

Committee: **Regulatory
Planning Committee**

Date: **18 December 2019**

Report by: **Director of Communities, Economy and Transport**

Proposal: **Retention of deposited inert building waste**

Site Address: **Appletree Cottage, Beacon Lane, Staplecross,
Robertsbridge, TN32 5QP**

Applicant: **Mr H Willing**

Application No. **RR/828/CM**

Key Issues: (i) **Effect of waste in woodland within the High
Weald**
(ii) **Effect on amenity**

Contact Officer: **Jeremy Patterson: Tel: 01273 481626**

Local Member: **Councillor Angharad Davies**

SUMMARY OF RECOMMENDATIONS

1. The Committee is recommended to refuse planning permission for the reasons set out at paragraph 8.1 and authorise the Director of Communities, Economy and Transport, in consultation with the Assistant Chief Executive, Governance Service, to undertake appropriate enforcement action to require the removal of the waste.

CONSIDERATION BY DIRECTOR OF COMMUNITIES, ECONOMY AND TRANSPORT

1. The Site and Surroundings

1.1 The application site is in a rural location within the High Weald Area of Outstanding Natural Beauty (AONB). The site comprises a small area of woodland 100 metres to the east of the residential property known as 'Appletree Cottage'. The site is some 700 metres to the north-east of Cripps Corner and 850 metres to the south-east of Staplecross. The woodland comprising the application site is not designated ancient woodland but ancient woodland is proximate to the site and is contiguous with it. The western side of a pond is also affected by the proposal, with the eastern part of the pond included within the ancient woodland designation.

1.2 A residential property, known as 'The Barn', is present just to the south-west of the application site on the opposite side of a track. This track leads eastwards from Beacon Lane (200 metres from the application site) and provides vehicular access to Appletree Cottage and The Barn, together with 'Wish House' and 'Miles Farm', which are located further east. The track is also a public footpath (Ewhurst 34a), which forks some 130 metres to the east of the application site into public footpaths Ewhurst 34b and 32a.

2. The Proposal

2.1 The proposal is to retain deposited waste, which has arisen following building works at the neighbouring property, The Barn. According to the applicant, the waste involves about 60 tonnes of material, which was tipped over a steep embankment into woodland, mostly during April 2019. A 5 metres section of mature hedgerow was removed to facilitate the tipping. The waste includes concrete, sand and rubble and as well as retaining it 'in situ', the applicant is proposing to import top soils to cover it.

3. Site History

3.1 None of relevance.

4. Consultations and Representations

4.1 Rother District Council raises objections on the grounds that: (i) The deposited material is in close proximity to ancient woodland and within an area of mature trees. The waste is likely to lead to damage and soil compaction around the tree roots and an increase in pollution, which may have long term impacts, not only on the trees but also on landscape character and scenic beauty of the AONB; (ii) The retention of the waste could have an adverse impact on ecology within the woodland and pond; and (iii) The retention of waste could set a precedent which could encourage other similar proposals in unsuitable locations in the countryside.

4.2 Ewhurst Parish Council has not submitted any observations.

4.3 The Environment Agency notes that, inter alia, any waste deposit or transfer, if not already covered by an exemption or other authorisation, will require an Environmental Permit. The operator will need to demonstrate that the protection of any watercourses and all pollution risks are being managed. If the development requires the permanent deposit of waste to land, a deposit for recovery or landfill permit may be required.

4.4 Flood Risk Management ESCC raises no objection.

4.5 High Weald AONB Officer raises objections on the grounds that: (i) The development is a substantial change in landform contrary to objective G2 of the High Weald AONB Management Plan; (ii) The development is likely to have caused and will cause in the future damage to the ecological functioning of the woodland, adjacent pond and ecological network along the routeway

contrary to objectives G1, W1, W2 and R2 of the Management Plan; and (iii) The deposit of construction waste alongside an historic routeway, which is a public right of way, is likely to detract from the enjoyment of the users of this routeway and affect their experience of the naturalness of the AONB, contrary to objectives OQ3 and OQ4.

4.6 Local representations: None received.

5. The Development Plan and other policies of relevance to this decision are:

5.1 East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013: Policies: WMP25 (General amenity); WMP27 (Environment).

5.2 Rother Local Plan Core Strategy 2014: Policies: OSS4 (General development considerations); RA2 (General strategy for the countryside); RA3 (Development in the countryside); EN1 (Landscape stewardship); EN5 (Biodiversity and green space).

5.3 National Planning Policy Framework (NPPF) 2019

The NPPF is a material consideration in the determination of planning applications but does not change the status of the Development Plan as the starting point in decision making. Part 15 (Conserving and enhancing the natural environment) is relevant.

5.4 The High Weald AONB Management Plan 2019-2024

In broad terms, the Plan defines the natural beauty of the AONB and identifies the key landscape components of the High Weald. It then sets objectives for these components and identifies actions that could conserve and enhance the AONB. Objectives G1, G2, W1, W2, OQ3 and OQ4 are relevant.

6. Considerations

Effect of waste in woodland within the High Weald

(i) AONB landscape

6.1 Due to the sensitive location of the site, the application is accompanied by an Arboricultural and Ecological Impact Assessment Report, which comprises: (i) A tree survey for all trees with a stem diameter of 75mm or more and the hedgerow, which have been impacted by the deposited material, and which are likely to be impacted by any subsequent operations to remove the deposited material; and (ii) An ecological survey, which relates to those ecologically sensitive habitats within the woodland, which have been impacted by the deposited material, and which are likely to be impacted by any subsequent operations to remove the material.

6.2 Policy WMP27 of the Waste and Minerals Plan seeks to conserve and enhance the local character and environment of the High Weald AONB. Policies RA2 and RA3 of the Rother Core Strategy seek to conserve the intrinsic value, locally distinctive rural character, landscape features and the natural and ecological resources of the countryside, while Policy EN1 requires the protection and, wherever possible, enhancement of the landscape character of the AONB. Part 15 of the NPPF also requires the protection and enhancement of valued landscapes with great weight being given to AONBs in relation to landscape and scenic beauty. The High Weald AONB Management Plan seeks, *inter alia*, to maintain the existing extent of woodland and particularly ancient woodland.

6.3 The application site is within woodland in the rural countryside of the High Weald AONB. This generally comprises a canopy of oak, ash and beech with an understorey, including hawthorn, hazel and holly. The ground level plant species include ivy and dog's mercury. The affected pond is recorded on the Ordnance Survey Epoch 1 (1863-1894) base map, and therefore has a long association with the woodland. Two other ponds are located nearby within the ancient woodland.

6.4 The waste materials have been tipped from the top of a steep embankment into the woodland below, thereby covering the surface, including the western edge of the pond, and smothering the bases of trees. A section of mature hedgerow has been removed to facilitate the tipping. The steep wooded slope of the site and woodland pond are characteristic features of this part of the High Weald. The deposited material is alien to the site and local area and has a detracting influence on the rural setting, thereby having an adverse effect on the character of the AONB.

6.5 The deposited material has been sited against the stems of a number of trees and within the root protection areas (RPAs) of other trees, causing physical damage to stems and branches and potential compaction damage to the underlying roots. This means that it will adversely affect the available oxygen to surface roots and cause trees to die in the longer term. Some of these trees are in the highest value categorisation, as identified following the assessment carried out as part of the applicant's tree survey. As well as the trees, the deposit has destroyed characteristic woodland ground flora.

6.6 The deposit of waste has been carried out with no regard having been given to the interests of the woodland as part of the landscape of the AONB. The development has damaged trees and other vegetation and adversely affected the pond and will, if retained, likely result in further damage to the woodland. The development conflicts wholly with policies in the Development Plan, the NPPF and the High Weald AONB Management Plan to protect and enhance the interests of the AONB landscape.

(ii) Ecological issues

6.7 Policy WMP27 of the Waste and Minerals Plan seeks to conserve and enhance the natural environment and Policy EN5 of the Rother Core Strategy

seeks to ensure that development retains, protects and enhances habitats of ecological interest, including ancient woodland, water features and hedgerows and provides for appropriate management of these features. The NPPF states that the planning system should contribute to and enhance the natural and local environment by, *inter alia*, protecting sites of biodiversity value and minimising impacts. The High Weald AONB Management Plan seeks to enhance the ecological quality and functioning of woodland at a landscape scale, to maintain the extent of woodland and enhance the ecological function of routeways.

6.8 As previously set out, the site is within woodland and forms part of a larger stand of woodland, most of which is designated ancient woodland. The deposition of waste is outside but close to the ancient woodland and the base of the pile has encroached on the western side of the pond. There is connectivity from the site to other areas of woodland in the wider landscape via hedgerows and treelines, providing corridors for wildlife.

6.9 The waste in the pond has smothered bankside vegetation, increasing turbidity and potentially reducing water quality. The long-term effects of leachates from the waste have not been assessed and are unknown but could be significant. The woodland has high potential for roosting bats, dormice, breeding birds, reptiles and badgers and the pond for amphibians, including Great Crested Newts. The deposition of waste is likely to have damaged habitat for this wildlife and may have led to the disturbance or death / injury for some species, particularly reptiles and amphibians. Moreover, the on-going impacts from the waste will be likely to result in disturbance and damage to egg laying habitat for amphibians, declining water quality, damage to ground flora and the potential loss of additional trees.

6.10 The deposit of waste has been carried out with no regard having been given to the interests of the woodland as part of the ecological resource of the AONB. As with the impact on the landscape, the development fundamentally conflicts with policies in the Development Plan, the NPPF and the High Weald AONB Management Plan to protect and enhance the natural resource of the AONB.

(iii) Remediation

6.11 The applicant's Arboricultural and Ecological Impact Assessment Report sets out a method for removing the waste. This would involve the creation of an access track for plant and machinery through the woodland along the route of an old track to the base of the waste pile. The track would be constructed of aggregate spread over a geo-textile fabric laid into the ground. Three trees would need to be removed, although these are identified with a low value categorisation, and some pruning of other trees would be required due to overhanging branches. The track would also be likely to encroach on some RPAs of adjoining trees and route alongside parts of ancient woodland. Despite the limited effects of the access track on the woodland, the applicant's Report considers that retention of the waste would be preferable. The Report cites that removal would have a likely greater effect

on the woodland, would cause damage to more trees and other habitats and result in potential disturbance, death or injury to protected species.

6.12 Although the Report recommends that topsoil should be imported to cover the waste, it also recommends that certain remediation works are carried out, due to the potential adverse effects the waste is having on the woodland and pond habitats: (i) Removing the waste by hand from around the bases of 8 trees to provide a minimum radius of 1 metre clearance to minimise damage to the tree roots and stem bases and for this to be undertaken between April and October when Great Crested Newts and reptiles are active; (ii) Removing the waste by hand from the pond to enable emergent vegetation within the pond to re-colonise and reduce silt impacts on water quality and for this to be undertaken between September and October when Great Crested Newts are active but outside the breeding season; and (iii) The gap in the hedgerow to be replanted with holly and hazel saplings between November and March.

6.13 Notwithstanding these proposed remediation measures, the retention of the waste is considered to be unacceptable for the reasons previously set out. In order to protect the landscape and ecological interests of the AONB, the deposited waste should be completely removed as soon as practicable. The route and construction of the access track to facilitate removal, as set out in the applicant's Report, should be employed. The removal of all the waste from the woodland and pond should be undertaken between September and October to minimise disturbance to habitats and species and the re-planting of the hedgerow should take place in November. This means that the removal of waste and remediation works could be undertaken within a period of only three months of the year.

6.14 Therefore, it is recommended that enforcement action should be taken to require the removal of the waste and for remediation works to be carried out between 1 September 2020 and 30 November 2020 to minimise the period of time for disturbance to the woodland. Furthermore, the applicant and any operator would need to take account of the provisions of the Wildlife and Countryside Act in any activities undertaken at the site.

Effect on amenity

6.15 Policy WMP25 of the Waste and Minerals Plan requires development to have no unacceptable effect on the standard of amenity appropriate to the established, permitted or allocated land uses of the local and host communities likely to be affected by the proposal and that there is no unacceptable effect on the recreational use of an area, or the use of existing public rights of way. Policy OSS4 of the Rother Core Strategy requires development to respect and not detract from the character and appearance of the locality and not to unreasonably harm amenity. The High Weald AONB Management Plan seeks to maximise opportunities for everyone to enjoy the character of the AONB while conserving its natural beauty and to protect the perceptual qualities that people value.

6.16 The track from Beacon Lane, which adjoins the application site and provides vehicular access to properties, is also designated a public footpath (Ewhurst 34a), which subsequently splits into two separate footpaths further east. The High Weald AONB Unit has also identified the track as a historic routeway.

6.17 Although the waste deposit is largely concealed from views from the footpath, the gap in the hedge and the surface 'pad' used to facilitate the tipping are clearly visible. This offers an opportunity for users of the footpath to gain views of the woodland and is the way in which the unauthorised activity came to the attention of the County Council.

6.18 The breach in the hedgerow would be likely to lead to users of the footpath seeking views of the woodland and with them, views of the waste deposit. Such views would be likely to detract from the enjoyment of being within the High Weald countryside and adversely affect amenity. The development does nothing to promote the qualities of the AONB and conflicts with policies that seek to protect it for the benefit of people who wish to experience its naturalness.

7. Conclusion and reasons for refusal

7.1 In accordance with Section 38 of the Planning and Compulsory Purchase Act 2004 the decision on this application should be taken in accordance with the Development Plan unless material considerations indicate otherwise.

7.2 The applicant is proposing to retain waste which has been tipped into woodland within the High Weald AONB. This appears to have been undertaken without any consideration of the damage that could occur to the landscape and wildlife interests of the area. Damage has occurred to trees and other vegetation within the woodland, which is in close proximity to ancient woodland. A long established pond has also been adversely affected by the deposit. The removal of waste could be achieved in a way that would minimise disturbance to the woodland and be of benefit in the longer term to the landscape and biodiversity interests. It would also be of benefit to users of the footpath as the character of the locality would be restored.

7.3 The retention of the waste is unacceptable and planning permission should be refused. Instead, the waste should be removed. The development conflicts with Policies WMP25 and WMP27 of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013, Policies OSS4, RA2, RA3, EN1 and EN5 of the Rother Local Plan Core Strategy 2014, the provisions of Part 15 of the National Planning Policy Framework 2019 and the objectives of the High Weald AONB Management Plan 2019. It is also recommended that enforcement action should be taken to require the removal of the waste and for appropriate remediation measures to be carried out.

7.4 In determining this planning application, the County Council has worked with the agent in a positive and proactive manner. The Council has

also sought views from consultees and neighbours and has considered these in preparing the recommendation. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, and as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

7.5 There are no other material considerations and the decision should be taken in accordance with the Development Plan.

8. Recommendation

8.1 To recommend the Planning Committee to refuse planning permission for the reasons set out below and authorise the Director of Communities, Economy and Transport to take appropriate enforcement action to require the removal of the waste in liaison with the Assistant Chief Executive, Governance Services:

1. The site is within the countryside and the development conflicts with Policies RA2 (viii) and RA3 (v) of the Rother Local Plan Core Strategy 2014 which seeks to conserve, inter alia, the intrinsic value and the natural and ecological resources of the countryside and provide for appropriate development.
2. The site is within the High Weald Area of Outstanding Natural Beauty and its use for the disposal of waste is contrary to conserving and enhancing the landscape quality and character of the area, thereby conflicting with Policy WMP27 (a) of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan 2013, Policy EN1 (i) of the Rother Local Plan Core Strategy 2014, paragraph 172 of the National Planning Policy Framework 2019 and the overall objectives of the High Weald AONB Management Plan 2019.
3. The site is within a wooded area adjacent to an area of designated ancient woodland and the deposited waste materials are on a steep slope encroaching into a long established pond. These habitats are important for wildlife. As such, the use of land for the disposal of waste conflicts with Policy WMP27 (b) of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013, Policies EN1 (viii) and EN5 (viii) of the Rother Local Plan Core Strategy 2014, paragraphs 175 and 178 of the National Planning Policy Framework 2019 and the overall objectives of the High Weald AONB Management Plan 2019.
4. The site adjoins a public right of way and historic routeway and the development results in an adverse visual effect to the amenity of users of the path due to the damage caused to the woodland, thereby conflicting with Policy OSS4 (iii) of the Rother Local Plan Core Strategy 2014, Policy WMP25 (a) and (d) of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan 2013 and Objectives OQ3 and OQ4 of the High Weald AONB Management Plan 2019.

RUPERT CLUBB
Director of Communities, Economy and Transport
10 December 2019

BACKGROUND DOCUMENTS

Application RR/828/CM
The Development Plan
National Planning Policy Framework 2019
The High Weald Management Plan 2019