



5/2022/2443

Bricket Wood Sports and Country Club, Paintball Site & Bricket Lodge, Lye Lane, Bricket Wood, Hertfordshire AL2 3TF

Outline application (access sought) - Demolition of existing buildings and construction of up to 115 dwellings and creation of new access

1. PREAMBLE

- 1.1 This statement has been prepared in response to the receipt of a revised ecological appraisal (CD 2.13.1 Appendix A) and plans/drawings and reports related to the design and construction of the proposed footpath (CD 2.11 etc).
- 1.2 For the purposes of this report, I use the term 'site' typically refers to the proposed footpath and not to the land proposed for residential development.
- 1.3 Of fundamental importance to this statement is the presence of the ancient woodland of Blackgreen Wood Local Wildlife Site (LWS) that lies adjacent to the eastern boundary of Lye Lane; this is protected via Government (and other) guidance, policy and law; ancient woodland is widely considered to be 'irreplaceable'. The woodland benefits from being managed by the local community via a management plan and Forestry Commission licence.
- 1.4 Ancient woodlands are not characterised solely by trees and flora above ground. The roots, soils, microflora and microfauna, fungi and physical features amongst others are all considered as integral components and similarly protected. They are also of considerable historic and cultural value, as described in Defra's 'Keepers of Time' policy, and securing the safeguard and management of ancient woodlands is consistent with this.
- 1.5 One of the key characteristics of Blackgreen Wood is the presence of a low earth bank, in places supporting an overgrown hornbeam 'hedge', that runs along much of the length of Lye Lane, at any point no more than a handful of metres from the metalled surface of Lye Lane (see CD 2.13.1 Appendix A, Fig 12).
- 1.6 When originally created with spoil from the adjacent ditch, possibly several hundred years ago, the bank would have been more substantial and the hedge actively managed with both intended to act as a barrier to prevent wild or domestic stock from browsing the valuable coppice woodland within. Such features can be a determining characteristics of whether woodlands are considered ancient or not and it forms an integral part of the ancient woodland 'designation'.

- 1.7 Even though broadly similar in appearance, habitats to the west of the lane, comprising, in places, a ditch, bank and woodland, have different origins and are not afforded any special protections other than via biodiversity net gain and other requirements where they apply.
- 1.8 Boundaries of ancient woodlands and LWS are not always clinically defined on the ground but conservatively, as a minimum, it can be taken to run alongside the roadside-base of the bank (including the soil beneath) though it is quite arguable that the ditch itself could or should be included. This would certainly be a more precautionary approach.
- 1.9 Between the ditch and road lies a narrow strip of vegetation of variable width. This is described in the appellant's documents as a 'grass verge' though I believe a woodland edge community would be a more appropriate description; after all, this strip is identified on Natural England's ancient woodland inventory, perhaps reflecting the extent of the canopy, as an example of deciduous woodland, a Habitat of Principal Importance (or 'priority habitat'), protected in Government and other guidance, policy and law.
- 1.10 This means there is an unbroken chain of protected habitats extending from the edge of the road into the woodland. This broad pattern extends along the entire eastern side of Lye Lane from just south of the M25 bridge in the north to Lye Cottage, the first dwelling to the south near the settlement of Bricket Wood.
- 1.11 From the plans and other documents submitted, the proposed footpath would be located either on top of culverts newly installed in the ditch or within the woodland edge (priority) habitat before crossing the road at the location of an existing public footpath, to continue its journey southwards along the western boundary of Lye Lane.
- 1.12 Drawing this together, direct or indirect harm to the bank would represent damage to the irreplaceable, ancient woodland. Where it can be shown, convincingly and with evidence, that the bank will not be harmed, directly or indirectly, during construction/installation or use and maintenance over time, above or below ground, then there may be grounds for the proposed development to proceed.
- 1.13 However, as a minimum, it seems inconceivable that the direct loss of the priority habitat can be pursued without leading to conflicts with guidance, policy and law. Similarly, from the evidence submitted, I remain unconvinced that damage to the bank, soils, hydrology and root systems of the ancient woodland can be avoided given the type and scale of the proposed development. Where harm to an ancient woodland cannot be ruled out, para 186c of the NPPF states:
- '... development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.'*
- 1.14 In addition, the wider area is likely to support bats, amphibians and reptiles which benefit from varying degrees of protection in other guidance, policy and law.

2 INTRODUCTION

- 2.1 In my original statement, I drew attention to the importance of, *inter alia*, the following:
- The ecological importance of ancient woodlands and LWSs including its status as an 'irreplaceable habitat',

- The protection of ancient woodlands and LWSs in, where appropriate, policy, guidance and law,
 - The need for development proposals to be supported by surveys, and
 - The need for development to be evidenced and justified by a focused ecological appraisal
- 2.2 I also noted the lack of any satisfactory consideration of any of the above in the application documents at the time.
- 2.3 Subsequently, I have had sight of the following:
- CD 2.13 - Rebuttal Evidence – Planning Balance, Brian Parker
 - CD 2.13.1 Appendix A, Ecological Appraisal, Cherryfield Ecology
 - CD 2.11.1 General Arrangement Plan Sheet 1
 - CD 2.11.2 General Arrangement Plan Sheet 2
 - CD 2.11.3 General Arrangement Plan Sheet 3
 - CD 2.11.4 General Arrangement Plan Sheet 4
 - CD 2.11.13 Typical Section of Proposed Footway
 - CD 2.4.3 Arboricultural Method Statement and
 - CD 2.13.2 Appendix B Arboricultural Response
- 2.4 Despite the submission of new documents, the need to consider these matters of guidance, policy and law still stand and reference to my earlier statement should be made for clarity.
- 2.5 In addition, I have also seen the Council's advice from its Tree Officer.

3 THE PROPOSAL

- 3.1 This section represents my understanding of the proposed development based on the submitted documents. It is provided in good faith and only seeks to identify broad principles and can only be taken as a summary; the appellant's material will provide further detail and they will no doubt wish to correct any mistakes that have inadvertently been made.
- 3.2 This section is broken down into the following components: culvert and footpath construction and lighting. Each of these subjects will be explored again in section 5.

Culvert and footpath construction

- 3.3 I understand the proposed footpath is intended to run along the eastern boundary of Lye Lane before crossing to the western side at the location of an existing public footpath as it nears the settlement of Bricket Wood. A discrete passing place is also proposed on the eastern boundary south of the 'crossing'. At all points, it appears to be designed to fall within the solid green line that denotes the highway boundary (see CD 2.11.1-4).
- 3.4 The proposed footpath would be 2m wide (except where reduced to 1.2m at '*pinch points*', (defined as '*the presence of specific trees*'), comprise a permeable surface (such as compacted gravel) and lie either on woodland edge vegetation or above newly installed culverts to be

placed, following excavation along with subsequent haunching, in the ditch that run alongside Lye Lane. Any voids would be backfilled with a permeable material.

- 3.5 CD 2.11.1-4 (repeated in CD 2.4.3) also provide cross-sections of the ditches/culverts of the footpath and culvert to the west of Lye Lane. Intriguingly, no cross sections are provided of the proposed route to the east of Lye Lane (and adjacent to Blackgreen Wood). Why this is the case is not explained.
- 3.6 Further, CD 2.4.3 s11.3 states that '*... no excavation takes place in areas where tree roots may be located.*' and that (in s8.1 and elsewhere) a '*no dig*' approach would be followed where surfacing is required where tree roots may be present.
- 3.7 However, this goes on (CD 2.4.3 s 7.2) to indicate that this is a standard methodology and that the final approach will only be '*... confirmed as part of site investigations prior to the start of each section of the works.*'
- 3.8 Drawing this together, this means the construction methodology proposed for adoption to the west of Lye Lane is explained in greater detail than that to the east though, fundamentally, the chosen methodology may differ from that proposed. Even so, only limited information is provided to the extent that the use and type of vehicles/machinery, the depth and location of all necessary excavations, the disposal of soil, the nature of imported materials for instance, remains unclear.

Lighting

- 3.9 CD 2.11.1-4 and CD 2.13.1 Appendix A (the Ecological Appraisal) also provide details of lighting, presumably required for the safety of pedestrians. This is to be provided by solar powered uplighters, embedded in the surface of the path. The Ecological Appraisal (CD 2.13.1 Appendix A Table 17) indicates the spectrum and intensity of these will meet Bat Conservation trust best practice requirements.

4 The Appellant's Position

- 4.1 The appellant's rebuttal (CD 2.13, s6.15) concludes '*... no bats or other protected species were present or likely but that the presence of some reptiles was likely ...*', before adding the need for '*... a cautious approach ... including accounting for the potential for Great Crested Newts.*'
- 4.2 Further, (CD 2.13 s6.19) it goes on to state '*... that a safe footpath can be delivered along Lye Lane without encroaching onto the Ancient Woodland and without harming trees ...*'.
- 4.3 Elsewhere, CD 2.4.3 refers repeatedly to the land between the ditch and the lane as a '*... grass verge ...*'.
- 4.4 Cherryfield's Ecological Appraisal (CD 2.13.1, Appendix A, s4.3) recommended the use of screens to reduce the impact of '*... dust and debris ...*' on Blackgreen Wood though the reason for this and the potential threat it was addressing was not made clear.
- 4.5 I return to these points below in section 5.

5 LEADS' ADVICE

- 5.1 This section scrutinises the appellant’s proposals and opinions set out in sections 3 & 4 above as I understand them. However, it begins with a brief reminder of the ecological importance of Blackgreen Wood and its immediate surroundings

Summary of ecological importance of Blackgreen Wood and adjacent land

- 5.2 Blackgreen Wood lies immediately to the east of Lye Lane. It is listed on the [ancient woodland inventory](#), as a Habitat of Principal Importance (NERC Act, 2006) and as a LWS, and is considered an irreplaceable habitat in terms of the NPPF and biodiversity net gain. As such it is afforded strong protection in Government and other guidance, policy and law.
- 5.3 For instance, if harm to the ancient woodland, ie its ‘*loss or deterioration*’, cannot be ruled out, then para 186c of the NPPF makes clear that ‘... *applications should be refused unless there are wholly exceptional reasons ...*’;
- 5.4 The ancient woodland inventory shows the boundary to run mostly parallel and in close proximity to the metalled surface of the lane except for a short distance immediately south of the M25 where the ancient woodland boundary immediately abuts the road surface where a crash barrier is located.
- 5.5 The inventory also shows, perhaps reflecting the extent of the canopy, that the entire woodland and the ‘woodland edge’ habitat (or ‘grass verge as described by the appellant) between the bank and Lye Lane, including the ditch, is considered to represent an example of ‘deciduous woodland or ‘priority habitat’ listed in s41 of the NERC Act, 2006; that is, a habitat of particular importance for the overall purpose of conserving biodiversity which places a duty on local planning authorities to conserve and enhance.
- 5.6 Accordingly (apart for the short section adjacent to the M25), for the purposes of this statement, the boundary of the ancient woodland and LWS is taken to follow the interface between the bank and, where one exists, the ditch; beyond this, to the road itself, and including the ditch is considered as a priority habitat.
- 5.7 Drawing on the plans submitted (CD 2.11.1-4), the green line (the highway boundary) to the east of Lye Lane appears to follow the line of the wood bank that in places, supports an old, overgrown, hornbeam ‘hedge’ that forms the boundary of the ancient woodland. The bank lies directly adjacent to the ditch from which the material used to create it would have been excavated.

Construction of the footpath/culverts

- 5.8 In various documents the appellant states or suggests that installation of the culvert and footpath will be restricted to the land within the highway boundary and the ancient woodland will not be affected. This is despite the highway boundary appearing to follow the line of the bank and its hornbeam hedge which I consider to represent an integral component of the ancient woodland. Further, as I could find no statements to the contrary, I assume this means there will be no other harmful impacts on biodiversity and protected features, such as to the priority habitat.
- 5.9 Yet, it is my opinion that there are a number of credible threats that have not been acknowledged or their impact assessed.

- 5.10 For instance, it is clear from the publicly available evidence I have used, that at best, the culvert and footpath will result in the direct loss of the priority habitat. If construction of the culvert/footpath is limited to just the 2m width suggested, over the full length of the route to the east of Lye Lane, this will result in a direct loss of approximately 500m² of deciduous woodland. A no dig approach will not affect this outcome, the habitat will still be lost. This is neither acknowledged nor addressed in any of the appellant's documents including the Ecological Appraisal. Instead, the land to be directly affected is described as a grass verge and, presumably, considered to support little of ecological value.
- 5.11 However, I could find no information that the working corridor will be restricted to the 2m (or 1.2m) width of the path and so presume that a wider working corridor will be required to, not least allow the installation of culverts that range up to 900mm diameter; a considerable size.
- 5.12 A wider corridor could result in harm from compaction of root systems and loss of flora and fauna over a wider area than that to be lost to the footpath. Similarly, the width between the lane and the bank varies and, in places, I doubt there is adequate room for even a 1.2m wide footpath without direct encroachment into the bank and the ancient woodland and without directly affecting trees (as it is these are presented as the reason for this narrowing of the path). Again, none of this is either acknowledged or addressed in any of the appellant's documents including the Ecological Appraisal.
- 5.13 Cross sections of the ditch/culvert to the west of Lye Lane show encroachment into the (unprotected) bank yet no sections are provided for the installation to the east of the lane. Does this reflect a different engineering approach or a response to ground conditions? If not, encroachment into the bank to the east of the lane would result in direct harm to the ancient woodland and LWS. Again, this is neither acknowledged nor addressed in any of the appellant's documents including the Ecological Appraisal.
- 5.14 In any event, the installation of a presumably impermeable culvert and the loss of the porous/permeable bank is likely to impact the local hydrological regime of Blackgreen Wood with associated changes in fauna and flora. Again, this is neither acknowledged nor addressed in any of the appellant's documents including the Ecological Appraisal.
- 5.15 Further, there is no information provided on the type of material to be imported either to support the installation of the culvert or provide the foundations or provide the surface of the track. This is important as contaminated material or that of a markedly different chemistry or pH can result in contamination of what are otherwise undisturbed soils that have remained so for centuries and associated changes in fauna and flora via the possible introduction of invasive species. Again, this is neither acknowledged nor addressed in any of the appellant's documents including the Ecological Appraisal.
- 5.16 Similarly, no evidence is provided on how any excavated soils will be disposed of. Disposal, deliberate or inadvertent within the wood could again result in localised changes to the fauna and flora. Again, this is neither acknowledged nor addressed in any of the appellant's documents including the Ecological Appraisal.
- 5.17 In addition, no evidence has been submitted that shows, unequivocally, that the ditch/bank sides will remain undisturbed during excavation. This is important as this increases the risk that the roots of trees within the ancient woodland could be affected.

- 5.18 Whilst the appellant argues that anaerobic conditions beneath the ditch will prevent root growth, I am swayed by the Council's Trees Officer who disputes this. So, whilst this potential threat has been considered to some degree in the appellant's documents (though not in the Ecological Appraisal) I am not in a position to rule out any harmful impacts.
- 5.19 I find the Tree Officer's evidence (p3) regarding the impact of the excavation methodology to be convincing. From this, like her, I am unconvinced that damage to the root systems of ancient woodland will remain unaffected given the proximity of the working corridor and the depth of excavation, potentially extending below the depth of any anaerobic soils.
- 5.20 No evidence has been submitted by the appellant to consider otherwise though the risk is clearly recognised as CD 2.4.3 s7.1 states: *'The bank of the ditch nearest the trees will not form part of the proposed installation as roots may be present here'*; the sections to the west of Lye Lane would appear to dispute this if carried forward to the boundary of Blackgreen Wood.
- 5.21 Finally, and importantly, it is unclear from the plans provided if the footpath immediately south of the M25 would lie within or adjacent to the ancient woodland which here extends to the edge of the road. If the former, a direct loss of land identified as ancient woodland would result in clear conflict with Government (and other) guidance, policy and law. Again, this is neither acknowledged nor addressed in any of the appellant's documents including the Ecological Appraisal.
- 5.22 Accordingly, on the evidence submitted, I am unable to reconcile the claim made in the rebuttal that *'... disturbance of tree roots ... will not take place ...'* (CD 2.13, s6.14(b)) and therefore, that [the proposed footpath] *'... lies entirely outside the Ancient Woodland ...'* (CD 2.13, s6.14(a)).

Protected species

- 5.23 The Ecological Appraisal focuses primarily on protected species. Accordingly, the appellant's rebuttal statement (see CD 2.13, s6.15) is wrong to claim that *'... no bats or other protected species were present or likely but that the presence of some reptiles was likely ...'* as the Appraisal clearly states (CD 2.13.1 Appendix A, s4.1) the *'... wet ditches and surrounding habitats provide moderate potential for Great Crested Newt ... and high potential for reptiles.'*
- 5.24 Yet, no bespoke species surveys have been carried out in support of the proposed culvert/footpath and, instead, only a single day walk-over of the site. Again, Government guidance is clear that the status of protected species should be known before consent is awarded.
- 5.25 That said, I accept the Ecological Appraisal's conclusion that reptile surveys would not be practical in this instance (s4,3) and that other methods should be sought although supervision by an ecologist does not go far enough. Accordingly, I support the (unstated) assumption that reptiles are present and here, I recommend that their safeguard would best be secured by production of a thorough but proportionate Method Statement that describes a range of reasonable avoidance, mitigation and compensation mechanisms. This is standard practice with a high degree of certainty that it would be successful and can be secured by condition.
- 5.26 Regarding great crested newts, again, I support the (unstated) assumption that these amphibians are present though here accept the proposal to apply for a District Level Licence

from Natural England. Again, this is standard practice with a high degree of success anticipated. Again, this can be secured by condition.

- 5.27 Consequently, I am prepared to put potential impacts on amphibians and reptiles to one side though I will refer to bats again below.

Lighting

- 5.28 Whilst I accept that if no trees are to be felled, and works restricted to crown lifting, then the likelihood of individual bats or roosts being harmed is low, but as bats are likely to forage and commute amongst the woodland and above Lye Lane, then inappropriate lighting could disrupt this behaviour.
- 5.29 It is proposed the footpath will be illuminated by numerous solar-powered 'uplighters' located at ground level in the footpath. Accordingly, it is claimed no cabling and so no disturbance of the ground will be required.
- 5.30 However, I am uncertain how these will function when covered in leaves during autumn and winter or how sufficient power will be generated under a full canopy in summer. Furthermore, I could find no information on where the solar panels will be located. If subsequently installed but then found inadequate, would more substantial lighting be required in future?
- 5.31 The same issue could arise after consent is awarded, when the final design is proposed if trees are considered to be in an unsafe condition given proximity to a right of way and proposals made to clear these; I note the trees have not been subjected to a full survey which could highlight this. Again, this is neither acknowledged nor addressed in any of the appellant's documents including the Ecological Appraisal.

General comments on the Appellant's ecological assessment

- 5.32 The Appellant's ecological opinions can be found across the rebuttal, arboricultural statements and the Ecological Appraisal.
- 5.33 Established best practice guidance for ecological impact assessment (see my first statement) makes clear that ecological features should be surveyed, described, their importance identified and placed in context, and that all credible, potential impacts should be thoroughly scrutinised. The outputs should be set out in light of the legislative and policy landscapes and considered in line with best practice guidance.
- 5.34 None of the ecological opinions provided by the appellant's satisfy these requirements. Reasons for this include but are not limited to the following:
- The site has not been subjected to formal ecological or arboricultural surveys with the Ecological Appraisal informed only by a walkover survey on a single day and, despite the recommendation in the NE/FC Standing Advice, a tree survey following the standards of BS:5837 also does not appear to have been carried out in full though it claims the report was developed following this guidance.
 - That these matters are not explored thoroughly in the appellant's Ecological Appraisal is particularly disappointing. Indeed, more attention is given to potential impacts on the ancient woodland/LWS in the rebuttal than the Appraisal. Instead, the latter focuses on protected species, bats, amphibians and reptiles, and omits any meaningful scrutiny of

potential impacts on the primary ecological asset at risk, Blackgreen Wood and its associated deciduous woodland edge. That its sole recommendation, to erect dust screens, ‘... to protect the adjacent priority and ancient woodland from dust and debris pollution.’ lacks any supporting rationale. Other plausible threats, related to the construction methodology, pollution from vehicles or the materials used or direct, physical impacts on the wood bank itself, amongst others, have not been considered.

- Further, use of the mitigation hierarchy, which requires development proposals to first avoid harm before mitigating and, as a last resort, compensating for unavoidable losses, is notable by its absence. Accordingly, there is no consideration of alternative proposals, the first step in the hierarchy, which would avoid or reduce any impact. Further, as the presence of the ancient woodland is referred to only infrequently and the priority habitat not at all (when considering impacts), other than the intention to implement a no dig approach and the installation of dust screens, I could find no other examples of where the presence and proximity of this fragile, priority and irreplaceable habitat had influenced the proposals.

5.35 This is disappointing because the NE/FC standing advice includes a link to a freely available ‘Assessment Guide: ancient woodland, ancient and veteran trees’ which effectively provides a checklist of ecological matters that should be considered. There is no evidence it has been followed in this case.

5.36 Fundamentally, though, none of the submitted documents refer to the NE/FC standing advice for development in proximity to ancient woodland to be subjected to buffers. An extract from the guidance is provided below:

Buffer zone recommendations

For ancient woodlands, the proposal should have a buffer zone of at least 15 metres from the boundary of the woodland to avoid root damage (known as the root protection area)

For ancient or veteran trees (including those on the woodland boundary), the buffer zone should be at least 15 times larger than the diameter of the tree. The buffer zone should be 5 metres from the edge of the tree’s canopy if that area is larger than 15 times the tree’s diameter. This will create a minimum root protection area ...

You should not approve development proposals, including gardens, within a buffer zone.

You should only approve sustainable drainage schemes if:

- *they do not affect root protection areas*
- *any change to the water table does not negatively affect ancient woodland or ancient and veteran trees*

- 5.37 As far as I can see, neither the Appraisal nor any other submitted documents refer to this fundamental guidance which should have been of relevance to both the ecologist and arboriculturist.
- 5.38 Therefore, in terms of the assessment of impacts on the ancient woodland and associated priority habitat, the wider ecological assessment cannot be considered fit for purpose and cannot be relied upon.
- 5.39 Given this lack of scrutiny, the Council simply does not have the evidence available to consent to the proposals.

6 CONCLUSION

- 6.1 The proposed culvert and footpath would lie within a priority habitat and in close proximity to/about the irreplaceable ancient woodland/LWS of Blackgreen Wood; all are afforded varying degrees of protection.
- 6.2 The direct loss of the deciduous woodland priority habitat is inevitable and indirect or direct harm (to the earth bank or the loss of the section adjacent to the M25) to the ancient woodland cannot be convincingly ruled out on the evidence submitted.
- 6.3 Section 5, above, identifies a considerable number of shortcomings in the broad ecological impact assessment submitted by the appellant. Overall, I find it to be superficial, lacking evidence, scrutiny with no meaningful reference to the fundamental guidance, policy and law; it cannot be considered fit for purpose.
- 6.4 For instance, it lies wholly within the minimum 15m buffer zone where development (even including gardens) is so strongly discouraged by Natural England and the Forestry Commission in their standing advice.
- 6.5 Importantly, if harm to the ancient woodland, ie its '*loss or deterioration*', cannot be ruled out, then para 186c of the NPPF makes clear that '*... applications should be refused unless there are wholly exceptional reasons ...*'; these have not been proven.
- 6.6 Further, given their historic and cultural value, deterioration of the site is unlikely to be consistent with Defra's 'Keepers of Time' policy.
- 6.7 Accordingly, the Council does not have the evidence to grant consent with the certainty and confidence necessary to meet the high bar imposed by these tests. To do so, would be to risk conflict with Government (and other) guidance, policy and law.

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