
Appeal Decision

Site visit made on 25 March 2025

by **C Coles MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 JUNE 2025

Appeal Ref: APP/C1435/W/24/3353074

Bowhill, The Drive, Hellingly, East Sussex BN27 4EP

- 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 Bowhill Homes Ltd against the decision of Wealden District Council.
 - The application Ref is WD/2024/1101/F.
 - The development is proposed new dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the habitats and ecology associated with the ancient woodland;
 - The effect of the proposed development on the character and appearance of the surrounding area; and
 - The effect of the proposed development on the living conditions of the occupiers of No 10 Bowhill (No 10) and the future occupiers of the proposed development, with particular regard to privacy and daylight.

Reasons

3. The appeal site comprises an area of grassed garden and tarmac drive within the curtilage of No 10. The site is fenced on three sides and forms the end of a road which backs onto ancient woodland. The site forms part of a larger residential estate comprising new build development and the conversion of former commercial units into residential accommodation.
4. The proposed development is for a detached bungalow with tandem parking and a shared driveway and turning area with No 10.

Effect on the habitats and ecology associated with the ancient woodland

5. The proposed development would be located within a 15 metre buffer zone of the ancient woodland (an irreplaceable habitat). Irreplaceable habitats are defined in the National Planning Policy Framework (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. Paragraph 193(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 (such as infrastructure projects) where the public benefit would clearly outweigh the loss or deterioration of that habitat, and a suitable compensation strategy exists.
6. Standing advice from Natural England and the Forestry Commission (Ancient woodland, ancient trees and veteran trees: advice for making planning decisions January 2022) 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.
7. The appellant's ecological and arboricultural report advises that the site would have the potential to provide suitable habitat for protected species and that biodiversity enhancements should be incorporated into the scheme. The appellants have suggested the restoration of the ancient woodland is of paramount importance but that incursion of the garden of the proposed development into the buffer zone would cause negligible disturbance, subject to appropriate mitigation being put in place. In the absence of any specific details of the mitigation or a mechanism detailing how the ancient woodland would be restored, I am unable to give this anything more than minor weight. However, this approach would not accord with Natural England and the Forestry Commission's standing advice and building within and incorporating the buffer zone into the residential garden for the proposal would result in significant uncertainty as to the long-term effect of the development on irreplaceable habitats. It is acknowledged that the appeal site currently comprises the garden for No 10, but this is not a reason to allow the intensification of the use of the site or perpetuate any potential harm.
8. 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 Policy EN13 of Wealden Local Plan (1998) (LP), Policies WCS12 and WCS13 of the Wealden District Council Core Strategy Local Plan (2013) and Policy HNBP 5 of the Hellingly Neighbourhood Plan (July 2021). These seek to resist, amongst other things, development which would prejudice the ecology of ancient woodland or otherwise fail to protect habitats and biodiversity.

Effect on the character and appearance of the surrounding area

9. The Drive broadly consists of two lines of dwellings separated from one another by differences in site levels, attractive undeveloped space, gardens and a shared drive. The space is neatly framed by a large expanse of woodland, beyond the site's north eastern boundary. The existing dwellings vary in height from two/three storey to single storey dwellings and are positioned within generous rectangular plots. The scale of the dwellings, their gardens and the central undeveloped space gives the estate an attractive and uniform appearance.
10. The proposal would be single storey in height and positioned very close to the plot's side and rear boundaries. The addition of the proposed boundary fences would make the dwelling appear cramped and confined within the plot, in stark contrast to the more spacious arrangement of dwellings nearby. Accordingly the proposed dwelling would have a plot layout wholly inconsistent with the surrounding dwellings and would be an obtrusive form of development that would have a disharmonising effect on the more orderly surroundings.
11. The proposed development would result in a cramped layout which would have a detrimental impact on the character and appearance of the surrounding area in conflict with Policy EN27 of the LP and WCS12 of the Wealden District Council Core Strategy Local Plan (2013) which seek to ensure the proposal respects the character of existing development.

Effect on the living conditions of the occupiers of No 10 and of the proposed development

12. The proposed front elevation would be positioned perpendicular to the corresponding elevation of No 10. The proposed side elevation would run along the boundary of No 10 and enclose a portion of its private garden area. Although the proposal would be single storey in scale, its general mass and close proximity to No 10's nearest front elevation window, side elevation doors and rear garden would cast an unacceptable shadow on those parts of the neighbouring dwelling such that there would be a harmful loss of daylight to existing occupiers.
13. The positioning of the proposal would also feel uncomfortably close to No 10 and would enable mutual overlooking to occur between the windows on the front elevation of No 10 and the window serving the bedroom of the proposal in particular. The close proximity would also allow direct overlooking to occur when occupiers of both dwellings were accessing the external space between the front of the properties where boundaries are physically undefined. The proximity and degree of overlooking would result in a loss of privacy to both No 10 and the proposal and cause harm to the living conditions of the occupiers of both the existing and the proposed dwelling.
14. In view of the above, the proposal would have an unacceptable effect on the living conditions of the occupiers of No 10 and the future occupiers of the proposed development, with particular regard to privacy and daylight. The proposed development is contrary to Saved Policy EN27 of LP, which seeks to resist, amongst other things, development which would create an unacceptable adverse impact on the privacy and amenities of neighbouring properties.

Planning Balance

15. The proposal would result in harm to irreplaceable habitats, the living conditions of the occupiers of the proposed development and No 10 and to the character and appearance of the area. This would bring the scheme into conflict with the development plan as a whole. Substantial weight is afforded to this conflict.
16. The Council does not have an up-to-date five year housing land supply. The Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. Irreplaceable habitats such as ancient woodland are an example of such areas/assets and the proposal is contrary to the relevant policies of the Framework in regard to these.
17. The proposal would deliver an additional dwelling in an accessible location and there would be associated economic benefits during construction and thereafter in occupation. This would make a small but important contribution to meeting the housing requirements of the area as indicated by paragraph 73 of the Framework, particularly given that the Council conceded it is unable to demonstrate a five-year supply of deliverable housing sites. However, given the scale of the scheme and the addition of only one dwelling to the local housing supply I have judged these benefits to be limited.
18. The appellant proposed compensation and enhancement biodiversity measures and the restoration of the ancient woodland, however, I afford these limited weight as I have no specific details of how these would be secured given that the ancient woodland falls outside of the site.
19. Accordingly, the benefits of the scheme do not outweigh the harm I have described to the irreplaceable habitat, local character and living conditions, together with the associated development plan conflict. Therefore, the material considerations do not indicate a decision otherwise than in accordance with the development plan.

Conclusion

20. For the reasons given above the appeal should be dismissed.

C Coles

INSPECTOR