Land at Downlands Farm, Uckfield

(Appeal Ref: APP/C1435/W/23/21978)

Appellant's Submissions

Introduction

1. These Submissions are prepared in support of the Appellant's application to substitute amended plans for the SANG for those submitted as part of the application to include boardwalks in the Ancient Woodland forming part of the SANG.

Background

2. As the Inspector will be fully aware, the proposed development includes the provision of a SANG to mitigate any impact on the Ashdown Forest SPA/SAC arising from the proposed residential development of the Site and has been the subject of consultation with Natural England.

3. In its original consultation response dated 22nd September 2022, Natural England raised a number of concerns, including the use of Ancient Woodland as part of the proposed SANG. The Appellant responded by providing additional information on 1st December 2022 and 1st March 2023; but, as Natural England explains in its letter dated 13th July 2023 (attached), it was only able to provide the Appellant with an informal response on 20th February 2023.

4. Consequently, Natural England's formal response was not received until 13th July 2023 when it commented on all the information provided, including an updated SANG Overview Plan showing boardwalks along certain lengths of the SANG route that a winter survey had identified as being seasonally wet.

5. As Natural England's 13th July response further notes, having reviewed all the documents, the changes proposed by the Appellant addressed a number of their concerns. However, Natural England also advised that, in the absence of mitigation, the proposed development remained likely to have an adverse effect on the integrity of the Ashdown Forest SPA/SAC because of increased recreational pressure but that this could be addressed by the Appellant (1) paying a financial contribution to Wealdon District Council's Strategic Access Management and Monitoring Strategy ("SAMM"); and (2) either (a) paying a further financial contribution to secure capacity at an agreed SANG, or (b) providing its own bespoke SANG. As Natural England records, the Appellant is proposing to provide its own SANG and went on to make three recommendations.

6. Natural England's first recommendation was that the SANG design:-

> "should be amended to provide boardwalk along the full extent of the circular route where it passes through ancient woodland (not just through the wetter areas as currently proposed in the SANG Overview Plan (July 2023). This will help to manage the extent of visitor access within the ancient woodland".

7. The second recommendation was that the capacity of the SANG should be discounted to take account of the fact that the SANG would make use of Ancient Woodland.

8. The third recommendation was, if the long-term management of the SANG was not passed to a public body/established charity, that "step-in" rights should be given to Wealdon District Council.

9. As regards Natural England's second recommendation, the Appellant has agreed to discount the capacity of the SANG which nonetheless leaves sufficient capacity to mitigate the recreational impacts of the Ashdown Forest SPA/SAC. As regard the third recommendation, the Appellant has been in correspondence with both the Land Trust and Wealdon District Council and

is proposing to pass the long-term management to the Land Trust to be secured through the proposed s.106 agreement.

10. So far as provision of boardwalks (where they pass through the Ancient Woodland) is concerned, the Appellant has also accepted Natural England's first recommendation; and it is this that has prompted the proposed substitution of plans, alongside an additional plan, which the Appellant wishes to be considered at the Inquiry scheduled to start on 24th October 2024. These are explained below:-

    (1) SANG Overview Plan, drawing ref. edp6170_d026 Rev D – Updated from determined plan (Rev B) (**CD2/107**).
    (2) SANG: Detailed Hard and Soft Landscape, drawing ref. edp6170_d016 Rev J – Updated from the determined plan (Rev I) (**CD2/108**).
    (3) Proposed SANG Boardwalk, drawing ref. 2001061-142 Rev A – New plan.

The CMC

11. When the Appellant at the CMC on 16th August 2023 raised the matter of substituting a plan showing a boardwalk along the full length of the SANG route within the Ancient Woodland, the Council raised a concern as to whether, because the development was EIA development, the amendment to the SANG plan would require an amendment to the Environmental Statement ("the ES") submitted with the application. And, in her Note provided after the CMC, the Inspector asked the Appellant to provide a cross-referenced tree-protection plan which identified the potential impacts on the woodland from the proposed boardwalk (including its construction) and whether the revised plans would necessitate an update to the ES to help her decide whether the proposed amendment should be accepted.

Appellant's response

12. In response to the concerns expressed by the Council and the Inspector, the Appellant has undertaken the following work:-

    (1) Completed a walk-over survey of the full SANG route through the Ancient Woodland where the boardwalk is proposed to assess what impact (if any) the proposed boardwalk (including its construction) would have on trees.

    (2) Produced a Technical Note (FLAC 40-1020_JFL), prepared the Appellant's Arboricultural Consultant, explaining what impact the boardwalk (and its method of construction) is likely to have on the trees in the Ancient Woodland.

    (3) Sought a letter dated 8th September 2023, prepared by the Appellant's environmental consultants Stantec, explaining what has been done.

    (4) Although unnecessary to do so, updated for completeness the Environmental Statement to assess the environmental impact of the proposed boardwalk[1].

13. These documents emphatically demonstrate that extending the boardwalk through the Ancient Woodland as requested by Natural England will not have any adverse environmental impact. On the contrary, the boardwalk will result in a significant improvement to the rooting environment of the existing trees and the long-term improvement of the soil which is currently being damaged by impaction from walkers.

The test for amendments

14. In ***Bernard Wheatcroft v Secretary of State for the Environment*** (1982) 43 P&CR 233, the Court held that the test was whether the development (were

[1] In addition to taking the opportunity to update the ES in relation to Great Crested Newts following further, more recent surveys.

the appeal to be allowed) would in substance be that which was applied for (the "no substantial difference" test) taking account of whether allowing the amendment would deprive those who should have been consulted on the changed development the opportunity of such consultation ("the consultation" test). These are separate tests or requirements as explained by the Court in ***R (oao Holborn Studios Ltd) v London Borough of Hackney*** [2017] EWHC 2823 (Admin) at [64] – [74] (attached for convenience).

15. The Appellant submits that the addition of the boardwalk recommended by Natural England would not (if the appeal is allowed) result in a development which would be substantially different to that which it applied for. The application is for the development of land as a SANG and the development as amended will remain a SANG. All that has changed is that a boardwalk will be provided along part of the route identified as part of the application instead of the proposed route being bare earth. Moreover, the addition of a boardwalk will have no impact on the Ancient Woodland (other than to improve it). The amendment plainly would not result in development which could reasonably be said to be substantially different from that proposed by the application. Thus, the "no substantial difference" test is met.

16. So far as the "consultation" test is concerned, it is the Appellant's intention to publicise the proposed amended plans and supporting documents through a press notice in the Sussex Express (in print and online) on 14th September 2023 and site notices erected the same day to allow anyone who wishes to comment 30 days to do so. All those who the Council originally sent copies of the Environmental Statement to will also be consulted via email on the same date with the proposed amended plans, supporting documents and covering letter.

17. By publicising the proposed amendment and supporting documents in the manner indicated there will be no unfairness to the Council, third parties proposing to attend and/or participate in the Inquiry or any other party with

an interest in the application. Consequently, the consultation test can also plainly be met.

18. In the circumstances, the Appellant invites the Inspector to accept the proposed amendment plan.

Dated 8th September 2023

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