

## Protection for Ancient Woodland through Planning appeal decisions.

This document highlights cases where ancient woodland has been protected through planning appeal decisions. It notes the key factors that led to a decision for protection, whether that was interpretation of policy or evidence in relation to the particular site, as summarised in the table below. Some of the examples refer to previous planning policy e.g. Planning Policy Statement (PPS), before the more recent introduction of the National Planning Policy Framework (NPPF) in 2012.

This document can be read with the recently revised Natural England and Forestry Commission [Standing Advice for ancient woodland and veteran trees](#)

Case	Key factors in the decision
Northside Copse (2013)	Inspector considered that the NPPF has stronger wording for ancient woodland than PPS9 Importance of the ancient woodland inventory as a tool for policy makers and planners
Forest Pines (2010)	Confirmed that in considering ancient woodland sites, Plantations on Ancient Woodland sites should be considered equally to Ancient Semi Natural Woodland sites
Bolnore Village ( 2007)	Recent evidence demonstrating the site's status as ancient woodland (more recent than the Local Plan) Proposals requiring housing in the woodland, tested for viability, did not outweigh irreplaceable nature of ancient woodland Supported need for a buffer from development around the ancient woodland

### 1) Northside Copse (Lake House), Fernhurst (Ancient Woodland) (Appeal decision 2013) <sup>1</sup>

The case involved a proposal for a single very large dwelling which would have been built in part within ancient woodland, and also within the South Downs National Park (SDNP). The decision took into account a number of issues which make it an important case study.

The Inspector noted that the NPPF has stronger wording for ancient woodland than PPS9:

*'...whilst NPPF... cancels the advice in PPS9, the test in respect of Ancient Woodland is very similar in NPPF paragraph 118 to that in PPS9 paragraph 10 save for the fact that*

<sup>1</sup> Stiles (2013)

## Protection for Ancient Woodland through Planning appeal decisions

---

*there is now a more onerous requirement on developers to show that “the need for, and benefits of, the development in that location clearly outweigh” as opposed to simply “outweigh” the loss.’*

Considering whether the need for a development outweighs the loss of ancient woodland, the inspector upholds that small incursions into ancient woodland are unacceptable.

*‘Impacts on the AW caused by the proposal would include the direct loss of flora and irreplaceable ancient soils and a substantial change in the character of the woodland arising from the development and its ancillary services. Whilst the Appellants have suggested that this would be only a small proportion of the woodland identified as AW, NPPF considers any loss to be unacceptable.’*

The Inspector made special reference to the importance of the ancient woodland inventory as a tool for policy makers and planners.

*‘The inventories are an important tool for policy makers and to assist planners in making decisions about development. Accordingly, it was an important tool for the Authority when it considered the application the subject of this appeal.’*

*‘...given that the definition used for AW in NPPF is essentially no different to the one used in the survey which informed the Revised Ancient Woodland Inventory (RAWI), I do not consider that it would be unreasonable for the Authority to rely upon the recently updated RAWI to identify whether a particular woodland meets the NPPF definition or not.’*

The proposal put forward as mitigation for the development the management of a nearby alternative woodland, and the Inspector found that

*‘The introduction of a woodland management scheme does not warrant the loss of an area of Ancient Woodland or the loss of a significant number of A or B grade trees.’*

The Inspector criticised the appellants for not engaging with Natural England on their contention that the site was wrongly included on the revised inventory. She agreed that, by the appellant not making any attempt to provide further information to Natural England in respect of disputing the inclusion of part of their land on the RAWI but instead relying on commissioning substantial new evidence as part of the appeal, the SDNPA incurred unnecessary additional expense in the appeal process as a consequence which would not have been incurred if the evidence had been made available at the application stage.

*‘A fair inference to draw from the Appellants’ handling of this case is that a tactical decision is likely (although not necessarily) to have been taken to avoid any engagement with Natural England so that the Appellants could state their case on Ancient Woodland status at the latest possible stage and give the Authority as little time as possible to respond to it. If that was not the intention, it was certainly the effect. This was not reasonable given the complexity of the issues involved.’*

### 2) Land containing woodlands and golf courses beside Forest Pines Hotel Golf and Country Club, Broughton, Lincolnshire (Appeal decision April 2010) <sup>2</sup>

This inquiry concerned a change of use of woodland into golf course extension and alterations to an existing golf course. This would have resulted in the direct loss of 33 hectares of ancient woodland classified as a PAW (plantations on ancient woodland sites). In his conclusion, the inspector considered both the importance of PPS9 and the relevance of its measures to ancient woodland classified as PAWS:

*'I have found that the key policy test is set out in PPS9 and seeks to balance the irreplaceable ecological and historical nature of 'ancient woodland' against the need for, and benefits of, the proposed development. That test applies to both 'semi-natural ancient woodland' and 'plantations on an ancient woodland site'.*' <sup>3</sup>

Considering, with reference to Natural England's Standing Advice for ancient woodland, that there is no policy distinction between 'semi-natural ancient woodland' and a 'plantation on an ancient woodland site', the Inspector also highlighted the need for planning measures to ensure the appropriate management of ancient woodland:

*'...in policy terms, the protection afforded to 'ancient woodland' would appear to be independent of its 'quality' or species richness. This stance is reinforced by the Standing Advice from Natural England. Not only should Core Strategies provide strict protection for 'ancient woodland', but also such protection for that 'irreplaceable resource' should include management measures to maintain and enhance its special character.'* <sup>4</sup>

The Inspector also considered that the irreplaceable nature of the woodland outweighed the value of the compensatory measures being proposed:

*'Clearly, the value of ancient woodland is that it is ancient. The complex interrelationships between plants, animals, soils, climate and people have developed over centuries and, for that reason, the habitat is practically irreplaceable.'*

*'I consider that the direct and indirect effects of the scheme would severely damage that woodland. I doubt that these woods would necessarily suffer significant and continual decline in the absence of the proposed development and any deterioration likely would not compare with the irreplaceable loss entailed by the scheme... I do not accept that the management of the woods that would remain or the creation of new and radically different habitats would compensate for the loss and fragmentation of this ancient woodland.'* <sup>5</sup>

Judging that the economic benefits of the proposal were overstated, the inspector concluded:

*'I find that the loss and damage to this 'ancient woodland' is not outweighed by any need for, or benefits of, the proposed development. Hence, and having considered all the other matters raised, I find nothing sufficiently compelling to alter my conclusion that this appeal should be dismissed.'*

---

<sup>2</sup> Cullingford (2010)

<sup>3</sup> Ibid. para. 54

<sup>4</sup> Ibid. para. 17

<sup>5</sup> Ibid. para. 27

### 3) Bolnore Village phases 4 and 5 development, Haywards Heath, West Sussex (Appeal decision October 2007) <sup>6</sup>

This inquiry considered whether (amongst other issues), an area of woodland, Four Acre Wood, should be developed as part of the Bolnore Village phases 4 and 5 development, near Haywards Heath in West Sussex.

Although the woodland had already been allocated for housing before being identified as ancient woodland, Mid Sussex District Council, in its evidence to the Inquiry, considered that the ancient woodland status of Four Acre Wood outweighed its development allocation. The authority argued that the balancing exercise set out in PPS9 fell 'firmly in favour' of preventing the development of the ancient woodland. The local authority considered that:

*'There is no viable argument provided... [by the developer] to support any contention that this particular part of the proposed development is required to be built within Four Acre Wood and nor is any argument put forward that the need for development at "that location" must "outweigh the loss of woodland habitat"... PPS9, its Companion Guide, and 'Keepers of Time' all stress the vital importance of ancient woodland as an irreplaceable natural resource, which needs to be retained and protected.'* <sup>7</sup>

The Inspector noted that the site's inclusion as ancient woodland within the Mid Sussex revised Ancient Woodland Inventory and the publication of PPS9 all post-dated the Mid Sussex Local Plan. He also cited Paragraph 19 of Planning Policy Statement 1, which indicates that planning decisions should be based on up-to-date information on the environmental characteristics of an area. These issues and the fact that the Council now considered that the Local Plan allocation of the woodland was inappropriate in the light of new information and guidance, were considered by the Inspector to be 'highly relevant and material considerations.' In reaching his decision, the Inspector considered both the viability of the whole proposed development (in effect, an economic test) and an ecological test when weighing up the requirements of PPS9 in relation to the proposed development on the area of ancient woodland:

*'It was accepted by the appellant's planning witness that there is no strategic need for dwellings within Four Acre Wood itself... Further, it is not argued that development of Four Acre Wood is necessary in terms of the viability of the wider scheme. I therefore do not consider it has been demonstrated why there is a need for development in this particular location.'* <sup>8</sup>

*'I conclude that (Four Acre Wood) is ancient woodland and is an ecologically important habitat which should be conserved. Up-to-date planning policy guidance in PPS9 supports*

---

<sup>6</sup> Asquith (2007)

<sup>7</sup> Ibid. paras. 8.178 & 8.180

<sup>8</sup> Ibid. para. 13.73

*this... Residential development on the site would not achieve the satisfactory safeguarding of this habitat. The need for and benefits of potential development in this location would not outweigh the loss of this habitat. I consider that these constitute relevant material considerations sufficient to outweigh the site's allocation for residential development within the Mid Sussex Local Plan.'*<sup>9</sup>

Considering the report of the Planning Inspector, the Secretary of State agreed in her decision letter<sup>10</sup> that the development should not include the woodland, recognising that it was identified as ancient in the Mid Sussex survey after the site was allocated for housing:

*'Subsequent to its allocation as housing land in the Local Plan, Four Acre Wood was included in A Revision of the Ancient Woodland Inventory for Mid Sussex District, West Sussex, published in 2006. The Secretary of State agrees with the Inspector... that Four Acre Wood is ancient woodland, as categorised in the Inventory. The Secretary of State also agrees with the Inspector... that Four Acre Wood has considerable other acknowledged ecological interest and importance. In addition, she agrees with the Inspector... that there is no strategic need for dwellings within Four Acre Wood itself. Like the Inspector, she therefore concludes that no residential development should take place on Four Acre Wood... She agrees with the Inspector that policy guidance in PPS9 supports the conservation of Four Acre Wood, as do those elements of the Local Plan which relate to the protection of sites of national and local importance.'*

The Secretary of State's (SoS) decision letter provides a valuable guide to the weight and meaning to be attached to PPS9. The inquiry outcome also demonstrated that decisions should be made in view of up-to-date information or environmental policies which can be sufficient to override the allocation of sites in local plans. In addition, the SoS also supported the arguments for a buffer around the ancient woodland (and individual trees) of 15 metres, providing a potentially valuable guide (though given in the context of this development) for the many other planning cases where this is an issue:

*'The Secretary of State agrees with the Inspector... that, on balance, a considerable degree of protection would be afforded to individual trees if the suggested Buffer Zone scheme were to be implemented. Like the Inspector, she considers that, in terms of the need to adequately protect the ecological value of the ancient woodland components in and abutting the appeal sites, the balance lies in favour of the adoption of buffer zones of a minimum width of 15m around their edges and agrees that this could be achieved by the imposition of suitable conditions.'*

---

<sup>9</sup> Ibid. para. 13.74

<sup>10</sup> Secretary of State decision letter for Bolnore Village Phases 4 & 5 (2008)