Town and Country Planning Act 1990

Appeal by Croudace Homes Ltd

Outline application with all matters reserved, except for the means of access from Eastbourne Road, for the comprehensive development of a mixed use urban extension

Land at Bird in Eye South, South of Bird in Eye Hill, Framfield, TN22 5HA

Wealden District Council Ref:	Planning Inspectorate Ref:
WD/2021/2198/MAO	APP/C1435/W/22/3307820

PROOF OF EVIDENCE

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APPENDICIES

1. Biodiversity & Arboricultural Officer Consultation Comments for Planning Application WD/2021/2198/MAO, 30/11/2021

2. Biodiversity & Arboricultural Officer Consultation Response to Planning Officer Relating to Natural England Comments for Planning Application WD/2021/2198/MAO, 26/05/2022

3. Forestry Commission Consultee Response for Planning Application WD/2021/2198/MAO, 06/01/2022

4. Woodland Trust Comments for Planning Application WD/2021/2198/MAO, 06/01/2022

5. Natural England Comments for Planning Application WD/2021/2198/MAO, 23/03/2022

6. Photographs 6a - of AW features taken by the author with individual descriptions

1 Introduction

1.1. My name is Ben Rainbow. I hold a Bachelor of Science (Honours) degree in Ecology, Conservation and Animal Behaviour from Anglia Ruskin University Cambridge and NVQ2 in Environmental Conservation from Plumpton College, nr Lewes.

1.2. I have been employed by Wealden District Council as Biodiversity & Arboricultural Officer since 2014 until present day.

1.3. Prior to this, I was Ecologist at West Sussex County Council from 2010 -2014, Assistant Ecologist at West Sussex County Council from 2004 to 2010, Countryside & Access Ranger at West Sussex County Council from 2003 - 2010, Trainee Countryside Ranger at East Sussex County Council from 2001 – 2003.

1.4. For completeness, I advise that I am the responsible officer for the Service Level Agreement between Wealden and the South Downs National Park (in so far as the Park area crosses into the former administrative area of Wealden). I provide tree and ecology advice to the Park on tree work applications in that area. I am also part of the officer working group drawing up the emerging Wealden Local Plan, where I am contributing to emerging policies and strategies on trees, ecology and biodiversity.

1.5. I am a member of the Association of Local Government Ecologists (ALGE) and have been since 2005.

1.6. The evidence which I have prepared and provided within this proof is true and accurate.

1.7. I can confirm that the opinions expressed are my true and professional opinions.

1.8. This appeal is against the Council's non-determination of the outline application with all matters reserved, except for the means of access from the B2102, for the construction of up to 290 dwellings, associated landscaping, informal open space and strategic SANG, on the 42.8 hectare site at Land at Bird in Eye Farm, south of Bird in Eye Hill, Framfield, TN22 5HA. I shall refer to this as the 'Appeal Scheme'.

1.9. I provided a consultation response for planning application WD/2021/2198/MAO on 30 November 2021 (CDB.16 & Appendix 1). Following this time, the drainage scheme outflow was amended. I undertook a site visit with my colleague and Mr David Massheder on the 19 January 2022. Further informal comments were provided on 26 May 2022 relating to Natural England (NE) officer comments on the application (Appendix 2). I address the position of Natural England and other key consultees the Forestry Commission and the Woodland Trust further below. My ecology objection was sustained until the appeal was lodged for non-determination due to the remaining unresolved ecological impacts of the scheme. I undertook a further site visit with Mr Massheder ahead of the change in appeal procedure to Public Inquiry on 25 July 2023.

1.10. The Council's Statement of Case sets out the reasons as to why planning permission should be refused, which are summarised below:

- Conflict with the development plan;
- The adverse impact of the development on Ancient Woodland;
- Whether the appeal scheme is in an accessible location so as to offer a genuine choice of transport modes;
- Whether the appeal scheme can provide safe access;
- The impact on the safety and operation of traffic on the local highway network and town centre; and
- No mechanism to secure affordable housing, custom built housing and other key infrastructure mitigation measures.

1.11. My evidence deals with trees, Ancient Woodland, Veteran Tree and related ecological impacts and putative Reason for Refusal (RfR) number 2. In summary:

- I explain how the scheme would lead to direct and indirect impacts upon veteran trees and ancient woodland, leading to degradation and loss of irreplaceable habitat.
- RfR 2 says the proposals fall foul of a number of Policies, both national and local, including the saved policy EN13. I explain why this is so.

2 STRUCTURE OF EVIDENCE

2.1. The Council has provided Putative Reasons for Refusal, of which Deemed Reason 2 relate to ecological and arboricultural matters and are addressed by me.

2.2. Reason 2 states:

The development proposals would result in indirect and direct degradation and loss of ancient woodland, an irreplaceable habitat, and lead to the unacceptable fragmentation, isolation and disturbance of natural habitats that support protected wildlife species and other flora and fauna of acknowledged nature conservation importance. In addition, the development would threaten, harm and cause degradation to veteran trees, an irreplaceable habitat.

The scheme is contrary to National Planning Policy Framework 2021, section 180c, Natural England Standing Advice, ancient woodland & veteran trees and saved policies EN1, EN12, EN13 and EN15 of the Wealden Local Plan 1998 and Wealden District Core Strategy Local Plan 2013, policy WCS12 Biodiversity and WCS14 sustainable development.

2.3. Following this section 2, my proof of evidence is structured as follows:

3 Planning Policy and Guidance

4 Identification of Veteran Trees and Ancient Woodland

5 Relevant Appellants Documents

6 Relevant Consultation Responses

7 Arboriculturally and Ecological Impacts of the Scheme

8 Summary and Conclusions

3 PLANNING POLICY AND GUIDANCE

National Planning Policy Framework 2021

3.1. Section 180c of NPPF 2021 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 63 and a suitable compensation strategy exists.

3.2 The term wholly exceptional reasons is clarified in footnote 63 that states:

For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat Annex 2 of the NPPF 2021 defines ancient woodland and ancient or veteran trees: *Ancient woodland: An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).*

Ancient or veteran tree: A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

3.3. Ancient Woodland takes hundreds of years to establish and is defined as an irreplaceable habitat, important for its wildlife, soils, recreational value and cultural / historical / landscape value. It is any area that has been wooded continuously since at least 1600AD (see CDG.3).

‘Wooded continuously’ does not mean there’s been continuous tree cover across the whole site. Not all trees in the woodland have to be old. Open ground, both temporary and permanent, is an important component of ancient woodlands. (see CDG.3).

Local Planning Policy

3.4. So far as is material to my areas of expertise, the Local Plan comprises Saved Policy EN13 of the Wealden Local Plan (CDE.2) relates to Ancient Woodlands and identifies that the Council will resist development proposals that involve the clear felling or otherwise prejudice the ecology of Ancient Woodlands.

3.5. The reason for refusal also refers to two Wealden District Core Strategy Local Plan 2013 policies: policy WCS12 Biodiversity and WCS14 sustainable development (CDE.1).

National Level Guidance

3.6. Two pieces of national-level guidance are relevant to this Appeals:

1. Standing Advice, Ancient Woodland, ancient trees and veteran trees: Protecting them from development ('Standing Advice'). This is published on gov.uk by Natural England and the Forestry Commission. The current version is dated 14 January 2022 (CDG.3); and

2. British Standard BS5837:2012 Trees in relation to design, demolition and construction - Recommendations (CDG.1). Whilst also referencing veteran trees, BS5837 covers all trees.

3.7. The Standing Advice states 'authorities should refuse planning permission if development will result in the loss or deterioration of ancient woodland unless there are wholly exceptional reasons and there is a suitable compensation strategy in place.'

3.8. It states *'Where a proposal involves the loss or deterioration of Ancient Woodland or ancient or veteran trees you should not take account of the existing condition of the Ancient Woodland or ancient or veteran tree when you assess the merits of the development proposal. Its existing condition is not a reason to give permission*

for development. A woodland or tree in poor condition can be improved with good management'.

3.9. It also states: *'Buffer zones can protect ancient woodland and individual ancient and veteran trees' and: 'The size and type of buffer zone should vary depending on the:*

- *scale and type of development and its effect on ancient woodland, ancient and veteran trees*
- *character of the surrounding area*

For example, larger buffer zones are more likely to be needed if the surrounding area is:

- *less densely wooded*
- *close to residential areas*
- *steeply sloped'*

3.10. It is common ground there are veteran trees hosted on the appeal site. The appeal scheme would create development near veteran trees within their buffer zone, as defined in the Standing Advice.

3.11. The Standing Advice goes on to say, relating to veteran trees:

'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'.

This matter is discussed further below.

3.12. The Standing Advice cites the following direct effects of development that can cause loss or deterioration of ancient woodland and veteran trees:

- damaging or destroying all or part of them (including their soils, ground flora or fungi)
- damaging roots and understorey (all the vegetation under the taller trees)
- damaging or compacting soil
- damaging functional habitat connections, such as open habitats between the trees in wood pasture and parkland
- increasing levels of air and light pollution, noise and vibration
- changing the water table or drainage
- damaging archaeological features or heritage assets
- changing the woodland ecosystem by removing the woodland edge or thinning trees - causing greater wind damage and soil loss.

3.13. Indirect effects are also cited:

- breaking up or destroying working connections between woodlands, or ancient trees or veteran trees - affecting protected species, such as bats or wood-decay insects
- reducing the amount of semi-natural habitats next to ancient woodland that provide important dispersal and feeding habitat for woodland species
- reducing the resilience of the woodland or trees and making them more vulnerable to change
- increasing the amount of dust, light, water, air and soil pollution
- increasing disturbance to wildlife, such as noise from additional people and traffic
- increasing damage to habitat, for example trampling of plants and erosion of soil by people accessing the woodland or tree root protection areas
- increasing damaging activities like fly-tipping and the impact of domestic pets
- increasing the risk of damage to people and property by falling branches or trees requiring tree management that could cause habitat deterioration
- changing the landscape character of the area.

3.14. British Standards BS5837-2012 Trees in relation to design, demolition and construction is a standard industry guidance document that gives recommendations and guidance on the relationship between trees and design, demolition and construction processes. This will be referred to in my evidence.

Other guidance

3.15. It is noted that the Woodland Trust objects to the appeal scheme (their comments 10th December 2021), I return to this objection in due course. However, it is material they have produced a guide Woodland Trust – impacts of nearby development on the ecology of ancient woodland and Planners Manual for ancient woodland (CDG.5). This identifies the range of potential effects which development may have on Ancient Woodland. These include: disturbance including path creation, noise, vegetation clearance, light and dust pollution and trampling, habitat and landscape fragmentation, invasion by non-native plant species, impact from domestic pets, reducing the amount of semi-natural habitats next to ancient woodland, changes to the water table or drainage, damaging activities such as fly-tipping and cumulative effects (p.17).

3.16. The Planners' Manual for Ancient Woodland and Veteran Trees from the Woodland Trust (Planners Manual) states on page 6:

'Ancient woodland is irreplaceable. It is our richest wildlife habitat, having developed over centuries, and contains a high proportion of rare and threatened species, many of which are dependent on the particular conditions that this habitat affords. For this reason, ancient woods are reservoirs of biodiversity, and because the resource is limited and highly fragmented, they and their associated wildlife are particularly vulnerable to development-induced changes.'

3.17. The Planners Manual sets out a list of potential mitigation measures at page 19. These are measures which are designed to avoid or reduce negative impacts.

3.23. On page 20 of the Planner's Manual it states: *'Although there is no 'one size fits all' with buffer design, each one should be designed to fulfil the specific requirements of its location and the type of proposed development. As a*

precautionary principle, a minimum 50 metre buffer should be maintained between a development and the ancient woodland, including through the construction phase, unless the applicant can demonstrate very clearly how a smaller buffer would suffice. A larger buffer may be required for particularly significant engineering operations, or for after-uses that generate significant disturbance.'

3.24. I note a particularly relevant appeal decision, East of Gleaming Wood Drive, Lordswood, Kent ref: APP/U2235/W/20/3270846 (CDK.18) that has, in part, similarities to a number of Ancient Woodland matters for consideration on this scheme.

3.26. This appeal was dismissed. One of the main reasons for refusal was impact to Ancient Woodland. I note the inspector found that 'both direct and indirect harm to Ancient Woodland would occur'. And (section 50): '*AW is an irreplaceable habitat. Both local and national policy has a presumption against development which results in its loss or deterioration. Several potential benefits, mitigation and compensation for harm have been proposed. However, it has not been sufficiently demonstrated that the proposal would have no direct and indirect impact on AW. Wholly exceptional reasons for allowing the proposal have not been demonstrated. I give substantial weight to this conflict'.*

4 IDENTIFICATION OF VETERAN TREES AND ANCIENT WOODLAND

4.1. Section 2.0 of the main SoCG provides a full description of the appeal site and the surrounding area.

4.2. There is also an Ancient Woodland SoCG and so to avoid repetition I focus on key matters.

4.3. The main points are as follows:

Ancient Woodland

4.4. The site is bound to the south and south-west by an extensive area of ancient semi natural woodland ('Ancient Woodland') recognised by Natural England as Nightingale Shaw and Bird in Eye Shaw. The extent of woodland in so far as it abuts and constrains the Appeal Site is shown at Appendix D of the Landscape Statement lodged by the Appellants at WB3 of their bundle.

4.5. Bird in Eye Shaw is a long and thin ghyll woodland running east-west through the centre of the site between proposed housing development area to the north and proposed sustainable alternative natural greenspace (SANG) to the south; a long linear Ancient Woodland running north-south bordering the west and south-west corner proposed development, and; Nightingale Wood a larger Ancient Woodland to the south-west of the proposed SANG. The Ancient Woodland onsite and bordering the site are all currently connected.

4.6. It should be noted that the majority of Ancient Woodland on and abutting the site is also recognised by Priority Habitat Deciduous Woodland (England). The northern end of Nightingale Shaw however is currently recognised as just ancient woodland, which appears an anomaly. Both Ancient Woodland and Priority Habitat Deciduous Woodland are shown on CDG6 and CDG7, and also available to view by the Government's MAGIC web resource.

4.7. It will be seen on the site visit that Nightingale Shaw and the other areas of woodland are remnants from a much larger wooded area that has long since been reduced to facilitate other land based activity. The stretch of woodland surviving along the edge of the site and abutting Framfield Stream is very clearly an 'island' of woodland and fragmented from other woods, however, still supports Ancient

Woodland indicator species including hazel and dog's mercury and is part of the local ecological network, forming a mosaic with other habitats.

4.8. The Ancient Woodland present on and boarding the development site appears of good general condition, structure and species diversity, generally devoid of invasive species.

4.9. Though there is no clarification of what 'steeply sloping' means in the context of seeking more than a 15m buffer (as per the Standing Advice*)*, the appeal site has a very pronounced change in levels. It is my view the Appeal Site is steeply sloping, with gradient becoming steeper close to and within the ancient woodland and its stream.

4.10. The scheme proposes up to 290 houses in the immediate context and vicinity of the Ancient Woodland. More than that, the Appeal Site shares two of its boundaries with almost continuance interface with the Ancient Woodland. I am in no doubt that, notwithstanding the use of a buffer, that major residential development will create a residential areas 'close' to the Ancient Woodland. This is a further aspect to the urbanisation of the Ancient Woodland edge that causes concern.

4.11. Lastly, the scheme also proposes pedestrian path through the Ancient Woodland to support not only resident path users but also visitors to the SANGs.

Veteran Trees

4.12. Since 2018, Veteran Trees are now included along with ancient trees and ancient woodland within section 180c of the NPPF 2021.

4.13. The Annex 2 Glossary of the NPPF 2021 states: 'Ancient or veteran tree: A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.'

4.14. The Standing Advice defines veteran trees as having significant decay features such as branch death or hollowing. These features contribute to its exceptional biodiversity, cultural and heritage value. The age at which a tree becomes ancient or veteran will vary by species because each species ages at a different rate.

4.15. An arboricultural impact assessment (AIA) carried out to BS 5837:2012 standards has been submitted in support of the Appeal Scheme. It accepts Veteran Trees have been identified on the site, these are T6 Ash and G9 Oak.

4.16. It should be noted that the AIA describes in detail the current Standing Advice in regard to Veteran Trees and the required buffer zones, which should be 15 times the stem diameter of the trees with no cap. However, in the initial AIA schedule both T6 and G9 had capped Root Protection Areas ('RPA') of 15m in line with BS standards, rather than using the current Standing Advice for Veteran Trees, which would in fact make the RPAs 21m and 23.8m respectively. A later amendment to AIA showed the relevant Veteran Tree buffer for the T6 Ash, but the G9 Oak tree has a footpath and part of the SANG walkway within the edge of its buffer. I return to the effect of this later.

4.17. I go on to address the impact of the appeal scheme on Ancient Woodland and Veteran Trees further in my evidence below.

5 RELEVANT APPELLANT'S APPLICATION DOCUMENTS

5.1. Below I refer to a number of the appellant and application submitted documents relevant to my evidence:

- The Ecological Impact Assessment document dated June 2021 (CDA.20)
- Ecology Statement dated January 2023 (Appellant statement of case: appendix WB1)
- Arboricultural Impact Assessment dated April 2023 (CDA.26)

Ecological Impact Assessment

5.2. The Ecological Impact Assessment (EcIA) was submitted with the application prior to appeal. The EcIA executive summary states: *'Based on successful implementation of the proposed avoidance, mitigation and enhancement, the development is anticipated to result in a residual negative effect on barn owl and Ancient Woodland at Site level at most.'*

5.3. The EcIA concludes there will be impact upon Ancient Woodland, however labels it as a 'site level' impact. The terminology and conclusion here is unclear and inconsistent with guidance and best practice principles. The report goes on to state *'The scheme is considered to accord with all relevant nature conservation legislation'*, however Ancient Woodland is an irreplaceable habitat that receives strict protection under the NPPF 2021 section 180c. This is clear that deterioration should result in refusal of application unless the exceptional circumstance test is met, which it is not for this scheme.

5.4. Section 5.15 of the report identifies potential for direct and indirect impacts to the woodlands (RPA impacts pollutants, light and disturbance) as a result of the proposal and section 5.16 recognises recreational disturbance and trampling.

5.5. Section 5.16 also states: '*The blocks of Ancient Woodland within the Site are currently not accessible by the public and as such have very little disturbance currently from recreational activity'.* This is an important point for consideration and should be kept in mind with my evidence relating to direct and indirect impacts upon Ancient Woodland made under the Arboricultural and Ecological Impacts of the Scheme section below.

5.6. Section 5.18 of the EcIA states: *'Given the importance of ancient woodlands and these impacts combined, without mitigation there is the potential for a negative effect on this habitat'.* As noted, mitigation of ancient woodland impacts would infer an impact (and degradation or loss) was still present and the exceptional circumstance test is met.

5.7. Section 5.77 of the EcIA states*: 'The Illustrative Site Layout includes the usage of the existing pathway and bridge location through W2 (Bird in Eye Shaw) which removes the requirement for a new bridge and pathway to be created elsewhere through the woodland and across the stream and as such, minimizes direct impacts to the woodland. However, the existing bridge will require a new reinforced and boundary fencing will be installed either side of the path which will be laid with bark chip. Additionally, disturbance impacts from walkers will be managed through the provision of only one route of access through this woodland, with the rest of the woodland supporting steep banks that drop down towards the stream, making access unmanageable*'. Impact to the Ancient Woodland is again inferred and discussion of the impacts are expanded upon below.

5.8. It was noted whilst onsite that, although there were in places steep banks within the ancient woodland down to the stream, there were in fact a number of flat areas running off from the pathways where mammals had already been traversing that would be suitable for people to use (Appendix 6 - photographs).

5.9. Section 5.99 of the EcIA states *'As discussed in relation to ancient woodlands, appropriate signage will be provided at the entrances to the woodlands as part of the SANG, to educate users about the impacts of trampling, however due to the sparsity of ground flora and the density of the trees, it is not anticipated that any negative residual effects will remain'.*

As cited in the following sections and photographs provided in the appendix section 6, impact to Ancient Woodland habitat, trees and ground flora to accommodate the path would occur due to existing site habitat.

Ecology Statement

5.10. The Ecology Statement (ES) dated January 2023 details a number of matters including Ancient Woodland, SANG, protected species and biodiversity net gain. Page 9 section 4.0 of the report discusses ecological matters – Ancient Woodland.

5.11. Section 4.3 of the ES states 'Potential Impacts, Effects and Mitigation No loss of Ancient Woodland is proposed under the Appeal Scheme, with built form adopting (and in most cases significantly surpassing) the 15m buffer advocated by Natural England to avoid damage'. It is important to note that the standing advice cites 15 metres as a minimum ancient woodland buffer zone. The ES does not assess in detail the potential direct and indirect impacts of the scheme upon Ancient Woodland and whether a larger buffer zone should be required or perhaps more importantly why the minimum 15 metres buffer zone is acceptable. Section 4.4 does identify some potential impacts (drainage infrastructure and recreation/urbanisation) however the list/assessment of impacts is it is deemed incomplete. The section of my evidence below Arboricultural and Ecological Impacts of the Scheme examines indirect and direct impact of the scheme on Ancient Woodland in detail.

5.12. Section 4.9 of the ES, like the EcIA, cites steep banks and bridge crossing would prevent desire lines through the Ancient Woodland. This, however, as per section 5.8 above, does not appear the case, and there are many flat areas and points of ingress for trespass, as shown in photographs from my site visits in Appendix 6.

Arboricultural Impact Assessment

5.13. The Arboricultural Impact assessment (AIA) was submitted with the application prior to appeal.

5.14. Page 7 of the document contains the tree survey and constraints plan. This depicts trees and their root protection areas (RPAs). The Ancient Woodland where the new pedestrian path is proposed through has been depicted as a group and no RPAs have been provided for the trees within influence of the proposed new pedestrian path through Bird in Eye Shaw. Exact RPA impact to Ancient Woodland trees has not therefore been established. However, from site visits, it was clear there would be impacts within ancient woodland tree root protection

areas, as discussed below. Photographs of mature trees near the existing path are provided in appendix 6.

5.15. Veteran trees are also depicted on this plan, and the impact of proposed SANG pathway at the eastern end of the Bird in Eye Shaw (to the south-east of the proposed development parcel) is discussed below.

6 REVELANT CONSULTATION RESPONSES

Natural England

6.1. Natural England have provided two consultation responses in relation to the Appeal Scheme (10th November 2021 CDB.12 and 23rd March 2022 CDB.26). It is understood that these responses have been provided through the Discretionary Advice Service (DAS) or as comments relating to the adequacy of the SANG.

6.2. Natural England rely on the Standing Advice and only provide bespoke consultation responses on ancient woodland in exceptional circumstances, as stated in the standing advice.

6.3. The consultation response of 10th November 2021 states: 'You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland Inventory which can help identify Ancient Woodland. Natural England and the Forestry Commission have produced Standing Advice for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.'

6.4. Natural England's comments have been provided to address the impact of the SANG on the Ancient Woodland. In their latter response, Natural England expressed a view that *'the inclusion of a well-maintained and managed fencing along the entire SANG boarder should help avoid and restrict recreational impacts to the ancient woodland'*. And '*the inclusion of a well-maintained and managed fencing along the entire SANG boarder should help avoid and restrict recreational impacts to the ancient woodland. In addition, some management of ancient woodland would help mitigate some recreational disturbance impacts, that are still likely to occur due to this proposal. Although we requested that this management of ancient woodland be included within the SANG management scheme'.*

6.5. I disagree that this will be sufficient to deter the public and dogs from trespass. It will also be a burdensome maintenance requirement that is unlikely to be

maintained functionally in its entirety ongoing. Such large scale fencing will negatively impact ancient woodland ecology including restriction of larger ancient woodland mammals including protected species known to be living in the vicinity.

6.6. In addition, and perhaps critically, some management of the Ancient Woodland was considered to balance and mitigate some recreational disturbance impacts that they cited would "still be likely to occur due to this proposal" (my emphasis). This is contrary to the NPPF 2021 section 180c where no deterioration or loss is acceptable where not an exceptional circumstance. The response is also at odds with the Standing Advice.

6.7. In addition, Natural England also expressed a views that they are content with the use of wood chip/gravel paths as an alternative to boardwalk (see response of 23rd March 2022 CDB.26) I address this further below.

6.8. Natural England has maintained that the Ancient Woodland should be managed as part of the proposal. In its consultation response of 23 March 2022 (CDB.26) it states: *'Natural England are concerned that the adjacent Ancient Woodland could experience an increase in recreational pressure due to the proposed planning application. For this reason, the inclusion of a well-maintained and managed fencing along the entire SANG boarder should help avoid and restrict recreational impacts to the ancient woodland. In addition, some management of ancient woodland would help mitigate some recreational disturbance impacts, that are still likely to occur due to this proposal. Although we requested that this management of Ancient Woodland be included within the SANG management scheme. The applicant has now clarified that an area of ancient woodland within Nightingale shaw can be included within the development zone management plan. If this management of ancient woodland can be conditioned to be included with this development zone management plan, then this should address our concerns with regards to recreational disturbance impacts to ancient woodland.'*

6.9. I note that the applicant has not produced an Ancient Woodland management scheme for woodland that is not within the red line boundary of the site.

6.10. I must record my surprise that Natural England has not raised greater concern as a consequence of these matters. The suggestion in their 23rd March 2022 email (CDB.26) of dealing with the matter through fencing and management is in my

professional view, an oddity and inconsistent with their usual view and current legislation. I note the initial consultation response from 10th November 2021 advises that *"Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances".* Instead, they refer to the Standing Advice (CDG.3). I am no doubt that the path through the Ancient Woodland is contrary to and directly opposed to the Standing Advice and I draw support of that view by the objection lodged by the Forestry Commission (who co-author the Standing Advice). Their views below are clear and unequivocal.

The Forestry Commission

6.11. The Forestry Commission has made two consultation responses (21st December 2021 (CDB.20 and 6 January 2022 (CDB.21). The first response simply highlighted relevant guidance and signposted the Standing Advice. The second response included the following:

'It is highly likely that this development will impact, either directly or indirectly, on ancient woodland. This impact may include, but not be limited to, compaction and/or erosion of soils and tree roots; damage via anti-social behaviour; damage and disturbance to flora and fauna from domestic pets; noise, air, light and dust pollution during and after construction. We note that the majority of the development will be sited away from ancient woodland, and we are pleased to see that buffer zones have been taken into account, and planting of trees incorporated into the buffer zones to further protect the ancient woodland.

We would advise, however, measures where possible to avoid increased footfall and recreational pressure on the ancient woodland by implementing restrictions to access both by people and their pets. Increased access into the woodlands can lead to compression and damage to soils and roots, change in nutrient status due to faecal and urinary wastes from pets and also fly- tipping of garden waste, and damaging anti-social behaviour such as fires, improvised structures and removal of trees.

We have concerns about the proposed pathway to be created through Bird in Eye Shaw. We appreciate that it has been included to prevent a pinch point on the required circular walk as part of the SANG provision, but do not feel that loss of

ancient woodland through creation of this path is acceptable for this reason. Again, we would also recommend that, should this path through Bird in Eye Shaw be approved, that access into the woodland by visitors and pets be tightly controlled or restricted, by fencing or similar means.

Within the SANG management plan, we are encouraged to see a commitment to managing both new and existing woodlands, and ensuring new planting will be managed appropriately to ensure it establishes. We would like to see a firm commitment to increasing the resilience of the new and existing woodlands with appropriate species choices which will reflect our changing climate and threats from pests and diseases. A robust biosecurity management policy should be included in this, including a commitment to sourcing stock grown in the UK to prevent the introduction or spread of pathogens and pests.'

Woodland Trust

6.12. The Woodland Trust made a consultation response on 10th December 2021 (CDB.31 and Appendix 4). This sets out an objection to the Appeal Scheme. On the basis of 'damage, deterioration and potential loss of ancient woods…' The Trust's comments include:

'The development in question is for a new housing development of a significant size and scale. As identified by the applicant, there are two areas of ancient woodland in close proximity to the proposed development site, Bird-in-eye Shaw and Nightingale Shaw. We also note the presence of veteran trees, though accept that the applicant has undertaken the necessary measures to protect them from adverse impact.

Where development is situated in close proximity to ancient woodland, it has the potential to adversely affect these sensitive habitats through increased exposure to outside influences or 'edge effects'. These can impact cumulatively on ancient woodland, which is much more damaging than individual effects.

Furthermore, we have significant concerns around some elements of the development that would appear to result in direct loss and damage to ancient woodland, namely through the construction of a drainage outfall and new footpaths within the ancient woodland areas. Development in ancient woodland can lead to

long-term changes in species composition, particularly ground flora and sensitive fauna, i.e. nesting birds, mammals and reptiles.

We are specifically concerned about the following impacts to the ancient woodland:

- *Direct loss of ancient woodland to facilitate a new drainage outfall and new footpaths.*
- *Intensification of the recreational activity of humans and their pets, resulting in disturbance to breeding birds, vegetation damage, trampling, litter, and fire damage.*
- *Fragmentation as a result of the loss and separation of adjacent semi-natural habitats, such as small wooded areas, hedgerows, individual trees and wetlands.*
- *Noise, light and dust pollution occurring from adjacent development, during both construction and operational phases.*
- *Where the wood edge overhangs public areas, such as the new footpath, trees can become safety issues and be indiscriminately lopped/felled, resulting in a reduction of the woodland canopy and threatening the long-term retention of such trees.*
- *Adverse hydrological impacts can occur where the introduction of hard-standing areas and water run-offs affect the quality and quantity of surface and ground water. This can result in the introduction of harmful pollutants/contaminants into the woodland.*
- *Development can provide a source of non-native and/or invasive plant species and aids their colonisation of the woodland;*
- *Any effect of development can impact cumulatively on ancient woodland - this is much more damaging than individual effects.'*

6.13. With regards to mitigation, the Woodland Trust's consultation response states:

'We note that some of the above impacts have been recognised by the applicant, such as the increased recreational activity and disturbance, however we do not consider that the direct loss and deterioration of the ancient woodland will be appropriately mitigated. Where a development results in the loss of ancient

woodland, the only mitigation suitable would be to avoid siting such elements within the woodland. This has not been the case here.

We consider that permission should only be given to this scheme if all development is removed from the ancient woodland and other forms of mitigation are in place to alleviate the additional indirect impacts.

We note that the applicant has provided a 15m minimum buffer to areas of ancient woodland, however considering the size and scale of the development, we consider that a ***buffer of 50m*** *would be more appropriate in this instance. By using the 15m minimum recommended in the standing advice, we consider that the applicant has not suitably tailored the buffer to the development. While a 15m buffer zone will allow for the avoidance of root damage in most cases, it is unlikely to be a sufficient distance to alleviate other indirect impacts associated with a new large housing development'.*

6.14. This is backed up by Natural England's Standing Advice which states that "*you should have a buffer zone of at least 15 metres to avoid root damage. Where assessment shows other impacts are likely to extend beyond this distance, you're likely to need a larger buffer zone. For example, the effect of air pollution from development that results in a significant increase in traffic*."

6.15. As stated above, the loss of Ancient Woodland associated with this development is unacceptable, and regardless of whether larger buffers are implemented, the scheme should be refused on this basis. If the applicant were to redesign the scheme to avoid direct impact on the Ancient Woodland then they must also incorporate the other mitigation measures suggested above, such as a larger buffer to all areas of Ancient Woodland.'

7 ECOLOGICAL AND ARBORICULTURAL IMPACT OF THE SCHEME

7.1. The development requires the removal of a small number of C cat trees (using the quality assessment criteria found in BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations CDG.1) and a short run (approx. 17m) of hedgerow. The tree officer (my colleague Mr Massheder of the Council) and I considered that some of these impacts could be compensated for in the scheme landscaping proposal and by improving and extending retained pre-existing hedgerows.

7.2. There would also be encroachment upon the nominal root protection areas (RPAs) to tree group G4 and tree T2. Current best practice guidance (BS 5837:2012 CDG.1) is clear that the default position should be that structures are located out of the RPAs of retained trees. In this instance the AIA identified that there was an existing container storage area and therefore some RPA impact may have already occurred. It was argued that the proposal could provide an opportunity to mitigate some of the impact caused by this informal use.

Ancient Woodland Impacts

7.3. At paragraph 1.41. of what was the Appellant's hearing statement (before the appeal was escalated to an Inquiry) the appellant contests that the proposal would not have an adverse impact on Ancient Woodland and that the presence of Ancient Woodland does not represent a clear reason for refusal. At paragraph 1.44 vi. The statement also asserts that the appeal scheme will not result in the loss or deterioration of Ancient Woodland and that consequently the scheme is compliant with NPPF 180(d) - although it is assumed this was an error and should refer to 180(c), the relevant paragraph that deals with Ancient Woodland. I disagree with this stance, and it is my view the Appeal Scheme will cause loss and deterioration of Ancient Woodland.

7.4. It is important to note that the previous appeal decision from 2009 referred to in paragraph 2.10 of the hearing statement predated the current NPPF and Standing Advice by a number of years and decisions at that time would have been made on assessments based upon a 'where benefit outweighs harm' argument rather

than the current 'wholly exceptional' test that is applied today under NPPF para 180c. This evolution of national policy set a higher bar for Ancient Woodland and irreplaceable habitats.

7.5. In my view the effect of the Appeal Scheme on the Ancient Woodland falls into three categories, and these are:

- The Sustainable drainage system (SuDS) basin and engineering operations;
- The buffer to the Ancient Woodland (and why that is inadequate in this case); and
- The route to the SANG through the Ancient Woodland and expected recreational disturbance, direct and indirect impacts.

I deal with each of these in turn.

The SuDS Basin and Engineering Operations

7.6. I note that the Appeal Scheme, post Casework Management Conference, now proposes a revised location for the surface water outfall. This is in order to avoid direct impacts to Ancient Woodland habitat from the previously proposed piped outlet to the Framfield Stream. The revised proposal suggests an outfall pipe now located at the north east corner of the attenuation basin. All of these works are located outside, but on the extreme edge of the 15m buffer. I remain concerned about this and the effects on that part of the Ancient Woodland, which occupies a corner and low spot in the field where the woodland turns along Bird in Eye Shaw on the southern boundary of the site. It means the body of water relates to the two stretches of woodland boundary and a distance of 300-400m of interface.

7.7. Firstly, this is no minor undertaking. The SuDS pond must accommodate approximately 3,300m3 of water or 636m3/ha. The water body measures approximately 50m across and its 70m at it widest. I have seen nothing with the submission that reviews the effect of light and sound reflection from that body of water on the adjacent Ancient Woodland. Few studies exist that quantify the effects of development noise on Ancient Woodland, however as stated in the document Woodland Trust Impacts of Nearby Development on Ancient Woodland 2012 (CDG.4), studies have found that the higher the background noise level, the lower the number of woodland birds present González-Oreja et al. (2012). Also, a study

found that artificial night lighting had a strong effect on the timing of breeding and individual mating behaviour in five European songbird bird species (Kempanaers et al. (2010). The indicative scheme proposes road, passing bay or parking area alongside the SuDS, with residential units fronting the SuDS and buffer zone. Lighting impacts and loud noises such as shouting, car horns, engine noises, bouncing balls on tarmac or power tools/jet washers would likely create loud sounds capable or reflecting on the water surface and penetrating at volume into the Ancient Woodland, especially when the deciduous trees are out of leaf that would reduce buffering impacts further. It may be that the Appellants rely on the 15m buffer, but as set out below this buffer is inadequate in size, further this water basin sits on the edge of that buffer. And the open space will provide no vegetative buffer over the open SuDS area. It is my view that the light and sound reflection and associated 'bounce' will have impact the adjacent Ancient Woodland ecology. The evidence to support the Appeal Scheme is silent on this.

7.8. As seen on the site visits undertaken by myself, as dated above, the existing Ancient Woodlands and associated streams are largely devoid of non-native invasive species. It was noted however, that just to the north of the western 'arm' of Ancient Woodland, close to the proposed location of SuDS water outflow, Himalayan Balsam was present, a non-native and invasive waterborne plant species. There is a real and likely possibility that the concentration of water outflow at this location would act as a vector spreading the seeds of this species into the Ancient Woodland stream, downstream. This would lead to out-completion of Ancient Woodland plants and degradation.

7.9. I have seen some comment that the SuDS layout is not part of the application, that it's indicative and is a Reserved Matter for later consideration. I would leave that matter to my colleague Mrs Turner to deal with in her Planning Proof of Evidence. However, my understanding is that the layout is intended to show the quantum of development proposed in the application. My understanding is that the SuDS basin is highly likely to be in this location, not least because of the sloping nature of the site and the overall difficulty the Appellants have had in drawing up a credible solution. I know this due to the close working relation with my colleague Mr Graham Keane, who has provided engineering and drainage observations on the planning application.

The Buffer to the Ancient Woodland (and why that is inadequate in this case)

7.10. As I have set out above, the Standing Advice (CDG.3) makes clear that a 15m buffer zone is the minimum which should be provided for all types of development. However, the size and type of the buffer zone should vary depending on the scale and type of development and its effect on ancient woodland and ancient and veteran trees. Larger buffers are likely to be required if the surrounding area is less densely wooded, close to residential areas or steeply sloped. The guidance goes on to state:

'Where assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone. For example, the effect of air pollution from development that results in a significant increase in traffic.'

7.11. Further, as stated above the Woodland Trust's Planner's Manual (CDG.5) states that the starting point for a buffer should be 50m unless the applicant can demonstrate very clearly how a smaller buffer would suffice (p20).

7.12. In this case the Woodland Trust (CDB.31) has advised that: *"We note that the applicant has provided a minimum 15m buffer to areas of ancient woodland consider that a buffer of 50m would be more appropriate in this instance. By using the 15m minimum recommended in the standing advice, we consider the applicant has not sufficiently tailored the buffer to the development. While a 15m buffer zone will allow for the avoidance of root damage in most cases, it is unlikely to be a sufficient distance to alleviate other indirect impacts associated with a new large housing development.'*

7.13. At present the Appeal Site is undeveloped. The construction and operation of the development proposal would introduce: dust, noise, light, air quality impacts, domestic pets (I deal with recreational pressure separately below).

7.14. The Forestry Commission advised that *'it is highly likely this development will impact either directly or indirectly on Ancient Woodland.'* It cited impacts may include air, light and dust pollution during and after construction, notwithstanding the buffers which have been provided, which the Forestry Commission is 'pleased to see'.

7.15. I note from the proposed parameters plan (CDA.4) that the proposal introduces roads around the appeal scheme. This will introduce cars close to the Ancient Woodland.

7.16. I do not consider that the appellant has demonstrated that its minimum 15m buffer zone will be sufficient to prevent the deterioration of Ancient Woodland. Here the sloping nature of the site, the size of the development on a hitherto undeveloped site, the nature of the Ancient Woodland, the limited permeability of the site and the fact that the Ancient Woodland borders 40% of the site means that a larger buffer zone should be required in this case.

7.17. A larger buffer zone would assist with preventing impacts upon the Ancient Woodland. These are specifically the risk of degradation associated with the aquatic environment, pet predation, air quality impacts and light and noise pollution. The Appellant has not provided sufficient evidence to demonstrate that its proposed buffer is sufficient to prevent these impacts. It is noted a larger buffer zone may be incompatible with current indicative layout and quantum of development and then therefore would likely not be able to be resolved later at a Reserved Matters stage.

7.18. I note that the Ecological Impact Assessment (CDA.20) at para 5.69 states that *'The future lighting scheme should be developed to avoid light spill onto the Ancient Woodland blocks and in particular and ensure the levels of artificial light do not exceed that present at baseline.'* The current lighting baseline of the site is low and roads and dwellings are proposed on the boundary of the Ancient Woodland buffer zone. This will inevitably introduce a requirement for road lighting. In addition, there will be regular incidences of cars reversing into driveways positioned directly facing the Ancient Woodland with headlights directly penetrating Ancient Woodland habitat. During the winter [redacted]n and spring bird breeding season this could cause night-time disturbance to animal species causing abandonment of roost, disturbance affecting overall fitness and breeding success and/or disturbance or displacement of roosting, foraging or commuting bat species. This would ultimately compromise Ancient Woodland ecology leading to degradation.

7.19. The Standing Advice states: *'You should consider if access is appropriate. You can allow access to buffer zones if the habitat is not harmed by trampling'.* The pedestrian pathway is proposed within buffer zone and as discussed below will be, surfaced, subject to large increases in traffic and consequently create ground compaction and root damage. Therefore, it is considered access is not appropriate and the path's presence in the buffer zone would cause degradation of Ancient Woodland.

7.20. I see that in part a wider buffer (exceeding 15m) is shown. However, within that wider area there are swales and paths. The would be at odds with the Standing Advice which clear says you should only approve sustainable drainage schemes [in buffer zones] 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*

7.21. There is no evidence provided by the Appellant to demonstrate how this part of the Standing Advice would be met.

7.22. In part the buffer zone is wider than 15m, however this is largely at the location of the SuDS and the reflective issued associated with this open habitat are addressed above.

7.23. Development of up to 290 dwellings would result in a large number of domestic cats being introduced in relative close proximity to the Ancient Woodland. As discussed, the development has approximately a 40% boundary interface with Ancient Woodland with dwellings proposed to front the Ancient Woodland with access road between. The proposed 15 metre buffer zone is provided as a minimum requirement and whilst being able to be planted up with some thorny species, would likely not be able to prevent cat ingress to the woodland. It is noted the proposed SANG pedestrian walkway, discussed further and specifically below, and additional SANG loop walkway to the east of the Ancient Woodland Bird In Eye Shaw, would provide immediate access for cats to the Ancient Woodland. Cat predation would cause Ancient Woodland deterioration through predation of small mammals and birds that are part of Ancient Woodland ecology (plant seeds, predate tree or plant pests, etc).

Direct and Indirect Ancient Woodland Impacts – the route to the SANG through the Ancient Woodland

7.24. The development proposes the creation of pedestrian pathway through the Ancient Woodland Bird in Eye Shaw to provide pedestrian link from housing development with the proposed SANG to the south.

Existing Pathway AW habitat

7.25. The current informal path comprises of a narrow line of bare earth largely no greater than 300mm in width bordered by an ecotone of Ancient Woodland habitat grading from lower growing ground flora up to full canopy mature Ancient Woodland trees. Photographs are within Appendix 6 ref 6a and 6b.

7.26. As observed on my site visit of 5th July 2023, ground flora directly bordering narrow path includes Ancient Woodland indicator species. I observed yellow archangel, pendulous sedge, wood-sedge, wood spurge, primrose, dog's mercury and other native plant species all conducive of Ancient Woodland and deciduous woodland including violets, wood avens, enchanters nightshade, fern species and bramble. This was not a full floristic survey however these species were noted whilst onsite out-of-season.

I address the adverse impacts of the proposed path below.

Direct loss of Ancient Woodland habitat under path surface

7.27. The development proposes creation of the pedestrian pathway surfaced with woodchip through Ancient Woodland along the line of a narrow infrequently used private access pathway on land within and consisting of Ancient Woodland habitat. The widening and surfacing of the new path, together with greater public access will result in direct loss of Ancient Woodland habitat through immediate and ongoing compaction, mulching and suppression of Ancient Woodland plants and plant germination. I am in no doubt it will cause changes to Ancient Woodland soil ecology through build-up of nutrients introduction of pathogens. The installation of new wider and surfaced pathway would require manipulation of the existing land causing damage to Ancient Woodland soils and removal of eradication of existing Ancient Woodland plants.

Direct loss of Ancient Woodland habitat - facultative pruning

7.28. The existing woodland shrub layer and canopy extends over close to, and in places over, the existing narrow access. Photographs are within Appendix 6, ref appendix 6c – 6e. The construction of new pedestrian access will require removal and ongoing removal of Ancient Woodland tree branches (facultative pruning) directly impacting Ancient Woodland habitat to create and maintain the width of the new wider access.

Direct loss of Ancient Woodland habitat – increased requirement for Ancient Woodland tree risk management tree felling

7.29. There are large mature trees along the edges of the existing narrow access track and contained woodland ride within zone of influence in terms of tree risk management purposes. Photographs are within Appendix 6, ref appendix 6f – 6h.

7.30. Under well-established tree risk assessment protocol of assessing frequency (presence of people) against risk (severity of potential incident), creating a path that will be used frequently by people as opposed to the current situation where the path is used rarely (since it simply links two field parcels in agricultural and in part equestrian use and has not formal public right of way) will result in immediate and ongoing requirement for removal or reduction of large mature Ancient Woodland tree removal along the edge of the path, widening direct Ancient Woodland impacts on the woodland.

7.31. A number of trees seen during the site visit are sub-optimal health (ref appendix 6 ref 6f – 6h) including those subject to ash dieback, leaning in the ground, windblown, hung-up, providing standing deadwood/Ancient Woodland habitat and/or in natural states of decay. Such management of the Ancient Woodland would cause direct deterioration of Ancient Woodland habitat but also increase indirect impacts as sound, light and other impacts would have the ability to travel further and have a negative influence on a greater area of Ancient Woodland.

7.32. The future pressure for tree removal would, in my view, become and remain high, including perceived risks and risks from falling branches, preventing a full-sized or complete canopy formation along the length of the pedestrian walkway, potentially

having implications for arboreal species such as hazel dormice and wider ecological connectivity, leading to Ancient Woodland habitat fragmentation.

Direct and indirect impact upon Ancient Woodand – proposed path surface, desire lines and Ancient Woodland trampling damage

7.33. Bark chippings as a path surface will not provide a long-term sustainable option for sufficient path surfacing. Bark chip, like other wood in a woodland, is subject to ecological processes and will break down. As the bark chippings are small diameter and as such with the increased surface area this is usually a fast process. The proposed path location is shady, on impermeable soils and naturally wet/damp. Indeed I understand part of the woodland here is in a higher risk flood zone. These conditions will exacerbate the issue.

7.34. Bark chippings end up combining with existing woodland soil creating a loose muddy substrate on the path surface. Where chippings are topped up, the depth of muddy substrate eventually deepens and the path becomes unusable to pedestrians and dogs.

7.35. I am in no doubt this will lead to trespass into the Ancient Woodland habitat and formation of new desire-line paths avoiding the unusable paths. This will cause trampling and damage of ground flora, soil erosion, compaction of Ancient Woodland habitat and disturbance through human and dog presence, wild animal disturbance, additional noise, dog fouling and litter.

7.36. It is noted the steep gradient of the proposed pedestrian pathway which takes path users down and up both steep gradient banks of the Ancient Woodland ghyll. Woodchip path substrate would inevitably get pushed down the bank through pedestrian traffic and rain, with path users therefore relying on Ancient Woodland soil substrates for grip and footholds for walking. This would therefore lead to Ancient Woodland soil erosion on the steeper parts of the Ancient Woodland proposed path location, causing direct degradation and loss.

7.37. I note that the Appellant's ecology statement (Appellant statement of case: appendix WB1) states that the new footpath would be fenced (see para 5.87). No details have been provided of this. However, where ground conditions become difficult and impassable by pedestrians and dogs, path users will find alternative

routes which can involve vandalism of fences or creation of desire lines where fences are not present, poorly maintained or have rotten in permanently damp or wet Ancient Woodland environments.

Direct Impact upon Ancient Woodland – Installation and maintenance of fence line

7.38. It is understood a fence line is proposed to be installed along both sides of the new pedestrian walkway in Ancient Woodland. This would equate to over 110 new post holes to be dug within the Ancient Woodland, creating damage to Ancient Woodland soils and tree roots and potential for chemical pollution or introduction of materials for securing the post on non Ancient Woodland origin.

7.39. Should the post not be dug into the ground, driving them into the ground would also damage Ancient Woodland tree roots, or facilitate the use of a vehicle to enter the woodland to undertake such a task – creating its own compaction, root and plant damage. Fencing within the Ancient Woodland would disrupt the woodland ecology and prevent movement of species through the woodland, for example, a [redacted].

7.40. Finally, due to the permanently damp and wet conditions of the woodland, a fence line would be liable to rotting and failing in a relatively short space of time, especially at the post interface with the ground, not providing a long-term solution to preventing access and leading to degradation of Ancient Woodland. The fence materials themselves may, leach chemicals into the woodland should it to treated softwood or similar.

7.41. The new pedestrian footpath will be wider and take a very significant uplift in pedestrian traffic. The pedestrian pathway is undoubtably located upon ancient woodland tree roots (within what is classed as root protection areas but not individually identified in the arboricultural submissions within or near Ancient Woodland path) and the larger and more frequently used pathway will cause direct damage to ancient woodland trees and habitat through compaction of soils that can cause direct damage to roots but also starve trees of gases and cause hydrological problems.

Indirect impact upon Ancient Woodland - noise and disturbance

7.42. The existing plant growth and path condition during my site visits in 2022 and 2023 indicate the existing pathway has a very low level of pedestrian use with a narrow compacted earth surface, as per photographs within appendix 6 of the current path. The scale of recreational pressure using the proposed Ancient Woodland pedestrian pathway is due to be much greater than the very low level of existing use and greater than that of just serving the proposed new adjacent development. From the information submitted with the application, it is understood the SANG would serve an additional 1000+ units and 2000+ persons which would result in a significantly increased scale of recreational pressure from current very low levels including the noise and disturbance which this would inevitably bring.

Recreational disturbance and pressure

7.43. Recreational pressure includes: trampling, pollution through littering and pet faeces, light and noise. I am in no doubt that the hugely increased use of the ancient woodland from additional people and dogs which would result in elevated levels of disturbance of species forming part of the Ancient Woodland habitat, including mammals and birds.

7.44. In addition such drastic increases in recreational pressure would be likely lead to pollution through littering and dog faeces nutrient enrichment.

7.45. The Appellant's own Ecological Impact Assessment notes that the *'level of disturbance as a result of recreational activity will increase and there is a potential for impacts such as trampling which could reduce the abundance of ground flora, including notable plant species such as bluebell'* (ref para 5.16 & 5.42).

7.46. The Ecological Impact Assessment goes on to state that public access will be discouraged through buffer planting along the woodland edge. With no access paths being provided (para 5.76). It also notes steep banks from the footpath in the woodland which make access unmanageable (see para 5.77). It finally states that there will be signage (5.97). Whilst these mitigation measures are likely to assist in reducing recreational impacts, they cannot prevent such impacts. For example children and teenagers natural sense of exploration, pets running into woodland, adults trespassing or den-building (introduction of waste materials), fire

creation, dead wood/firewood retrieval, tree vandalism. Such recreational impacts will cause deterioration either on their own or in combination during the lifetime of the development.

7.47. It is noted there is no management of monitoring of the ancient woodland has been proposed to be secured as part of the proposal. As per Natural England response of 23rd March 2022, they explicitly recommended that management of the Ancient Woodland should be secured. Should recreational issues occur as a result of the scheme, there appears a missing mechanism to address these or prevent further ongoing or increased degradation.

7.48. The Ecological Impact Assessment goes on to state that 'due to the sparsity of ground flora and the density of the trees, it is not anticipated that any negative residual effects will remain' (para 5.99). As stated above, the existing area of ancient woodland where the new pedestrian pathway is proposed consists largely of semi-natural deciduous woodland vegetation, including ancient woodland indicator species. Therefore I am unable to agree and conclude that there will be residual and ongoing negative effects to the ancient woodland in terms of impacts and degradation. The reality is that introduction of this number of visitors to AW and to SANG is going to result in recreational pressure into woodland.

7.49. It is particularly concerning that the applicant has not put forward any measures to monitor or manage the ancient woodland not in its control.

Veteran Tree buffer and RPA incursion

7.50. In accordance with the National Planning Policy section 180c, and as in the case of Ancient Woodland, Veteran Trees are also included as irreplaceable habitat.

7.51. The Standing Advice requires a protective buffer zone around Veteran Trees with a radius of 15 times stem diameter. On landscape parameter plan PRB/BIE/PA2S, the Veteran Tree buffers are depicted separately and are in line with current standing advice. The 2646_114_L Landscape Strategy and SANG Design document and Arboricultural Impact Assessment are also relevant documents related to this matter.

7.52. It is common ground that the SANG pathway is shown within the Veteran Tree buffer to G9, an Oak tree. This has a footpath and part of the SANG walkway

within the edge of its buffer. In my view it doesn't matter that it is the edge of the buffer, after all the point of the deeper buffer to a Veteran Tree is to adopt a more precautionary approach than BS5837:2012. And this is because veteran trees are irreplaceable habitat. Access in buffers is only allowed where the habitat will not be harmed from trampling.

7.53. In my view there can be no doubt this walkway would be heavily used. It links the northern and southern parts of the SANG space. That includes the proposed SANG car park in the northern field. Most users of the SANG will pass in very close proximity to the veteran Oak tree. This would likely cause the direct effects listed in the Standing Advice which decision makers are told to avoid in regard to veteran trees. Namely:

- damaging or destroying all or part of them (including their soils, ground flora or fungi)
- damaging roots and understorey (all the vegetation under the taller trees)
- damaging or compacting soil
- damaging functional habitat connections, such as open habitats between the trees in wood pasture and parkland
- increasing levels of air and light pollution, noise and vibration
- changing the water table or drainage
- damaging archaeological features or heritage assets

7.54. Whilst formation of new hard surfacing might seem to be a low-impact proposition, in the case of veteran trees this is contrary to the recommendations of BS5837:2012 section 7.4 (CDG.1).

7.55. The impacts on the veteran tree and Ancient Woodland detailed above engage with section 180c of the NPPF, requiring the Appellant to demonstrate wholly exceptional reasons to justify the harm to Irreplaceable Habitat *and* the availability of a suitable compensation strategy. Unless the Appellant can do both of these things, paragraph 180c of the NPPF is clear that planning permission should be refused.

7.56. If development is likely to harm Ancient Woodland or Veteran Trees, unequivocal and credible evidence should be prepared to justify the exceptional need and

benefits. Simply restating a national drive for housing, or need for new transport infrastructure, does not constitute exceptional circumstances, ref: Woodland Trust's Planner's Manual (CDG.5). I have already commented that the existing site condition should be disregarded as per the Standing Advice (CDG.3 and paragraph 3.8 above).

8 SUMMARY AND CONCLUSION

8.1. The Council has deemed that, had it determined the application, it would have refused planning permission for several reasons. One of those, putative reason for refusal 2, sets out that the proposals fail to retain important trees, Ancient Woodland and will to loss and deterioration of Irreplaceable Habitat (RfR2) (ancient woodland and veteran trees).

8.2. The Council therefore considers the scheme does not meet a number of local and national policies. Namely local policies EN12 and EN13 of the Saved Local Plan 1998 relating to trees, woodland and Ancient Woodland, and broader policies relating to biodiversity WCS12 in the Core Stagey and relating to sustainable development WCS14.

8.3. I have explained that there are veteran trees proposed to be impacted by the scheme that would result in degradation and would not meet national policy NPPF 108c.

8.4. The presence of Ancient Woodland has been identified through the Ancient Woodland Inventory and its presence is not disputed, as reflected in the Ancient Woodland SoCG (however the use of the Ancient Woodland along route of proposed pedestrian pathway is disputed – see below).

8.5. The Appeal Scheme will cause loss and deterioration of Ancient Woodland. It will cause deterioration of a veteran tree (by allowing works and ongoing impacts within its buffer zone). The Appeal Scheme does not meet the robust requirements of NPPF 180c, nor meet its exceptions.

8.6. I conclude that the Appeal Scheme is indeed – as the Council alleges – contrary to the various local and national policies cited in RfR2.

8.7. **Statement of truthfulness and professional endorsement**

8.8. Pursuant to Planning Inspectorate guidance ‘Procedural Guide: Planning appeals – England Updated 13 June 2023), in particular Section 13 – expert witness, I

confirm that the evidence and opinions which I have prepared and provide in this Proof of Evidence herein are my true and professional opinions.

Ben Rainbow – 15 August 2023

(to be signed if required at opening of Inquiry)

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9 APPENDICES

Appendices

1 Biodiversity & Arboricultural Officer Consultation Comments for Planning Application WD/2021/2198/MAO, provided on 30/11/2021

Subject: WD/2021/2198/MAO LAND AT BIRD IN EYE FARM, SOUTH OF BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Dear Claire,

Please find below my ecology consultation for this application:

Ecological Survey Reports
The following documents are deemed to have been generally undertaken to best practice standards (including CIEEM guidelines for Preliminary Ecological Appraisal 2017, Guidelines for Ecological Impact Assessment 2018 and Government guidance on DEFRA Biodiversity Metric):

- Ecological Impact Assessment dated June 2021
- Biodiversity Net Gain Assessment dated June 2021

Comments are provided below regarding ancient woodland.

Protected Species and European Protected Species
Protected species surveys are deemed adequate to inform the application with appropriate methodology and survey effort. Recommendations for adequate avoidance, mitigation and compensation have been provided. The EcIA states the development is largely set back from boundaries to maintain ecological functionality and dark corridors and a sensitive lighting strategy is proposed. It is noted further survey for bats may be required should further tree removal be required.

Ancient Woodland, Irreplaceable Habitat
The ancient woodland (AW) has been identified as diverse and generally in good, undisturbed condition. A minimum 15 metre buffer zone has been proposed from development to ancient woodland, this is greater in places and appears to have been taken account of in proposed development design.

The ancient woodland is omitted from the red line boundary of the site and enhancement measures are not proposed, despite the woodland being subject to higher levels of indirect impacts post-development – light, noise, potential for trampling. As per Natural England's comments: "*In our previous discussions, we also recommended that some management of the ancient woodland is provided within the management scheme. From reviewing the SANG Management Plan, it is not clear if this consideration has been included, we therefore advice that some management to ancient woodland is factored in to the final SANG management scheme*".

The development proposes construction of a pathway through the ancient woodland between development area and proposed SANG. The level of pedestrian impact on the site will significantly increase leading to greater impacts: direct impacts of trampling, compaction & disturbance of ancient woodland habitat and indirect impacts including noise and disturbance. The application (EcIA) proposes construction of a path on the ancient woodland habitat using bark chip. This is not deemed a long-term sustainable option as this substrate degrades leading to a wet muddy surface, encouraging users to walk on alternative woodland habitat to avoid. Bark chip may also negatively impact ancient woodland soil ecology. In Natural England's consultation response they state: "*further details are required to show that impacts to ancient woodland habitat can be prevented; - We still recommend that boarded paths are installed through areas of woodland as this will ensure functionality of the paths during the wetter months*."

Further information should be provided on how the development can avoid direct and indirect impacts on ancient woodland and demonstrate AW ecological enhancement.

The EcIA states the development proposes loss of ancient woodland to accommodate/facilitate a new drainage outfall which will extend from the attenuation basin in the south-western corner of the site, towards Framfield Stream. This is contrary to section 180 c) of the National Planning Policy Framework 2021: "*Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused*".

Comments submitted with the application (332510180/2001/TAU/LD/ET/ASm) state intention for site drainage infiltration testing to be undertaken at the reserved matters stage. Whilst this may be deemed acceptable from ESCC's LLFA officer's consultation with regard to drainage/flooding, it is not deemed acceptable on ecology grounds as impact/loss of irreplaceable habitat AW is a material consideration. Should drainage not be able to be accommodated through onsite infiltration, drainage features onsite would result in direct loss of AW. The loss of AW irreplaceable habitat is deemed unacceptable and whether infiltration can be accommodated onsite, negating proposals for drainage through AW, should be confirmed prior to determination.

Recommendation
Ecological objection: Current proposals would result in indirect and direct (degradation and loss) of ancient woodland, irreplaceable habitat, contrary to:

- National Planning Policy Framework 2021, section 180c
- Natural England Standing Advice, ancient woodland & veteran trees
- Wealden Local Plan 1998, saved policy EN13

Regards,

Ben Rainbow | Biodiversity and Arboricultural Officer
Planning and Environmental Services, Wealden District Council

2 Biodiversity & Arboricultural Officer Consultation Response to Planning Officer Relating to Natural England Comments for Planning Application WD/2021/2198/MAO, provided on 26/05/2022

Subject: RE: BIRD IN EYE SOUTH, UCKFIELD - WD/2021/2198/MAO - Ancient Woodland

Hi Claire,

I'm perplexed by this, as is Dave. A few points:

- As per my consultation on this, woodchip paths turn to mush very quickly, as wood naturally breaks down. There is no way to stop this, and topping up the wood chip eventually leads to a deep boot-sucking mush. So as a result users would move into the AW to navigate through and cause direct damage. I wonder if NE are aware that this happens.
- I disagree that the boardwalks will cause greater damage to surrounding trees; this is unrealistic when you consider the short to long-term impacts... as per those cited in Natural England's standing advice.
- "Some management of ancient woodland would help mitigate some recreational disturbance impacts, that are still likely to occur due to this proposal". "If this management of ancient woodland can be conditioned to be included with this development zone management plan, then this should address our concerns with regards to recreational disturbance impacts to ancient woodland". If NE believe there will still be impacts why are they not objecting or liaising further to resolve? It seems clear there is an issue with meeting NPPF 180c. Also they are suggesting considering compensation/mitigation for AW? That is against NE standing advice unless exceptional circumstance AND suitable compensation strategy tests met first.

Regards,

Ben Rainbow | Biodiversity and Arboricultural Officer
Planning and Environmental Services, Wealden District Council

3 Forestry Commission Consultee Response for Planning Application WD/2021/2198/MAO, 06/01/2022

Forestry Commission

Mrs. C. Turner
Planning and Environmental Services,
Wealden District Council,
Vicarage Lane,
Hailsham,
East Sussex
BN27 2AX

South East & London Area Office
Bucks Horn Oak
Farnham
Surrey
GU10 4LS

planningconsultationSEL@forestrycommission.gov.uk

Area Director
Jane Hull

Via email only

Your ref: WD/2021/2198/MAO

06/01/2022

Dear Mrs. Turner,

Re: OUTLINE PLANNING APPLICATION FOR THE ERECTION OF UP TO 290 DWELLINGS, ASSOCIATED LANDSCAPING, INFORMAL OPEN SPACE AND STRATEGIC SANG, WITH ACCESS FROM THE B2102.
LAND AT BIRD IN EYE FARM, SOUTH OF BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Thank you for seeking the Forestry Commission's advice about the impacts that this application may have on Ancient Woodland. As a non-statutory consultee, the Forestry Commission is pleased to provide you with the attached information that may be helpful when you consider the application:

- Details of Government Policy relating to ancient woodland
- Information on the importance and designation of ancient woodland

SUMMARY:

It is highly likely that this development will impact, either directly or indirectly, on ancient woodland. This impact may include, but not be limited to, compaction and/or erosion of soils and tree roots; damage via anti-social behaviour; damage and disturbance to flora and fauna from domestic pets; noise, air, light and dust pollution during and after construction. We note that the majority of the development will be sited away from ancient woodland, and we are pleased to see that buffer zones have been taken into account, and planting of trees incorporated into the buffer zones to further protect the ancient woodland.

We would advise, however, measures where possible to avoid increased footfall and recreational pressure on the ancient woodland by implementing restrictions to access both by people and their pets. Increased access into the woodlands can lead to compression and damage to soils and roots, change in nutrient status due to faecal and urinary wastes from pets and also fly-

tipping of garden waste, and damaging anti-social behaviour such as fires, improvised structures and removal of trees.

We have concerns about the proposed pathway to be created through Bird in Eye Shaw. We appreciate that it has been included to prevent a pinch point on the required circular walk as part of the SANG provision, but do not feel that loss of ancient woodland through creation of this path is acceptable for this reason. Again, we would also recommend that, should this path through Bird in Eye Shaw be approved, that access into the woodland by visitors and pets be tightly controlled or restricted, by fencing or similar means.

Within the SANG management plan, we are encouraged to see a commitment to managing both new and existing woodlands, and ensuring new planting will be managed appropriately to ensure it establishes. We would like to see a firm commitment to increasing the resilience of the new and existing woodlands with appropriate species choices which will reflect our changing climate and threats from pests and diseases. A robust biosecurity management policy should be included in this, including a commitment to sourcing stock grown in the UK to prevent the introduction or spread of pathogens and pests.

We note the inclusion within the plans of Sustainable Drainage Systems (SuDS), with a balancing pond included within the south-west corner of the main development site. We are keen to highlight the need for care to be taken to ensure that SuDS are not installed within the ancient woodland buffer zone, and their use must not affect the hydrology of the ancient woodland, which can cause damage.

Finally, we note that the plantation woodland blocks within the SANG, identified as W3 and W4, have been created via government grants, namely a Woodland Creation Grant (WCG) under the England Woodland Grants Scheme (EWGS) and the Farm Woodland Premium Scheme respectively. Block W4 is under obligation until 2030, which means it must remain as woodland until at least this time. We would make the Council and applicants aware that, while no tree loss has been proposed in this block in the outline application, should more than 0.1ha be removed in this obligation period, that the Forestry Commission may seek to reclaim some or all of the grant monies paid. Block W3 will similarly be under obligation until 2038.

END SUMMARY

Ancient woodlands are irreplaceable. They have great value because they have a long history of woodland cover.
It is Government policy to refuse development that will result in the loss or deterioration of irreplaceable habitats including ancient woodland, unless "*there are wholly exceptional reasons*[1]

[1] For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.)

and a suitable compensation strategy exists" (National Planning Policy Framework paragraph 180).

We also particularly refer you to further technical information set out in Natural England and Forestry Commission's Standing Advice on Ancient Woodland – plus supporting Assessment Guide and Case Decisions.

As a non-ministerial Government Department, we provide no opinion supporting or objecting to an application. Rather we are including information on the potential impact that the proposed development would have on the ancient woodland.

One of the most important features of ancient woodlands is the quality and inherent biodiversity of the soil; they being relatively undisturbed physically or chemically. This applies both to Ancient Semi Natural Woodland (ASNW) and Plantations on Ancient Woodland Sites (PAWS). Direct impacts of development that could result in the loss or deterioration of ancient woodland or ancient and veteran trees include:

- damaging or destroying all or part of them (including their soils, ground flora or fungi)
- damaging roots and understory (all the vegetation under the taller trees)
- damaging or compacting soil around the tree roots
- polluting the ground around them
- changing the water table or drainage of woodland or individual trees
- damaging archaeological features or heritage assets

It is therefore essential that the ancient woodland identified is considered appropriately to avoid the above impacts.

Planning Practice Guidance emphasises: *'Their existing condition is not something that ought to affect the local planning authority's consideration of such proposals (and it should be borne in mind that woodland condition can usually be improved with good management)'.*

If this application is on, adjacent to or impacting the Public Forest Estate (PFE):

- Please note that the application has been made in relation to land on the Public Forest Estate and Forestry England, who manage the PFE, is a party to the application. They therefore should also be consulted separately to the Forestry Commission.

If the planning authority takes the decision to approve this application, we may be able to give further support in developing appropriate conditions and legal agreements in relation to woodland management mitigation or compensation measures. Please note however that the Standing Advice states that *"Ancient woodland, ancient trees and veteran trees are*

irreplaceable. Consequently you should not consider proposed compensation measures as part of your assessment of the merits of the development proposal".

We suggest that you take regard of any points provided by Natural England about the biodiversity of the woodland.

This response assumes that as part of the planning process, the local authority has given due regard as to whether or not an Environmental Impact Assessment is needed under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 or the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, as amended. If there is any doubt regarding the need for an Environmental Impact assessment (Forestry), including for forest roads, please contact us.

We would also like to highlight the need to remind applicants that tree felling not determined by any planning permission may require a felling licence from the Forestry Commission.

We hope these comments are helpful to you. If you have any further queries please do not hesitate to contact me on the email address provided above.

Yours sincerely,

Caroline Gooch
Local Partnerships Advisor, South East and London
Forestry Commission

Forestry Commission

A summary of Government policy on ancient woodland

Natural Environment and Rural Communities Act 2006 (published October 2006).
Section 40 – "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity".

National Planning Policy Framework (published July 2021).
Paragraph 180 – "*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*".

Planning Practice Guidance (published March 2014)
This Guidance supports the implementation and interpretation of the National Planning Policy Framework. This section outlines the Forestry Commission's role as a non statutory consultee on "*development proposals that contain or are likely to affect Ancient Semi-Natural woodlands or Plantations on Ancient Woodlands Sites (PAWS) (as defined and recorded in Natural England's Ancient Woodland Inventory), including proposals where any part of the development site is within 500 metres of an ancient semi-natural woodland or ancient replanted woodland, and where the development would involve erecting new buildings, or extending the footprint of existing buildings*"

It also notes that ancient woodland is an irreplaceable habitat, and that, in planning decisions, **Plantations on Ancient Woodland Sites (PAWS) should be treated equally in terms of the protection afforded to ancient semi-natural woodland in the National Planning Policy Framework.** It highlights the Ancient Woodland Inventory as a way to find out if a woodland is ancient.

The UK Forestry Standard (4th edition published August 2017).
Page 23: "Areas of woodland are material considerations in the planning process and may be protected in local authority Area Plans. These plans pay particular attention to woods listed on the Ancient Woodland Inventory and areas identified as Sites of Local Nature Conservation Importance SLNCIs)".

Keepers of Time – A Statement of Policy for England's Ancient and Native Woodland (published June 2005).
Page 10 "The existing area of ancient woodland should be maintained and there should be a net increase in the area of native woodland".

Natural Environment White Paper "The Natural Choice" (published June 2011)
Paragraph 2.53 - This has a "renewed commitment to conserving and restoring ancient woodlands".

Paragraph 2.56 – "The Government is committed to providing appropriate protection to ancient woodlands and to more restoration of plantations on ancient woodland sites".

Standing Advice for Ancient Woodland and Veteran Trees (first published October 2014, revised November 2017)
This advice, issued jointly by Natural England and the Forestry Commission, is a material consideration for planning decisions across England. It explains the definition of ancient woodland, its importance, ways to identify it and the policies that are relevant to it.

The Standing Advice refers to an Assessment Guide. This guide sets out a series of questions to help planners assess the impact of the proposed development on the ancient woodland. Summaries of some Case Decisions are also available that demonstrate how certain previous planning decisions have taken planning policy into account when considering the impact of proposed developments on ancient woodland.

Biodiversity 2020: a strategy for England's wildlife and ecosystem services (published August 2011).
Paragraph 2.16 - Further commitments to protect ancient woodland and to continue restoration of Plantations on Ancient Woodland Sites (PAWS).

Importance and Designation of Ancient and Native Woodland

Ancient Semi Natural Woodland (ASNW)
Woodland composed of mainly native trees and shrubs derived from natural seedfall or coppice rather than from planting, and known to be continuously present on the site since at least AD 1600. Ancient Woodland sites are shown on Natural England's Inventory of Ancient Woodland.

Plantations on Ancient Woodland Site (PAWS)
Woodlands derived from past planting, but on sites known to be continuously wooded in one form or another since at least AD 1600. They can be replanted with conifer and broadleaved trees and can retain ancient woodland features, such as undisturbed soil, ground flora and fungi. Very old PAWS composed of native species can have characteristics of ASNW. Ancient Woodland sites (including PAWS) are on Natural England's Inventory of Ancient Woodland.

Other Semi-Natural Woodland (OSNW)
Woodland which has arisen since AD 1600, is derived from natural seedfall or planting and consists of at least 80% locally native trees and shrubs (i.e., species historically found in England that would arise naturally on the site). Sometimes known as 'recent semi-natural woodland'.

Other woodlands may have developed considerable ecological value, especially if they have been established on cultivated land or been present for many decades.

Information Tools – The Ancient Woodland Inventory

This is described as provisional because new information may become available that shows that woods not on the inventory are likely to be ancient or, occasionally, vice versa. In addition ancient woods less than two hectares or open woodland such as ancient wood-pasture sites were generally not included on the inventories. For more technical detail see *Natural England's Ancient Woodland Inventory*. Inspection may determine that other areas qualify.

As an example of further information becoming available, Wealden District Council, in partnership with the Forestry Commission, Countryside Agency, the Woodland Trust and the High Weald AONB revised the inventory in their district, including areas under 2ha. Some other local authorities have taken this approach.

Further Guidance

Felling Licences - Under the Forestry Act (1967) a Felling Licence is required for felling more than 5 cubic metres per calendar quarter. Failure to obtain a licence may lead to prosecution and the issue of a restocking notice.

Environmental Impact Assessment - Under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, as amended, deforestation which is likely to have a significant impact on the environment may also require formal consent from the Forestry Commission.

4 Woodland Trust Comments for Planning Application WD/2021/2198/MAO, 06/01/2022

The Woodland Trust
Kempton Way
Grantham
Lincolnshire
NG31 6LL

Wealden District Council
Council Offices
Vicarage Lane
Hailsham
BN27 2AX

10th December 2021

Dear Mrs C Turner

Application: WD/2021/2198/MAO
Proposal: Outline planning application for the erection of up to 290 dwellings, associated landscaping, informal open space and strategic sang, with access from the B2102 | Land at Bird In Eye Farm, South of Bird In Eye Hill, Framfield, TN22 5HA

Objection – loss, damage and deterioration of ancient woodland

As the UK's leading woodland conservation charity, the Woodland Trust aims to protect native woods, trees and their wildlife for the future. We own over 1,000 sites across the UK, covering around 29,000 hectares (71,000 acres) and we have over 500,000 members and supporters.

The Trust objects to this application on the basis of damage, deterioration and potential loss of ancient woods, Bird-in-eye Shaw (grid ref: TQ 48498 20492) and Nightingale Shaw (TQ 48229 20503), both areas Ancient Semi Natural Woodland designated on Natural England's Ancient Woodland Inventory (AWI).

<u>Ancient Woodland</u>
Natural England[1] and the Forestry Commission defines ancient woodland *"as an irreplaceable habitat [which] is important for its: wildlife (which include rare and threatened species); soils; recreational value; cultural, historical and landscape value [which] has been wooded continuously since at least 1600AD."*

It includes: *"Ancient semi-natural woodland* [ASNW] *mainly made up of trees and shrubs native to the site, usually arising from natural regeneration*

Plantations on ancient woodland sites – [PAWS] *replanted with conifer or broadleaved trees that retain ancient woodland features, such as undisturbed soil, ground flora and fungi"*

Both ASNW and PAWS woodland are given equal protection in government's National Planning Policy Framework (NPPF) regardless of the woodland's condition, size or features.

<u>Planning Policy</u>
The National Planning Policy Framework, paragraph 180 states: *"When determining planning applications, local planning authorities should apply the following principles:*

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c) 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[63] and a suitable compensation strategy exists;"

Footnote 63, defines exceptional reasons as follows: *"For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat."*

There is no wholly exceptional reason for the development in this location and as it would result in both loss and deterioration of ancient woodland, we consider this development should be refused on the grounds that it does not comply with national planning policy.

Impacts to Ancient Woodland

The development in question is for a new housing development of a significant size and scale. As identified by the applicant, there are two areas of ancient woodland in close proximity to the proposed development site, Bird-in-eye Shaw and Nightingale Shaw. We also note the presence of veteran trees, though accept that the applicant has undertaken the necessary measures to protect them from adverse impact.

Where development is situated in close proximity to ancient woodland, it has the potential to adversely affect these sensitive habitats through increased exposure to outside influences or 'edge effects'. These can impact cumulatively on ancient woodland, which is much more damaging than individual effects.

Furthermore, we have significant concerns around some elements of the development that would appear to result in direct loss and damage to ancient woodland, namely through the construction of a drainage outfall and new footpaths within the ancient woodland areas. Development in ancient woodland can lead to long-term changes in species composition, particularly ground flora and sensitive fauna, i.e. nesting birds, mammals and reptiles.

Natural England has identified the impacts of development on ancient woodland within their standing advice. This guidance should be considered as Natural England's position with regards to development impacting ancient woodland.

"Direct impacts of development on ancient woodland or ancient and veteran trees include:

- *damaging or destroying all or part of them (including their soils, ground flora, or fungi)*
- *damaging roots and understorey (all the vegetation under the taller trees)*
- *damaging or compacting soil around the tree roots*
- *polluting the ground around them*
- *changing the water table or drainage of woodland or individual trees*
- *damaging archaeological features or heritage assets"*

"Nearby development can also have an indirect impact on ancient woodland or veteran trees and the species they support. These can include:

- *breaking up or destroying connections between woodlands and veteran trees*
- *reducing the amount of semi-natural habitats next to ancient woodland and other habitats*
- *increasing the amount of pollution, including dust*

- *increasing disturbance to wildlife from additional traffic and visitors*
- *increasing light pollution*
- *increasing damaging activities like fly-tipping and the impact of domestic pets*
- *changing the landscape character of the area*

We are specifically concerned about the following impacts to the ancient woodland:

- Direct loss of ancient woodland to facilitate a new drainage outfall and new footpaths.
- Intensification of the recreational activity of humans and their pets, resulting in disturbance to breeding birds, vegetation damage, trampling, litter, and fire damage.
- Fragmentation as a result of the loss and separation of adjacent semi-natural habitats, such as small wooded areas, hedgerows, individual trees and wetlands.
- Noise, light and dust pollution occurring from adjacent development, during both construction and operational phases.
- Where the wood edge overhangs public areas, such as the new footpath, trees can become safety issues and be indiscriminately lopped/felled, resulting in a reduction of the woodland canopy and threatening the long-term retention of such trees.
- Adverse hydrological impacts can occur where the introduction of hard-standing areas and water run-offs affect the quality and quantity of surface and ground water. This can result in the introduction of harmful pollutants/contaminants into the woodland.
- Development can provide a source of non-native and/or invasive plant species and aids their colonisation of the woodland;
- Any effect of development can impact cumulatively on ancient woodland - this is much more damaging than individual effects.

<u>Mitigation</u>

We note that some of the above impacts have been recognised by the applicant, such as the increased recreational activity and disturbance, however we do not consider that the direct loss and deterioration of the ancient woodland will be appropriately mitigated. Where a development results in the loss of ancient woodland, the only mitigation suitable would be to avoid siting such elements within the woodland. This has not been the case here.

We consider that permission should only be given to this scheme if all development is removed from the ancient woodland and other forms of mitigation are in place to alleviate the additional indirect impacts.

Natural England's standing advice for ancient woodland, states: *"Mitigation measures will depend on the development but could include:*

- *improving the condition of the woodland*
- *putting up screening barriers to protect woodland or ancient and veteran trees from dust and pollution*
- *noise or light reduction measures*
- *protecting ancient and veteran trees by designing open space around them*
- *identifying and protecting trees that could become ancient and veteran trees in the future*
- *rerouting footpaths*
- *removing invasive species*
- *buffer zones"*

Additional mitigation approaches are also outlined in our Planners' Manual[2]; these measures would help ensure that the development meets policy requirement and guidance, but must go hand in hand with avoidance of ancient woodland first and foremost.

We note that the applicant has provided a 15m minimum buffer to areas of ancient woodland, however considering the size and scale of the development, we consider that a **buffer of 50m** would be more appropriate in this instance. By using the 15m minimum recommended in the standing advice, we consider that the applicant has not suitably tailored the buffer to the development. While a 15m buffer zone will allow for the avoidance of root damage in most cases, it is unlikely to be a sufficient distance to alleviate other indirect impacts associated with a new large housing development.

This is backed up by Natural England's standing advice which states that *"you should have a buffer zone of at least 15 metres to avoid root damage. Where assessment shows other impacts are likely to extend beyond this distance, you're likely to need a larger buffer zone. For example, the effect of air pollution from development that results in a significant increase in traffic."*

As stated above, the loss of ancient woodland associated with this development is unacceptable, and regardless of whether larger buffers are implemented, the scheme should be refused on this basis. If the applicant were to redesign the scheme to avoid direct impact on the ancient woodland then they must also incorporate the other mitigation measures suggested above, such as a larger buffer to all areas of ancient woodland.

Conclusion

Ancient woodland is an irreplaceable habitat, once lost it is gone forever. Any development resulting in its loss, damage and deterioration should be refused unless such impacts can be avoided.

In summary, the Woodland Trust objects to this proposal on account of the direct loss of ancient woodland and the damage and deterioration to this habitat from insufficient mitigation to protect it from adverse impact. Due to the detrimental impact to ancient woodland, this development is in conflict with national planning policy and should be refused accordingly.

If you would like clarification of any of the points raised please contact us.

Yours sincerely,

Jack Taylor
Lead Campaigner – Woods Under Threat

5 Natural England Comments for Planning Application WD/2021/2198/MAO, 23/03/2022

From: Scott-Heagerty, Tom <Thomas.Scott-Heagerty@naturalengland.org.uk>
Sent: 23 March 2022 13:39
To: Claire Turner
Cc: planning
Subject: Planning Application WD/2021/2198/MAO

Dear Claire Turner,

I have been in contact with the applicant since our last consultation (ref 370366, 10 November 2021), and subsequently have additional comments for consideration for this application.

In our previous response letter (ref 370366, 10 November 2021), we spoke about the functionality of the SANG, and recommended that boardwalks were installed through areas of woodland to ensure that the paths remained functional all year round. The applicant has now clarified this point and has shown that boardwalks may not be feasible due to safety concerns, and may cause greater damage to neighbouring woodland/trees. Woodchipped/gravel paths have been proposed as an alternative solution to boardwalks which we have now considered. Natural England are content with the use of wood chip/gravel paths on the condition that the paths will be suitable managed and maintained to ensure that they remain function all year round.

Natural England are concerned that the adjacent ancient woodland could experience an increase in recreational pressure due to the proposed planning application. For this reason, the inclusion of a well-maintained and managed fencing along the entire SANG boarder should help avoid and restrict recreational impacts to the ancient woodland. In addition, some management of ancient woodland would help mitigate some recreational disturbance impacts, that are still likely to occur due to this proposal. Although we requested that this management of ancient woodland be included within the SANG management scheme. The applicant has now clarified that an area of ancient woodland within Nightingale shaw can be included within the development zone management plan. If this management of ancient woodland can be conditioned to be included with this development zone management plan, then this should address our concerns with regards to recreational disturbance impacts to ancient woodland.

If you have any further queries relating to these comments or our last consultation letter, then please contact me on 07919 659298, or at thomas.scott-heagerty@naturalengland.org.uk

Yours sincerely,

Tom Scott-Heagerty
Lead Adviser - Sustainable Development
Sussex and Kent Area Team
Natural England
Guildbourne House
Worthing
BN11 1LD

Mobile: 07919 659298

Pronouns: he/him - why have I put this?

Working Pattern: Monday – Friday, 9am – 5pm
www.gov.uk/natural-england

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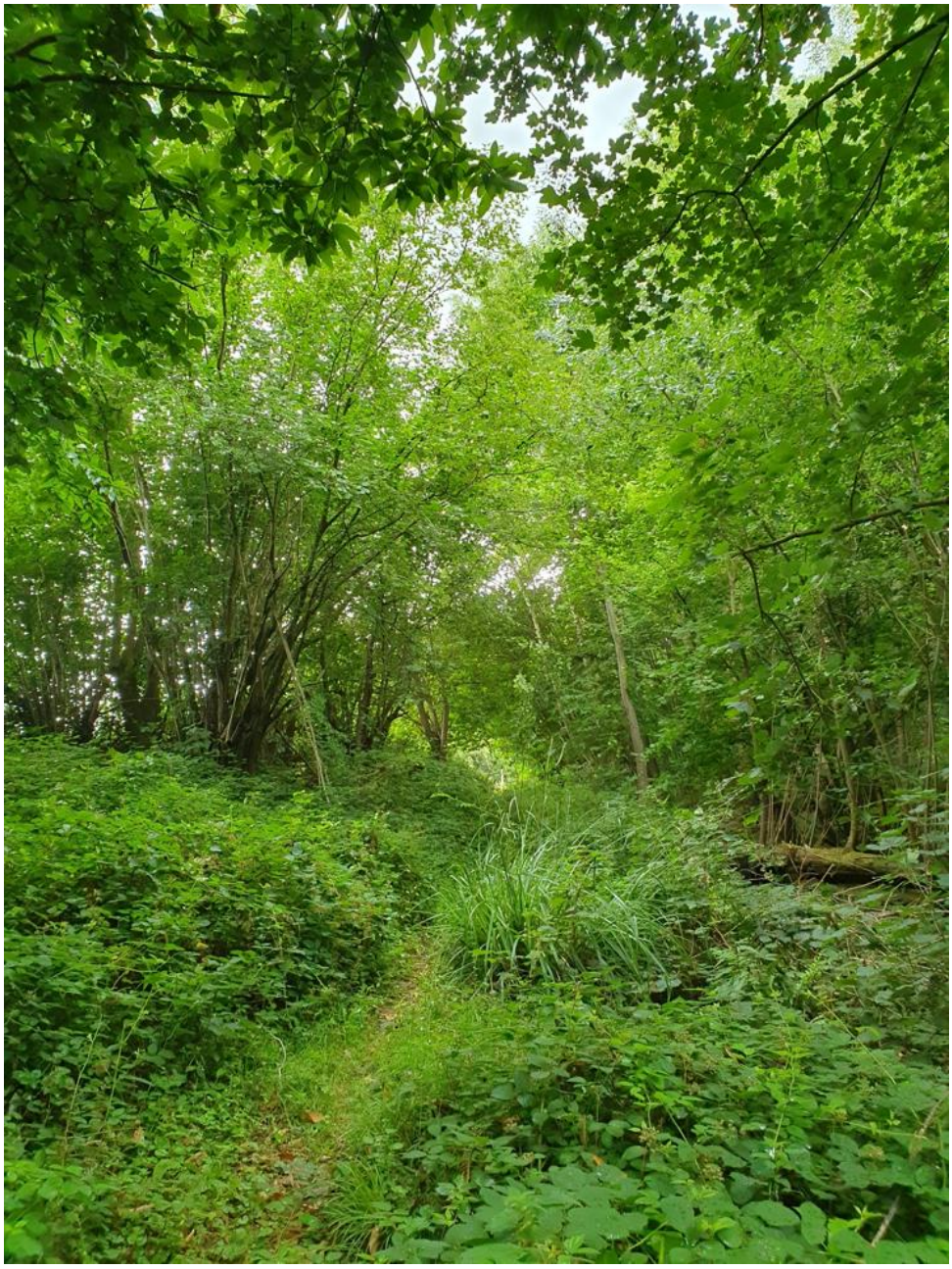
6 Photographs of AW features taken by the author

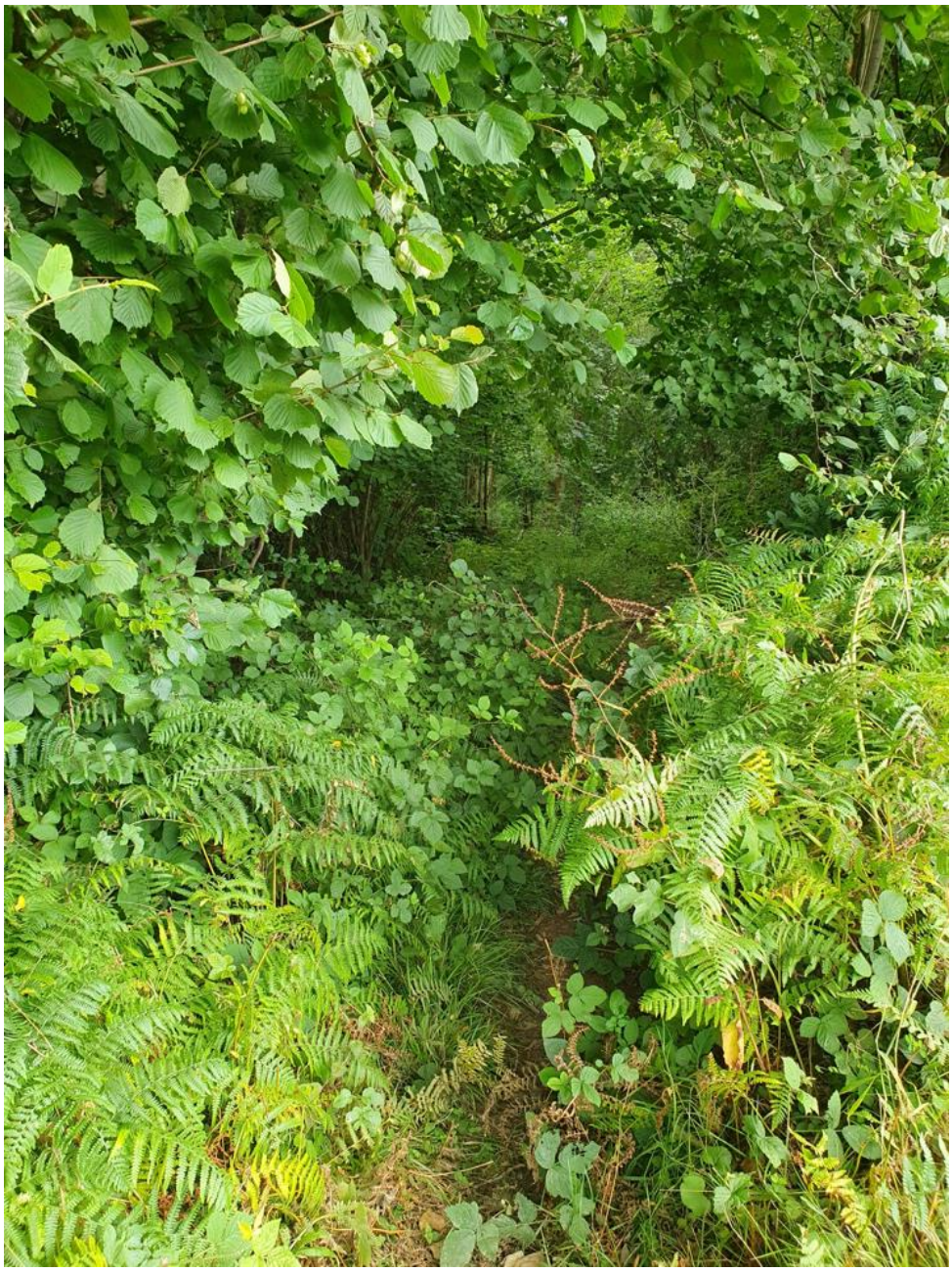
6a. Photograph taken on 19/01/22. Extent of current AW path

6b. Photograph taken on 25/07/23. Extent of current AW path

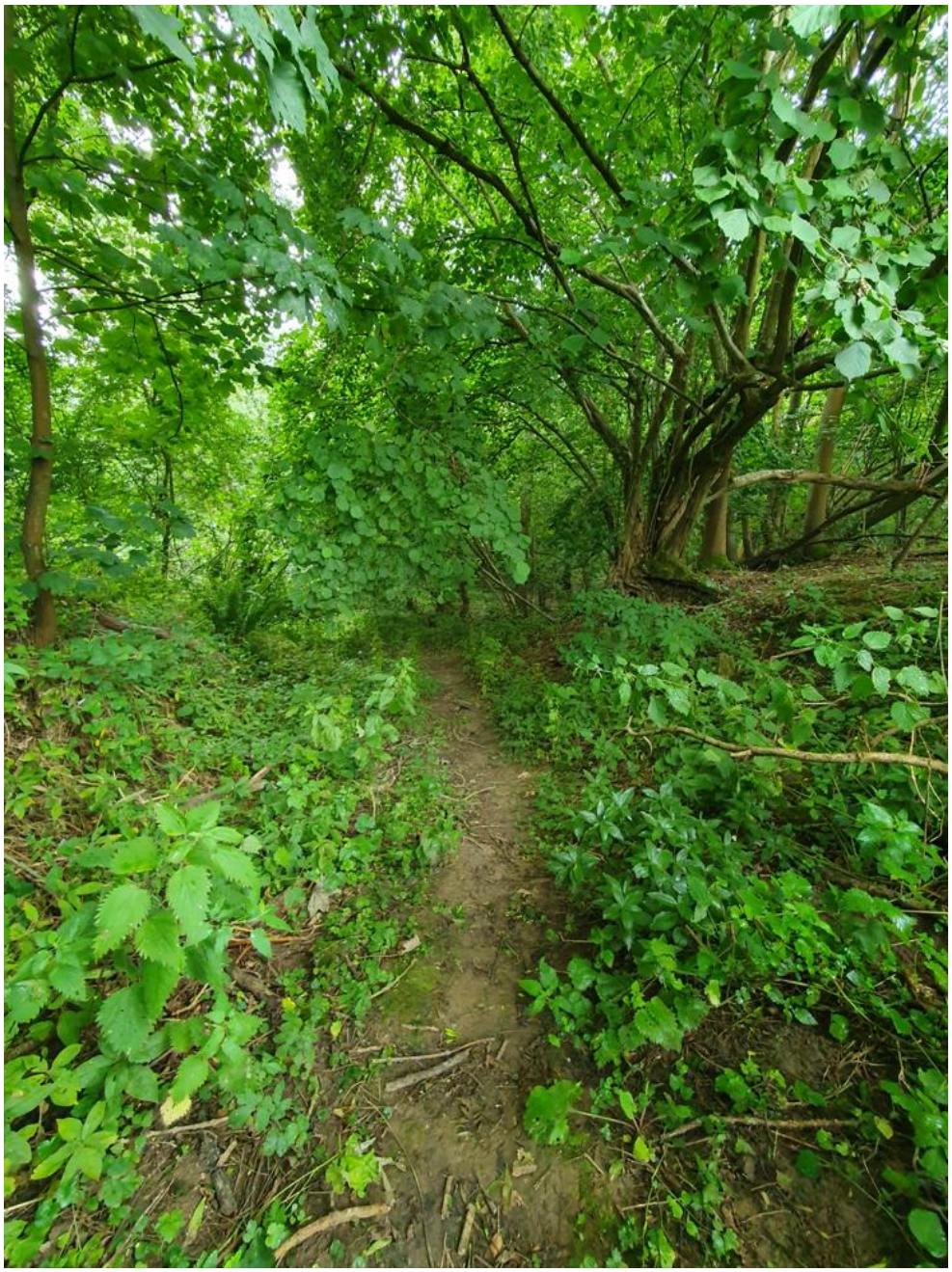


6c. Photograph taken on 25/07/23. Location of existing narrow pathway access (left centre)

6d. Photograph taken on 25/07/23. Existing narrow access



6e. Photograph taken on 25/07/23. Existing narrow access

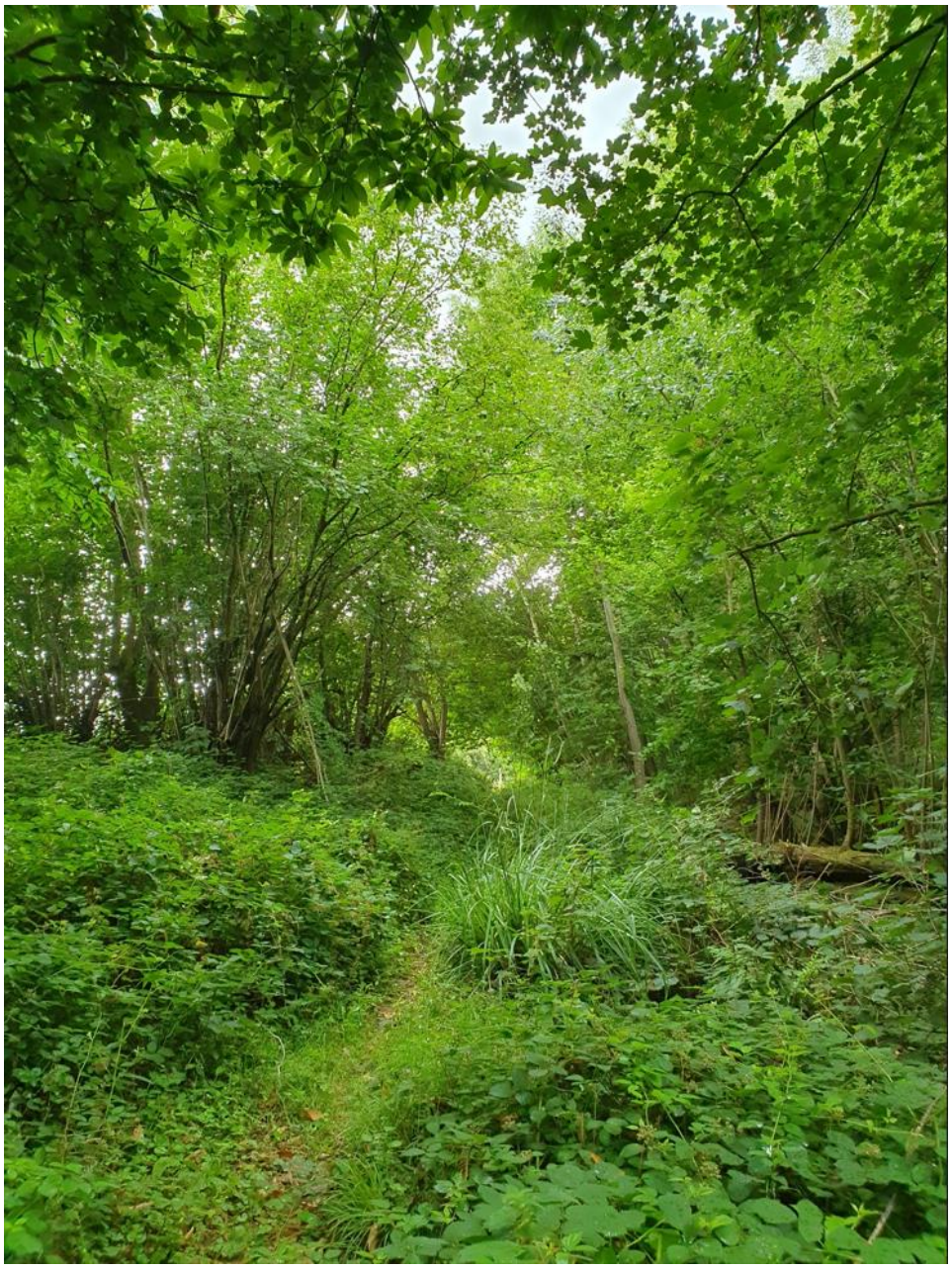


6f. Photograph taken on 25/07/23. Mature AW trees and habitat near existing narrow path

6g. Photograph taken on 25/07/23. Mature AW trees and habitat by existing path. Deadwood and leaning trees.

6h. Photograph taken on 25/07/23. Mature AW trees and habitat.

6i. Photograph taken on 25/07/23. Mature AW trees and habitat.



6j. Photograph taken on 25/07/23. Example of flat accessible ancient woodland habitat near proposed new pedestrian footpath.

End