ASNW’ at section 5 of the enforcement notice;
 - (VIII) deleting the text ‘x) When the surfacing has been fully dismantled and all demolition arisings removed, the area should be remediated. The area of the surfacing that encroached into the ASNW should be backfilled with sufficient inert granular material/soil volume to ensure that any exposed roots are covered, taking particular care to ensure that the top 50cm is made up of clean soil. Fertilisers should not be applied to the soil but a good quality mulch layer can be arranged on top of the soil to a maximum depth of 5-10cm, applied from the dripline of the trees to the trunk, ensuring that it is not in physical contact with the stem of any of the trees. This will provide a suitable growing environment for tree roots and encourage soil biological activity. The mulch should be of a suitable type, such as spent mushroom compost, leafmould, bark chip or organic compost - not livestock manure or other acidic compounds’ at section 5 of the enforcement notice and the substitution of the text ‘iv) Restore the

land to its condition before the breaches of planning control took place. Where that restoration falls within the root protection area of Ancient Semi-Natural Woodland, then all works are to be carried out in accordance with British Standard BS 3998:2010 Tree work – recommendations’; and

- (IX) deleting the text ‘(xii)’ at section 5 of the enforcement notice and the substitution of the text ‘v)’.

32. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

33. It is directed that the enforcement notice is corrected and varied by:

- (I) Insertion of the text ‘the material’ between the text ‘without planning permission,’ and ‘change of use’ at section 3 of the enforcement notice;
- (II) Deletion of the text ‘Land’ in the first step at section 5 of the enforcement notice and the substitution of the text ‘land coloured blue on the attached plan’;
- (III) Deletion of the text ‘:(a) Works to demolish, dismantle and remove these items should be carried out from outside of the tree Root Protection Areas (RPAs), ideally by hand or if necessary by appropriate plant machinery with sufficiently long reach but this must be sited outside of the root protection area of all trees at all times, unless on suitable ground protection. Where plant machinery would result in damage (through soil compaction or physical damage to trees) demolition activities should be carried out by hand. (b) Hard surfacing removed is to be pulled away from the edge of the ASNW in a methodical manor with all arisings stock piled outside of the ASNW RPA. Arisings should be removed promptly to avoid leaching into the ASNW. (c) No fires shall be lit in a position where the flames would extend to within 5 metres of the foliage, branches or trunks of the ASNW. (d) No materials or equipment shall be stored within the RPA of the ASNW. (e) When the surfacing has been fully dismantled and all demolition arisings removed, the area should be remediated. The area of the surfacing that encroached into the ASNW should be backfilled with sufficient inert granular material/soil volume to ensure that any exposed roots are covered, taking particular care to ensure that the top 50cm is made up of clean soil. Fertilisers should not be applied to the soil but a good quality mulch layer can be arranged on top of the soil to a maximum depth of 5-10cm, applied from the dripline of the trees to the trunk, ensuring that it is not in physical contact with the stem of any of the trees. This will provide a suitable growing environment for tree roots and encourage soil biological activity. The mulch should be of a suitable type, such as spent mushroom compost, leafmould, bark chip or organic compost - not livestock manure or other acidic compounds’ at section 5 of the enforcement notice and the substitution of the text ‘(iii) Restore the land to its condition before the breaches of planning control took

place. Where that restoration falls within the root protection area of Ancient Semi-Natural Woodland, then all works are to be carried out in accordance with British Standard BS 3998:2010 Tree work – recommendations'; and

- (IV) Deletion of the text (iii) at section 5 of the enforcement notice and the substitution of the text '(iv)'.

34. Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR

Appendix A

- i) Demolish, dismantle and remove the sloped wrap-around brick driveway.
- ii) Demolish, dismantle and remove the retaining wall adjoining the sloped wrap-around brick driveway.
- iii) Construct the front parking and vehicle turning areas in accordance with the approved plan 2017-03-02 Rev F dated 21st August 2019, and Materials Schedule 2017-03-MS dated 30th August 2019, approved pursuant to the planning permission ("the Planning Permission") granted under reference WD/2020/1176/FA dated 28th August 2020.
- iv) Demolish, dismantle and remove the side and rear patios, save for those parts of the patios approved pursuant to the Planning Permission shown on approved plan 2017-03-06 Rev F dated 30th August 2019.
- v) Erect the 1.3m high close boarded boundary fence in the position shown on approved plan 2017-03-06 Rev F dated 30th August 2019.
- vi) Works to demolish, dismantle and remove these items should be carried out from outside of the tree Root Protection Areas (RPAs), ideally by hand or if necessary by appropriate plant machinery with sufficiently long reach but this must be sited outside of the root protection area of all trees at all times, unless on suitable ground protection. Where plant machinery would result in damage (through soil compaction or physical damage to trees) demolition activities should be carried out by hand.
- vii) Hard surfacing removed is to be pulled away from the edge of the ASNW in a methodical manor with all arisings stock piled outside of the ASNW RPA. Arisings should be removed promptly to avoid leaching into the ASNW.
- viii) No fires shall be lit in a position where the flames would extend to within 5 metres of the foliage, branches or trunks of the ASNW.
- ix) No materials or equipment shall be stored within the RPA of the ASNW.
- x) When the surfacing has been fully dismantled and all demolition arisings removed, the area should be remediated. The area of the surfacing that encroached into the ASNW should be backfilled with sufficient inert granular material/soil volume to ensure that any exposed roots are covered, taking particular care to ensure that the top 50cm is made up of clean soil. Fertilisers should not be applied to the soil but a good quality mulch layer can be arranged on top of the soil to a maximum depth of 5-10cm, applied from the dripline of the trees to the trunk, ensuring that it is not in physical contact with the stem of any of the trees. This will provide a suitable growing environment for tree roots and encourage soil biological activity. The mulch should be of a suitable type, such as spent mushroom compost, leafmould, bark chip or organic compost - not livestock manure or other acidic compounds.
- (xii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.

Appendix B

- (i) Stop using the Land for residential purposes.
- (ii) Demolish, dismantle and remove all domestic structures from that part of the Land shown coloured blue on the attached plan including, but not limited to, chicken sheds and pens, garden shed, wood store, patio area, pallets and all other residential domestic furniture and paraphernalia:
 - (a) Works to demolish, dismantle and remove these items should be carried out from outside of the tree Root Protection Areas (RPAs), ideally by hand or if necessary by appropriate plant machinery with sufficiently long reach but this must be sited outside of the root protection area of all trees at all times, unless on suitable ground protection. Where plant machinery would result in damage (through soil compaction or physical damage to trees) demolition activities should be carried out by hand.
 - (b) Hard surfacing removed is to be pulled away from the edge of the ASNW in a methodical manor with all arisings stock piled outside of the ASNW RPA. Arisings should be removed promptly to avoid leaching into the ASNW.
 - (c) No fires shall be lit in a position where the flames would extend to within 5 metres of the foliage, branches or trunks of the ASNW.
 - (d) No materials or equipment shall be stored within the RPA of the ASNW.
 - (e) When the surfacing has been fully dismantled and all demolition arisings removed, the area should be remediated. The area of the surfacing that encroached into the ASNW should be backfilled with sufficient inert granular material/soil volume to ensure that any exposed roots are covered, taking particular care to ensure that the top 50cm is made up of clean soil. Fertilisers should not be applied to the soil but a good quality mulch layer can be arranged on top of the soil to a maximum depth of 5-10cm, applied from the dripline of the trees to the trunk, ensuring that it is not in physical contact with the stem of any of the trees. This will provide a suitable growing environment for tree roots and encourage soil biological activity. The mulch should be of a suitable type, such as spent mushroom compost, leafmould, bark chip or organic compost - not livestock manure or other acidic compounds.
- (iii) Remove all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.