



APPEAL BY BOWBRIDGE HOMES (NANPANTAN) LIMITED

LAND OFF LECONFIELD ROAD, NANPANTAN, LOUHBOROUGH

**IN RELATION TO THE REFUSAL OF PLANNING PERMISSION BY CHARNWOOD
BOROUGH COUNCIL REFERENCE P/20/2199/2**

**OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT WITH
ASSOCIATED INFRASTRUCTURE FOR UP TO 30 DWELLINGS, INCLUDING
DETAIL OF ASSOCIATED POINT OF ACCESS. ALL OTHER MATTERS
(LANDSCAPING, SCALE, LAYOUT AND APPEARANCE) RESERVED**

Proof of Evidence (Summary): Ms. Justine Walsh BSc

Acting on behalf of Charnwood Borough Council

Planning Inspectorate Reference: APP/X2410/W/22/3304644

Local Planning Authority Reference: P/20/2199/2

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1 LOSS OF PRIORITY (SEMI NATURAL) HABITAT

- 1.1 The presence of acid grassland has not been fully considered and the total extent of this local priority habitat (CD.5.3.3) is materially underrepresented.
- 1.2 A portion of the area marked as ‘scrub’ along the western boundary of the site (CD.4.2.3) has been incorrectly identified by the appellant, and instead constitutes part of the ‘woodland edge’ of Burleigh Wood..
- 1.3 The area of broadleaved semi natural woodland within the site boundary is directly connected to Burleigh Wood and could only be viewed as being a continuation of the same habitat.
- 1.4 Several of the ecological reports submitted by the appellant state both that a woodland is present on site and recognise its ecological value (in terms of biodiversity and providing foraging habitat for protected species).
- 1.5 Table 1 summarises the relevant legislative and policy context of priority habitats.

Table 1: Summary of relevant legislative and policy context of priority habitats.

Habitat Type	Legislative and Policy Context
Acid Grassland	Leicester, Leicestershire and Rutland Biodiversity Action Plan 2016- 2026 (CD.5.3.3) states that the acid grassland habitat (there defined as Heath Grassland) is noted as having partial equivalence to the UK BAP habitat
	Policy CS13 of the Charnwood Local Plan 2011-2028
	Policy EV6 of the emerging Charnwood Local Plan 2021-2038 (CD.6.3)
Broadleaved Woodland	Habitat of principal importance in England and is included on the list of priority habitats and species for England (i.e., the Section 41 habitats and species list (CD.5.3.8))
	Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) (CD.6.12)
	Policy CS13 of the Charnwood Local Plan 2011-2028
	Policy EV6 of the emerging Charnwood Local Plan 2021-2038 (CD.6.3)

2 ADVERSE IMPACTS UPON IRREPLACEABLE HABITAT

- 2.1 The Burleigh Wood Ancient Woodland and Local Wildlife Site designation commences immediately west of the development site’s boundary.
- 2.2 Table 2 summarises the relevant policy required to assess the impacts on ancient woodland.

Table 2: Relevant policy required to assess the impacts on ancient woodland.

Policy	Summary
NPPF 21 (CD.6.4)	Paragraph 180, section ‘c’ of the NPPF 2021 (CD.6.4) provides clear guidance to determining authorities on how to weight a developments impacts (direct or indirect) upon an irreplaceable habitat when reaching a planning determination The exceptional reasons where it is acceptable to allow a determining authority to permit the loss or degradation of an ancient woodland are detailed in footnote 63
Planning Practice Guidance (PPG)(CD.6.5)	Paragraph 33 of Planning Practice Guidance (PPG) 2019 (CD.6.5) elaborates upon how determining authorities should assess the potential impact of development on ancient woodland
Forestry England and Natural England Standing Advice for Ancient Woodland (CD.5.3.1)	This standing advice constitutes a material planning consideration. The Standing Advice details that direct and indirect effects of the development should be considered for both the construction and operational phases
2022 Assessment Guide	The Forestry England and Natural England Standing Advice (CD.5.3.1) recommends that determining authorities use their ‘2022 Assessment Guide’ document to ensure that any planning decision made can demonstrate its accordance with NPPF 2021.

- 2.3 Forestry Commission submitted comments to the local planning authority in relation to the proposed development (CD.5.3.9).

- 2.4 Natural England’s submitted comments to the local planning authority in relation to the proposed development (CD.5.3.10).
- 2.5 The appellant’s assessment of the impact of the development to Burleigh Wood Ancient Woodland falls short of the standing advice requirements of Natural England and the Forestry Commission;. their advice was not followed by the appellant with regards to fully determining the potential direct and indirect impacts on the ancient woodland.
- 2.6 The determining authority is unable to be certain that the proposed development will not result in the deterioration of an irreplaceable habitat. In line with guidance provided within the NPPF 2021 (CD.6.4), PPG 2019 (CD.6.5), Standing Advice on Ancient Woodlands (CD.5.3.1) and Ancient Woodland Assessment Guide (Appendix 2), it is recommended that the appeal should be dismissed.

Loss of semi natural habitat adjacent to Burleigh Wood Ancient Woodland

- 2.7 The illustrative layout (CD.1.5) and parameter plan (CD.1.6) depict impacts to the woodland edge of Burleigh wood. The parameter plan does not specify that site clearance works of vegetation are not permitted within 15m of the ancient woodland.
- 2.8 Although the LI-EcIA (CD.4.2.3) and Biodiversity Metric 3.1 (CD.4.2.3) both suggest that the development will result in no habitat impacts along the western boundary of the development site this is at odds with the parameter plan (CD.1.6) and illustrative layout (CD.1.5).
- 2.9 Given the information provided it should be viewed as highly likely that the proposals will lead to loss or reduction of the woodland edge of Burleigh Wood.
- 2.10 This woodland edge acts as a buffer to the Burleigh Wood Ancient Woodland. Its loss is likely to result in the deterioration of the ancient woodland.
- 2.11 The development site represents one of the last areas of semi natural habitat adjacent to ancient woodland. There is no manner in which the development can occur without impacting the ancient woodland.

Inadequacy of proposed ancient woodland buffer

- 2.12 The appellant notes on page 22, section IV, of the LI-EcIA (CD.4.2.3) that:

“The site has been designed to maintain a buffer zone (greater than the 15m required) between residential housing and the woodland...”.

- 2.13 However the standing advice recommends:

*“For ancient woodlands, the proposal should have a buffer zone of at least 15 metres from the **boundary of the woodland** to avoid root damage... Where assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone.”*

- 2.14 The buffer does not adhere with the standing advice. The standing advice also does not state that 15 metres is the required buffer size, it is the minimum.
- 2.15 As all the possible impact pathways (presented in table xx) have not been considered by the appellant, it is impossible for them to recommend what the appropriate size of the buffer should be.

Underestimation of Indirect Impacts

- 2.16 Table 3 summarises the likely indirect impacts to the Burleigh Wood Ancient Woodland.

Table 3: Likely indirect impacts to the Burleigh Wood Ancient Woodland.

Indirect Impact	Summary
Recreation	Impacts from recreation such as walking, dog walking and jogging have not been adequately considered as part of the proposals.
	<p>The only references with regards to the impacts of recreation upon Burleigh Wood Ancient Woodland are included in the LI-EcIA (CD.4.2.3) where a CEMP is recommended to prevent direct public access into the woodland.</p> <p>A CEMP acts to mitigate the impact of the construction phase of a development upon ecological receptors. During this phase there are no residents thus no recreational impacts. It is improper and highly irregular to suggest that a CEMP could mitigate against recreational impacts.</p> <p>The CEMP submitted (CD.2.18) contains no measures to protect the ancient woodland and Local Wildlife Site.</p>
Increased Pet Ownership	Dogs may impact through both enrichment of soil through fouling and disturbance and injury of animal species.
	Domestic cats are a major predator of small mammals and birds within the UK.

	The likely effect of the development by this impact pathway on Burleigh Wood ancient woodland (including cumulatively with existing level of disturbance, soil enrichment and predation caused by existing local dog and cat populations) has not been determined by the appellant.
Noise	Changes in noise level adjacent to the ancient woodland could result in disturbance to protected and priority species.
Hydrological	A sustainable urban drainage scheme is proposed yet no hydrology report has been submitted with regards to potential impacts on the ancient woodland.
Air Pollution	Potential for dust emissions to impact the ancient woodland during the construction phase and degrade its quality.

Conclusion Regarding Adverse Impacts on Irreplaceable Habitat

- 2.17 The appellant's documents are not in accordance with Paragraph 180(c) of the NPPF, PPG 2019 (CD.6.5), Policy CS 13 (CD.6.1) Policy EV6 (CD.6.3), Standing Advice on Ancient Woodlands (CD.5.3.1) and Ancient Woodland Assessment Guide (Appendix 2) or Natural England Standing Advice on Ancient Woodland. No wholly exceptional reasons for the development to occur in this location have been demonstrated.
- 2.18 The determining authority will be unable to discharge its biodiversity duty as defined under section 40 of the NERC Act 2006 (as amended).

3 INCONSISTENCIES AND ERRORS IN ECOLOGICAL ASSESSMENTS

Biodiversity Net Gain

- 3.1 A breakdown of the inconsistencies and errors in the appellant's approach to completing their quantitative assessment of biodiversity impacts / gain is provided in Appendix 3.
- 3.2 To demonstrate the change if the habitat conditions, strategic significance multiplier and delay factor were imputed correctly the appellant's metric was re-run with these changes (See appendix 4: Updated BNG Metric), resulting in a biodiversity loss of 11.73%.
- 3.3 This was done without prejudice against the belief that the appellant has also misidentified the presence and extent of key habitat within the development areas.

Undeliverability of proposed biodiversity offset

- 3.4 The Appellant proposes that onsite biodiversity losses can be offset via the creation of new habitats elsewhere through the enhancement of neutral grassland and creation of new scrubland and acid grassland upon a modified grassland.
- 3.5 The proposed acid grassland creation does not meet the criteria in respect of soil pH, soil nutrient levels etc., but the Leicester, Leicestershire & Rutland BAP also notes that acid grassland should be of at least 1 hectare unless they are adjacent to existing Heath Grassland. The Biodiversity Metric 3.1 submitted (CD.4.2.3) demonstrates that the area of acid grassland proposed for creation is very small (0.0657ha).
- 3.6 The appellant is not proposing to undertake any works to appropriately prepare the high nutrient non-acid soils to achieve the conditions which are to be expected for acid grassland to establish.

Conclusion Regarding Inconsistencies and Errors within Ecological Assessments

- 3.7 The development would result in a significant net loss to biodiversity and is in conflict with the requirements of paragraphs 174 and 180 of the NPPF 2021. The determining authority will be unable to approve the appeal without being in conflict with the NPPF 2021, and being unable to discharge its biodiversity duty (Section 40 of the NERC Act 2006 (as amended)).

- 3.8 The development is not in accordance with Policy CS 13 of the Charnwood Local Plan or Policy EV6 of the emerging Charnwood Local Plan.
- 3.9 Due to the proposals resulting in a significant net loss to biodiversity the scheme should be refused.

4 LIKELY IMPACTS UPON PROTECTED SPECIES (BADGERS AND BATS)

- 4.1 Confidential information regarding badgers can be found in Appendix 5: Badger Report. A full assessment has not been undertaken to determine the status and extent of badger activity on site; no impact assessment regarding badgers has been undertaken.
- 4.2 Although high quality commuting and foraging habitat was located within the development site no bat transect survey was undertaken by the appellant. It is clear from the appellant's LI-EcIA (CD.4.2.3) and Parameter Plan (CD.2.5) that the development will impact on the woodland edge and so proposals are likely to impact on local bat populations.