The Planning Inspectorate

Appeal Decision

Site visit made on 17 January 2023

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Ref: APP/Z3825/D/22/3304724
'Silver Birches', Bashurst Hill, Itchingfield, Horsham RH13 0NY

- 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 Mr Robert Yorke against the decision of Horsham District Council.
- The application, Ref. DC/21/0535, dated 7 March 2021 was refused by notice dated 23 May 2022.
- The development proposed is the creation of a new access for a private driveway.

Decision

1. The appeal is allowed and planning permission is granted for the creation of a new access for a private driveway at 'Silver Birches', Bashurst Hill, Itchingfield, Horsham in accordance with the terms of the application, Ref. DC/21/0535, dated 7 March 2021 and subject to the following conditions:

    1) The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this Decision;

    2) The development hereby permitted shall be carried out in full accordance with an Arboricultural Method Statement ('AMS') first submitted to and approved in writing by the Local Planning Authority;

    3) Unless the already submitted details are superseded by, or inconsistent with, the approved AMS, the development hereby permitted shall be carried out in accordance with the following approved plans: OS Based Location Plan; Drawing Nos. SB (SP) 001 PL1 Existing Site Plan; SB (SP) 001 PL1 Proposed Site Plan; SB (EX) 100 PL1; SB (GA) 100 PL1; 5636/001 Rev. A;

    4) No use of the proposed vehicular access shall take place until such time as it has been constructed in accordance with the details shown on 'Drawing No. SB (SP) 001 PL1: Proposed Site Plan', including the provision of visibility splays of 2.4 metres by 62.3 metres to the south and 2.4 metres by 70.1 metres to the north. Once provided, the splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metres above the carriageway of Bashurst Hill.

Main Issue

2. The main issue is the effect of the proposed access on an area within the curtilage of 'Silver Birches' designated as Ancient Woodland.

Reasons

3. The Council's Notice of Refusal refers to the siting and scale of the proposed access track which is considered would result in the loss of, and damage to, an area of Ancient Woodland, together with the provision of insufficient information to justify this effect. The Officer's Report on the application also refers to objections from the Woodland Trust and the Council's Arboricultural Officer.

4. The designation of this area as Ancient Woodland is derived from its inclusion within the Revision of the Ancient Woodland Inventory for West Sussex published in January 2010. The existence of this designation requires the Council to assess the proposed development (which other than the new access to Bashurst Hill on highway land comprises a 2m width gravel drive to the house to avoid use of the shared driveway with Willow Cottage) having regard to the relevant local and national policies.

5. As regards the development plan the Officer's Report cites Policy 31: 'Green Infrastructure and Biodiversity' of the Horsham District Planning Framework 2015 ('the HDPF'). The relevant Government policy is in paragraphs 179 & 180 of the National Planning Policy Framework 2021 ('the Framework').

6. I have given careful attention to the Report's analysis of the appeal proposal, which with the assistance of the Council's Arboricultural Officer concludes that the proposed gravel drive would damage the Ancient Woodland and therefore be in harmful conflict with, in particular, HDPF Policy 31(4)(b)(ii) and the Framework's paragraphs 179(b) and 180(a) & (c).

7. However, in my view the Council's assessment and conclusions, and the objection by the Woodland Trust are materially offset by the grounds of appeal and in particular three principal considerations. These are firstly the contextual evidence of the land's designation as part of the aforementioned Inventory in 2010; secondly the qualitative assessment of the woodland in terms of both its existing condition and the effect of the construction of the gravel drive, and thirdly the safeguards against harm that would be secured by a condition on a permission requiring the works to be carried out in full accordance with an AMS to be first agreed by the Council.

8. On the first consideration, the appellant has been in occupation of Silver Birches since 1981 and did not become aware of the existence of the Ancient Woodland Designation until the making of this appeal application in March 2021. In these circumstances and with no access to the site sought at any time during the compilation of the Inventory, it is clear that the status as Ancient Woodland was conferred on the basis of a Desktop Study, albeit no doubt supported by historical evidence including old Ordnance Survey maps.

9. As regards the second consideration, I carried out a site inspection which included walking along the full length of the proposed driveway. I have also had regard to photographs reproduced in the appellant's evidence and the detailed information of the events that resulted in significant changes to the woodland in 2008, two years before the designation as Ancient Woodland.

10. These changes were the result of works within the property's garden but for the most part outside the (since) designated area of Ancient Woodland, comprising the demolition of a garage outbuilding; levelling and regrading around the

construction of L-shaped timber outbuildings, and excavation works to create a large garden pond. The consequential changes of 2008 to the area now designated Ancient Woodland were the deposition of rubble and extensive amounts of clay spoil, with the amount sufficient to raise surface levels by a depth of up to 2 metres. The fact that the now existing levels are significantly different to the original is demonstrably evident from my site inspection, not least the sight of tree trunks with deposited spoil well above the root spread.

11. In addition, there was a 14 metre length of deep trench to redirect overhead services underground (along the now proposed route of the drive); the layering and covering of drainage pipes, and the temporary construction of a rubble, timber and earth bridge from the road across the stream. The appellant also says that since 2008 the area has been used for bonfires and the dumping of leaves, grass cuttings and other garden rubbish.

12. From all that I have seen and read I am satisfied that these are the facts in this case. Accordingly, it is appropriate to give significant weight to the altered landform and condition of the designated area in appraising the development against local and national policy. As regards the reference in the Officer's Report to the importance of a seed bank and the presence of Ancient Woodland indicator plant species, I consider it improbable that the thick layer of clay spoil does anything other than effectively nullify the seed bank and inhibit the prospering of plant growth and biodiversity. As suggested for the appellant, the presence of the clearing itself is an indicator of sorts, but one of its inclusion within a domestic garden for about nine decades, the after-effects of the fundamental change in levels 15 years ago and its subsequent use as a garden working and storage area.

13. Whether the appellant is correct to suggest that the land should no longer be designated as Ancient Woodland is not a matter for me to evaluate and determine in this appeal. However, I am persuaded that subject to the adequacy of the further safeguards outlined in paragraph 14 below, the construction of a gravel drive and its use for access to a single dwelling would not have anything other than a benign effect on the ecological integrity of the site. Gravel is a natural material and with only a few vehicular movements daily confined within a 2 metre wide strip the ecology of the woodland is unlikely to be adversely affected, least of all the outcome of 'significant harm' referred to in paragraph 180(a) of the Framework.

14. The third principal material consideration is that the appeal scheme can be implemented within the constraints and opportunities set out within an AMS. I acknowledge that this does not go to the crux of the main issue, but in my view it remains important. Whilst much of the work on an AMS has already been carried out as part of the appellant's evidence, a condition on a permission can be imposed that further secures the retention and protection of the existing trees and the site's remaining ecological value. A requirement for the AMS to be first agreed with the Council will provide the basis for ensuring that the loss and damage feared does not actually occur.

Conclusion

15. The Council has justified its refusal of this householder application on the basis of a loss of and damage to an area of Ancient Woodland and in so doing

referred to a significant conflict with HDPF Policy 31 and the Habitats and biodiversity paragraphs in the Framework. However, in the particular circumstances of this case I do not consider that the proposal and its effects can be reasonably and fairly tested against the full weight of the provisions and objectives of these local and national policies.

16. I shall therefore allow the appeal. Conditions in respect of the appeal scheme complying with the AMS and the approved plans are needed to protect the existing landscape and ecological value of the site and for the avoidance of doubt in the interests of proper planning. A condition requiring the full construction of the access to Bashurst Hill and the maintenance of visibility splays are needed for highway safety.

Martin Andrews

INSPECTOR

n.j.a town planning Ltd

Applications & Appeals Services

APPEAL UNDER S.78 OF THE
TOWN & COUNTRY PLANNING ACT 1990

GROUNDS OF APPEAL

in respect of

Creation of new access at Silver Birches, Bashurst Hill Itchingfield, West Sussex, RH13 0NY



Appellant: Mr R Yorke

LPA Ref: DC/21/0535

August 2022

Nikolas J. Antoniou BSc (Hons) DipTP MRTPI

NIKOLAS JAMES ANTONIOU

I hold a Bachelor of Science with Honours Degree and Post Graduate Diploma from the University of Wales, College of Cardiff, in City and Regional Planning and have been a Member of the Royal Town Planning Institute since 1999.

I have over 25 years of experience in Town Planning and have held senior positions in Local Government the most notable being Head of Development Control at Arun District Council. I have worked for national planning consultancies and also held the position of Planning Manager for a house building firm.

For a number of years I have been the Director of NJA Town Planning Ltd and undertake the full range of planning work across a wide geographical area serving the needs of private individuals, private estates and commercial businesses.

I am familiar with the appeal site, the Local Planning Authority and its policies.

CONTENTS PAGE

1.0	INTRODUCTION	4
2.0	APPEAL SITE AND SURROUNDINGS	5
3.0	RELEVANT PLANNING HISTORY	9
4.0	PROPOSED DEVELOPMENT	10
5.0	ANALYSIS OF THE COUNCIL'S DECISION	12
6.0	POLICY CONSIDERATIONS	25
7.0	CONCLUSION	31

APPENDICES

NJA/1 – Statement & Appendix by Appellant (2 x documents)

NJA/2 – Statement by Mr Mark Mackworth-Praed. Senior Arboricultural Consultant of David Archer Associates with Appendices (3 x documents)

NJA/3 - January 2010 Revision of the Ancient Woodland Inventory for West Sussex

1.0 INTRODUCTION

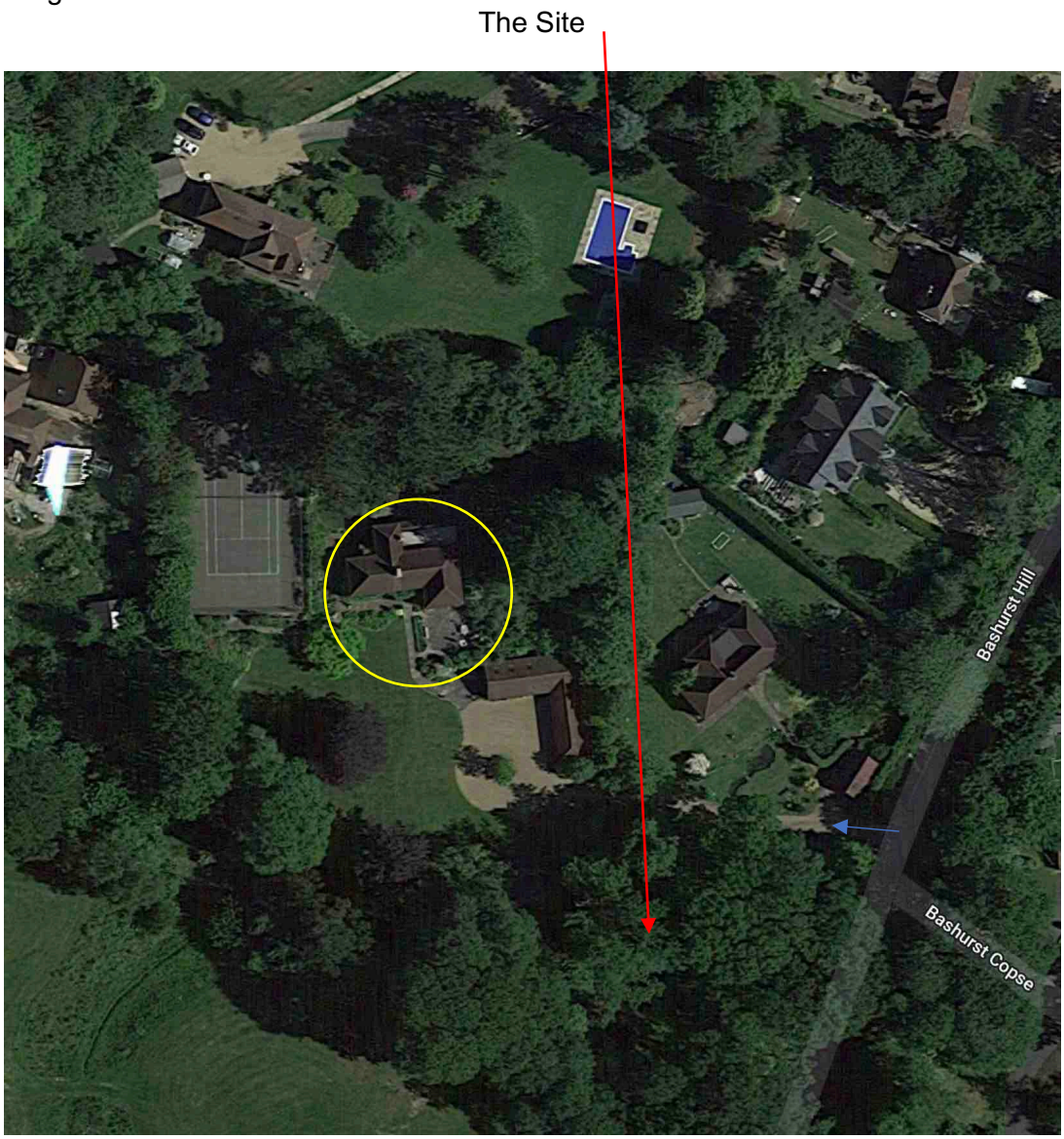
1.1 This appeal is against the refusal of planning permission by Horsham District Council, as Local Planning Authority, for “Creation of new access.” at Silver Birches Bashurst Hill Itchingfield Horsham**.** NJA Town Planning Ltd has been instructed by Mr Yorke to appeal against this refusal of planning permission by the Council.

2.0 APPEAL SITE AND SURROUNDINGS

2.1 The appeal site is not part of any built up area. The key policy issue in respect of this proposal is the designation of part of the curtilage as an area of Ancient Woodland. This was undertaken in 2010, although it appears the appellants were not informed on this action (see appendix NJA/1).

2.2 Below is an aerial image of the site with the arrow pointing to the approximate location of the proposed access track. The yellow circle is situated over the house and the blue arrow shows the location of the existing shared access.

Google Extract*



2.3 The images below are provided to give the Inspector prior to the formal site inspection an idea of the context of the appeal site. The Tree numbers used are those in the Arboricultural report and the Consultants report (NJA/2). Those numbers listed in the Planning statement should be ignored.




These images show the existing shared entrance. The buildings visible are of the neighbouring property. The access to Silver Birches continues past this neighbouring dwelling and then swings to the right.




The first image is taken looking up Bashurst Hill from the existing shared entrance in a South-Westerly direction. The tree highlighted in yellow is tree T1 which is to be removed. The proposed access would be just to the left of this.




The first image is looking North-East towards the existing access. The second image shows tree T8 along with T5 & T6 (in green) which are to be removed. The proposed access is located here.




These images show the general point of access and trees T8 and T21 & T22, all of which are to be removed to facilitate the required visibility splays.




These are images from along the route of the proposed access and show the deposition of excavated clay and other material from works undertaken in 2008.




The first is a similar view to above whilst the second image shows where the access would emerge out onto existing parking area for Silver Birches.




These images show the reverse image with the existing shared access visible in the first and the proposed route of the new access highlighted in the second.




These images show the existing house and its ancillary buildings.

3.0 RELEVANT PLANNING HISTORY

3.1 There have been no previous planning applications relating to the actual appeal site although the house has been subject to applications in 1997, 2002 and more recently 2008 for the replacement ancillary domestic outbuilding comprising garage/workshop and hobby/games room.

3.2 The application subject of this appeal (DC/21/0535) was determined by the Council on the 23rd May 2022. The application was refused for the following reason:

1 The proposed access track, by virtue of its siting and scale, would result in the loss of, and damage to an area of Ancient Woodland, where insufficient information has been provided to justify the loss/damage which would be caused. The proposal therefore fails the relevant tests as set out in the NPPF and would be contrary to Policy 31 of the Horsham District Planning Framework (2015).

4.0 PROPOSED DEVELOPMENT

4.1 Figures 1 and 2 below show the location of the proposed access.

Figure 1 – Point of access onto Public Highway

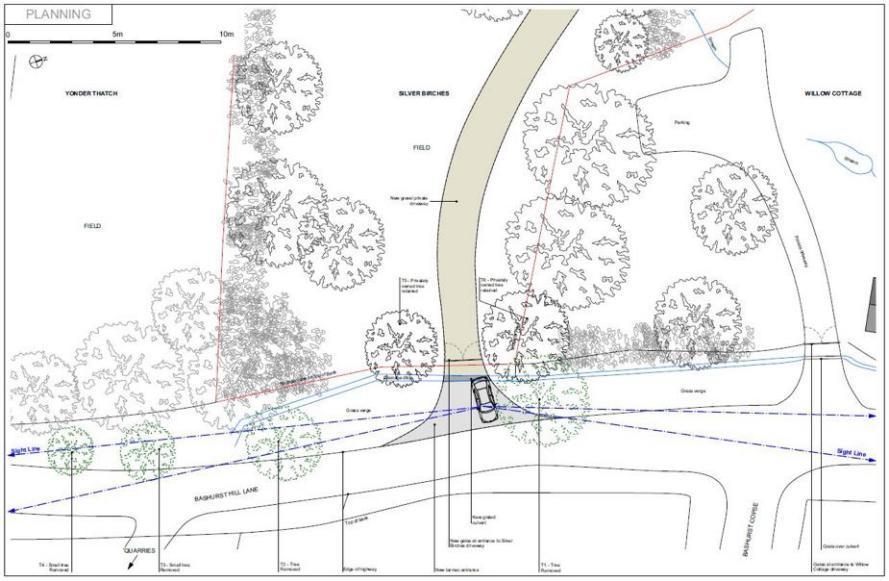
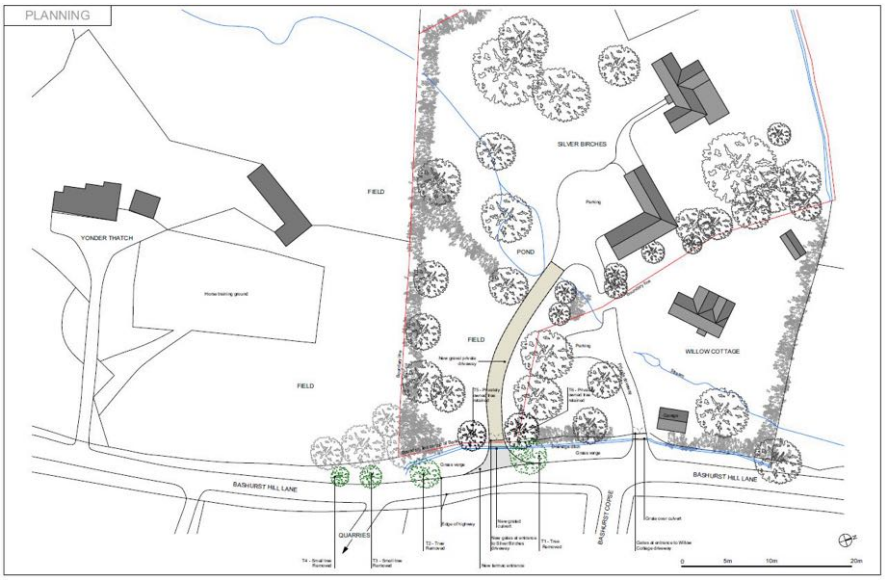
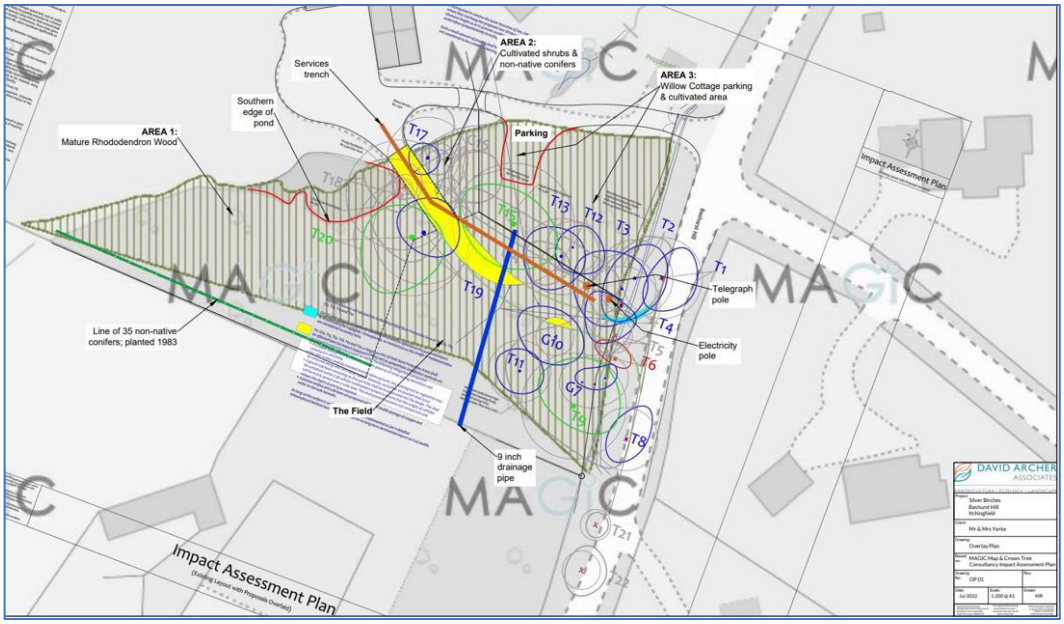


Figure 2 – General Layout



4.2 The appellant's Arboricultural consultant has produced a very helpful composite drawing at the end of his statement, and this is reproduced here for ease of reference when reading this statement. The Inspector is particularly asked to note the location of the service trench in red and the drainage pipe in blue.

Figure 3 – Composite Drawing.



5.0 ANALYSIS OF THE COUNCIL'S REPORT AND DECISION

5.1 Before considering the compliance of the appeal scheme with relevant planning policy it is necessary to examine the Council's planning report to understand the key planning issues. In this section the text highlighted in bold is from the Council's report with the Appellants' response following.

5.2 However first, it is perhaps helpful to firstly consider the legal framework within which planning decisions are made. Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

5.3 Specifically, section 70 (2) of the Town and Country Planning Act 1990 states:

"In dealing with such an application the authority shall have regard to:

a) The provisions of the development plan, so far as material to application,
b) and local finance considerations, so far as material to the application, and
c) Any other material considerations."

5.4 More recently, section 38(6) Planning and Compulsory Purchase Act 2004 provides:

"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

5.5 When considering whether or not a proposed development accords with a development plan, it is not necessary to say that it must accord with every policy within the development plan. The question is whether it accords overall with the development plan (Stratford on Avon v SSCLG [2014] JPL 104). Even if a proposal cannot be described as being in accordance with the development plan, the statutory test requires that a balance be struck against other material considerations. The courts have emphasised that a planning authority is not obliged to slavishly adhere to the development plan and should apply inherent flexibility: Cala Homes (South) Limited v

SSCLG [2011] JPL 1458 and Tesco Stores Ltd v Dundee City Council [2012] 2 P.&C.R. 9.

PLANNING ASSESSMENT

The site is located to the west of Bashurst Hill, outside of any built up area boundary and therefore a rural location. Bashurst Hill is a C-classified road subject to the national speed limit in this location. The dwelling of Silver Birches currently shares an access to Bashurst Hill with its neighbour Willow Cottage, for which Silver Birches exercises an easement over Willow Cottage land.

5.6 The appellant acknowledges the above as factually correct.

The west side of the highway contains a grass verge and a drainage ditch. Immediately to the west of the grass verge and immediately south of the existing shared access to Bashurst Hill is an area of defined Ancient Woodland, a pond is located close to the woodlands western edge and the dwelling of Silver Birches and its outbuildings are located to the north/northwest of the area of Ancient Woodland.

5.7 The area of land lies within an area designated as Ancient Semi-Natural Woodland within the January 2010 Revision of the Ancient Woodland Inventory for West Sussex (see NJA/3). This designation is explained in more detail at section 1.6 of the Consultants report (see NJA/2). It is worth noting at this juncture the consultant advises.

'In cases where, as here, a parcel of woodland has not been subject to ground survey as part of the revision exercise, has long formed part of a domestic garden or gardens, and furthermore has been the subject of extensive works which have fundamentally altered its nature (as will be shown), the validity and robustness of the designation as 'ancient woodland' must, in my view, be open to critical question.'

5.8 The appellant does not believe the Council has had sufficient regard to whether the area is worthy of designation giving works that have taken place within that area and as has been pointed out the area has been part of the domestic curtilage of the property since the 1930's.

5.9 The pond referred to was constructed in 2008 and the material from the excavation was deposited within the area now subject to this appeal (see explanation at NJA/1). The Consultant refers to the evidence and impact of this deposition in his statement.

This application seeks permission to create a new independent access from Bashurst Hill to Silver Birches to be located approx 13m-17m south of the existing shared access, and which would cross through the area of Ancient Woodland to the north then northeast, east of an existing pond to arrive to an existing parking area fronting the existing garaging. The access from the highway is proposed to be laid with tarmac and the drive is proposed to be gravelled, approximately 2m in width.

5.10 The appellant acknowledges the above as a statement of fact.

In order to improve the sight lines from the proposed new entrance a number of trees within the publicly maintained verges to Bashurst Hill are proposed to be removed. The new driveway would cross the existing drainage ditch that runs down the side of Bashurst Hill, and it is proposed that a new culvert would be laid underneath the new entrance in order to maintain a clear drainage route down Bashurst Hill. Following consultation with the HDC's Arboricultural Officer, the Applicant was requested to provide a tree survey and an Arboricultural impact assessment/method statement. The Applicant provided the requested information in the form of an Arboricultural Impact Assessment, Tree Constraints Plan, Impact Assessment Plan, Site Plans and Tree Schedule as well as additional information and comments from the applicant with regards to the designation of Ancient Woodland, which have been taken into account as part of the determination of this application.

5.11 The appellant believes that the information provided demonstrates that the proposal has an acceptable impact upon the locality given the areas status as an Ancient Woodland is questionable.

Principle, Character and Appearance:

Policy 31 Green Infrastructure and Biodiversity states:

1. **Development will be supported where it can demonstrate that it maintains or enhances the existing network of green infrastructure. Proposals that would result in the loss of existing green infrastructure will be resisted unless it can be demonstrated that new opportunities will be provided that mitigates or compensates for this loss, and ensures that the ecosystem services of the area are retained.**

2. **Development proposals will be required to contribute to the enhancement of existing biodiversity, and should create and manage new habitats where appropriate. The Council will support new development which retains and /or enhances significant features of nature conservation on development sites. The Council will also support development which makes a positive contribution to biodiversity through the creation of green spaces, and linkages between habitats to create local and regional ecological networks.**

3 Where felling of protected trees is necessary, replacement planting with a suitable species will be required.

4. a) Particular consideration will be given to the hierarchy of sites and habitats in the district as follows:
i. Special Protection Area (SPA) and Special Areas of Conservation (SAC)
ii. Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs)
iii. Sites of Nature Conservation Importance (SNCIs), Local Nature Reserves (LNRs) and any areas of Ancient woodland, local geodiversity or other irreplaceable habitats not already identified in i & ii above.

b) Where development is anticipated to have a direct or indirect adverse impact on sites or features for biodiversity, development will be refused unless it can be demonstrated that:
i. The reason for the development clearly outweighs the need to protect the value of the site; and,
ii. That appropriate mitigation and compensation measures are provided.

5. Any development with the potential to impact Arun Valley SPA or the Mens SAC will be subject to a HRA to determine the need for an Appropriate Assessment. In addition, development will be required to be in accordance with the necessary mitigation measures for development set out in the HRA of this plan.

(NB: The Council's report didn't include the whole of the policy so the appellant has taken the liberty of including it all at this point to address this error)

5.12 The appellant notes the policy consideration and will discuss this in more detail in section 6 below. However, at this stage it is worth noting that the only direct reference to Ancient Woodland is at section 4 (a) (iii). This part of the policy requires that it must be shown that 'the reason for the development clearly outweighs the need to protect the value of the site; and, that appropriate mitigation and compensation measures are provided.' The appellant will seek to demonstrate that this policy requirement is satisfied as the rationale for the development outweighs the limited value of the site given the existence of the 2008 works, plus the works are proposed in a manner which limits the impact upon the remaining trees, although as the Consultant advises it is questionable that this is even required given the previous deposition of material. (see 2.5.7 of NJA/2)

The application involves the creation of a new access and driveway running east to west from Bashurst Hill to the applicants' property, Silver Birches, and has been consulted with the Council's Arboricultural Officer and the Woodland Trust. The area where the development is proposed lies within an area designated as Ancient Woodland by way of its inclusion within the Revision of the Ancient Woodland Inventory for West Sussex (January 2010). From assessing the 1875, 1909 and the 1949 Ordnance Survey maps of the area, it would appear that the site was heavily wooded between these periods, which is likely part of the reasoning for its inclusion in the West Sussex Ancient Woodland Inventory.

5.13 As the consultant confirms the inclusion of the area as Ancient Woodland appears to be based on a desk top exercise with no on-site assessment to determine whether works have taken place to degrade the potential value of the site.

A primary consideration of this proposal is the suitability and impact regarding trees as the proposed driveway's location is within a designated Ancient Woodland (AW), an irreplaceable habitat. Since AW now covers less than 3% of England's landmass, policies have arisen in recent years attempting both to stem the loss of such sites and indeed to protect them for future generations. Central to this consideration is the relevant paragraphs within the NPPF (National Planning Policy Framework(2021)), which seek to "promote the conservation, restoration and enhancement" of such priority habitats" (para. 179(b)). Setting out the principle regarding applications for planning permission on such sites that "if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused" (Para. 180(a)). "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" (Para. 180(c)). The importance of AW centres on protecting the undisturbed soils, which are typically exceptionally rich in wildlife, and support a seed bank of many rare and threatened species now seldom seen outside such sites. It is therefore essential that such areas are not harmed from development.

5.14 The appellant acknowledges the policy considerations. However, what this paragraph doesn't acknowledge is any assessment regarding the condition of the Ancient Woodland. This is dealt with extensively by both the appellant (see NJA/1) and the consultant (NJA/2). The appellant particularly notes the views of the consultant at 2.2.1 that *'As has been demonstrated above, for the reasons discussed and made clear within the revision document itself, the mere inclusion of a parcel of woodland within the inventory should not be considered to represent a definitive validation of its ancient status, particularly in the absence of ground survey and in the context of a long history of non-woodland use or other disturbance.'*

5.15 The works in 2008 have effectively sealed any 'seed bank' that might have existed under a significant depth of clay and other material so that this proposal which largely sits above this new clay layer has neither a positive nor negative impact upon the seed bank.

The area of AW is suited to the east of the main dwelling and is separated from the main formal garden area for the property by a pond and established shrubs/trees; as a result of this, it has a detached, more isolated feel than that of the more frequently used parts of the property. In its current form, the area of AW is best described as a clearing/glade set within the wooded landscape. There are several fairly substantial trees around the site's perimeter,

all of which have a typical slender and compact woodland form; however, the central area where the new access is proposed to pass through is mostly free from any mature trees. Within the clearing, there were several AW indicator vascular plant species, and the following species were noted; Anagallis minima (Chaffweed), Primula vulgaris (Primrose), Vaccinium montana (Wood speedwell), Viola rechenbichiana (Early dog violet), Ranunculus aurcomus (Goldilocks buttercup) and Lamium *galeobolon (Yellow archangel).* The presence of such plants certainly appears to support the view that the site is still AW, at least to a layman's or possibly an arboriculturist's eye.

5.16 It is interesting to note that the Council doesn't consider why the clearing might currently exist (through the deposition of material). The Council refers to a number of possible Ancient Woodland indicator plant species. The consultant addresses this point very clearly in section 2 of his report where at 2.3.3 he states *'while some of the plants present can be associated with woodland habitats (and some might be included on the list of ancient woodland indicator species), they can also occur in other habitats; and further, that several species present are more typical of open ground and disturbed soil conditions, and thus are not considered to be indicators of ancient woodland.'*

5.17 He goes onto add at 2.3.5 *'On the question of ancient woodland indicator species more generally, the Woodland Trust's guidance states that 'It is important to remember that an indicator species indicates a particular type of environment, in this case woodland continuity/ancientness. On their own they do not prove that a site is ancient. Ancient woodland indicators (AWIs) should be used in conjunction with documentary and map archive research to evaluate the ancientness of a woodland.' In this case, in the context of the known history of disturbance and alterations to the landform of the Field through the excavations for underground services and the deposition of rubble and clay spoil, in my view it is extremely unlikely that the occurrence of a very limited number of plants of species included on the list of ancient woodland indicators will have been from any original seed bank within the underlying soil, but is much more likely to have resulted from colonisation from other nearby areas.'*

5.18 Based on this analysis it is considered reasonable not to attach to much weight to the presence of the plants referred to as suggesting that the original seed bank is likely to naturally become active.

This site of Ancient woodland is surrounded by several large and small areas of AW. For example, Toat Copse is sited 81m to the south-west, Bashurst Copse 205m to the south and a small wooded area 73m to the east; to the rear Stone House, all are included within the AW Register, as is the site in question. Accordingly, the scheme should be tested against the thrust of the Habitats and Biodiversity section of the NPPF, which sets out the principle of promoting "the

conservation, restoration and enhancement of priority habitats" and in particular (Para. 180(c). What, therefore, must be considered is whether the scheme will cause harm or deterioration to the AW, even if it were to be confirmed by an ecologist that the actual clearing itself no longer meets the definition of AW. In this respect, it is considered that the scheme shows some serious deficiencies.

5.19 The Council continues to overlook the issue of the changes made to site since the house was built in the 1930's and in particular the major changes in and around 2008 with the deposition of extensive areas of clay and other material.

A key concern is the domestication of the site as caused by the change of context, manifesting itself through the various overall potentially woodland-degrading effects as set out within the report by Corney et al., ('Impacts of nearby development on the ecology of ancient woodland', Oct 2008) including chemical effects, disturbance, fragmentation, invasion by non-native plant species, and cumulative effects. Government guidance on avoiding these effects is provided in the publication' Ancient woodland, ancient trees and veteran trees: protecting them from development' (Nov 2018), thus replacing the previous guidance given under Natural England's 'Standing Advice' on AW sites. This sets out the principle of requiring a minimum 15m wide buffer zone between the development edge and adjacent AW to protect the woodland from the likely effects set out above. However, given that the proposed access and driveway will be located within the AW, this is impossible for the applicant to achieve the 15m buffer zone. The scheme is thereby in conflict with the guidance given. It was also noted that no mitigation had been offered in regard to the AW, nor any compensation for any harmful effects that will result from the scheme, both through its construction and post-development.

5.20 This paragraph in essence sums up the fundamentally different positions of the two parties, with the Council assessing this issue on a largely desk-based basis working to an assumption that the area still has the opportunity to act as a functional ancient woodland whereas the appellants case is more pragmatic given the changes that have already taken place to the ground conditions. The consultant response to the above comments by the Council sums up the appellant's frustrations that the Council doesn't appear to have acknowledged these changes. The consultant states at 2.4.10 *'This comment appears to completely ignore the clear evidence that "domestication" of almost the entire designated area has already occurred, over a very considerable period of time, quite apart from the impacts of the 2008 works on the Field area itself, as discussed in earlier sections. On the evidence, the whole area has formed part of, and has been managed as, garden land, albeit with established native trees present, since long before its inclusion within the West Sussex ancient woodland inventory in 2010. In this context, it is hard to understand what further adverse consequences of "domestication" could sensibly be held to arise as a result of the driveway proposal, that would have any material impact on biodiversity or wildlife.'*

5.21 The consultant goes on to offer the following observations regarding the remarks about buffer zones. *'Given the nature and condition of the remainder of the designated area which is not immediately affected by the proposed access, in my opinion the provision of a 'buffer zone' in this case is completely unnecessary, and the inability of the scheme to provide one cannot be held up as a basis for serious objection to the proposal'*

5.22 All of the above demonstrates that the refusal of the application by the Council cannot be justified based on the evidence available.

A further issue considered is the likelihood of damage to some of the remaining large trees around the site. From the Tree Constraints Plan (TCP), it is evident that the new access and drive would be sited within the Root Protection Area (RPA) of several of the trees indicated for retention; T2, T15, T17, T18, T19, T20, and G10.

5.21 The Inspectors attention is drawn to the Crown Tree Consultancy Impact Assessment Plan which identifies how individual trees would be impacted.

The Arboricultural Impact Assessment states that the drive would be built using a cellular confinement *system* to help spread the weight of any passing vehicles and that "The new surface shall be installed entirely above ground. Any existing turf or vegetation may be removed along with very loose topsoil. However, no further excavation shall occur." This method of construction within the RPA would generally be considered appropriate and in line with the guidance in BS5837 Trees in relation to design, demolition and construction (2012). However, it is considered that this would not be the case due to a historic boundary ditch at the front of the property and differences between the height of the site and the road to the east. The difference in ground levels between the site and the road to the east is close to 1m. Accordingly, a significant amount of soil would need to be excavated from the eastern boundary of the AW for the new access to be established in this area to a useable standard. This action would damage the undisturbed soils of the AW and would also likely result in a significant amount of root severance on the two retained oaks listed as T2 and T3, despite only a small part of their RPA shown to be affected on the TCP.

5.22 The consultant offers an alternative view to the Council which is set out at section 2.5.2 of his report. '*In my opinion, the Arboricultural Officer has misunderstood the details of the proposal in this respect, as the Crown Tree Consultancy Impact Assessment Plan clearly shows that the above ground construction method would be deployed within the area shaded yellow on the drawing, which (with the exception of a small part of the RPA of tree G10), is towards the western end of the access route. The Impact Assessment Plan (and the accompanying report) clearly acknowledge that excavation would be required over the initial section of the access from Bashurst Hill, in order to*

traverse the boundary bank and to accommodate the change in level. As the report notes, this would involve a minor encroachment into the RPAs of trees T2 and T3 (identified by blue shading on the Impact Assessment Plan).'

5.23 Reference is made to how the previous action of digging a service trench slightly to the north of the proposal will have already caused the impact about root severance that the Council is concerned about.

The RPAs, as indicated on the TCP, have been plotted using the standard circular calculation centred on the base of the stem. To the north of T2 and T3 is the current shared access for the applicants' property and the adjacent dwelling. To the east is the boundary ditch; the presence of both these physical barriers may have impeded root growth in these areas and would suggest that the majority of the tree roots would be located to the south and west of the trees. Para 4.6.2 of the BS states, "Where pre-existing site conditions or other factors indicate that rooting has occurred asymmetrically, Modifications to the shape of the RPA should reflect a soundly based arboricultural assessment of likely root distribution."

5.24 At paragraph 2.5.4 of the consultants report a rationale is provided based on observations taken as to why the plotting of RPA's in the standard way is appropriate for these trees. '*I disagree with this assessment. The shared access is located approximately 23m northward of tree T2 and around 25m northward of tree T3, and at these distances from the trees, in my opinion, would have no effect on them in terms of influencing preferential root growth in other directions. Similarly, I saw no evidence on site that the shallow dry ditch eastward of the trees would represent any obstruction or barrier to root growth which would impede root development within the area of the highway verge, or would result in preferential root development southward and westward of the two trees. I therefore consider that the depiction of the trees' RPAs by Crown Tree Consultancy as conventional circles was appropriate in this case.'*

Furthermore, due to the site's topography (sloping east to west), to build a comply above ground, no- dig drive in this area would require significant and extensive infill for the new driveway to be built at an acceptable and useable gradient. Para 7.2.1 of the BS states, "7.2.1 To avoid damage to tree roots, existing ground levels should be retained within the RPA. Intrusion into soil (other than for piling) within the RPA is generally not acceptable, and topsoil within it should be retained in situ." If built as proposed, there will inevitably be changes to the existing ground levels within the RPA of the retained trees, which over time will negatively impact the affected trees.

5.25 These comments by the Council fail to acknowledge the change to the ground conditions that has already occurred. As the consultant highlights at 2.5.7 the need for a no dig approach is perhaps unnecessary given what has happened previously,

although it is still proposed. However, any more material is not going to change the position regarding the trapped seed bank under the clay addition.

The consultant offers the following comments at 2.5.8 on the issue of levels *'… however, I do not understand the basis of the Arboricultural Officer's concerns on this issue. From west to east, the rise in levels along the proposed route of the driveway is even and gradual as far as the boundary bank. Whilst acknowledging that there would need to be excavation of a section of the boundary bank to allow the access to pass through it, I do not understand why there should need to be importation of any further fill into the Field area in order to achieve an acceptable profile for the driveway. I note that no concerns as to the engineering feasibility of the proposed access have been raised by the local Highways Authority (West Sussex County Council).'*

Regarding the trees indicated for removal, none of the trees at the site are covered by a Tree Preservation order, nor is the site located within a Conservation Area. These trees are fair specimens, with some degree of amenity value due to their roadside location; however, it is considered that they are not of such exceptional merit and quality that their removal would have a detrimental impact on the character and amenities of the locality for their removal to be objectionable. However, it is considered that the overall proposal is likely to cause damage to the AW, and thereby not compliant with the relevant parts of the NPPF. As such, the proposal is also considered to be not compliant with Policy 31 (4)(b)(ii) of the Horsham District Planning Framework (November 2015) and the principle of the proposal is not considered acceptable or supportable.

5.26 The appellant notes the lack of objection to the removal of the trees listed. In so far of the remainder of the Councils objection regarding the impact upon the ancient woodland its perhaps worth considering the consultants conclusion in total in which he states.

'As I have argued in this statement, the particular circumstances and history of this site demonstrate that its designation as ancient woodland in 2010 was flawed, most particularly in relation to the Field through which the new access is proposed to pass, but also in respect of the greater part of its remaining area (Areas 1, 2and 3 as discussed and denoted on the overlay plan). Because of these circumstances and history, in my opinion the status of the woodland as ancient woodland was effectively "lost" over the great majority of its area a long time ago, due to its domestic residential garden context.

Over the Field more particularly, the works undertaken in 2008 (two years before the site was included in the AWI revision) resulted in fundamental disturbance and alterations to its soils and topography, such that it can no longer be considered to present any features characteristic of an undisturbed area of ancient woodland. In this context, the proposed new access across it in my opinion cannot be held as resulting in the direct loss of ancient woodland, as is claimed by the Local Planning Authority and by the Woodland Trust; nor as being likely to cause any significant further "deterioration" of ancient woodland over and above what had already occurred as a result of its context, history and past and ongoing present vegetation cover and uses.

For these reasons, I consider that Horsham District Council's refusal of Mr and Mrs Yorke's planning application is ill-founded, and accordingly that their appeal against the Council's decision should be upheld.'

5.27 If this position is accepted then the appellant contends that the benefits of the development to the appellant and their neighbours clearly outweighs any value that might potentially remain but is effectively lost and thus appropriate mitigation and compensation measures are not necessary.

Highways Impacts:

This proposal would create a new vehicular access onto Bashurst Hill, a C-classified road subject to national speed limit in this location. WSCC Highways requested more information from the applicant to demonstrate vehicular visibility for the proposed access. The applicant submitted amended access plans, demonstrating vehicular visibility at the proposed access. These splays are supported by seven- day speed survey data. Having inspected the application documents, the LHA are minded to raise no objections to the proposals, subject to recommended conditions and informatives. The LHA does not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 111), and that there are no transport grounds to resist the proposal.

5.31 The appellant welcomes and supports the conclusions drawn by the LHA and the Council on the matter of highway safety. The speed survey undertaken on behalf of the appellant identified that the 85th speed percentile was 38.7 mph northbound and 41.8 mph southbound leading to visibility splays of 67.6m to the left and 60m to the right when emerging.

Amenity Impacts:

The access subject of this application would not be expected to result in any unacceptable harm on neighbouring amenity, with no material intensification of movements onto Bashurst Hill envisaged.

5.32 The appellant is disappointed that the letter of support from the neighbour is not recognised at this point of the assessment. The proposal if allowed would actually improve the amenity for the neighbours as there would now be a separate access for the occupants of 'Silver Birches'.

Water Neutrality:

There is no clear or compelling evidence to suggest the nature and scale of the proposed development would result in a more intensive occupation of the dwelling necessitating an increased consumption of water that would result in a significant impact on the Arun Valley SAC, SPA and Ramsar sites, either alone or in combination with other plans and projects. The grant of planning permission would not therefore adversely affect the integrity of these sites or otherwise conflict with policy 31 of the HDPF, NPPF paragraph 180 and the Council's obligations under the Conservation of Habitats and Species Regulations 2017.

5.33 The appellant is disappointed with the objection raised by Natural England on Water Neutrality grounds since this proposal for an access clearly does not lead to an increase in water usage. As an aside it is noteworthy that Natural England did not consider it necessary to comment on any matters relating to the Ancient Woodland issue.

Conclusion:

It is considered that the proposal is likely to cause damage to the Ancient Woodland, and thereby fails the test at the relevant parts of the NPPF and is considered non-compliant to Policy 31(4)(b)(ii) of the Horsham District Planning Framework (November 2015)

5.34 Both the appellant and the appellants consultant have provided statements to demonstrate that the much of the potential value of this area as Ancient Woodland was effectively lost over previous decades and more recently in and around 2008 by various domestic related activities and the deposition of significant quantities of clay and other material. These more recent works were done at a time before the site was identified as a possible Ancient Woodland. Indeed, the appellant wasn't even aware of this designation until 2021.

5.35 The reality is the value of this site as Ancient Woodland has been lost and this proposal will not change that position. In terms of the impact upon some individual trees the appellants consultant has addressed all of the issues raised by the Council. Overall, therefore if these positions as expressed on behalf of the appellant are accepted then there is not policy conflict with policy 31 and this appeal should be allowed.

6.0 PLANNING POLICY COMPLIANCE

6.1 National planning policy is set out in the National Planning Policy Framework (2021). Local planning policy is set out in the Development Plan, in this case comprising the Horsham District Planning Framework (2015) with reference made to policy 31 within the single reason for refusal. There is no Neighbourhood Plan that has been 'made' for this Parish.

6.2 This section of the Grounds of Appeal Statement provides an analysis of the development proposal against only the policies cited within the recommended reasons for refusal contained within the Officer report.

National Planning Policy Framework (NPPF) 2021

6.3 Importantly, the new NPPF sets out the status of the document at paragraph 2 when it states;

"The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions."

6.4 In Chapter 2 the new NPPF restates at paragraph 7 that *'the purpose of the planning system is to contribute to the achievement of sustainable development.'*

6.5 Paragraph 8 of the NPPF sets out the following three dimensions to sustainable development:

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

6.6 Paragraph 9 is a very important part of the overall framework when it states;

"These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area."

6.7 Note the reference to local circumstances. This is important because there is always a risk that decision making becomes focused on applying 'the words' without having the necessary regard for the circumstances to be found on site.

6.8 Chapter 12 provides guidance on ensuring quality design. Whilst it is largely focused on buildings there are references to wider issues such as landscape. The Appellants believe the proposals meet all the tests set out in paragraph 130 where it states;

"Planning policies and decisions should ensure that developments:
a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience."

6.9 The Council hasn't raised any general design issues in its report or singular reason for refusal and it is logical to assume that had the issue of the impact upon Ancient woodland not arisen then the Council would have granted permission for the proposal. The appellant doesn't consider there to be any conflict with paragraph 130 which would trigger the refusal of the proposal in accordance with paragraph 134.

6.10 In respect of the issue regarding Ancient Woodland reference is made to Chapter 15 of the NPPF which addresses matters relating to conserving and enhancing the natural environment.

6.11 Paragraph 179 advises the following which recognises the importance of priority habitats such as Ancient Woodlands.

'To protect and enhance biodiversity and geodiversity, plans should:

a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and steppingstones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and

b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity'

6.12 However, as already has been noted the study that led to the designation of this site as Ancient Woodland has a number of caveats relating to the desk-top nature of its preparation and so its conclusions need to be treated with a degree of caution

and should be informed by on-site fieldwork which hasn't yet occurred. Any consideration to the application of paragraph 179 must be made in that context as should individual decisions on applications which are to also be addressed through the lens of paragraph 180 below.

'When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

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, and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.'

6.13 The council has referred to paragraph 180 (a) in their report but the appellant notes that this refers to significant harm arising. The appellant's case is that any harm that might be considered to arise is not significant because the qualities of the area have already been impacted by previous activities and works, particularly the 2008 works and as such this paragraph is not triggered. Similarly in respect of paragraph 180 (c) these proposed works do not result in the loss or deterioration of an irreplaceable habitat because that has effectively already happened.

Horsham District Planning Framework (2015)

Policy 31 - Green Infrastructure and Biodiversity

1) Development will be supported where it can demonstrate that it maintains or enhances the existing network of green infrastructure. Proposals that would result in the loss of existing green infrastructure will be resisted unless it can be demonstrated that new opportunities will be provided that mitigates or compensates for this loss, and ensures that the ecosystem services of the area are retained.

6.14 According to the supporting text of the Local Plan 'Green Infrastructure' includes areas of biodiversity and so this criterion applies. However, as stated above the appellants case is that the biodiversity value of the site as Ancient Woodland is effectively trapped under the layer of clay added in 2008 and so this proposal which for the most part lies on top of this layer of clay doesn't actually harm the biodiversity value of the site.

2) Development proposals will be required to contribute to the enhancement of existing biodiversity, and should create and manage new habitats where appropriate. The Council will support new development which retains and /or enhances significant features of nature conservation on development sites. The Council will also support development which makes a positive contribution to biodiversity through the creation of green spaces, and linkages between habitats to create local and regional ecological networks.

6.15 The fact that the area is a designated as Ancient Woodland has only recently come to the appellants attention. Whilst the appellant is supportive of the principles in protecting Ancient Woodlands he believes the area an no longer be considered to present any features characteristic of an undisturbed area of ancient woodland and that its designation as Ancient Woodland in 2010 was flawed.

3) Where felling of protected trees is necessary, replacement planting with a suitable species will be required.

6.16 The trees that are due to be felled are not protected by a Tree Preservation Order. However, the appellant is supportive of their replacement on a one for one basis if the Inspector feels it is necessary.

4) a) Particular consideration will be given to the hierarchy of sites and habitats in the district as follows:

i) Special Protection Area (SPA) and Special Areas of Conservation (SAC)

ii) Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs)

iii) Sites of Nature Conservation Importance (SNCIs), Local Nature Reserves (LNRs) and any areas of Ancient Woodland, local geodiversity or other irreplaceable habitats not already identified in i & ii above.

b) Where development is anticipated to have a direct or indirect adverse impact on sites or features for biodiversity, development will be refused unless it can be demonstrated that:

The reason for the development clearly outweighs the need to protect the value of the site; and,
That appropriate mitigation and compensation measures are provided.

6.17 This is the key part of the policy, and the outcome of its application is dependant upon whether it is considered these proposed works have a direct or indirect adverse impact on the biodiversity value of the site as Ancient Woodland. The appellant argues that it doesn't because of the impact of the previous works and thus the reason for the development, namely, to provide a separate access clearly outweighs the need to protect the value of the site which has been severely impaired. On this basis no mitigation and compensation measures are warranted.

5) Any development with the potential to impact Arun Valley SPA or the Mens SAC will be subject to a HRA to determine the need for an Appropriate Assessment. In addition, development will be required to be in accordance with the necessary mitigation measures for development set out in the HRA of this plan.

6.18 This part of the policy doesn't apply.

7.0 CONCLUSION

7.1 In considering this appeal it is crucial to recall that since the house was built in the 1930s this area has to some extent been managed as part of the curtilage of the house and more recently material from the creation of new buildings and a pond was deposited in the woodland. This has effectively capped the soils of this area of land so that the seed bank is trapped. Unfortunately, the exercise of re-mapping areas of potential Ancient Woodland was purely a desktop one and thus didn't take into account what had occurred on this site previously. The Council in making its decision doesn't appear to have had regard to this set of circumstances and so the decision itself is considered to be flawed because had this information been given appropriate weight then the reasonable conclusion to draw would be that the proposal itself doesn't cause any significant harm and therefore based on the analysis of policy 31 set out above there is no reason why permission should not have been forthcoming as there is no policy conflict. The Inspector is therefore respectfully invited to allow this appeal.

Arboricultural appeal statement

Creation of new access at

Silver Birches

Bashurst Hill

Itchingfield

West Sussex

RH13 0NY

Client: Mr R. and Mrs M. Yorke

Date: August 2022

Direct: 07761 826237
Office: 0333 772 1152
mark@davidarcherassociates.co.uk
www.davidarcherassociates.co.uk

Arcadian Prospect Ltd – trading as David Archer Associates
Company Reg No.: 10627581 (England & Wales)
Registered Office: Chesham House,
Eastbourne Road, Halland,
East Sussex, BN8 6PT

Contents

1. Introduction 3
   - 1.1 Scope of statement 3
   - 1.2 Statement author 3
   - 1.3 Site description and proposal 3
   - 1.4 Tree survey, arboricultural report and site inspection 4
   - 1.5 Statutory protection 5
   - 1.6 Non-statutory designation 5
2. Reason for refusal 6
   - 2.1 Reason for refusal 6
   - 2.2 Comments on reason for refusal – site use and history 7
   - 2.3 Comments on reason for refusal – ground vegetation 9
   - 2.4 Comments on reason for refusal – adjacent areas 11
   - 2.5 Comments on reason for refusal – impact on retained trees, tree removals 13
   - 2.6 Matters raised by third parties 16
3. Conclusions 16
   - 3.1 Summary 16

APPENDIX 1 – Images and photographs

APPENDIX 2 – Overlay plan

1. Introduction

1.1 Scope of statement

1.1.1 This statement addresses the reason for Horsham District Council's refusal, on the 23rd May 2022, of our clients Mr and Mrs Yorke's householder planning application DC/21/0535 for the construction of a new vehicular access to their property from Bashurst Hill. The statement considers the arboricultural and ecological aspects of the Council's single reason for refusal, as set out in its decision notice, and comments on the arguments presented within the consultation response on the planning application by the Council's Arboricultural Officer, Andrew Bush, dated the 4th January 2022, and within the Planning Officer's report ('POR').

1.2 Statement author

1.2.1 My name is Mark Mackworth-Praed. I am a Senior Arboricultural Consultant of David Archer Associates, and have been employed in this practice since September 2015. I am a Chartered Arboriculturist, a Fellow and a Registered Consultant of the Arboricultural Association, and a Member of the Expert Witness Institute. I hold an MSc degree in Landscape Ecology, Design and Maintenance from Wye College, University of London (now part of Imperial College).

1.2.2 I have over 40 years' experience in the inspection, assessment and management of trees and woodlands, initially for six years as a tree surgery contractor, then for 16 years as a Local Authority Arboricultural and Landscape Officer at Northampton and Maidstone Borough Councils, and for the past 21 years as an arboricultural consultant in private practice.

1.3 Site description and proposal

1.3.1 My clients' property, Silver Birches, is a large detached residential property set within extensive landscaped grounds, on the west side of Bashurst Hill, Itchingfield. Currently, the property is accessed via a driveway which is shared with another detached house, Willow Cottage. This is situated between Silver Birches and Bashurst Hill, with its garden bordering that of Silver Birches on its west and south boundaries. Once beyond the garden of Willow Cottage, the shared driveway leads to a wide gravel forecourt adjoined by an L-shaped timber-framed outbuilding which includes garaging and storage. I am informed that this was constructed in 2008, the forecourt being expanded by excavation and levelling of the sloping ground towards the house at the same time. The house itself sits upslope at a higher level than that of the forecourt. Immediately to the south of the forecourt is a sizeable ornamental pond, which I understand was also excavated and formed at the same date, expanding and damming an existing small stream running through the grounds.

1.3.2 Eastward of the gravelled forecourt and pond is an open glade or clearing (known as "the Field" by my clients, and referred to as such hereafter in this statement). This is bordered by a narrow fringe of trees on its north side lining a shallow ditch or gully, most of the trees

being within the garden of Willow Cottage to the north; and on its east side by a fringe of trees and understorey vegetation along a shallow boundary bank running roughly parallel to the roadway of Bashurst Hill. On the further side of this bank is a ditch which I understand marks the property boundary of Silver Birches, the rough uncultivated verge beyond this to the carriageway edge being highway land.

1.3.3 Southwards, the Field extends in places to the boundary of a grassland paddock beyond the property boundary to the south, whilst westwards, it is bordered by a denser cover of trees with a shrub layer dominated by mature Rhododendron. There is a row of mature conifers (Lawson Cypress) along the southern boundary of this area.

1.3.4 The proposal which has been refused is to create a new vehicular access from Bashurst Hill, thereby creating a separate driveway for Silver Birches. This would be formed with a splay crossing the highway verge, bridging over the ditch and across the boundary bank, and then passing through the Field, slightly southward of the gully which marks the boundary of Willow Cottage, to emerge onto the existing gravel forecourt over the earthwork dam formed at the east end of the pond.

1.3.5 Over the western section of its length, the access is proposed to be constructed above existing soil level, utilising a cellular confinement system to form the sub-base, thereby avoiding the need for excavations within the root protection areas ('RPAs') of nearby trees. This is considered further below.

1.4 Tree survey, arboricultural report and site inspection

1.4.1 The planning application was accompanied and supported by an Arboricultural Report and Impact Assessment by Crown Tree Consultancy dated 10th October 2021, authored by Joe Taylor FdSc, MArborA, based on a survey of the trees immediately surrounding the area of the proposed access and along the highway verge, which he undertook on the 8th July 2021. The report, and its accompanying impact assessment plan, identify trees which would be removed as a result of the proposed access, and those which could potentially be affected by encroachments into their RPAs, together with specifications of where protective measures would be required to avoid unacceptable damage to affected trees' root systems.

1.4.2 I visited the site myself on Wednesday the 13th July 2022. I initially met my clients' gardener Ian Trevillion, who showed me round the site and pointed out various features relevant to its use and past history. Subsequently, I met my clients' planning consultant Nik Antoniou to discuss the case in more detail.

1.4.3 Following this meeting, I undertook a review of the Crown Tree Consultancy survey data and findings for each of the trees surveyed, checking tree dimensions, condition and the BS 5837: 2012 categories assigned to them. I then inspected the ground levels and vegetation cover within the clearing, noting the presence of dumped garden rubbish and other extraneous materials, drawing up a rough sketch plan and taking several photographs as I did so. I also

viewed the location of the proposed entrance from Bashurst Hill, noting relative levels of the carriageway, ditch and boundary bank and estimating these by eye.

1.5 Statutory protection

1.5.1 No trees on the site are included within a Tree Preservation Order ('TPO'), and the site is not in a Conservation Area.

1.6 Non-statutory designation

1.6.1 The Field is identified as being within an area designated as Ancient Semi-Natural Woodland within the January 2010 Revision of the Ancient Woodland Inventory for West Sussex. As the introduction to this document explains, the 2010 revision was undertaken in order to update the previous inventory of ancient woodland for the county, which was published in 1989, and for the first time, woodlands of below 2 hectares in extent were considered. The 1989 inventory recorded a total area of 16,874 ha of ancient woodland in the county, and as a result of the 2010 revision, the recorded total area rose to 21,375 ha, a rise of 4,501 ha, representing an increase from around 8.3% of the county's area to 10.5% being designated as ancient woodland. The number of separate parcels of woodland, however, was over two and a half times that of the original 1989 inventory, this gain being mostly attributable to small parcels of woodland of less than 2 ha in size.

1.6.2 The parcel of ancient woodland identified in this case is shown on the DEFRA Multi-Agency Geographic Information for the Countryside ('MAGIC') online mapping application as a roughly right-angled triangle shape extending westwards from the limit of the highway boundary on Bashurst Hill, with its northern apex commencing on the south side of the existing driveway to Willow Cottage, and its southern apex at the south-east boundary corner of Silver Birches' property, as shown on the copy extract presented as *Image 1* in **Appendix 1** to this statement. By reference to Map 2 appended to the 2010 Revised West Sussex Inventory document, it can be seen to be a parcel which was only added to the Ancient Woodland Inventory as a result of the revision exercise, and was not previously recorded in the 1989 Inventory.

1.6.3 As the revision document makes clear in its discussion of its methodology, the revision of the West Sussex Ancient Woodland Inventory was primarily a desk-based mapping exercise, taking as its main evidence base the so-called 'Epoch 1' 25-inch to 1-mile Ordnance Survey maps of the County, published in 1869 to 1875. Only a sample of sites were surveyed on the ground, and these tended to be concentrated around settlements or areas of development or settlement expansion. Moreover, the document acknowledges that *"Whilst the methodology aims to be systematic and robust, because of the regional scope of this research, the methods are, by necessity, relatively simple and quick, with more detailed historical and field surveys confined to a priority set of sites. The inventory is therefore inclusive, meaning that the default for borderline sites, or those for which data is lacking, is*

that they are retained on the inventory, thus ensuring they can be considered in future surveys."

1.6.4 Later in the document (Section 6.1), under the heading "Limitations of the survey", it is recognised that *"There will, however, always be limitations with the types of evidence used in assessing ancient woodland status and* ***these need to be considered by all users of the dataset****….****No decision based on historical map evidence relating to woodland can be completely infallible*** *and a project such as this must inevitably make many such decisions. This is especially true where woods of diverse historical character, which have been little studied in this way before, are concerned"* (my emphasis).

1.6.5 It is clear from the above that for the reasons which are identified and acknowledged within the study itself, the designation of any particular woodland parcel on the Ancient Woodland Inventory should be regarded as provisional, and not necessarily definitive. Indeed, at national level, Natural England refers to the inventory as a whole as the "Provisional Inventory of Ancient Woodland" for this reason. In cases where, as here, a parcel of woodland has not been subject to ground survey as part of the revision exercise, has long formed part of a domestic garden or gardens, and furthermore has been the subject of extensive works which have fundamentally altered its nature (as will be shown), the validity and robustness of the designation as 'ancient woodland' must, in my view, be open to critical question.

2. Reason for refusal

2.1 Reason for refusal

2.1.1 Horsham District Council's single reason for refusal of planning application DC/21/0535 states as follows: *"The proposed access track, by virtue of its siting and scale, would result in the loss of, and damage to an area of Ancient Woodland, where insufficient information has been provided to justify the loss/damage which would be caused. The proposal therefore fails the relevant tests as set out in the NPPF and would be contrary to Policy 31 of the Horsham District Planning Framework (2015)."*

2.1.2 The reason for refusal is considered through the discussion of the Arboricultural Officer's comments on the proposal (which are reproduced verbatim in the Planning Officer's delegated report) which follows.

2.1.3 My statement should also be considered in conjunction with the plan presented as **Appendix 2** to this statement. This drawing ('the overlay plan') superimposes the impact assessment plan drawn by Crown Tree Consultancy onto the MAGIC map which identifies the extent of the designated ancient woodland within the grounds of Silver Birches and Willow Cottage to the north. Based on my site visit and information provided by my clients, other features are also noted on the plan, including the locations of the electricity and telephone poles from which these services have been re-routed underground, and the route of the relevant

trench; the location of the buried surface water drain across the Field; and other areas of garden and non-native planting and non-woodland uses, which are described and discussed in more detail in later sections.

2.1.4 At this stage however it is important to note that the 2010 revision of the West Sussex Ancient Woodland Inventory post-dates the extensive works which are described in the following section, and occurred earlier, in 2008. Moreover, it can also be seen that the mapped "ancient woodland" area is also obviously inaccurate in relation to the underlying Ordnance Survey base map, as its north-western boundary (the "hypotenuse" of the approximate right-angled triangle shape) passes through the centre of the pond which is correctly shown on the OS base. The designation area also ignores the presence of the parking bay to Willow Cottage to the north which, whilst not present on the OS base map, has clearly been present for many years.

2.2 Comments on reason for refusal – site use and history

2.2.1 The LPA's refusal of this application relies on its presumption that the site is correctly designated as Ancient Woodland and that it thus constitutes an "irreplaceable habitat" to which the provisions of paragraphs 179(b), 180(a) and 180 (c) of the NPPF (2021) apply. As has been demonstrated above, for the reasons discussed and made clear within the revision document itself, the mere inclusion of a parcel of woodland within the inventory should not be considered to represent a definitive validation of its ancient status, particularly in the absence of ground survey and in the context of a long history of non-woodland use or other disturbance.

2.2.2 The Arboricultural Officer's comments state: *"From assessing the 1875, 1909 and the 1949 Ordnance Survey maps of the area, it would appear that the site was heavily wooded between these periods, which is likely part of the reason for its inclusion in the West Sussex Ancient Woodland Inventory."* He goes on to say: *"The importance of AW centres on protecting the undisturbed soils, which are typically exceptionally rich in wildlife, and support a seed bank of many rare and threatened species now seldom seen outside such sites. It is therefore essential that such areas are not harmed from development."*

2.2.3 Later mapping since 1949, however, shows the progressive fragmentation of the formerly larger wooded area (named Toat Copse) as a result of clearance for paddocks and the development of detached houses and their gardens, leading to the patchwork of non-woodland uses which occupies the majority of the former woodland area today. I understand that Silver Birches itself was first built in 1934, and thus has been present for almost 90 years. *Images 2-4* at Appendix 1 present Ordnance Survey map extracts illustrating the progressive break-up and reduction of the former woodland area, leading to the present situation, as illustrated on the Bing aerial photograph reproduced as *Image 5.*

2.2.4 In considering proposed development adjacent to ancient woodland, it is commonly held that residential gardens typically result in degrading or damaging effects on previously

undisturbed woodland areas. It is also argued that these effects tend to be magnified with increasing fragmentation and progressively smaller sizes of remaining 'islanded' areas of woodland. In the context of this site, it is therefore difficult to believe that the limited areas or patches of the former woodland which remain around this now very substantially developed area could be considered to have remained unaffected by the adjoining domestic uses, and thus be considered as "undisturbed" habitat. In my view, this would be the case even without the benefit of the information which is discussed below.

2.2.5 In this case, in support of this appeal my clients Mr and Mrs Yorke have prepared a detailed account of the site's history and use, with accompanying photographs, which clearly demonstrates that the area through which the proposed access is to pass has been the subject of very substantial past disturbance and alteration. Specifically, they relate that the Field was used for the depositing of all the spoil arising from the demolition of the former garage outbuilding, the levelling and regrading around the construction of the L-shaped timber outbuildings in 2008, and the excavation of the pond, which was formed at the same time. They describe the landform of the Field to have previously been "concave" prior to these works, that is to say being depressed in level, whereas now it presents a "convex" landform, i.e. raised with respect to surrounding levels. They estimate that the land levels within the clearing were raised very substantially, by up to 2m in places.

2.2.6 Apart from the depositing of spoil and raising of levels, according to Mr & Mrs Yorke's account other significant disturbances, including deep trenching to redirect overhead services underground, laying and covering of drainage pipes, and construction of a rubble, timber and earth bridge across the stream into the Field, have taken place. Since the completion of the works in 2008, the Field has been used for the dumping of leaves, grass cuttings and other garden rubbish, for bonfires, and other temporary non-woodland uses.

2.2.7 As I saw on my site visit, there is ample physical evidence of these past operations on site. Photographs of these features and evidence of the past operations related in my clients' account are presented in *Photographs 13, 14 & 16 to 21* in the photographic appendix to their statement.

2.2.8 Evidence of the general raising of levels can be seen by comparison with the gully along the northern boundary of the area and the garden area of Willow Cottage beyond, as well as at the southern boundary of the area, where the build-up of soil over the drainage pipe laid to allow continued surface water run-off from the adjoining field down to the gully is readily apparent *(Photos 13 & 14)*.

2.2.9 Further evidence can be seen at the bases of a number of trees on the edges of the clearing, where the build-up of soil has resulted in the normal basal flare of buttress roots being buried and no longer visible in some cases, or where original levels have been retained immediately around tree bases, creating a dish or bowl effect as a result of the deposition of soil around them *(Photos 16, 17 & 18).*

2.2.10 Buried rubble is visible at the soil surface close to the eastern boundary of the area, on the rise in ground or bank. Large, irregular clods or lumps of clay soil are also seen, which are consistent with spoil having previously been deposited in the area, and areas of exposed clay are present where no natural humus or soil layer has formed, which is further evidence of it only having been placed there recently. The exposed clay at the date of my visit was also extensively cracked due to the prevailing dry conditions and the lack of recent rainfall, further illustrating the lack of vegetation rooting presence which would normally bind clay soil together *(Photos 20 & 21)*.

2.2.11 In addition to the clear physical evidence supporting Mr and Mrs Yorke's account of the past importation of spoil, raising of levels, and other engineering works within the area, the clearing's present and long-standing use as a dumping ground for garden rubbish and other materials is evident, with piles of leaves, leaf mould and beech nuts, grass clippings, pruning arisings in several places, covering approximately half or more of its total area. Other extraneous items and materials are also present. Examples are illustrated in *Photographs 1 to 4* in Appendix 1 to this statement.

2.2.12 A further feature is that the access track into the clearing over the earth dam or bridge at the east end of the pond is partially surfaced with limestone scantlings or chippings *(Photograph 5* in Appendix 1*,* and this informal surfacing continues southwards into the area for some distance *(Photograph 6).*

2.2.13 The Field's history of extensive alteration and disturbance through soil importation, raising of levels, trench excavations, drainage and other works, and long-standing use for the dumping of garden rubbish, in my opinion renders it incapable of being considered to be undisturbed ancient woodland. It has clearly been dramatically affected by both the past operations as described by Mr and Mrs Yorke, and continues to be affected by the ongoing present uses. In this context, the basis of the Council's refusal of the driveway proposal, namely its objective to protect the "undisturbed soils" of ancient woodland, is in my view fundamentally ill-founded.

2.2.14 One particular effect of the works described will have been that the underlying soil of the Field will have been buried by the filling of the area with excavated spoil to varying depths of up to 2m. This will have buried the seed bank of any typical native woodland ground flora which may previously existed, rendering the persistence of any such plants and their capacity to grow within the area extremely unlikely. This is considered further in the following section.

2.3 Comments on reason for refusal – ground vegetation

2.3.1 The Arboricultural Officer's description of the site of the proposed access contains the following; *"Within the clearing, there were several AW indicator vascular plant species, and the following species were noted: Anagallis minima (Chaffweed)*, *Primula vulgaris (Primrose), Vaccinium montana (Wood Speedwell), Viola rechenbichiana (Early dog violet), Ranunculus*

aurcomus (Goldilocks buttercup) and Lamium galeobdolon (Yellow archangel). The presence of such plants certainly appears to support the view that the site is still AW, at least to a layman's or possibly an arboriculturist's eye. I am happy to concede that otherwise, there are no other vascular plants I could identify as AW indicator species within the clearing, but consider that, where this appears to be in doubt, a report by a woodland ecologist should be required to make a complete professional adjudgment on this matter; the importance of AW sites requires LPAs to err on the side of caution in this respect."

2.3.2 I was not able to confirm the presence of any of the species referred to by the Arboricultural Officer on my site visit. Where not covered by piles of garden rubbish or by the informal hard surfacing, the Field bears a cover of a variety of species of vascular plants, including thistles, docks, sedges and grasses. I took a selection of photographs of the vegetation cover and sought the advice of colleagues in my practice's ecology team as to the presence of any species which could be considered to be ancient woodland indicator species.

2.3.3 Their advice (subject to the obvious limitations of botanical identification from photographs) was that while some of the plants present can be associated with woodland habitats (and some might be included on the list of ancient woodland indicator species), they can also occur in other habitats; and further, that several species present are more typical of open ground and disturbed soil conditions, and thus are not considered to be indicators of ancient woodland. Unfortunately, due to the constraints of time involved in this householder appeal, it has not been possible to arrange for detailed and appropriately qualified ecological survey of the ground vegetation to take place.

2.3.4 I understand that the date of the Arboricultural Officer's site visit was the 19th November 2021. I am advised by my ecologist colleagues that the recommended period for woodland vascular plant surveys is between April and September, so the date of the Arboricultural Officer's visit was outside this window. I also note that the Arboricultural Officer does not identify the numbers of each species which he records as being present, so it is not clear if each species was represented by a single plant only, or more than one. I am also advised that early dog violet is very difficult to distinguish from other violets when it is not in flower, which it would not be in November, so it is possible that this identification, in particular, may not have been correct.

2.3.5 On the question of ancient woodland indicator species more generally, the Woodland Trust's guidance states that *'It is important to remember that an indicator species indicates a particular type of environment, in this case woodland continuity/ancientness. On their own they do not prove that a site is ancient. Ancient woodland indicators (AWIs) should be used in conjunction with documentary and map archive research to evaluate the ancientness of a woodland.'* In this case, in the context of the known history of disturbance and alterations to the landform of the Field through the excavations for underground services and the deposition of rubble and clay spoil, in my view it is extremely unlikely that the occurrence of a very limited number of plants of species included on the list of ancient woodland indicators

will have been from any original seed bank within the underlying soil, but is much more likely to have resulted from colonisation from other nearby areas.

2.3.6 I therefore do not consider that the Arboricultural Officer's reference to the presence of these plants lends weight to the Council's ground of refusal on the basis of seeking to prevent loss of, or damage to, "undisturbed" woodland.

2.4 Comments on reason for refusal – adjacent areas

2.4.1 The Arboricultural Officer's comments continue: *"From the site visit, it was apparent that the applicant had concerns with the veracity of the AW designation and whether the clearing itself has survived as AW or not; the site is surrounded by several large and small areas of AW. For example, Toat Copse is sited 81m to the south-west, Bashurst Copse 205m to the south and a small wooded area 73m to the east; to the rear Stone House, all are included in the AW Register, as is the site in question. Accordingly, the scheme should be tested against the thrust of the Habitats and Biodiversity section of the NPPF, which sets out the principle of promoting "the conservation, restoration and enhancement of priority habitats" and in particular (Para. 180(c). What, therefore, must be considered is whether the scheme will cause harm or deterioration to the AW, even if it were to be confirmed by an ecologist that the actual clearing itself no longer meets the definition of AW."*

2.4.2 I do not believe the distances to nearby areas of ancient woodland referred to in the extract above are correct. Scaling on the MAGIC map application gives a distance of approximately 140m south-west from the approximate centre of the Field to the nearest edge of (the remaining part of) Toat Copse, not 81m; whilst the nearest ancient woodland area to the east scales at roughly 120m distance. The small wooded area to the rear of Stone House, eastward of the site, is not identified as ancient woodland, contrary to what is stated above.

2.4.3 Irrespective of these points, it is not clear why the presence of these nearby woods should be relevant to the consideration of the proposed access, as they are at distances from the site where the risk of any adverse effect on them arising from the proposal is so remote, in my view, as to be inconceivable; and conversely, no beneficial effect on them could sensibly be held to result from the refusal.

2.4.4 Besides the effects of past works and its present use on the Field itself, it is also relevant to consider the extent to which the adjacent parts of the designated "ancient woodland" area have been altered or affected by its long-standing domestic context. As noted in my client's detailed statement, the Field comprises only part of the designated area.

2.4.5 To the west of the Field and south of the pond (which as previously noted, itself encroaches into the designated area, but was completed and present prior to the date of the designation), the designated area is entirely dominated by mature Rhododendron planted, according to my clients' account, by a former owner of Silver Birches sometime prior to their purchasing the property 41 years ago. This is marked as 'Area 1' on the overlay plan at Appendix 2. As is well known, Rhododendron as a genus is regarded as being highly inimical

to native woodland flora, due to both the dense year-round shade it casts onto the woodland floor, and to its allelopathic properties, which inhibit or prevent the germination of other species of flora. The suppression and extinction of native flora as a result of its presence and growth have consequential adverse impacts on native vertebrate and invertebrate fauna populations. For these reasons, at a national level, considerable effort and expense are devoted to the eradication of Rhododendron from native woodlands by landowners and environmental conservation bodies.

2.4.6 Along the southern boundary running westward from the Field is a line of 35 non-native Lawson Cypress, which I am informed were planted in 1983 by my clients. At around 40 years old, these trees form a dense continuous screen, and further shade the woodland floor, suppressing the growth of any native flora.

2.4.7 The area immediately to the north-west of the Field, lying between the earth bridge/dam and the boundary with Willow Cottage, marked as 'Area 2' on the overlay plan, this also predominantly comprises a garden planting of exotic shrubs, together with three further semi-mature or mature planted Lawson Cypress (G16 and T17 in the Crown Tree Consultancy survey). This part of the designated "ancient woodland" area cannot therefore be considered to represent undisturbed native or semi-natural woodland, due to these garden plantings.

2.4.8 Finally, Area 3 as marked on the overlay plan is within the garden of Willow Cottage, and is occupied by the parking area for this property referred to earlier, by a bed of planted Azaleas, and mown grass lawn beneath a limited number of established native trees. There is also a composting area at the rear of the gravelled parking bay, with other materials stacked or heaped adjacent to it. I understand that the grass area has been maintained as mown lawn for at least the 41-year period of my clients' ownership of Silver Birches.

2.4.9 Between them, Areas 1, 2 and 3 as described above (and further detailed in my clients' separate statement), together with the Field itself, account for almost the entirety of the area designated as ancient woodland. It is therefore clear that the wooded area has been significantly affected by its situation within the domestic gardens of two residential properties, as a consequence of garden plantings and management over many years. For all these reasons, the designated area cannot be considered to be "ancient woodland" in the sense of representing a woodland of long-standing, continuous native woodland comprised of native flora and undisturbed soils.

2.4.10 The Arboricultural Officer comments that: *"A key concern is the domestication of the site as caused by the change of context, manifesting itself through the various overall potentially woodland-degrading effects as set out within the report by Corney et al., ('Impacts of nearby development on the ecology of ancient woodland, Oct 2008) including chemical effects, disturbance, fragmentation, invasion by non-native plant species, and cumulative effects."* This comment appears to completely ignore the clear evidence that "domestication" of almost the entire designated area has already occurred, over a very considerable period of

time, quite apart from the impacts of the 2008 works on the Field area itself, as discussed in earlier sections. On the evidence, the whole area has formed part of, and has been managed as, garden land, albeit with established native trees present, since long before its inclusion within the West Sussex ancient woodland inventory in 2010. In this context, it is hard to understand what further adverse consequences of "domestication" could sensibly be held to arise as a result of the driveway proposal, that would have any material impact on biodiversity or wildlife.

2.4.11 The Arboricultural Officer's subsequent discussion of the Forestry Commission and Natural England Standing Advice on prevention of indirect effects of development on ancient woodland through the recommended use of 'buffer zones', and his objection to the scheme based on the inability to deliver a 'buffer zone' in this case, similarly fail to take account of the actual situation on the ground, and of the implications of the site's past history and present uses. It also ignores the advice contained within the West Sussex Ancient Woodland Inventory Revision Report itself, cited earlier in this statement, which clearly warns against treating the map-based designations as being definitive, without regard to other considerations or to site-based data from ground survey.

2.4.12 Given the nature and condition of the remainder of the designated area which is not immediately affected by the proposed access, in my opinion the provision of a 'buffer zone' in this case is completely unnecessary, and the inability of the scheme to provide one cannot be held up as a basis for serious objection to the proposal.

2.5 Comments on reason for refusal – impact on retained trees, tree removals

2.5.1 The Arboricultural Officer's comments, as embodied within the POR, discuss the specific implications of the proposed access for the trees retained adjacent to it, noting that it would be sited within, or traverse, the RPAs of trees T2, T15, T17, T18, T19, T20 and G10. Referring to the proposal for its construction to employ an above-ground technique of a cellular confinement system where it passes over substantial proportions of the RPAs, he states: *"This method of construction within the RPA would generally be considered appropriate and in line with the guidance in BS5837….However, it is considered that this would not be the case due to a historic boundary ditch at the front of the property and differences between the height of the site and the road to the east."*

2.5.2 In my opinion, the Arboricultural Officer has misunderstood the details of the proposal in this respect, as the Crown Tree Consultancy Impact Assessment Plan clearly shows that the above ground construction method would be deployed within the area shaded yellow on the drawing, which (with the exception of a small part of the RPA of tree G10), is towards the western end of the access route. The Impact Assessment Plan (and the accompanying report) clearly acknowledge that excavation would be required over the initial section of the access from Bashurst Hill, in order to traverse the boundary bank and to accommodate the change in level. As the report notes, this would involve a minor encroachment into the RPAs of trees T2 and T3 (identified by blue shading on the Impact Assessment Plan).

2.5.3 The Arboricultural Officer however contends that this limited excavation *"would also likely result in a significant amount of root severance"* of the two trees, arguing that *"The RPAs…have been plotted using the standard circular calculation centred on the base of the stem. To the north of T2 and T3 is the current shared access for the applicants' property and the adjacent dwelling. To the east is the boundary ditch; the presence of both these physical barriers may have impeded root growth in these areas and would suggest that the majority of the tree roots would be located to the south and west of the trees."*

2.5.4 I disagree with this assessment. The shared access is located approximately 23m northward of tree T2 and around 25m northward of tree T3, and at these distances from the trees, in my opinion, would have no effect on them in terms of influencing preferential root growth in other directions. Similarly, I saw no evidence on site that the shallow dry ditch eastward of the trees would represent any obstruction or barrier to root growth which would impede root development within the area of the highway verge, or would result in preferential root development southward and westward of the two trees. I therefore consider that the depiction of the trees' RPAs by Crown Tree Consultancy as conventional circles was appropriate in this case.

2.5.5 Moreover, the Arboricultural Officer's assessment ignores the presence of tree T4, situated just to the south of trees T2 and T3, which is proposed for removal. Quite apart from the considerations above, in my view, the presence of the base and root system of T4 between the two trees and the edge of the proposed access is likely to be a further factor limiting the extent to which any extensive root severance of trees T2 and T3 is likely to occur.

2.5.6 The Arboricultural Officer goes on to contend that *"due to the site's topography (sloping east to west) to build a comply (sic) above ground, no-dig drive in this area would require significant and extensive infill for the new driveway to be built at an acceptable and useable gradient….If built as proposed, there will inevitably be changes to the existing ground levels within the RPA of the retained trees, which over time will negatively impact the affected trees."*

2.5.7 As is described earlier in this statement and detailed in the accompanying statement by Mr and Mrs Yorke, almost the entire area of the Field has previously been filled with clay spoil and other materials to depths ranging between 0.5m and 2m. I saw no signs, on my site visit, of crown decline or dieback in any of the trees on the edges of the Field which could be attributed to the resulting changes in level. Again, it appears that the Arboricultural Officer has failed to take account of this factor in his assessment of the proposals. Indeed, it could reasonably be argued that the raising of levels, which has already occurred, in fact renders a no-dig construction method unnecessary, as excavation for the formation of the driveway would be within the imported fill material, and not into the original underlying soil horizons which are occupied by the trees' root systems.

2.5.8 That said, however, I do not understand the basis of the Arboricultural Officer's concerns on this issue. From west to east, the rise in levels along the proposed route of the driveway is

even and gradual as far as the boundary bank. Whilst acknowledging that there would need to be excavation of a section of the boundary bank to allow the access to pass through it, I do not understand why there should need to be importation of any further fill into the Field area in order to achieve an acceptable profile for the driveway. I note that no concerns as to the engineering feasibility of the proposed access have been raised by the local Highways Authority (West Sussex County Council).

2.5.9 It should also be remembered that as detailed in Mr and Mrs Yorke's statement, there has previously been a significant trench excavation along a line southward of the gully marking the boundary between Silver Birches and Willow Cottage to enable the electricity and telephone services to Silver Birches to be routed underground. In the (as reported) absence of any measures to prevent it, this operation will have severed the roots of adjacent trees down to the full depth of the trench concerned (stated to have been 1m-2m). As shown on the appended overlay plan, at its western end, the line of this trench closely follows the route of the proposed access. In my opinion, it is unlikely that the construction of the access would give rise to significant additional indirect impacts on the trees' health or viability, when (as I saw on my site visit) none appear to have suffered significantly from the previous direct root damage attributable to the past excavations.

2.5.10 In relation to the trees which are proposed for removal in order to enable the creation of the new access, the Arboricultural Officer notes that none are protected by a Tree Preservation Order, nor are within a Conservation Area, and comments as follows: *"These trees are fair specimens, with some degree of amenity value due to their roadside location; however, it is considered that they are not of such exceptional merit and quality that their removal would have a detrimental impact on the character and amenities of the locality for their removal to be objectionable."*

2.5.11 Having viewed the site and the trees concerned, I agree with this assessment. As shown on the appended overlay plan, five of the trees to be removed (T1, T6, T8, T21 and T22) clearly stand on the highway verge between the Bashurst Hill carriageway edge and the boundary of the designated ancient woodland area, their removal being necessary to achieve satisfactory visibility from the new access.

2.5.12 Tree T5 is growing from a position on the boundary bank close to the bottom of the adjoining ditch, whilst tree T4 is on the crest of the boundary bank. On the appended overlay plan, their trunk positions are shown to be just outside the mapped ancient woodland boundary. However, it can be seen that there is a slight discrepancy between the line of the property boundary as shown on the underlying OS base map and the line of the ancient woodland boundary. It is therefore not possible to state the trees' positions in relation to the designated area boundary definitively.

2.5.13 In any event, however, I note that no specific objection is raised by the Council in relation to the limited number of individual trees to be removed as a result of the proposal, and that this is not relied on or referred to within the context of its reason for refusal based on the

alleged impacts on ancient woodland. This is reasonable, since as the Arboricultural Officer correctly states, the importance of ancient woodland for biodiversity is focussed on the protection of the undisturbed soils and their long continuity, rather than on the retention of the particular trees growing within such woodlands at any given time. As has been demonstrated, however, no such continuity, or lack of disturbance, exists in this case.

2.6 Matters raised by third parties

2.6.1 An undated letter from Nicole Hillier of the Woodland Trust objected to the original planning application raised objection to the application on the following basis (as summarised in the Planning Officer's report): *"Objection – direct loss of ancient woodland. The Woodland Trust objects to planning application DC/21/0535 on the basis of direct loss of an area of Ancient Semi Natural Woodland (grid ref: TQ12662961) designated on Natural England's Ancient Woodland Inventory (AWI). Ancient woodland is an irreplaceable habitat, once lost it is gone forever. The Trust objects to this proposal due to the direct loss of this irreplaceable habitat."*

2.6.2 A subsequent email from Nicole Hillier of the 29th November 2021 in response to re-consultation following the production of the Arboricultural Impact Assessment report by Crown Tree Consultancy stated that the Woodland Trust was maintaining its objection to the scheme on the same basis.

2.6.3 No new issues of any substance are raised in the Woodland Trust's objection which have not already been addressed in the course of this statement. It is readily apparent that their letter is a standard objection which the Trust issues in response to any planning application (anywhere in the UK) which they consider might affect ancient woodland, based purely on the mapped AWI designation, without the benefit of any knowledge of the site's history or condition, and without any site visit.

3. Conclusions

3.1 Summary

3.1.1 As I have argued in this statement, the particular circumstances and history of this site demonstrate that its designation as ancient woodland in 2010 was flawed, most particularly in relation to the Field through which the new access is proposed to pass, but also in respect of the greater part of its remaining area (Areas 1, 2and 3 as discussed and denoted on the overlay plan). Because of these circumstances and history, in my opinion the status of the woodland as ancient woodland was effectively "lost" over the great majority of its area a long time ago, due to its domestic residential garden context.

3.1.2 Over the Field more particularly, the works undertaken in 2008 (two years before the site was included in the AWI revision) resulted in fundamental disturbance and alterations to its soils and topography, such that it can no longer be considered to present any features characteristic of an undisturbed area of ancient woodland. In this context, the proposed new

access across it in my opinion cannot be held as resulting in the direct loss of ancient woodland, as is claimed by the Local Planning Authority and by the Woodland Trust; nor as being likely to cause any significant further "deterioration" of ancient woodland over and above what had already occurred as a result of its context, history and past and ongoing present vegetation cover and uses.

3.1.3 For these reasons, I consider that Horsham District Council's refusal of Mr and Mrs Yorke's planning application is ill-founded, and accordingly that their appeal against the Council's decision should be upheld.

Mark Mackworth-Praed | Senior Arboricultural Consultant
BA (Cantab), MSc, MEWI, MICFor, FArborA, RCArborA

August 2022

APPENDIX 1 – Images and photographs

Direct: 07761 826237
Office: 0333 772 1152
mark@davidarcherassociates.co.uk
www.davidarcherassociates.co.uk

Arcadian Prospect Ltd – trading as David Archer Associates
Company Reg No.: 10627581 (England & Wales)
Registered Office: Chesham House,
Eastbourne Road, Halland,
East Sussex, BN8 6PT

Appendix 1 – Images and photographs

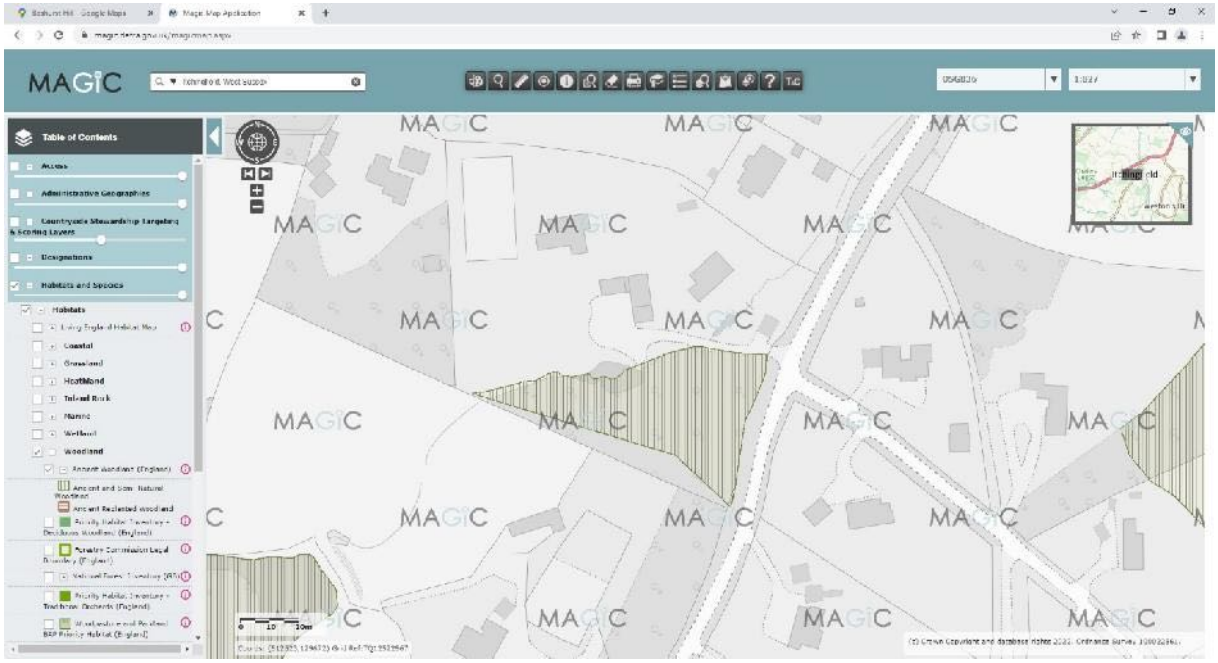


Image 1. **Extract from MAGIC map, showing designated ancient woodland area**

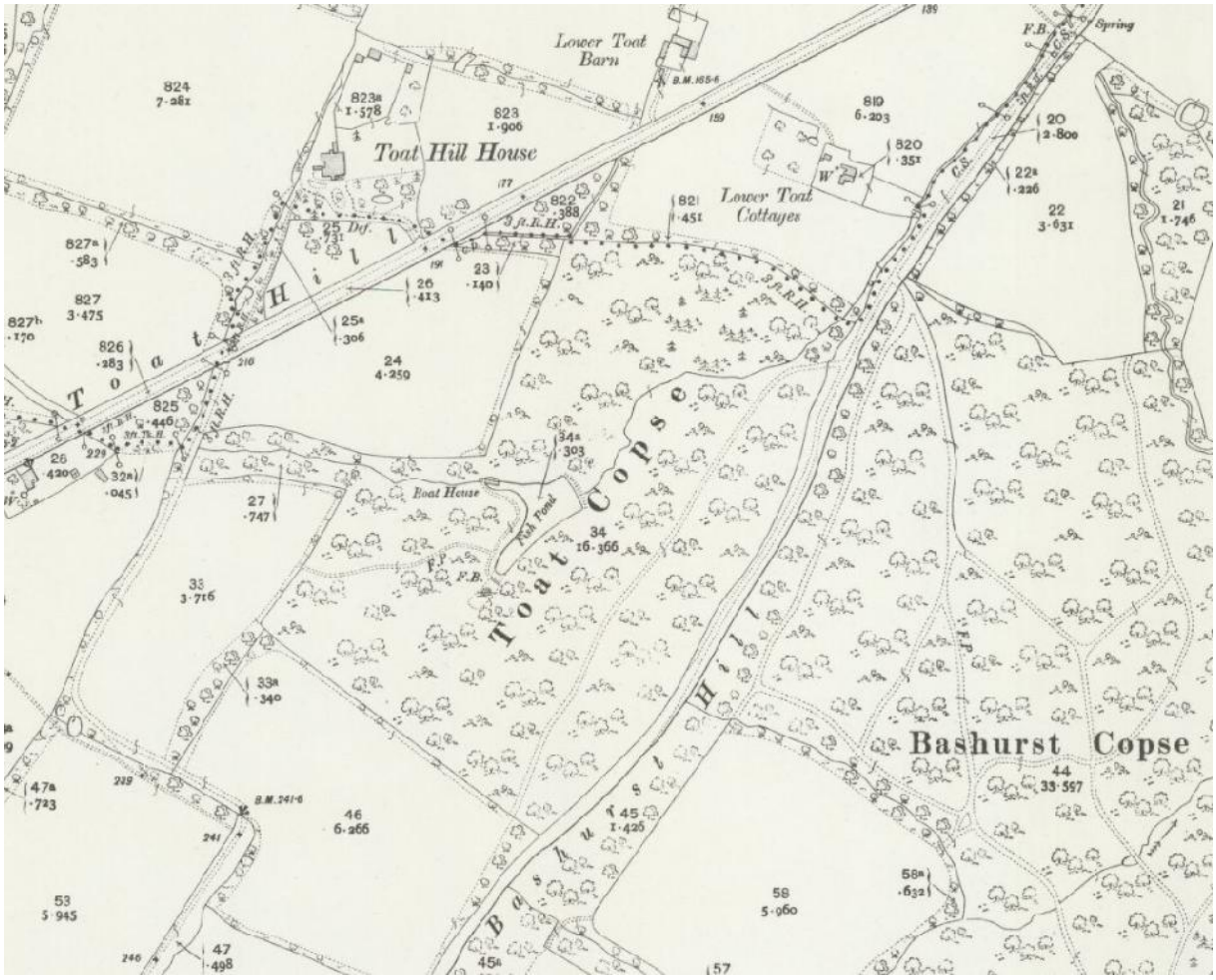


Image 2. **1911 Ordnance Survey map extract**

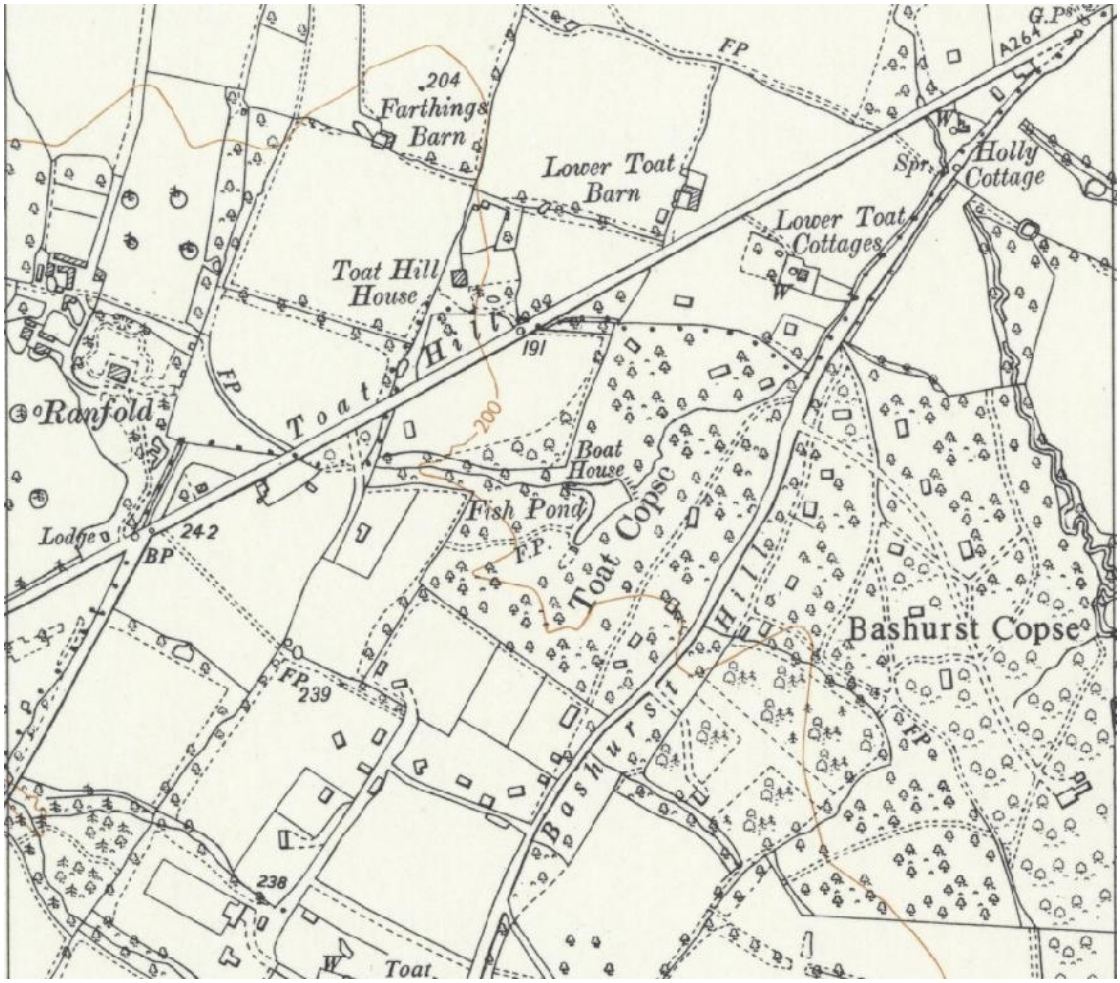


Image 3. **1961 Ordnance Survey map extract**

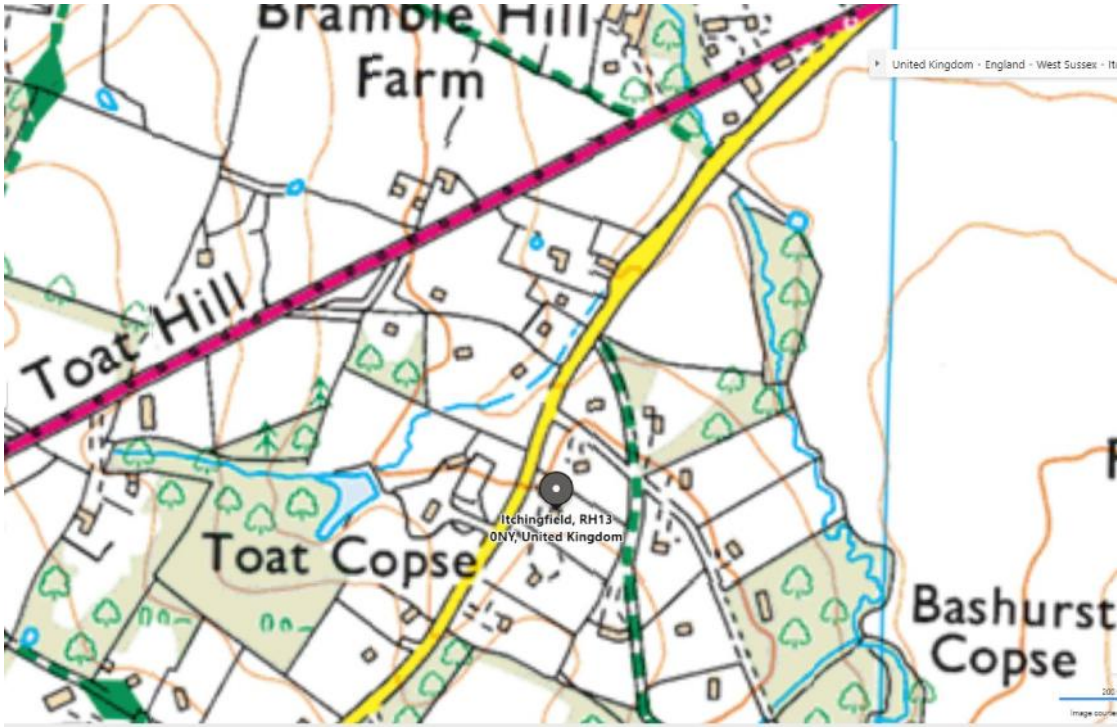


Image 4. **Present-day Ordnance Survey map extract**



Image 5. **Present-day aerial image (Bing)**



Photograph 1. **Grass clippings and other garden rubbish in the Field**



Photograph 2. **Further garden rubbish piles in the Field**



Photograph 3. **Garden cuttings and other garden rubbish piles in the Field**



Photograph 4. **Further garden rubbish piles in the Field**



Photograph 5. **Limestone chippings surfacing on track into the Field**



Photograph 6. **Continuation of roughly surfaced track into the Field**

APPENDIX 2 – Overlay plan

Direct: 07761 826237
Office: 0333 772 1152
mark@davidarcherassociates.co.uk
www.davidarcherassociates.co.uk

Arcadian Prospect Ltd – trading as David Archer Associates
Company Reg No.: 10627581 (England & Wales)
Registered Office: Chesham House,
Eastbourne Road, Halland,
East Sussex, BN8 6PT

N

0m 4m 8m 12m 16m 20m

1:200@A1

AREA 1:
Mature Rhododendron Wood

Services trench

Southern edge of pond

AREA 2:
Cultivated shrubs & non-native conifers

AREA 3:
Willow Cottage parking & cultivated area

Parking

Bashurst Hill

Telegraph pole

Electricity pole

Line of 35 non-native conifers; planted 1983

The Field

9 inch drainage pipe

T1 T2 T3 T4 T5 T6 T8 T9 T11 T12 T13 T15 T17 T18 T19 T20 T21 T22 G7 G10 G16

Impact Assessment Plan
(Existing Layout with Proposals Overlaid)

Impact Assessment Plan
(Existing Layout with Proposals Overlaid)

DAVID ARCHER ASSOCIATES
ARBORICULTURE | ECOLOGY | LANDSCAPE

Project: Silver Birches
Bashurst Hill
Itchingfield

Client: Mr & Mrs Yorke

Drawing: Overlay Plan

Based on: MAGIC Map & Crown Tree Consultancy Impact Assessment Plan

Drawing No: OP 01

Rev:

Date: Jul 2022

Scale: 1:200 @ A1

Drawn: MR

David Archer Associates. info@davidarcherassociates.co.uk
OS data © Crown copyright 2022 OS Licence 100061674

The original of this drawing was produced in colour - a monochrome copy should not be relied upon

©This drawing is copyright & must not be reproduced without consent from David Archer Associates.

Appendix 1 – Images and photographs

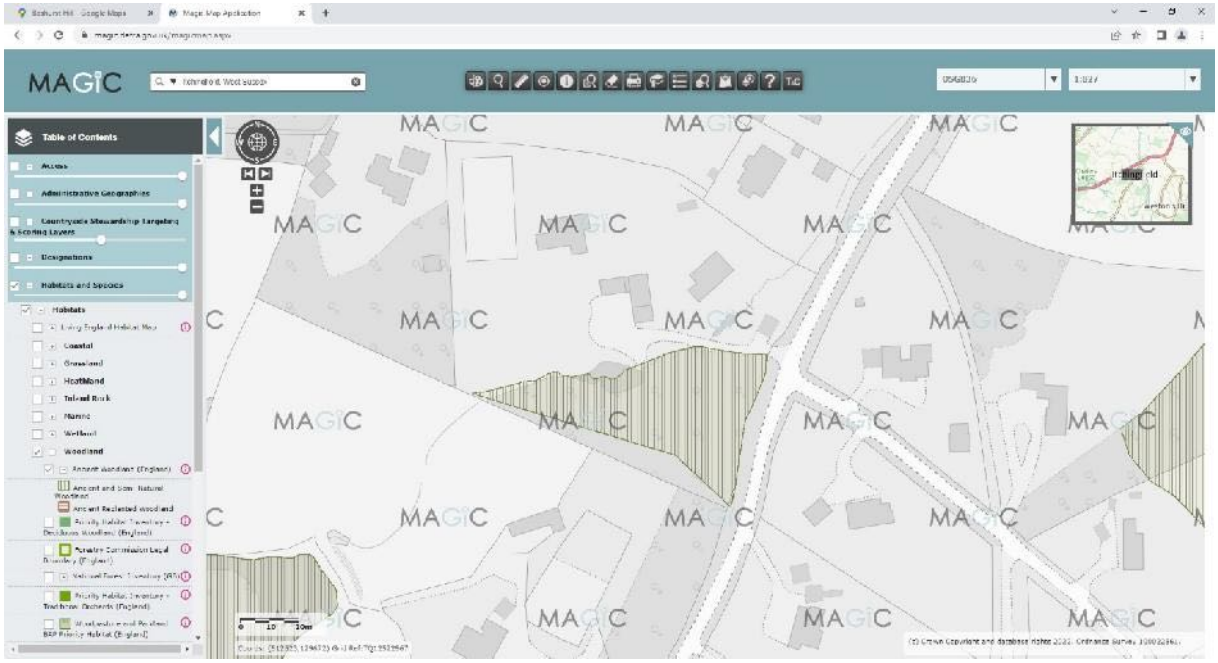


Image 1. **Extract from MAGIC map, showing designated ancient woodland area**

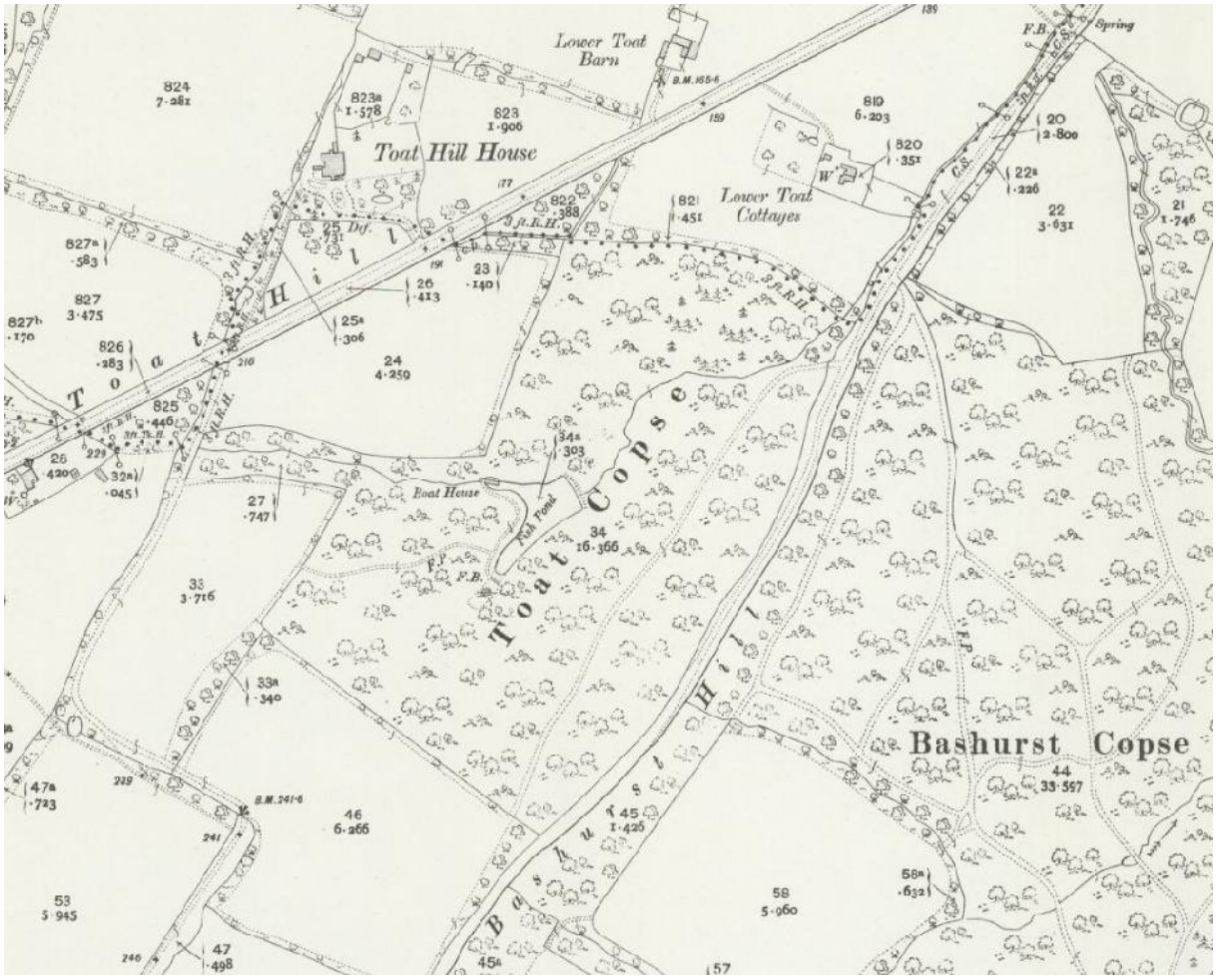


Image 2. **1911 Ordnance Survey map extract**

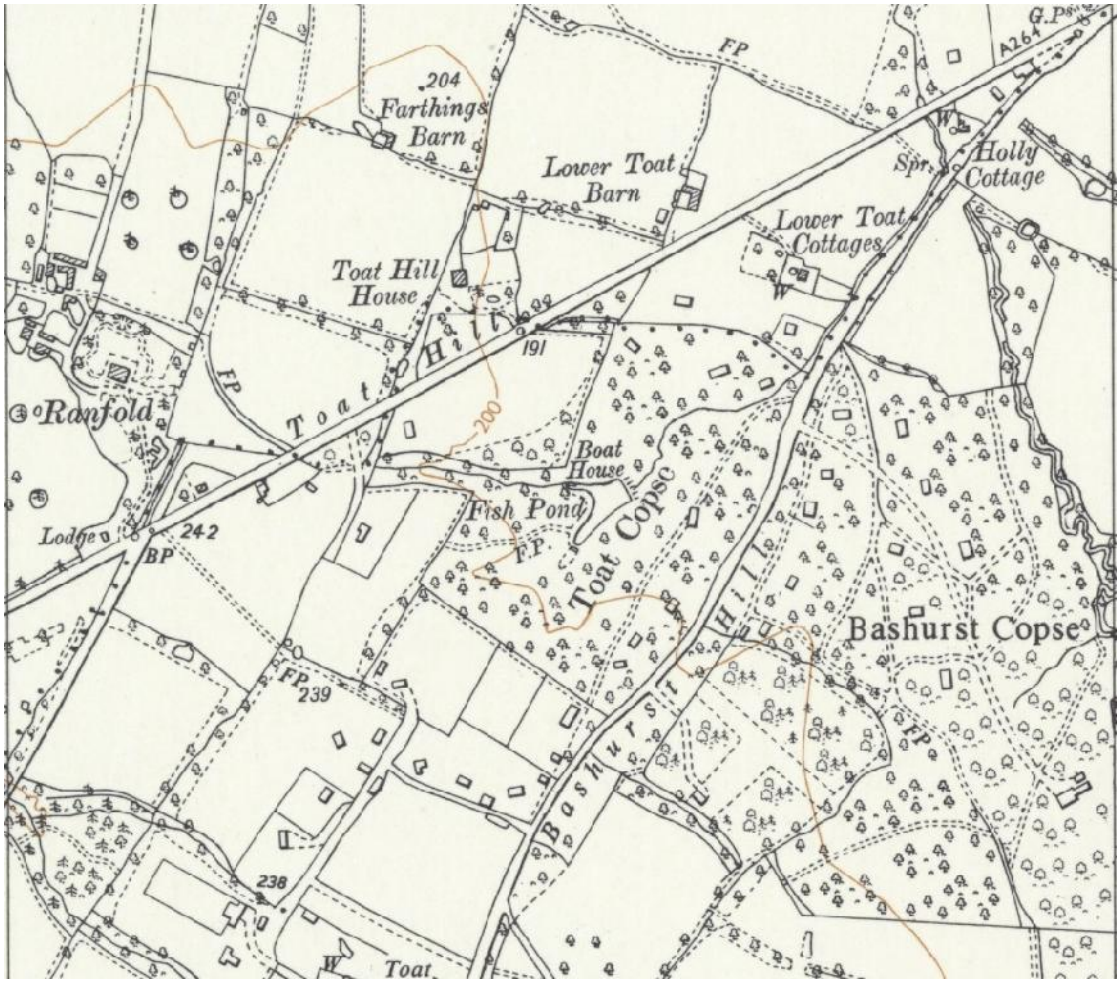


Image 3. **1961 Ordnance Survey map extract**

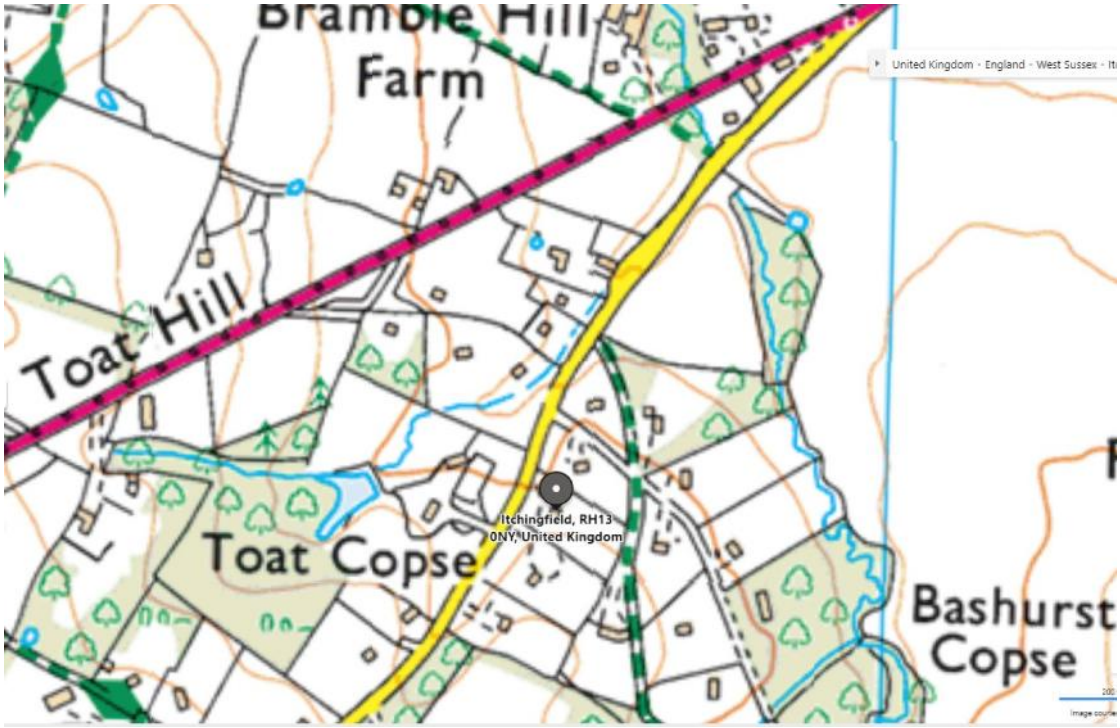


Image 4. **Present-day Ordnance Survey map extract**



Image 5. **Present-day aerial image (Bing)**



Photograph 1. **Grass clippings and other garden rubbish in the Field**



Photograph 2. **Further garden rubbish piles in the Field**



Photograph 3. **Garden cuttings and other garden rubbish piles in the Field**



Photograph 4. **Further garden rubbish piles in the Field**



Photograph 5. **Limestone chippings surfacing on track into the Field**



Photograph 6. **Continuation of roughly surfaced track into the Field**

N

0m 4m 8m 12m 16m 20m

1:200@A1

AREA 1:
Mature Rhododendron Wood

Services trench

Southern edge of pond

AREA 2:
Cultivated shrubs & non-native conifers

AREA 3:
Willow Cottage parking & cultivated area

Parking

Bashurst Hill

Telegraph pole

Electricity pole

Line of 35 non-native conifers; planted 1983

The Field

9 inch drainage pipe

T1 T2 T3 T4 T5 T6 T8 T9 T11 T12 T13 T15 T17 T18 T19 T20 T21 T22 G7 G10 G16

Impact Assessment Plan
(Existing Layout with Proposals Overlaid)

Impact Assessment Plan
(Existing Layout with Proposals Overlaid)

DAVID ARCHER ASSOCIATES
ARBORICULTURE | ECOLOGY | LANDSCAPE

Project: Silver Birches
Bashurst Hill
Itchingfield

Client: Mr & Mrs Yorke

Drawing: Overlay Plan

Based on: MAGIC Map & Crown Tree Consultancy Impact Assessment Plan

Drawing No: OP 01

Rev:

Date: Jul 2022

Scale: 1:200 @ A1

Drawn: MR

David Archer Associates. info@davidarcherassociates.co.uk
OS data © Crown copyright 2022 OS Licence 100061674

The original of this drawing was produced in colour - a monochrome copy should not be relied upon

©This drawing is copyright & must not be reproduced without consent from David Archer Associates.

Horsham District Council

Mr Robert Yorke
Silver Birches
Bashurst Hill
Itchingfield
Horsham
RH13 0NY
United Kingdom

Application Number: DC/21/0535

TOWN & COUNTRY PLANNING ACT, 1990 (as amended)
TOWN & COUNTRY PLANNING (Development Management Procedure) (England) Order 2015

On behalf of:

In pursuance of their powers under the above-mentioned Act and Order, the Council hereby **REFUSE** to permit the works specified hereunder, that is to say:

Creation of new access.

Silver Birches Bashurst Hill Itchingfield Horsham

as shown on Plan and Application Number DC/21/0535 submitted to the Council on 19/04/2021. The reasons for the Council's decision to refuse to permit the above works are specified hereunder.

1 The proposed access track, by virtue of its siting and scale, would result in the loss of, and damage to an area of Ancient Woodland, where insufficient information has been provided to justify the loss/damage which would be caused. The proposal therefore fails the relevant tests as set out in the NPPF and would be contrary to Policy 31 of the Horsham District Planning Framework (2015).

Schedule of plans/documents **not approved**:

Plan Type	Description	Drawing Number	Received Date
Location plan		NONE	19.04.2021
Location plan		NONE	09.03.2021
Site plan	Existing	SB (SP) 001 PL1	08.03.2021
Site plan	Proposed	SB (SP) 001 PL1	08.03.2021
Block plan	Proposed	SB (GA) 100 PL1	08.03.2021
Supporting Statement	Planning	NONE	08.03.2021
Block plan	Existing	SB (EX) 100 PL1	08.03.2021
Supporting Statement	Tree Schedule		30.10.2021
Supporting Statement	Arboricultural Impact Assessment 15.10.21		30.10.2021
Supporting Statement	Site 2 ATC DATA		30.10.2021
Supporting Statement	Letter from Bellamy Robert 8.9.21		30.10.2021
Plan	Access Visibility Plan 5636/001 REV A		30.10.2021

Supporting Statement	Site 1 ATC DATA		30.10.2021
Supporting Statement	Impact Assessment Plan		30.10.2021
Plan	Tree Constraints Plan		30.10.2021
Supporting Emails	Emails		30.12.2021 and 16.02.2022

Note To Applicant:
Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.



Emma Parkes
Head of Development and Building Control

Date: 23/05/2022

ADDITIONAL INFORMATION

Right of Appeals
If you are aggrieved by the decision to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.

You must appeal within 12 weeks of the date of the decision notice for a householder application. Other types of application have different timescales. In particular, if an enforcement notice is/has been served for the same (or very similar) land and development, appeals should usually be lodged within 28 days. Only the applicant possesses the right of appeal.

Appeals can be made online at: https://www.gov.uk/planning-inspectorate. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are at https://www.gov.uk/government/collections/casework-dealt-with-by-inquiries

For official use only (date received): 08/08/2022 15:45:07

The Planning Inspectorate

HOUSEHOLDER PLANNING APPEAL FORM (Online Version)

WARNING: The appeal **and** essential supporting documents must reach the Inspectorate within the appeal period. **If your appeal and essential supporting documents are not received in time, we will not accept the appeal.**

Appeal Reference: APP/Z3825/D/22/3304724

A. APPELLANT DETAILS

The name of the person(s) making the appeal must appear as an applicant on the planning application form.

Name	Mr Robert Yorke

B. AGENT DETAILS

Do you have an Agent acting on your behalf? Yes ☑ No ☐

Name	Mr Nikolas Antoniou
Company/Group Name	NJA Town Planning Limited
Your reference	NJA22/248 - Silver Birches

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority	Horsham District Council
LPA reference number	DC/21/0535
Date of the application	07/03/2021

Did the LPA issue a decision? Yes ☑ No ☐

Date of LPA's decision	23/05/2022

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address? Yes ☑ No ☐

Address	Silver Birches Bashurst Hill Itchingfield HORSHAM RH13 0NY

Is the appeal site within a Green Belt? Yes ☐ No ☑

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? Yes ☐ No ☑

E. DESCRIPTION OF THE DEVELOPMENT

Has the description of the development changed from that stated on the application form? Yes ☑ No ☐

Please state below the revised wording.

Creation of new access
(see decision notice)

Please attach a copy of the LPA's agreement to the change.

☑ see 'Appeal Documents' section

F. REASON FOR THE APPEAL

The reason for the appeal is that the LPA has:

1. Refused planning permission for the development. ☑
2. Refused permission to vary or remove a condition(s). ☐
3. Refused prior approval of permitted development rights. ☐

G. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations ☑

(a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land? Yes ☐ No ☑

(b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts? Yes ☑ No ☐

Please explain.

To appreciate the proposal in context

2. Hearing ☐

3. Inquiry ☐

H. GROUNDS OF APPEAL

The grounds of appeal are:

☑ see 'Appeal Documents' section

Do you have a separate list of appendices to accompany your grounds of appeal? Yes ☑ No ☐

☑ see 'Appeal Documents' section

Have you made a costs application with this appeal? Yes ☐ No ☑

I. (part one) SITE OWNERSHIP CERTIFICATES

Which certificate applies?

CERTIFICATE A

I certify that, on the day 21 days before the date of this appeal, nobody, except the appellant, was the owner of any ☑

part of the land to which the appeal relates;

CERTIFICATE B

I certify that the appellant (or the agent) has given the requisite notice to everyone else who, on the day 21 days before the date of this appeal, was the owner of any part of the land to which the appeal relates, as listed below: ☐

CERTIFICATE C and D

If you do not know who owns all or part of the appeal site, complete either Certificate C or Certificate D and attach it below. ☐

I. (part two) AGRICULTURAL HOLDINGS

We need to know whether the appeal site forms part of an agricultural holding.

(a) None of the land to which the appeal relates is, or is part of, an agricultural holding. ☑

(b)(i) The appeal site is, or is part of, an agricultural holding, and the appellant is the sole agricultural tenant. ☐

(b)(ii) The appeal site is, or is part of, an agricultural holding and the appellant (or the agent) has given the requisite notice to every person (other than the appellant) who, on the day 21 days before the date of the appeal, was a tenant of an agricultural holding on all or part of the land to which the appeal relates, as listed below. ☐

J. SUPPORTING DOCUMENTS

01. A copy of the application form sent to the LPA. ☑

02. A copy of the LPA's decision notice. ☑

K. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes ☐ No ☑

L. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form, the personal details form and any supporting documents (including the full grounds of appeal) not previously sent as part of the application to the LPA. If you do not send them a copy of this form and documents, we may not accept your appeal.

To do this by email:

- open and save a copy of your forms
- locating your local planning authority's email address:

  https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council
- attaching the saved forms including any supporting documents

To send them by post, send them to the address from which the decision notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

M. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. Please ensure that any correspondence you send to us is clearly marked with the appeal reference number.

You will not be sent any further reminders.

The documents listed below were uploaded with this form:

Relates to Section: DESCRIPTION OF DEVELOPMENT
Document Description: A copy of the LPA's agreement to the change.
File name: Decision Notice.PDF

Relates to Section: GROUNDS OF APPEAL
Document Description: The grounds of appeal
File name: Grounds of Appeal - August 2022.pdf

Relates to Section: GROUNDS OF APPEAL
Document Description: A separate list of appendices to accompany your grounds of appeal
File name: Appellant Appeal Statement - Robert Yorke .pdf
File name: Appellant Appeal photograph Appendix - Robert Yorke.pdf
File name: David Archer Asssociates - Appendix 2 Overlay Plan.pdf
File name: David Archer Associates - Appendix 1 Images-photos.pdf
File name: David Archer Associates - Appeal Statement Aug 2022.pdf

Relates to Section: SUPPORTING DOCUMENTS
Document Description: 01. A copy of the original application form sent to the LPA.
File name: Application form.pdf

Relates to Section: SUPPORTING DOCUMENTS
Document Description: 02. A copy of the LPA's decision notice.
File name: Decision Notice.PDF

Completed by MR NIKOLAS ANTONIOU

Date 08/08/2022 15:45:54