The Planning Inspectorate

Appeal Decision

Hearing held on 30 May 2018 and Site visit made on 13 June 2018

by Helen Heward BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10th July 2018

Appeal Ref: APP/V3120/W/17/3190461
Badbury Hill, B4019, near Great Coxwell, Faringdon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by The National Trust against the decision of the Vale of White Horse District Council.
- The application Ref P/16/V1285/FUL, dated 18 May 2016, was refused by notice dated 30 May 2017.
- The development proposed is described as '*New cycle trails and enlargement and improvement of car park'*.

Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. The Nation Trust's (NT) aims include to restore and protect sites, and to open them to all through careful and balanced management of change. The proposed cycle trails include a Green trail for beginners and families, a Blue trail for intermediate level users and sections of Red for advanced cyclists.

3. The appeal included changes (v5) to the trail routes considered by the Council (v4) and an increase in width of the 'micro-siting corridors' from 10m to 20m (10m either side of the trail lines). At the hearing the appellant advised that a 20m corridor was essential for both the v4 and v5 routes.

4. Part of the v4 Green trail would run through the southern edge of a woodland whereas the v5 Green trail would be outside of it and a public footpath would be within the 20m micro-siting corridor for the v5 Green trail. Much less of the footpath would fall within a 10m micro-siting corridor of the v4 Green trail.

5. The submitted drawings for this area also indicate that most of the v5 Green trail would be outside of a 10m micro-siting corridor for the v4 Green trail. Therefore, it would not be possible to micro-site the v4 Green trail onto the v5 alignment within the terms of the application the Council considered. I consider that the potential for conflict between the public footpath and Green trail is greater with the v5 route and/or with a 20m corridor.

6. Oxford County Council Countryside Access Team (CAT) supported the application (v4) subject to safeguards to protect users on the public rights of way. At the hearing the Council advised that they were not required to undertake consultation at the appeal stage and that CAT had not been consulted upon the v5 routes. A number of third parties raised concerns about potential conflicts with public rights of way. Some, including the Ramblers Association, submitted objections to the appeal but it is not clear from their

comments if they were aware of the v5 plans and they were not represented at the hearing. Therefore, in the interests of fairness and openness, I have set aside the v5 drawings and determined the appeal upon the v4 routes.

7. For the appeal the appellant submitted a Badger Survey Report by Ecoconsult, November 2017, and an Arboricultural Method Statement (AMS) by Boskytrees. Both provide information in relation to the reasons for refusal. Prior to the hearing a third party, the National Trust Monitoring Group (NTMG), submitted a Badger Survey conducted by 4 Acre Ecology, March 2018. In response the appellant submitted a statement of agreement and disagreement in relation to badgers addressing the 4 Acre report. I accepted all of these documents.

8. Although not referred to in the reasons for refusal the Council drew attention to Hazel Dormice. The appellant submitted a statement of common ground in relation to Hazel Dormice. The Council officers confirmed to the hearing that they had seen, and were in agreement with it. I accepted this document.

9. At the hearing the main parties agreed that it would assist the site visit if the appellant prepared a drawing indicating the routes and submitted evidence in relation to constraints. Five drawings were received. Post the site visit the appellant clarified a number of construction details by email and attachments. These documents did not introduce new evidence and I accepted them also.

10. Great Coxwell Parish Council submitted a document about the location of archaeological assets to assist the site visit. It included commentary and opinion. I could not be certain if it introduced new evidence and the hearing had closed and it was declined. After the hearing and site visit the appellant clarified aspects of the proposed construction and the main parties were consulted upon a draft, without prejudice, list of conditions. I have taken these and the responses into consideration. The appellant also sought to submit a revised AMS to correct a matter identified on site but this was declined.

Main issue

11. The effect of the proposed development upon biodiversity with particular regard to ancient woodland and badgers.

Reasons

12. Access at Badbury Hill is largely unrestricted. Unauthorised 'wild' bike trails exist throughout many areas. The NT is particularly concerned about unmanaged 'wild' and downhill mountain bikers, and the construction of log, sand and earth features in the woodlands. On the site visit I was shown a large 'bowl' in the landscape in an area of ancient woodland where activities are impacting upon woodland and there is evidence of archaeological assets being dug into for the creation of mountain bike tracks. I agree also that the wild biking can also cause health and safety concerns and conflicts for riders and users of the permissive paths and public rights of way.

Ancient woodland

13. The proposed trails would go through an area of plantations on ancient woodland (PAWS), some of which has been replanted with coniferous trees. PAWS areas retain ancient woodland features, such as undisturbed soil, ground flora and fungi. The Planning Practice Guidance website (PPG) advises that both ancient semi natural woodlands (ASNW) and PAWS types should be

treated equally in terms of the protection afforded to ancient woodland in the National Planning Policy Framework[1] (the Framework).

14. Standing advice from the Forestry Commission and Natural England[2] includes that the complex ecological relationships found in ancient woodlands cannot be recreated once taken away, due to the timescales involved and changes in the modern abiotic environment. For this reason, ancient woodlands are regarded as irreplaceable; a finite biodiversity resource. If the existing condition of ancient woodland is poor this should not be seen as a factor in favor of development because condition can usually be improved with good management, and compensation should not be considered as a benefit for development impacting irreplaceable habitats. BS 42020:2013 reflects this[3].

15. Construction of the trails in the PAWS area would be by 'over tipping' and a no-dig construction. The AMS states that the surface would be formed of a minimum of 90mm of sub base and surface dressing. However, in certain situations this could be increased by up to 300mm. Appendix 2 of the Planning Statement[4] illustrates a cross section of a no-dig construction with a 300mm deep base and battered sides adding to the width of the overall surface to be covered with geotextile and base course material.

16. At the hearing the NT's tree expert agreed that in the PAWS area the trails would go over tree roots. He had recommended that the v4 Green trail be moved out of the PAWS area because it would be hard to weave or 'snake' this wide trail between the trees without harm to tree roots and trees.

17. The surface of the Blue trail would be narrower, approximately 1.2m. We followed, as best we could, the route of this trail for much of the site visit. As we entered the PAWS area there were some quite noticeable level changes. Woodland appeared mixed with some quite mature trees, and although dying back, many bluebells were apparent. A drawing[5] indicates that the Priority Habitat Inventory records deciduous woodland and an ecological appraisal[6] records an "*overgrown corridor of semi-natural broadleafed woodland between plantation woodland"* and "*likely ancient semi natural broadleafed woodland, which has received added planting and therefore lies between mixed plantation and semi natural broadleafed woodland*". Later we went through an area which appeared relatively undisturbed, save for a logging route and then an area where the ecological appraisal notes locally abundant bluebells throughout and is described as "*woodland essentially plantation on former semi natural broadleafed woodland of ancient origins, resulting in complex mosaics*".

18. Within the PAWS area there would be clearance of understorey and 50mm of organic layers at the top of the top soil and the trails would be largely through tree root protection areas (RPA's). Only trees with a diameter of 300mm or less would be removed. The trees are likely to have large rooting areas and might be better able to withstand impacts than urban trees. The trails would affect only a small percentage of each tree's RPA and a small percentage of the PAWS area. Bench cuts are not intended, no tree roots would be cut within 2.5m of a tree, tree roots might not be asphyxiated and techniques might

[1] Reference ID: 8-021-20140306 Revision date: 06 03 2014
[2] https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences#avoid-impacts-reduce-impacts-and-compensate-as-a-last-resort
[3] BS 42020:2013, Biodiversity code of practice for planning and development
[4] Paragraph 3.9, Macro Design Study for Mountain Bike trails at Badbury Clump, Architrail (23 October 2015)
[5] BH-CAP-00-EGN-DR-V-0002_S2_P01.2
[6] Badbury Hill Ecological Appraisal, LUC, 04 September 2015 Target Notes 25 and 26

accord with advice in BS 5387. However, advice in BS 5387[7] includes that the default position should be that structures are located outside RPAs and that technical solutions might be available where there is an overriding justification for construction within the RPA.

19. Material would be piled at the sides or used to cover the edges of the trail. In this way it would not be lost from ancient woodland, and with time the appearance would soften and might not look dissimilar to existing paths. But the soils, ground flora and understorey are all important parts of an ancient woodland ecosystem. There may be areas within the PAWS area where there is little or no understorey, reduced ground flora and shrub species but ecological evidence within the PAWS area is quite sporadic and it is not clear how protected species, such as locally abundant Bluebells, might be affected. There would be disturbance and the potential for unspecified losses and harms exists.

20. A micro-siting corridor of 10m or 20m would allow flexibility. However, there are also other constraints such as archaeological assets and I am informed that flexibility is required to allow the construction team room for the art of creating an attractive trail for riders, because it is difficult to accurately depict exactly what is required on the ground for good mountain bike trail design. There is limited evidence to assess how many situations might call for berms, switchbacks or otherwise require the trail to have more than the minimal construction. It is equally difficult to know what the impacts upon ancient woodland and biodiversity interests would be and I have no way of knowing how decisions would be made where there are a number of competing interests. A planning condition could require details of the scheme as constructed to control future changes, but this would be post construction.

21. Once in use the trails would provide improved and enhanced access into the PAWS area and would facilitate an increase in the number of people accessing more of the PAWS area. Most might stick to the trails and signage could be used, but it would be difficult to prevent people from leaving the trails, perhaps for a short cut or to explore a bluebell glade, or earthwork.

22. The potential for such behaviours may already exist, wild riders could be encouraged to an area outside of the PAWS area, and the trails are intended to direct riders to specific areas of the ancient woodland. However, the eastern end of the Blue trail would go down into, round, and back out of the large dramatic bowl feature which I was shown as an area suffering damage from wild riding. Once in this area riders might depart from the trail and explore.

23. On my visit I observed riders arriving and setting off in the early evening. This was corroborated by the experiences of local people at the hearing who opined that existing riders are mainly 'youngsters'. It was put to me that the type of experience to be had from wild riding would be quite different from that on the trails, and existing riders would be unlikely to cease using unauthorised trails in favour of formal routes. A number of the unauthorised jumps and routes used by wild riders looked as though they would involve speed, height and thrill making. There is little to say what the detailed design of the Blue and Red trails would be. Much would be decided during construction, but I expect that the experience could be quite different.

24. Creating the trails would enable the NT to block off and restore, where possible, wild trails at the time of construction. This would contribute to the

[7] BS 5837:2012 Trees in relation to design, demolition and construction,

long term strategy for restoration of semi-natural broadleaved woodland, enhancement of relict areas of ancient semi-natural woodland and active management of the site as a whole, including measures to manage the site's archaeology through regular monitoring. The NT agrees to a planning condition requiring a scheme for native broadleaf planting to off-set the loss of ancient woodland ground habitat. However, many areas affected by unauthorised bikers could restore naturally if left alone and the appellant concedes that natural regeneration is preferred. Having regard to the standing advice for ancient woodlands, the weight I attach to these benefits is limited.

25. Access would not be permanently prevented, for example with fencing. Rather it is proposed to use obstruction techniques with large stones and piled logs. At the hearing the appellant's team advised that a dedicated Ranger would not live on site and there is little to say how the site would be policed in their absence. From what evidence I saw of the wild riding I doubt that these measures would prevent or eliminate wild riding, particularly within the large bowl in the PAWS area.

26. I am not persuaded that insufficient land within non-ancient woodland areas to create usable trails is a reason to allow trails within the PAWS area, or that it is necessary to segregate cyclists and walkers. Plantation trees will be felled at some point, but forestry management does not necessarily involve disturbance to ground conditions or construction works. Examples of other trails through ancient woodland have been brought to my attention, but I know relatively little about the circumstances or the planning policy context of them. I have considered this scheme on its own merits.

27. I conclude that that the construction of the v4 Green and Blue trails in the PAWS area would be likely to result in the disturbance and harm of important ground flora and soils, trees and tree roots, including within presently relatively undisturbed areas and areas where protected species, priority habitat and archaeological assets have been identified. The trails would facilitate increased public access which could result in further deterioration or harm.

Badgers

28. On the site visit I saw much evidence of badger activity and badger setts. In particular I saw a large main sett on the western side of the site. The Blue trail would snake through this area going directly over, or very close to, at least one active hole. It was difficult to work our way into much of this area which was relatively impenetrable. There is little to clarify the exact routing and the extent to which the badgers would be affected but even with a 20m micro-siting corridor it would not be possible to move the trails outside of the 30m buffer area of most of these active holes.

29. Buffer areas are only indicative and do not prohibit trails. The low impact over-tip construction method would be used. But the degree of flexibility sought makes it unclear as to the extent to which badgers would be affected. Badgers can adjust to physical works once complete. However, use would follow construction and the trails would enable access to several areas that are presently largely undisturbed. Cumulatively the extent of access created by the trails, particularly the manner in which some setts would become almost surrounded by human activity, could have wider, and more indirect, disturbance effects upon the badgers.

30. English Nature may grant licences for works or sett closures but licencing is separate from the planning process. Paragraph 99 of Circular 6/2005[8] advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. I conclude that the proposals are likely to result in the deterioration or harm to badgers either directly or indirectly.

Other Matters

31. Natural England did not object. There is nothing to say that there would be an adverse impact to the appearance of the landscape. The Council does not object to the principle of providing cycling trails at Badbury Hill out-with ancient woodland. Vale of White Horse Local Plan 2031, Part 1: Core Policy 31 supports small-scale development to support the visitor economy.

32. In partnership with British Cycling the NT would encourage more people and new audiences to cycle at Badbury Hill and enjoy the site and the outdoors, including local clubs for young people. I attach weight to these, and the broader aim of the NT to increase, not restrict, public access.

33. At the hearing I was informed that the NT approached Architrail to investigate the possibility of creating trails on the site. Other sites had not been investigated. They conceded that much of the survey evidence had been compiled for a previous larger scheme. They had extrapolated data from different sites with different factors and used their experience and knowledge to arrive at their best estimates. In reality they did not know how many visitors there would be for the more limited scheme before me, or who would use the trails when. This limits the weight I attach to this evidence of need.

34. The trails would enable events organised by British Cycling to be held. The NT and their partners anticipate that there might be in the order of 200 participants at occasional regional or national events, and 50-60 at local mid-week evening events. These are estimates but the Council agreed at the hearing that a planning condition requiring submission of an event management plan could provide control.

35. The NT project team have experience of similar projects and are intent on ensuring that the woods are looked after and improved. To do otherwise would not be in the interest of the trail riders' experience. Woodland Management Plan objectives include conserving and enhancing the semi-natural woodland, measures to manage the site's archaeology through monitoring, managing the woods for recreational use and appointing a dedicated Ranger. The appellant's witnesses informed the hearing that without the trails car park fee income would be less, and this income was required to part fund the Ranger. They could not say if the car park alone would be provided and it is not clear what might occur without the scheme under the NT's broader objectives and responsibilities for management at Badbury Hill.

36. The Council agreed at the hearing that the possibility of the presence of Hazel Dormice could be dealt with by way of a planning condition. Plans for access to Badbury Hill Cottage do not appear to have considered access for a service vehicle longer than 3.5m. The County Council's Archaeology Team and Historic England raise no objections subject to conditions, but Great Coxwell

[8] https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005

Parish Council drew attention to Part 1, Policy EDQ3 of the Great Coxwell Neighbourhood Plan 2014-2031 which requires that where there are reasonable grounds for believing that important archaeological remains may be disturbed, the applicant will be required to carry out a predetermination archaeological field evaluation. The Council confirmed that the Neighbourhood Plan forms part of the Development Plan. However, in light of my findings on the main issue these matters are not determinative.

37. The proposal includes expansion and improvements to the existing car park to provide additional parking provision and ensure that cyclists, drivers and pedestrians can enter and use the site safely. Pay and display machines provided as part of a wider programme would help pay for the conservation and access work at Badbury Hill. Coleshill Parish Council is concerned about access, traffic generation and highway safety on the B4019. There are no objections from the Council or Highway authorities and from the evidence and my observations on site I find no reason to disagree. The CAT team did not object to the v4 scheme subject to conditions.

38. Faringdon Town Council fully supported the application and facilities to boost the local economy and promote good health for an increased population and a large number of third parties supported local provision of a new sports and well-being facility, improved car park and safe route for mountain bikers.

Conclusions

39. The appellant accepts that the v4 Green trail could be harmful to tree roots and trees in the PAWS area and that construction of trails in ancient woodland would cause disturbance. I am not persuaded that it has been adequately demonstrated that measures would be provided to avoid or mitigate impacts. In accordance with standing advice the weight I attach to compensatory measures for habitat loss in ancient woodland is limited. It has not been demonstrated that the proposals could not reasonably be located on an alternative site, or that the need for the scheme and other benefits outweigh the potential harms.

40. I conclude that the proposal is likely to result in unacceptable impacts that could result in loss, deterioration or harm, within an area of ancient woodland, which is an irreplaceable habitat, and harm to badgers either directly or indirectly. It is therefore contrary to aims of Vale of White Horse Local Plan 2031, Part 1, Policy CP46 which, amongst other things, seeks to prevent development likely to result in the loss, deterioration or harm to habitats or species of importance to biodiversity, either directly or indirectly.

41. The proposal is also contrary to advice in the Framework which includes that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss (paragraph 118).

42. Therefore, and having taken all other matters raised into consideration, the appeal is dismissed.

Helen Heward

PLANNING INSPECTOR

PARTICIPATING AT THE HEARING

FOR THE APPELLANT

Adam White MRTPI, McLoughlin Planning
Iain Corbyn MA MSc MCIEEM CENV, Ecoconsult Ltd
Ben Rose BSC (Hons) MSC Dip Arb (RFS) MICFOR RCArborA BoskyTrees
Edward Wright, Architrail
Gareth Evans, Conservfor Construction (in part)

FOR THE LOCAL PLANNING AUTHORITY

Tracy Smith, Principal Planning Appeals Officer Vale of White Horse District Council (VWHDC)
Edward Church, Countryside Officer and Ecologist, VWHDC
Tim Stringer, Tree Officer, VWHDC

PARISH COUNCILS

Dr Lauren Gale, Councillor for Great Coxwell Parish Council
Susan Homershan, Councillor for Coleshill Parish Council

THIRD PARTIES

Charles Eddis, Legal Counsel, the National Trust Monitoring Group (NTMG)
Richard Anstis, Planning Consultant for NTMG
Mark Satinent, Ecologist, 4 Acre Ecology Ltd for NTMG
Rob Hempel, Badbury Hill House,
Lucy Roeber, tenant of Badbury Hill Cottage,

DOCUMENTS SUBMITTED, AND ACCEPTED, AT OR AFTER THE HEARING

1 Maps showing public rights of way on the Definitive Map

2 Natural England Guidance Note: European Protected Species and the Planning Process – Application of the 'three tests' to licence applications, 2010

3 McLoughlin Planning email dated 11 June 2018 and five drawings for the site visit:

- BH-CAP-00-EGN-DR-V-0002_S2_P01.2_with badger buffers and showing trail routes in relation of Ancient Woodland (ASNW and PAWS), Priority Habitat Inventory (Deciduous Woodland), surface water flooding and Badger information
- BH-CAP-00-EGN-DR-V-0002_S2_P01.2 As above but minus 30m buffer zones around badger setts
- BH-CAP-00-EGN-DR-V-0002_S3_P01.2 Plan showing Badger constraints only
- BH-CAP-00-EGN-DR-V-0005_S2_P01.2 Plan showing Archaeology constraints only
- BH-CAP-00-EGN-DR-V-0006_S2_P01.2 Badbury Waymarker Points Map showing GPS reference points along the trail routes and an Excel document listing the Badbury Clump GPS Waymarker Points.

4 McLoughlin Planning, by emails dated 19 and 27 June 2018, clarification of a number of construction details and response to draft conditions.