



Appeal Decision

Site visit made on 16 April 2025

by Stewart Glassar BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 June 2025

Appeal Ref: APP/C1435/D/24/3354916

Tinkers, Bell Lane, Nutley, East Sussex, TN22 3PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
 - The appeal is made by Mr B Glover against the decision of Wealden District Council.
 - The application Ref is WD/2023/2713/FR.
 - The development proposed is Re-profiling and landscaping to create swimming pool with pool house/gym and summer house (part retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant acknowledges that some works have been undertaken on site and these appear to be consistent with some of the works shown in the submitted drawings. For the avoidance of doubt, this has no bearing on my decision, which is based on the submitted drawings.

Main Issues

3. The main issues are the effect of the proposed development on a) the Ancient Woodland; and b) the High Weald National Landscape.

Reasons

Ancient Woodland

4. Ancient Woodland (AW) is a term which includes ancient semi-natural woodland and plantations on ancient woodland sites. Generally, such areas will have been wooded continuously since at least 1600 AD and beyond some limited management, will usually have been subject to very little interaction with humans. It is a result of this, that they develop their diverse range and mix of plants, fungi, insects and other species and thus become an irreplaceable resource.
5. Paragraph 193, of the National Planning Policy Framework (the Framework) identifies that development resulting in the loss of irreplaceable habitats such as AW should be refused, unless there are wholly exceptional reasons for such loss. Policy EN13 of the Wealden Local Plan 1998 (LP) also seeks to protect areas of AW and avoid significant adverse impacts on them. Policy WCS 12 of the Wealden Core Strategy Local Plan 2013 (CS) more generally seeks to prevent a net loss of biodiversity.

6. Furthermore, standing advice published by Natural England and the Forestry Commission recommends that for AW, development proposals should have a buffer zone of at least 15 metres from the boundary of the woodland to avoid root damage within root protection areas. In directing that development proposals should not be approved within buffer zones the advice confirms that this restriction also applies to proposed gardens, implying that domestic garden activity can be harmful in such close proximity to AW.
7. There is a difference of opinion between the main parties as to whether the works are within the designated Ancient Woodland of Carr's Wood which encompasses the northern part of Tinkers. However, there is no dispute that some of the works would be within 15m of this AW boundary.
8. Despite this, it is the appellants position that the nature of the area identified as AW can no longer be considered to be AW, given the works/planting undertaken in these areas and how the land has been used in relation to Tinkers for many years. The appellant point to the garden of the neighbouring property of Stonedene Acre, which has been excluded from the AW designation for similar reasons.
9. It is therefore suggested that if the AW designation were to correspond to the situation on the ground, the works the subject of this appeal would be beyond a 15m buffer. Indeed, this garden area of Tinkers is now said to have no intrinsic ecological value in connection with the AW and so the proposal could not be said to have any harmful effects upon it, such as the loss or deterioration of irreplaceable habitats.
10. Having viewed the site, I have some sympathy with the appellant's position. However, I have also been presented with correspondence from Natural England (NE) which recently considered an application to amend the AW boundary along the lines suggested in this appeal. The evidence presented to NE was not sufficient for their specialist to agree to such an amendment. Whilst the poor condition of the woodland was noted, it was not considered so significant as to represent an end to woodland continuity.
11. NE remain open to reviewing the situation in the light of further evidence. Consequently, at this stage there is not the substantive evidence before me to definitively rule out the possibility of the proposal leading to some loss or deterioration of the AW, either through the works themselves or the intensification in the use of this part of the garden.
12. As per paragraph 193 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 therefore a very high bar and one which I do not consider that the current proposal would meet.
13. Therefore, at this stage, there is not the information before me to conclude that the proposal accords with Policy EN13 of the LP, Policy WCS12 of the CS or the Framework in ensuring that biodiversity in general and the AW in particular would not be prejudiced or otherwise harmed.

National Landscape

14. The appeal site comprises an existing dwelling and its extensive residential curtilage. The site is located within the countryside although it is secluded and not overly prominent within the landscape.
15. Some reprofiling and retaining works have already been undertaken. I have not been provided with precise details as to the appearance of the site before these works were undertaken. However, historic photographs from the 1980's show the area as being used as managed terraced vegetable beds. Since then, but prior to the current works, the area is said to have been regraded in 2015 to create a more level terrace arrangement as part of the wider garden area. It therefore appears that this part of the site has previously been subject to reprofiling and so the current scheme would to some extent be a variation on what has gone on before.
16. The proposed scheme as a whole involves not just the reprofiling and retaining works but also the provision of a swimming pool and various outbuildings. The works are therefore substantial albeit within a large garden curtilage.
17. The garden is reasonably secluded with the boundaries nearest the works comprising trees/hedges and a close boarded fence along the rear boundary adjacent to the public footpath. In places some additional planting/means of enclosure could usefully be deployed but generally views into the site are limited but where it can be seen it is clearly read as a domestic garden.
18. I am also mindful that from the public footpath any of the works that would be seen would be set against a backdrop of rising land, which would help to mitigate some of their visual impact. Given all of these factors, the works would not be unduly prominent within the wider landscape and therefore, on balance, I do not find the scheme harmful to the wider verdant and tranquil High Weald National Landscape.
19. Consequently, the proposal would not be contrary to Policies EN6, EN27 and DC19 of the LP and Spatial Planning Objectives SPO2 and Policy WCS14 of the CS which collectively, amongst other things, seek to protect the High Weald National Landscape and ensure development is sustainable and does not cause harm through such impacts as inappropriate layout and design or light spillage.

Other Matters

20. The Council's decision notice referenced a lack of information in relation to flood risk. In response, the appellant's appeal statement provided a Flood Risk Assessment (FRA) on which I sought the Council's comments. Despite the FRA, the Council remain concerned as to where the site would drain and the implications of this on the wider area.
21. The appellant has subsequently confirmed that the site would be suitable for infiltration and that a soakaway would address the issue, a matter which it is suggested could be addressed by condition. However, even if I were to find in favour of the appellant in relation to this matter, it would represent an absence of harm. As such, it would not overcome my conclusions in relation to the effect of the proposal on the AW.

Conclusion

22. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR