



Appeal Decision

Site visit made on 9 April 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29th May 2024

Appeal Ref: APP/M1520/C/21/3283330

Land at 231 Benfleet Road, Thundersley, Benfleet, Essex SS7 1QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (1990 Act).
- The appeal is made by Mr Norman Powell against an enforcement notice issued by Castle Point Borough Council.
- The notice was issued on 18 August 2021.
- The breach of planning control as alleged in the notice is "Without permission, the construction of a part single storey part two storey building shown in the approximate position on the attached plan (1) with an 'X'".
- The requirements of the notice are to:
 1. Demolish the unauthorised building;
 2. Remove all materials arising from the dismantling of the unauthorised works from land identified with hatching on the attached plan (2) as ancient woodland;
 3. Employ a suitably qualified ecologist, that is an ecologist who is a professional member of the Suitably Qualified (SQE) scheme operated by the Building Research Establishment ('BRE') to survey the site and prepare a compensation scheme to address the loss of ancient woodland and/or damage caused to it from the use of any heavy plant or machinery in the construction of the unauthorised works, details of which shall be provided to the local planning authority in a completed report; and
 4. Carry out the recommended compensation scheme set out in the ecology report in full.
- The periods for compliance with the requirements are:

Requirement (1) - 3 months after the notice takes effect;
Requirement (2) - 4 months after the notice takes effect;
Requirement (3) - a copy of the complete report shall be provided to the local planning authority no later than 6 months after the notice takes effect; and
Requirement (4) - 12 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 (as amended). 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.
- This decision supersedes the decision issued on 30 June 2023. That decision on the appeal was quashed by order of the High Court.

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

Applications for Costs

1. Applications for costs have been made by Nalandi Sharma Ebdon, an interested party, against both the appellant and the Council. These applications are the subject of separate decisions.

Preliminary Matters

2. The previous appeal decision was quashed due to a misapplication of paragraph 186(c) of the National Planning Policy Framework (formerly paragraph 180(c)), which places stringent protections on irreplaceable habitats, including ancient woodland. The effect of the development on ancient woodland, which is addressed as a main issue in this appeal, has resulted in me reaching a different decision to the previous Inspector.
3. Given the grounds of appeal are closely linked, I have still considered each of them fully, even where the findings of the previous Inspector were not challenged.
4. I have determined this appeal with regard to the latest version of the National Planning Policy Framework, published in December 2023 (Framework). I am satisfied that the updates do not materially affect its content insofar as it is relevant to the main issues of this appeal.
5. The appellant has sought to rely on a potential fallback position to support his case. There are two components to the fallback: the first is a lawful development certificate dated 16 August 2021 (reference 21/0448/CLP) which confirmed the lawfulness of the siting of a twin unit caravan within the curtilage of the dwelling to provide residential accommodation ancillary to the use of Howard Hall (Caravan LDC); and the second is a lawful development certificate dated 19 October 2021 (reference 21/0811/CLP) which confirmed the lawfulness of a single-storey outbuilding following demolition of existing outbuilding, for use as games room and gymnasium incidental to the enjoyment of Howard Hall (Outbuilding LDC). This potential fallback is relevant to the issues considered in this appeal.

GROUND B

6. Pursuant to ground (b), the appellant says that the breach of planning control, as alleged in the enforcement notice (EN), has not occurred. He contends that the works carried out are an extension to a pre-existing outbuilding, and not a new building altogether. To succeed on this ground, the evidential burden rests with the appellant to demonstrate his case, on the balance of probability. Planning merits are not relevant.
7. A photo dated September 2015 shows the original outbuilding, which is a modest timber-clad single-storey structure on a concrete base, with a gabled-roof. The building now in situ is much more substantial. It is now part single-storey and part two-storey, and extends further southwards than the original. Its overall footprint has more than tripled, increasing from approximately 22m² to 74m². Its volume has also substantially increased, from approximately 126m³ to approximately 343m³.
8. Alongside the substantial increase in size, extensive sections of the exterior walls to the original outbuilding have been removed. The current building also incorporates new foundations, new supporting framework throughout, and a new gambrel roof structure. In terms of external materials, the new roof incorporates a slate effect finish, in contrast to the felt shingle roof seen on the original. The external walls are also now clad in a feather board cladding, whereas the original appeared to incorporate tongue and groove. Owing to these factors, only limited aspects of the original building are readily apparent.

9. Nonetheless, some original features have been retained, which include the original chimney stack and fireplace, some of the windows, the front door and front steps, part of the original concrete base, and parts of the exterior walls. However, notwithstanding the retention of these features, the building now in situ appears markedly different to the original. Whereas the original looked like a modest and rustic garden building, the building now in-situ assumes the appearance of a self-contained dwelling.
10. In turn, I consider that the overall extent of works has resulted in a new building, and not an extension or alteration to an existing building. This finding is consistent with *Oates*¹, which found it is possible to conclude there is a 'new building' even where parts of an original building remained.
11. A new building has therefore been constructed, and the breach of planning control as alleged in the EN has occurred. The appeal on ground (b) therefore fails.

GROUND A

Main Issues

12. The main issues in respect of ground (a), being the deemed planning application, are informed by the Council's reasons for issuing the EN. They are:
 - whether the development represents inappropriate development in the Green Belt, including its effect on openness;
 - the effect of the development on ancient woodland;
 - the effect of the development on the character and appearance of the area; and
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate Development

13. The appeal site is located within the Green Belt. The Framework is explicit that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
14. Paragraphs 154 and 155 of the Framework set out a number of exceptions where development within the Green Belt may not be considered inappropriate. The parties agree that none of these exceptions would apply, and there is no reason before me to conclude otherwise. When assessed against the provisions of the Framework, the development therefore represents inappropriate development in the Green Belt.

¹ *Oates v Secretary of State for Communities and Local Government* [2017] EWHC 2716 (Admin)

Openness

15. The building is situated within the southern part of the rear garden to the appeal property. Whilst discreetly sited, the building appears isolated due to an absence of other built form within its immediate vicinity, which interrupts the sense of openness within this part of the garden. Notwithstanding the trees along the western boundary to the appeal property, the building can also be seen from the closest neighbouring property, which amplifies the loss of visual openness in this part of the garden. Whilst the loss of openness is localised to a small part of the garden, it still weighs against the development given the Framework's aim to keep Green Belt land permanently open.

Ancient Woodland

16. Natural England's mapping tool (Magic) shows that part of the building is within land designated as ancient woodland. The designated ancient woodland encompasses land to the south, west and east of the building, and broadly follows the western boundary of the appeal property.
17. Paragraph 186(c) of the Framework says that "*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*".
18. To ensure adequate protection of ancient woodland, Guidance from Natural England and the Forestry Commission² (Ancient Woodland Guidance) says that any development near to ancient woodland should have a buffer zone of at least 15 metres from the boundary of the woodland.
19. The appellant contends that the ancient woodland designation is no longer accurate, and that its boundary should be further south of the building, a position which appears to be supported by their Ecology Report (AJC Ecology, March 2024). This report highlights a review of local wildlife sites carried out on behalf of the Council in 2012, which found that the woodland "*composition does not provide a compelling argument for its inclusion*" and that the "*northern boundary has been lost to garden management*". Physically, the woodland is certainly more evident to the south of the building, with a clear treeline running just south of a small lake to the south-east of the building.
20. However, the land surrounding the building is still abundant with a variety of trees, many of which appear to be within 15 metres of the building. This is particularly the case along the western side of the building, a area which also falls within the ancient woodland designation. Notwithstanding that the presence of these trees potentially lends support to the official boundary designation, even if the boundary were altered to the south, it is not clear that an adequate buffer would be retained in all directions of the building.
21. The Ancient Woodland Guidance also says a larger buffer zone may be needed for new development if the surrounding area is less densely wooded; close to a residential area; or steeply sloped. To some degree, each of these factors apply to the present circumstances: the trees in the surrounding area are sparser, and therefore less densely wooded; the ancient woodland abuts a residential garden; and much of it is on a slope of varying gradient. A larger buffer zone

² Ancient woodland, ancient trees and veteran trees: advice for making planning decisions, Natural England and Forestry Commission (2022)

- may therefore be necessary in this instance, which amplifies the need for caution.
22. The Ancient Woodland Guidance says the adverse effects of development on ancient woodland can be direct and indirect. Direct effects can include damage to trees, roots and functional habitat. Indirect effects can include the destruction of habitats and working connections between woodlands, a reduction in the resilience of the woodland which makes it more vulnerable to change and increased disturbance to wildlife.
23. Many of these indirect effects can arise from increased recreational activity in the vicinity of ancient woodland, such as noise and trampling of plants. The building in this instance provides ancillary living accommodation to the main dwelling, and its use is therefore recreational in nature. This means the risk of indirect effects from the development is particularly acute, and would likely subsist even if the designated boundary were amended in future.
24. In turn, I cannot be sure that the development has not resulted in the loss or deterioration of the ancient woodland, or would not risk such adverse effects in future. As per paragraph 186 of the Framework, the development should therefore be refused unless there are *"wholly exceptional reasons and a suitable compensation strategy exists"*. The footnote to this paragraph says that *"wholly exceptional circumstances"* may include infrastructure projects *"where the public benefit would clearly outweigh the loss or deterioration of habitat"*. This is a very high bar.
25. The appellant says removal of the building and construction of the outbuilding approved under the Outbuilding LDC would result in greater harm than retention of the existing building, and suggests this test is therefore met. However, a permanent building within or closer to the ancient woodland is likely to cause longer-term effects than any temporary disturbance associated with its removal. The approved outbuilding is also outside of the designated ancient woodland, which reduces its potential for harm.
26. In turn, these factors would not introduce a public benefit which would clearly outweigh the harm, and would not constitute the wholly exceptional circumstances necessary to justify the development. Moreover, a Compensation Strategy should only be used as a last resort when harm cannot be avoided or mitigated, and so would again not overcome this harm, even if secured by condition.
27. The development therefore harms designated ancient woodland and conflicts with paragraph 186 of the Framework and the Ancient Woodland Guidance.

Character and Appearance

28. The building is situated discreetly in the southern part of the garden to the appeal property. The garden is heavily screened by trees to the south and west of the property, which limits the extent of public views into the garden. Even where glimpsed views are possible, the building is seen within the context of its extensive garden setting, commensurate with its own domestic character.
29. Notwithstanding the loss of openness discussed above, I am therefore satisfied that the building integrates sufficiently well with its surroundings, and does not cause undue harm to the character and appearance of Hadleigh Country Park or the Benfleet Downes, nor of the wider surrounding area. In this regard, the

development is consistent with the Framework's objective to promote development which is sympathetic to local character, surrounding built environment and landscape setting.

Other Considerations

30. If the existing building has to be removed, the appellant says he will construct a new outbuilding pursuant to the Outbuilding LDC, and site a twin-unit caravan within his garden pursuant to the Caravan LDC. Given that the appellant relies on the existing outbuilding to accommodate visiting family, this appears to be more than a theoretical fallback position, as it seems likely he would seek to replace the lost space.
31. The alternative outbuilding would be sited just north of the existing outbuilding. Whilst the twin-unit caravan could be sited anywhere in the garden, the plan submitted with the Caravan LDC included an indicative location very near to the existing outbuilding. Given both structures would be used to compensate for the lost space, it seems likely that the caravan would be sited near to the outbuilding.
32. The combined volume of the alternative outbuilding and twin-unit caravan would significantly exceed the volume of the existing building. Spatially, the two together would therefore have a greater impact on the openness of the Green Belt. They would also add more clutter to this part of the garden, which means their visual impact on the openness of the Green Belt would be felt more keenly than the existing building. In terms of Green Belt, the existing building is therefore less harmful than the fallback.
33. However, the alternative outbuilding and the caravan would both be sited outside of the designated boundary to the ancient woodland. The larger buffer between the fallback buildings and the woodland boundary would help protect the ancient woodland from further harm, as any associated recreational use would be further away. The same would be true even if the designated boundary were amended in future. This weighs significantly against the retention of the existing building when compared against the fallback.
34. As highlighted, the disturbance arising from demolition of the existing building and construction of the new outbuilding would be temporary, whereas a permanent building within the ancient woodland would have an ongoing impact. Moreover, compensatory tree planting should only be used as a last resort where loss or deterioration of ancient woodland cannot be avoided or mitigated against.
35. Whilst some of the original features of the pre-existing outbuilding are attractive, any potential benefit arising from their retention would be minor. There is also nothing to preclude the appellant from achieving an attractive design in terms of any alternative outbuilding.
36. Whilst the fallback does carry weight, when these other considerations are assessed together, I am not persuaded they would clearly outweigh the harm by reason of inappropriateness, harm due to loss of openness and harm to the ancient woodland. In turn, the very special circumstances necessary to justify the development do not exist in this instance.
37. The development therefore conflicts with paragraph 152 of the Framework, which says inappropriate development is, by definition, harmful to the Green

Belt and should not be approved except in very special circumstances. As highlighted, the development also conflicts with paragraph 186 of the Framework, which says development should be refused where it would result in the loss or deterioration of ancient woodland.

38. In turn, the development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, that outweigh this finding. The appeal on ground (a) therefore fails.

GROUND F

39. Pursuant to ground (f), the appellant says the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control. In particular, the appellant says the northern part of the building, which is alleged to be part of the original outbuilding, should be retained.
40. However, as set out under the ground (b) appeal, I have found that the development constitutes construction of a new building, and not alteration or extension of a pre-existing building.
41. As per s173(4) of the 1990 Act, the purpose of the EN is to remedy the breach of planning control, being the unauthorised erection of a new building. The requirements of the EN must achieve this purpose. In this instance, demolition of the building goes no further than remedying the breach of planning control, and is therefore reasonable and proportionate. Any lesser steps would fail to achieve this same purpose.
42. The appeal on ground (f) therefore fails.

Other Matters

43. It has been suggested that the Lawful Development Certificates referred to in this appeal were obtained on the basis of false or misleading information. However, given they have not ultimately affected the outcome of this appeal, there is no need to address this point further.

Conclusion

44. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

45. 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.

James Blackwell

INSPECTOR