



Appeal Decision

Site visit made on 19 September 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2024

Appeal Ref: APP/C1435/W/23/3329986

Hollinwood, Little London Road, Horam, East Sussex TN21 0BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Trevor Colley against the decision of Wealden District Council.
 - The application Ref is WD/2022/1768/F.
 - The development proposed is the erection of a detached dwelling and detached garage.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues in this appeal are the effect of the proposed development on ancient woodland, and whether it would provide adequate living conditions for future occupants, with particular regard to outdoor garden space.

Reasons

Ancient Woodland

3. The appeal site is located close to an ancient woodland. Paragraph 186.c) of the National Planning Policy Framework ("the Framework") states that development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland, should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists.
4. Natural England Standing Advice (SA) explains that ancient woodland can be protected by buffer zones. These should be at least 15 metres from the boundary of the ancient woodland, and should consist of semi-natural habitats such as woodland or a mix of scrub, grassland, heathland and wetland. Development proposals, including gardens, should not be approved within a buffer zone. Where the assessment shows other impacts are likely to extend beyond 15 metres, the proposal is likely to need a larger buffer zone.
5. The proposed 15 metre buffer zone would cover a large area of the appeal site and would appear as a significant incursion into what would otherwise have been a generous garden, consistent in size to those in the locality. By setting the proposed dwelling some distance off the southern boundary, the buffer zone's alignment would cut across the appeal site at relatively close distances from the rear wall of the proposed dwelling, ranging from a few metres up to 10 metres or so.
6. In this position, the buffer zone would constrain the size and shape of the patio/garden area directly behind the rear wall of the proposed dwelling, and

lead to a narrow rear garden beyond it. The patio/garden area would be expected to be highly valued by future occupiers of the proposed dwelling given its close visual and functional relationship with the lounge and kitchen, which would open out onto it. Consequently, the buffer zone would give this part of the garden an awkward shape that would negatively constrain and compromise its usability.

7. The buffer zone's appearance, whether planted in accordance with the SA or left to become wild as indicated in the evidence, would be expected to contrast sharply with the garden area outside of it, and it would emphasise the scale of the buffer, and its closeness to the rear wall of the proposed dwelling. This would be clear and obvious to future occupants of the proposed dwelling, particularly in views from their rear facing rooms and the patio area. They would be acutely aware of the negative compromises it imposes upon their living environment, particularly within the area of garden/patio area.
8. Consequently, I am of the view that future occupiers of the proposed dwelling would likely have a negative perception of the buffer zone. To my mind, encroaching into the buffer zone and using it as garden would significantly enhance their living environment and their enjoyment of the property. As such, it is likely that they would be sufficiently motivated to do so, resulting in harm to the ancient woodland, primarily through noise and disturbance. That future occupiers would likely need to maintain the buffer zone would add to their negative perception of it.
9. Whilst the appellant intends to retain ownership and maintenance of the buffer zone, there is no mechanism before me to secure this. Landownership is a civil matter between the parties that falls beyond the scope of this appeal. The submitted drawings show the buffer zone being within the application site boundary and part of the land necessary for the development. This is the basis on which I have assessed the appeal proposed.
10. A prospective buyer may choose to purchase the dwelling based on an understanding of the buffer zone's purpose. However, I am not persuaded that this would remove any future motivation to use the buffer as garden land, or that this would be a condition of any purchase. I have limited substantive evidence that buyers are seeking large homes with smaller gardens. Even so, the proposal is for a large home with a large garden, albeit with a significant area shown as a fenced-off buffer zone.
11. I am sceptical as to whether the post and rail fence would, in this instance and given my findings above, form an impenetrable barrier to people and predatory pets gaining access to the buffer zone. This type of fence would be relatively easy to climb over or through by most reasonably active persons. Securing a tall and less penetrable boundary would add further emphasis to the buffer zone, contributing to negative perceptions of it.
12. I have considered whether conditions can be imposed to exclude the buffer zone from the proposed dwelling's curtilage and prevent its use for residential amenity purposes. However, the buffer zone is included in the application land and if planning permission was granted, it would benefit from the use described on the application form. To my mind, taking away that use by a condition and replacing it with a different use, not part of the application description, would be unreasonable.

13. Removing permitted development rights would restrict specific types of operational development, as distinct from the use of the land, and curtilage is not a land use. As such, I am not satisfied on the evidence before me that the suggested conditions would make the proposal acceptable, let alone meet the relevant tests. Detecting any breach would be problematic given the buffer zone's location.
14. The illustrative layouts of the developments at Coldthorn Barn¹ and Coldthorn Lane² are materially different to the appeal proposal before me. They show gardens of a regular shape and size, with the buffer zones located behind them or beyond the side boundaries and side walls of the properties. The buffer zones in those developments would not run close behind the rear walls of any of those homes, nor would they appear as an intrusion into their gardens. They would not be expected to negatively affect the layout and usability of the gardens in the same way as the appeal scheme. Consequently, notwithstanding the conditions imposed on those developments, future occupiers of those dwellings would be unlikely to have negative perceptions of the buffer zone, significantly reducing the probability of encroachment into it.
15. The main parties disagree whether a 15 metre buffer zone would be satisfactory at the appeal site. The intensification of domestic activities on the appeal site would cause noise, disturbance and light pollution. However, these effects would be at a low level given its scale. The glazed openings in the rear wall of the proposed dwelling would not face the ancient woodland at a direct angle. The evidence demonstrates that the appeal proposal would not harm the roots of the ancient woodland trees.
16. Fifteen metre buffer zones have been provided on larger residential schemes³ where noise, disturbance and light pollution would likely have been cumulatively greater. The development at Downlands Farm⁴ may well have necessitated a larger buffer, however it was a substantially larger scheme of up to 424 homes. There is limited evidence to demonstrate that it would have had a comparable relationship with ancient woodland as the scheme before me.
17. As a matter of principle, I see no basis on the evidence before me and in this instance to justify departing from the SA and requiring a numerically larger buffer zone. Nonetheless, as an irreplaceable habitat, I must take a precautionary approach to the relationship between the proposed development and the ancient woodland. In so doing, I have serious reservations as to whether the proposed buffer zone could remain consistent with the SA, and effective in avoiding the deterioration of the ancient woodland's irreplaceable habitat.
18. Taking account of all the above and based on the merits of this case, it has not been demonstrated that the appeal proposal could avoid a harmful deterioration in the quality of the ancient woodland habitat through noise, disturbance and predatory pets. The appellant's Preliminary Ecological Assessment does not appear to reference the recommendations in the SA. Therefore, I give more weight to the SA in assessing this matter.

¹ APP/C1435/W/21/3285618

² Figure 4 of appellant's statement

³ Coldthorn Lane (30 dwellings), Oaklands (169 dwellings) and Summer Hill (241 dwellings)

⁴ APP/C1435/W/23/3321978

19. For the reasons given above, I therefore conclude on this matter that the appeal proposal would result in the deterioration of the ancient woodland habitat. As such, it would conflict with Policy EN13 of the Wealden Local Plan 1998 ("the WLP") and Policies WCS12 and WCS13 of the Wealden Core Strategy Local Plan Adopted February 2013 ("the WCSLP"), insofar as they seek to resist proposals which would prejudice the ecology of ancient woodland. There would also be conflict with Framework Paragraph 186.c) the requirements of which are set out above.

Living conditions

20. The rear garden area outside of the buffer would be markedly smaller in area and narrower in shape than the gardens of nearby properties. The buffer zone would also negatively compromise the size and usability of the garden/patio area directly behind the dwelling. However, this is not the same as amounting to unacceptable harm to the living conditions of future occupiers.
21. Relative to the likely occupancy levels within the proposed dwelling, the garden area would, in totality, be of a sufficient size and usable shape to accommodate a reasonably sized outdoor seating area, normal domestic paraphernalia and allow space for play activities. In particular, the area of garden between the side wall of the proposed dwelling and the southern boundary would provide a good standard of privacy for users. The ground floor window would provide surveillance of the side garden from within the proposed dwelling.
22. For these reasons, the garden of the proposed dwelling would contribute to providing acceptable living conditions for future occupiers, consistent with the guidance in the Design Guide⁵. I therefore find no conflict with WLP Policy EN27 insofar as it requires development to provide satisfactory living conditions for future occupants, and Framework Paragraph 135.f) insofar as it requires provision of a high standard of amenity for future users.

Other Matters

23. The delivery of an additional housing unit, which could be built out quickly, would make a small but valuable contribution to housing supply. Construction and occupation of the development would have a small beneficial effect on the economy. The proposed footpath would encourage travel by non-motorised means and would amount to a modest public benefit, serving a small number of homes. There would be a modest beneficial effect on the environment from the proposed biodiversity enhancement measures.
24. The proposed dwelling would be comparable in scale and design to those in the area and it would adhere to the established settlement pattern. The Council considered that the appeal proposal would not detract from the setting of the High Weald National Landscape or be out of character with the countryside in the locality. Parking provision would be satisfactory and no harm to highway safety would arise from its occupation. However, even if I were to agree, an absence of harm, including in these respects, does not weigh positively in favour or against the proposal.
25. As I am dismissing the appeal for the above reasons, the matters raised by an interested party, which do not relate to the Council's refusal reasons, would not

⁵ Wealden Design Guide Supplementary Planning Document November 2008

alter the outcome of the appeal. Therefore, it is unnecessary for me to reach a finding on them.

Planning Balance

26. The harm to ancient woodland habitat would bring the development into conflict with WLP Policy EN13 and WCSLP Policies WCS12 and WCS13. These policies, insofar as they relate to ancient woodland, are consistent with Framework Paragraph 186.c), the requirements of which are set out above. I therefore give substantial weight to the conflict with those policies, which brings the development into conflict with the development plan as a whole.
27. The conflict with the development plan firmly outweighs the collective benefits of the proposal, which are of modest weight in its favour. In any case those benefits do not amount to the wholly exceptional reasons required by the Framework to permit development that would result in deterioration of ancient woodland habitat.
28. The Council is currently unable to demonstrate a 5 year supply of deliverable housing land in its area. Consequently, the boost in the supply of housing which the Framework expects is not currently being achieved in the Council's area. Framework Paragraph 11.d) would therefore be relevant. However, under Footnote 7 to Framework Paragraph 11.d)i. the appeal proposal's adverse effect on ancient woodland habitat would provide a clear refusal reason. Therefore, the proposed development is not the sustainable development for which the Framework indicates a presumption in favour of.

Conclusion

29. For the reasons given, I conclude that the proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the benefits of the proposal and the provisions of the Framework, to indicate that a decision should be made other than in accordance with the development plan. Consequently, the appeal should be dismissed.

G Sylvester

INSPECTOR