



Case No: AC-2024-LON-002208

Neutral Citation Number: [2025] EWHC 377 (Admin)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 February 2025

Before :

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

NORMAN POWELL

Applicant

- and -

**(1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL
GOVERNMENT**

(2) CASTLE POINT BOROUGH COUNCIL

Defendants

Wayne Beglan (instructed by **Holmes and Hills**) for the **Claimant**
Horatio Waller (instructed by **Government Legal Department**) for the **First Defendant**

Hearing date: 27 November 2024

APPROVED JUDGMENT

Deputy High Court Judge Karen Ridge

Introduction

1. The Applicant seeks permission to appeal, pursuant to section 289 of the Town and Country Planning Act 1990 (the Act), against the decision dated 29 May 2023 of the First Respondent's Planning Inspector. That decision dismissed the Applicant's appeal against an Enforcement Notice previously issued on 18 August 2021 by Castle Point Borough Council, the Second Respondent. The Notice was in respect of land at 231 Benfleet Road, Thundersley, Benfleet, Essex SS7 1QG (the Land).

Background

2. The Applicant is the owner of the Land and resides at the property. The development targeted by the Enforcement Notice is a part single, part two-storey structure (the Building) which was said to be unauthorised development located within the Green Belt and to encroach on an area designated as ancient woodland. The Enforcement Notice required the demolition of the New Building, the removal of materials and the implementation of a compensation scheme to address the loss of ancient woodland.
3. At all material times the Land had the benefit of two certificates of lawful development ("LDC"). The first LDC, dated 16 August 2021, confirmed the lawfulness of the siting of a twin unit caravan within the curtilage of the dwelling to provide residential accommodation ancillary to the use of Howard Hall. The second LDC, dated 19 October 2021, confirmed the lawfulness of a single-storey outbuilding, following demolition of the existing outbuilding, for use as a games room and gymnasium incidental to the enjoyment of Howard Hall.
4. In December 2021 the Applicant submitted an appeal against the Enforcement Notice under grounds (b), (a) and (f) of section 174(2) of the Act. That appeal succeeded on ground (a) and conditional planning permission was granted for the development subject to the notice. Before the first appeal Inspector there was a detailed Statement of Case from the Applicant which addressed a number of matters, including a claimed fallback position in the event that permission was not granted. The fallback position related to a twin unit caravan and a new outbuilding being sited close to the location of the Building being enforced against. In addition, an ecological survey was submitted which set out a compensation and mitigation scheme. The first Inspector imposed a condition requiring a compensation scheme to address the loss of ancient woodland and any damage caused to it.
5. The Inspector's decision was then challenged by way of judicial review¹ by Ms Sharma, the owner of adjoining land. In those judicial review proceedings permission was given to appeal, after which, the first Defendant conceded and consented to judgment. The decision on the enforcement notice appeal was thereafter remitted to the Planning Inspectorate for a second determination.
6. In the remitted appeal further representations were submitted. The Applicant's submissions relied upon a new report and technical note dated 1 March 2024 prepared by a Chartered Ecologist, Andrew May, appended to the representations. That report

¹ Claim numbers AC-2023-LON-000074 and AC-2023-LON-000081.

concluded that the Building lay within the Nine Acre Wood ancient woodland as shown on the maps but in fact, that ancient woodland had receded many years ago and the Council's map should be revised accordingly. The report further concluded that the development had not resulted in any loss or deterioration of ancient woodland and that the buffer zone, advised by guidance, terminated some 21 metres south of the Building.

7. The Council's further representations indicated that it now accepted that the loss and/or deterioration of ancient woodland could be appropriately mitigated by condition and did not provide a reason for refusal of planning permission.
8. Ms Sharma made further representations in March 2024 through her planning solicitors. In that representation, it was stated that they were not aware of any further information submitted by the Applicant and Ms Sharma's original grounds in her Statement of Case dated December 2021 remained. The third party was therefore unaware of the additional representations and accompanying ecological report. Ms Sharma's representation went on to refer to indirect effects on ancient woodland referenced in guidance by Natural England.
9. The Applicant submitted his final representations by letter dated 28 March 2024. That letter noted the Council's position regarding the adequacy of the ancient woodland compensation and mitigation scheme and maintained his position that there had been no loss or damage to the ancient woodland by virtue of the unauthorised building. He further restated the fallback position having regard to both Green Belt harm and considerations about the ancient woodland.
10. By a decision letter (DL) dated 29 May 2024 the remitted appeal was dismissed by the Inspector ("the Decision"). The Decision turned on the effect on the ancient woodland and it is that decision which is subject to challenge within these proceedings.
11. In the DL the Inspector sets out the main issues in relation to the ground A appeal. They are said to be informed by the Council's reasons for issuing the enforcement notice and the second issue is described as 'the effect of the development on ancient woodland'. The ancient woodland issue was the one issue not resolved in the Claimant's favour. In determining this issue, the Inspector said the following:

"16. Natural England's mapping tool (Magic) shows that part of the building is within land designated as ancient woodland. The designated ancient woodland encompasses land to the south, west and east of the building, and broadly follows the western boundary of the appeal property.

17. Paragraph 186(c) of the Framework says that "development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists".

18. To ensure adequate protection of ancient woodland, Guidance from Natural England and the Forestry Commission²

(Ancient Woodland Guidance) says that any development near to ancient woodland should have a buffer zone of at least 15 metres from the boundary of the woodland.

19. The appellant contends that the ancient woodland designation is no longer accurate, and that its boundary should be further south of the building, a position which appears to be supported by their Ecology Report (AJC Ecology, March 2024). This report highlights a review of local wildlife sites carried out on behalf of the Council in 2012, which found that the woodland “composition does not provide a compelling argument for its inclusion” and that the “northern boundary has been lost to garden management”. Physically, the woodland is certainly more evident to the south of the building, with a clear treeline running just south of a small lake to the south-east of the building.

20. However, the land surrounding the building is still abundant with a variety of trees, many of which appear to be within 15 metres of the building. This is particularly the case along the western side of the building, a area which also falls within the ancient woodland designation. Notwithstanding that the presence of these trees potentially lends support to the official boundary designation, even if the boundary were altered to the south, it is not clear that an adequate buffer would be retained in all directions of the building.

21. The Ancient Woodland Guidance also says a larger buffer zone may be needed for new development if the surrounding area is less densely wooded; close to a residential area; or steeply sloped. To some degree, each of these factors apply to the present circumstances: the trees in the surrounding area are sparser, and therefore less densely wooded; the ancient woodland abuts a residential garden; and much of it is on a slope of varying gradient. A larger buffer zone may therefore be necessary in this instance, which amplifies the need for caution.

22. The Ancient Woodland Guidance says the adverse effects of development on ancient woodland can be direct and indirect. Direct effects can include damage to trees, roots and functional habitat. Indirect effects can include the destruction of habitats and working connections between woodlands, a reduction in the resilience of the woodland which makes it more vulnerable to change and increased disturbance to wildlife.

23. Many of these indirect effects can arise from increased recreational activity in the vicinity of ancient woodland, such as noise and trampling of plants. The building in this instance provides ancillary living accommodation to the main dwelling, and its use is therefore recreational in nature. This means the

risk of indirect effects from the development is particularly acute, and would likely subsist even if the designated boundary were amended in future.”

Procedural History

12. The application for permission to appeal was filed on 27 June 2024. The Applicant named Ms Sharma as an interested party within these proceedings and served the bundle of claim documents upon her. Ms Sharma is not legally represented, and she sought to file an Acknowledgement of Service dated 4 August with a 12 page representation and 12 documents. She then filed 6 documents and served those on the parties on 7 August 2024. She has submitted a witness statement dated 14 October 2024 and emailed the court on 28 October with 3 attachments. A further 5 exhibits were sent to the court on the 5 November 2024.

Preliminary Issue

13. At the oral renewal hearing a preliminary issue arose in relation to the status of Ms. Sharma. As a result of her inclusion on the Applicant’s notice she has continued to be named as an Interested Party within these proceedings. Ms. Sharma is not a person required to be served with the application for permission. The Applicant says that Ms. Sharma is not a person who was served and consequently is not entitled to appear and be heard at the oral permission hearing pursuant to CPR PD54D, para 6.6. The First Respondent is neutral as to whether the Court permits Ms Sharma to be heard and does not intend to rely upon any of her representations.
14. Pursuant to CPR PD 54D6.11 the Respondents to the application before the Court are (1) the Secretary of State, (2) the local planning authority, and (3) any other person having an interest in the land to which the notice relates. The Secretary of State and Castle Point Borough Council, the relevant local planning authority, are named as the two Defendants in these proceedings.
15. The Applicant, Mr Powell, is the owner of the land to which the relevant enforcement notice relates and accordingly there are no other persons having an interest in the land. Pursuant to CPR PD 54D6.6 it is only those persons served with the application who are entitled to appear and be heard at the permission hearing. Further, the procedure under CPR PD 54D.6 does not provide for acknowledgements of service to be filed and served by the Respondents.
16. It follows that, in an application under S289(1), an interested party in respect of the enforcement notice appeal under challenge, who has no interest in the land, does not have any standing in an application to the High Court for permission to bring a Statutory Challenge.
17. Ms. Sharma was not served with the papers at the time of their issue. She subsequently requested those papers saying that she was an interested party. Whilst she was interested in the outcome of the proceedings, she was not an Interested Party in the legal sense of the meaning within these proceedings. Her intercession in these

proceedings has been at her own instigation because she has sought copies of the proceedings.

18. At the renewal hearing I explained the legal position to Ms Sharma and asked whether she wished to take part in the renewal hearing. She was ambivalent saying that she would rely on the representations of the First Defendant.
19. Having regard to the rules I am satisfied that Ms Sharma is not an Interested Party and she should play no part within these proceedings. In making a determination on the application for permission I had not had any regard to any of the documents filed by Ms Sharma. Neither of the parties have relied upon those documents.

Grounds

Grounds 1 and 2: Failure to inquire or failure to canvass the determining issue

20. The Applicant contends that the Inspector was obliged to acquire sufficient information and to ensure that he canvassed determining issues in order to make a lawful decision. The Applicant contends that the parties did not provide, and were not asked to provide, submissions in relation to either indirect effects on the ancient woodland or to the Inspector's approach to an enlarged buffer zone. In addition, in coming to a decision on the ancient woodland issue the Inspector relied upon the Ancient Woodland Guidance and the Forestry Commission's Practice Guide and these documents were not within the appeal documentation and the parties had not been invited to submit comments upon their application. Mr Beglan submits that if the Inspector had sought that information, it cannot be said that his decision would necessarily have been the same.
21. For the First Defendant, Mr Waller submits that these grounds are without merit; the Applicant consented to the written representations procedure; his own ecologist referred to the Ancient Woodland Guidance which is a public document and representations on behalf of Ms Sharma referred to indirect effects.
22. The two matters on which the Inspector found against the Applicant were those of indirect effects on the ancient woodland and the adequacy of an appropriate buffer. It is a fundamental element of the right to a fair hearing that a party can be heard on the issues that are determinative. Whilst the procedure elected by the Applicant was the written representations procedure that does not absolve a decision maker from the need to ensure that participants have had a fair crack of the whip. In a written representations appeal the opportunities for an Inspector to seek further information by way of asking oral questions and adopting an inquisitorial approach are reduced.
23. It is also the case that appellants within the written representations procedure should anticipate that the decision maker will seek to deal with all contentious issues and points of dispute, including those made by third parties. The ancient woodland issue had initially been included as a reason for serving the enforcement notice. Following the decision of the first Inspector, the Council revisited that issue and decided that loss of any ancient woodland could be appropriately mitigated by condition. That position was taken in light of the updated expert ecology evidence submitted by the Applicant and the conclusions of the first Inspector on the ancient woodland issue.

24. At the time of the redetermination, the ecology evidence before the Inspector was that of the Applicant. That evidence sets out in some detail the author's reasons for believing that the boundary of the ancient woodland as depicted on the Natural England MAGIC map was incorrect. The letter of Mr May, the ecologist, dealt with the buffer zone contending that:
- “The construction/enlargement of the outbuilding between 2018 and 2019 with a buffer of 21mtrs to the northern extent of the LWS and the actual extent of the ancient woodland did not result in the removal of trees or the deterioration of the ancient woodland.”
25. The Ancient Woodland Guidance was referenced by the Applicant's ecologist by the insertion of a hyperlink in his representations. It was further referenced in the representations made by Walton and Co on behalf of Ms Sharma. It is clear therefore that all parties and the Inspector were aware of, and referred to, the relevant guidance. The Walton and Co letter specifically refers to Natural England's guidance making clear that damage includes direct and indirect effects and goes on to state “The change of landscape, reduction of semi-natural habitats next to woodland, changing woodland ecosystem or working connections will result in damage just by virtue of the building being in this location”. The Applicant's representative's responded to the case for Ms Sharma in some detail but there was no specific mention of indirect effects.
26. The Inspector dealt with ancient woodland matters at DL16-27. He begins by setting out information in relation to the boundary before dealing with national policy imperatives and then the guidance from Natural England and the Forestry Commission. At DL19 he deals with the issue of the boundary to the ancient woodland and at DL20 sets out his judgments in relation to the location of the boundary and the implications for the recommended buffer. DL20 comes to a conclusion on whether a 15 metre buffer could be maintained even if the boundary to the south were altered.
27. DL21 is applying the guidance on buffer zones and the Inspector concludes that a larger buffer zone may be needed and this “amplifies the need for caution”. His first conclusion is that a 15 metre buffer zone could not be achieved, even with alterations to the southern boundary of the ancient woodland because of the situation along the western side of the building. He then looks to the guidance, concludes that a larger buffer zone may be necessary, and comments that this reinforces his earlier concerns.
28. At DL22 the Inspector goes on to consider the question of adverse effects and refers to indirect effects setting out examples in terms of the guidance on indirect effects. He uses his own judgment to come to a view on the likelihood of indirect effects caused by ancillary living accommodation.
29. Those discussions and conclusions flow from the Inspector's analysis of the issues in dispute and the application of the guidance to the facts of the case. The Applicant was aware of the issues in dispute and made representations accordingly. It should have come as no surprise that the Inspector would look at indirect effects and the adequacy of the buffer zone. The Inspector identified that he had to come to a view about indirect effects and it is not arguable that he was irrational in deciding that he had enough information about the nature of the use and other factors to enable him to

come to a view on indirect effects without reverting to the parties. He used the information before him as to the use of the Building in his analysis as to likely indirect effects.

30. The Barff Lane decision was not drawn to the Inspector's attention and he cannot be criticised for not canvassing comments in relation to it. Grounds 1 and 2 are not arguable.
31. Ground 3: Consistency with Other Decisions: whilst the Barff Lane decision was not drawn to the Inspector's attention, consistency in planning decisions is important and there are circumstances in which it would be unreasonable of the Secretary of State not to have regard to a previous appeal decision bearing on the issues in the appeal at hand.
32. The Applicant contends that, in light of its recency and similarity of the policy subject matter, as well as the fact that both decisions addressed residential development (albeit on different scales), it is a decision that the First Defendant was required to have taken into account. Further Mr Beglan contends that there is an obvious and unexplained difference in the two approaches to an important issue of national policy, which was a matter of basic importance in both appeals.
33. The Barff Lane decision involved a residential development of up to 95 dwellings on a site which was not connected to, but was located a short distance away from, an ancient woodland. That decision turned on the effect of increased visitor numbers by public access and increased recreational use on the ancient woodland and whether it could be mitigated to the extent that any residual increase fell short of deterioration of the ancient woodland. In this case the ancient woodland is in the Applicant's ownership and the Building is adjacent to the ancient woodland with its access through the woodland. The factual position was markedly different in that case. For these reasons it is not arguable that the First Defendant was irrational in not considering this decision.
34. Ground 4: Interpretation of National Guidance: The Applicant contends that the Inspector in DL23 equated the likely impacts of permitting ancillary residential accommodation in a residential planning unit, with a recreational use. Mr. Beglan submits that that was an error of approach. He says that dedicated additional recreational use of, for example, a public right of way through ancient woodland is not of the same or a similar quality to the residential use of the Building.
35. This ground relies on the words 'increased recreational activity' at DL23 but it is clear that the Inspector has not erred in equating a residential use with a recreational use for two reasons. Firstly, he uses the words recreational activity as opposed to recreational use and secondly, the following sentence specifically refers to the ancillary living accommodation to the main dwelling. Whilst the Inspector next says it would be "recreational in nature", when read in context, those words are understood to mean that the ancillary living accommodation would have a recreational element. This ground is not arguable.
36. Ground 5: Objective Error of Fact: At DL19 the Applicant says that the Inspector found that the land surrounding the Building is still abundant with a variety of trees, many of which appear to be within 15 metres of the Building and that was particularly

the case along the western side of the Building, an area which also falls within the Ancient Woodland designation.

37. In making that finding the Applicant contends that the Inspector fell into objective error on fundamental facts because (i) The tree area near to the western side of the Building does not fall within the Ancient Woodland designation; and (ii) In any event, as explained in the evidence of Mr May, it was not a reasonable conclusion for the Inspector to find that many (relevant) trees are within 15 metres of the Building.
38. In support of his claim that the Inspector relied on an incorrect fact a plan at page 356 of the hearing bundle has been introduced but that plan was not before the Inspector at the time of his decision. The plans which were before the Inspector included those in the Applicant's November 2021 Statement of Case which contains a number of plans depicting the boundary of the ancient woodland in a different place. See the plan at page 8 of that submission, as well as the plan at page 13.
39. The plan which has been introduced is marked 'line understood to be the extent of the property boundary' which is not unequivocal and as Mr Waller points out, the plan depicts the location of the trunks for trees 1 to 6 rather than canopies or root protection areas. It was for the Inspector to determine having regard to the information before him and his site visit where the boundary lay. The new plan does not therefore establish incontrovertible facts.
40. Finally I am not satisfied that the alleged mistake played a conclusive part in the Inspector's reasoning. At DL20 the Inspector begins by saying that many of the trees appear to be within 15 metres of the building, that is particularly (but not exclusively) the case on the western side of the building and finally concludes that, even if the boundary were altered to the south, it is not clear that it would be retained in all directions. Ground 5 is not arguable.
41. Ground 6: Reasons: In the alternative to grounds 1, 2 and 4 the Applicant submits that the Inspector did not provide lawfully sufficient reasons to explain: why he did not follow the Barff Lane decision; why he did not revert to the parties to canvas views in relation to indirect effects and the buffer zone and the evidence he relied upon for concluding that the indirect effects of the Building might arise over and above the likely effects of the fallback position.
42. Ground 6 discloses no arguable grounds. The Inspector was unaware of the Barff Lane decision which was distinguishable on its facts in any event. The Inspector did not have to give reasons for not reverting to the parties, it was clear from his reasoning that he considered that he had sufficient information to proceed to a determination. At DL30 to DL35 the Inspector carefully considers the fallback position and explains at DL33 why the fallback position would have a lesser effect on the ancient woodland than the unauthorised development.
43. I have dealt with all matters in dispute before me. There are no arguable grounds and no realistic prospect of success of an appeal. Therefore permission is refused. I would ask the parties to draw up an Order for my consideration.