



Appeal Decision

Site visit made on 12 November 2024

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/U2235/W/24/3344507

132 Sandling Lane, Penenden Heath, Maidstone, Kent ME14 2EG

- 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 Jamie Hall against the decision of Maidstone Borough Council.
 - The application Ref is 23/503755/FULL.
 - The development proposed is the change of use of land to residential garden and extension of existing drive (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development in the banner heading above is taken from the Council's decision notice which succinctly describes the scheme. The scheme is retrospective and I have considered the appeal on this basis.
3. The Council's decision notice refers to policies from the Council's Local Plan (2017). However, this has been replaced by policies of its Local Plan Review (LPR) (2024). Accordingly, I have referred to these replacement policies in my decision.

Main Issues

4. The main issues are the effects of the development on:
 - The irreplaceable habitat within the Sandling Wood Ancient Woodland; and
 - The character and appearance of the area with particular reference to the Sandling Wood Ancient Woodland.

Reasons

Ancient woodland

5. Ancient woodland can include ancient semi-natural woodland, plantations replanted with conifers or broad-leaved trees that retain ancient woodland features, such as undisturbed soil, ground flora and fungi. Paragraph 186, of the National Planning Policy Framework (2023) (the Framework), identifies that development resulting in the loss of irreplaceable habitats such as ancient woodland should be refused, unless there are wholly exceptional reasons for such loss.
6. Policy LPRSP14(A) of the LPR also seeks to protect positive landscape character, including, amongst other things, areas of ancient woodland, from

inappropriate development and avoid significant adverse impacts as a result of development through the provision of adequate buffers and in accordance with national guidance.

7. The appeal site falls within land defined as ancient woodland by Natural England's Ancient Woodland (England) inventory (2023). There is no dispute between the parties that the Sandling Wood Ancient Woodland (the Ancient Woodland) should be classified as ancient woodland. However, the appellant considers that part of the designation, including the appeal site, does not constitute ancient woodland and has provided aerial imagery showing how the land has altered over time. I have no reason to dispute the authenticity of the images and they do show how parts of the woodland designation have not retained the tree cover found further west of the site and show an access track passing through.
8. Notwithstanding the appellant's photographic evidence, I am mindful that to be 'wooded continuously' does not mean there has been continuous tree cover across the whole site. Moreover, not all trees in the woodland must be old and open ground, both temporary and permanent, can also be an important component of ancient woodlands, as can be the soil, ground flora or fungi.
9. Furthermore, even if I accept the appellant's position that the appeal site, and land immediately adjacent, does not constitute ancient woodland, I have no substantive evidence as to whether this land falls within any buffer zone of the Ancient Woodland. In this regard, buffer zones also have the potential to contribute to wider ecological networks and be part of the green infrastructure of the area and can include semi-natural habitats including, amongst other things, a mix of scrub, woodland, and grassland.
10. No arboricultural or ecological assessment has been put to me to quantify the baseline habitat or that matters such as activity by the existing or future occupiers and pets, soil compaction, hardstanding, planting, and light spillage related to the development do not and would not adversely affect biodiversity or other interests on or near the site in relation to the Ancient Woodland. In this regard, even with the photographic evidence, there is no substantive technical evidence regarding the baseline and the effects on the Ancient Woodland or its buffer zone.
11. Portions of the woodland adjacent to the appeal site have been despoiled by tipping and have had earth moved and compacted to use as dirt bike tracks. However, Natural England and the Forestry Commission's "standing advice" for planning authorities¹ explains that the existing condition of the Ancient Woodland is not a reason to give planning permission for development. In other words, a woodland in poor condition can be improved in the future with management. This does not therefore weigh in favour of the scheme.
12. To conclude on this main issue, there is insufficient evidence to show that the development does not, and would not, be likely to harm the irreplaceable habitat within the Ancient Woodland. As such, the development conflicts with Policies LPRSP14(A) and LPRSP15 of the LPR, when taken together and in so far as they relate to this main issue. These seek, amongst other things, to protect and enhance any on-site biodiversity and geodiversity features.

¹ Ancient woodland, ancient trees and veteran trees: advice for making planning decisions (2022) Forestry Commission and Natural England

13. Footnote 67 in the Framework describes that exceptional reasons that might justify such loss could include, for example, national infrastructure projects where public benefits would clearly outweigh the loss or deterioration of habitat.
14. The extended driveway enables vehicles to turn internally within the site negating the need to reverse onto the highway. This would be a benefit. However, I have not been presented with any substantive technical evidence of a highway safety issue at this location moderating the weight I afford this matter. Whilst I recognise that there are benefits to the appellant from the development, including in relation to health and wellbeing from the extended garden and improved access to sunlight, these are private benefits. Taken together the benefits are not sufficient to amount to wholly exceptional reasons as required by the Framework.

Character and appearance

15. The appeal property is the last dwelling along the northern side of Sandling Lane before the woodland is reached when leaving the settlement. The land to the front is prominent from the road and footway. The large expanse of woodland beyond the settlement is a highly attractive feature that makes a significant contribution to the setting of the settlement and thus the character and appearance of the area.
16. The development has resulted in additional hard surfacing, grassed lawn, and tall close boarded fencing within and bounding the extended garden. Planting within the frontage and in the rest of the garden, aids to a degree, in assimilating the domestic elements within the woodland. However, it remains an overtly suburban incursion, contrasting with the more natural organic qualities of the woodland.
17. In this regard, the development has incrementally eroded the ground cover and potential natural regeneration of the woodland. Thus, it has eroded the contribution that this part of the woodland makes to the character and appearance of the area, albeit to a modest degree given the extent of incursion.
18. I therefore conclude on this main issue that the development has a harmful effect on the character and appearance of the area. As such, I find conflict with the requirements of Policies LPRQD4, LPRSP9, LPRSP14(A) and LPRSP15, when taken together and in so far as they relate to this matter. These, amongst other things, seek high quality design, including having regard to the type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features.

Other Matters

19. My attention has been drawn to other properties to the north of the appeal premises and their gardens which, have been extended into the Ancient Woodland or its buffer. In this regard, the extended garden of the appeal premises follows the western line of the boundaries of these properties to the north. However, I do not have the full details of how they came to be extended, including if any consents were secured. As such, I can not be certain that the circumstances are directly comparable to the appeal premises.

In any case, the appeal premises fronts onto Sandling Lane and as such is seen prominently from the road and footway. In this regard, the neighbouring gardens do not justify the harm I have identified in the main issues.

20. Concerns regarding the processing of the application are not matters for my consideration as part of the appeal and do not alter the planning merits of the development.

Conclusion

21. The development conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with that plan.
22. For the reasons given above the appeal should be dismissed.

Mr R Walker

INSPECTOR