



Appeal Decision

Hearing held on 12 June 2012

Site visit made on 12 June 2012

by K G Smith BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 July 2012

Appeal Ref: APP/H1033/A/12/2169702

Grinlow Wood and Buxton Country Park, Holmfield to Country Park Access Road, Buxton.

- 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 J Grimshaw, Peak Cycle Links, against the decision of High Peak Borough Council.
 - The application, Ref HPK/2010/0659, dated 13 December 2010, was refused by a notice dated 15 August 2011.
 - The development proposed is a cycle path linking Buxton Country Park through Grinlow Wood to Holmfield and Buxton for walkers, cyclists and people with disabilities.
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the Hearing, applications for costs were made by High Peak Borough Council against the appellant and by the appellant against the Council. These applications are the subject of separate Decisions.

Procedural and Background Matters

3. One of the reasons for refusal was that there was inadequate information about the effects on trees and on archaeological features. The appellant asked at the Hearing to submit additional information to deal with these concerns and he gave a general outline of its content. He had only become aware of the criticisms when the appeal questionnaire and documents were provided. He had not seen the Tree Officer's comments or two letters about archaeological concerns. The Planning Officer dealing with the application had indicated that any concerns could be addressed by conditions; the recommendation had been for permission to be granted. A tree survey had not been requested, only a trees study. Peak Cycle Links is a charity with limited resources. It has been disadvantaged by the application process. The additional information would not change the nature of the application.
4. The Council objected to the provision of this information at the Hearing because it had not been available to the Council when making its decision or indeed to residents who might have wanted to comment on the effects on trees, woodland or archaeological features. Moreover, the Council has only a narrow three to four week window in which to seek more information if targets

- are to be met; in this case, no information was wrongfully withheld from the applicant, although consultee responses are normally sent to applicants.
5. I ruled that I could not accept the additional information. In essence there cannot be an appeal without a prior application. The Council decided that, because of the lack of information, it was unable to give full consideration in making its decision on the application to the impact of the proposals on the trees, the woodland and archaeological features. Indeed, the missing information was so fundamental to the planning application that it constituted a reason for refusal. Other than those at the Hearing, those persons who might have wished to comment on the detailed proposals would have lost the opportunity to do so if I had accepted what was being offered.
 6. The appeal will be determined on the basis of the information available at the time of the Council's decision but in the light of current policy guidance, the only change since that decision being the introduction of the National Planning Policy Framework (the Framework) and the cancellation of previous Government advice. In passing, there is no dispute that the saved policies of the local plan are consistent with the Framework and it is agreed that its paragraphs 117, 118 and 128 do not raise new issues.
 7. The second matter is that the site of the path on the application plan is identified only by a red line, which the Council accepts identifies a strip of land some 2.5 metres wide. However, where areas of cut and fill would be needed to construct the path, principally in relation to the two zigzag hillside sections and for areas of cross-fall, much wider areas would be affected which are outside the application site. No land outside the line of the path is edged red as being within the application site and none is edged blue as being within the appellant's control. Indeed, some of the conditions in the Officer's recommendation to the Committee would not have been enforceable because they related to works or trees outside the site that are not on land within the appellant's control.
 8. Thirdly, Grinlow Wood is a 45ha woodland that has been managed for 30-40 years by the Buxton Civic Association. The northern part of the woodland is the subject of a Tree Preservation Order (TPO) and part is in the Poole's Cavern and Grinlow Woods Site of Special Scientific Interest (SSSI), designated because of its below-ground cave interest and the species-rich woodland glades. Natural England states that it would seem unlikely that the proposals would affect the cave interest or the species-rich woodland glades.

Main Issues

9. The Council supports the principle of the proposal, which is part of a larger scheme to link Buxton to the High Peak, Tissington and Monsal Trails. There is a current application for an alternative to the appeal proposal that would link Green Lane to the same point where the appeal proposal path would meet the Country Park access road. That route and the one in this appeal would converge at their southern ends and run close to each other for a significant distance.
10. The existing path through the wood is steep in places and unsurfaced, albeit that some parts show signs of an old stone surfacing. The proposed 1.1 km long path would be surfaced and of not more than 1:15 (6.66%) gradient, except for the short existing section of 1:8 (12.5%) between Nos 32 and 34

Holmfield. "No-dig" (minimum excavation) techniques would be used as necessary to protect tree roots.

11. The main issues are the effects on trees, on archaeological features and on residential amenity.

Reasons

Trees

12. There is no detailed tree survey. The appellant's tree study identifies 3 areas of trees. It states that in Area G1, in a part of the woodland that is subject to a Tree Preservation Area (TPO) to the south of the backs of the Holmfield houses, where the route would need regrading to form a zigzag up/down the hill, "approximately 10 trees...are likely to be lost" (the other proposed zigzag section would be further south, over a bowl shaped part of a mainly grassy section of hillside). Also, it states that several specimens would be lost from the main woodland compartment (Area G2), as well as many poor specimens in Area G3.
13. The submitted plans show only the trees to be retained in two small areas. They do not identify the ones to be removed. Thus, it is not possible to understand in any detail the scale of the works involved, the effects on individual trees, the likely level of impact on the woodland or the need for replacement planting and woodland management.
14. As the Tree Officer stated before the application was refused, the proposal would rely heavily on agreement being reached at the time of construction about detailed aspects of the scheme. However, any deviation from the red line route to avoid tree roots would not be possible because it would be outside the application site.
15. Also, adoption of that informal procedure would have removed the subject from consideration by the Council members. The impact of the proposal on the trees and the woodland is a crucial element of the decision-making process. Just as the Members refused permission rather than delegate that element to the Officers, I conclude on this issue that the information to hand is inadequate to allow a proper assessment of the impact of the proposal.
16. The development would be in conflict with saved local plan policy OC10.

Archaeological features

17. The woodland includes the sites of Grin Works quarry and lime works and Grin Low lime kilns, which are on the Derbyshire Historic Environment Record. The lime kilns have been identified by English Heritage as a nationally important site. The County Archaeologist commented on the application that the archaeological assessment establishes neither the significance of the heritage asset nor the detailed impacts of the proposals. Further information was requested from the appellant but the County Archaeologist went on paternity leave and the appellant was unable to pursue the matter effectively.
18. An archaeological assessment has been submitted. While normally, a matter such as this could be resolved by the imposition of a suitable condition if the appeal were to be allowed, in this case it would not be possible to divert the route even slightly if important remains were found during the construction works.

Residential amenity

19. There are concerns that those arriving with bicycles by car would, rather than pay to use the Poole's Cavern car park on Green Lane at some distance from the path, park on Holmfield. The appellant argues that the numbers who would do so would be few, as information would be provided via websites and leaflets for those seeking to use the route about parking for the various entry points. Also, the Highway Authority has no objections to the appeal proposal. I agree that some would be happy to pay for the facilities at the Poole's Cavern car park but others would not and they would park as close as possible to the entry to the woods on Holmfield. The road has a narrow carriageway in relation to its use and the vehicles parked on each side. The spare spaces for cars bringing cyclists would be few, especially at evenings and weekends. Nevertheless, some would use the available spaces in front of the houses; the cyclists would need to remove their bicycles, get ready to ride, leave the cars for possibly a long time and then return and fix the bicycles to racks or put them in the cars and get ready to leave.
20. Holmfield is a short residential street that is used as a rat-run between the A53 Leek Road and Green Lane by some motorists to avoid nearby traffic lights. This has a harmful impact on the living conditions of residents. The activities associated with the use of this road as a start point for cyclists arriving by car, as outlined above, would add significantly to the harm to their residential amenity. This would be in conflict with saved local plan policy GD5.

Other matters

21. Numerous other issues are raised in the representations.
22. There are concerns that the PAMIS (Profound and Multiple Impairment Service) standards would not be met. However, other than being advised that PAMIS is consulted by Government, little evidence was submitted on this matter. The route would have handrails and bushes on the lower side of the slope, albeit that they would be outside the site and could not be controlled by condition. A method statement could not deal with concerns about ground stability and drainage near the Holmfield houses because it would also involve land outside the appeal site. The same would apply if additional planting were required to reduce the overlooking of houses on Leek Road. Indeed, there would be limited scope for the imposition of negative or Grampian conditions to secure off-site planting, tree works, tree protection measures and the like.
23. Some point to speeding cyclists on, for example, the Tissington Trail, which endangers walkers and families but measures to slow down the riders on the proposed path could be secured by a condition. It is argued that the increased use of the woods would harm wildlife. However, the timing of construction works could be controlled to protect breeding birds and the appellant is aware that licences would be needed in relation to bats.
24. Some fear that cyclists would speed down the path to Holmfield. While any 'calming barrier' would have to be on the uphill side of the gateway accesses to Nos 32 and 34 Holmfield, riders descending from the barrier would have little distance in which to gain any significant speed. Also, it would be obvious that they were about to reach Holmfield and that care would be needed. This fear has little foundation.

25. Measures would be taken to discourage cyclists from leaving the path, for example by cutting across the zigzag sections but I agree that they could not be completely effective without an impenetrable barrier, a feature that would be undesirable; policing the route to ensure that cyclists did not leave the path could be, at best, occasional. In response, the appellant argues rightly that the benefits of the proposal must be weighed against any harmful impacts.
26. I have considered these and all other matters raised including the tourism and economic benefits, advice that the Derbyshire Wildlife Trust seeks some tree removal to encourage the restoration of species-rich grassy woodland glades over the limestone and the safety benefits of the link when compared with using Leek Road but they do not outweigh the factors outlined above that have led me to my conclusion.

K G Smith

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr J Grimshaw	Engineer
Mr M Wragg	Secretary

FOR THE LOCAL PLANNING AUTHORITY:

Mrs A Jordan	Senior Planner
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INTERESTED PERSONS:

Dr R Floyd	Green Holm Community Group and local resident
Miss J Sellars	Local resident
R Kniseley-Marpole	Local resident
Mrs A Kniseley-Marpole	Local resident
Cllr J Faulkner	Development Control Committee, HPBC Burbage Ward Member
Mrs F Dobson	Local resident
N Pearsons	Local resident
E W Thompson	Local resident

DOCUMENTS submitted after the opening of the Hearing

- 1 Notification letter of 16 May 2012 and list of addressees.
- 2 TPO Plan
- 3 J Grimshaw's note of 5/7/11 meeting, used for 7/7/11 email
- 4 Email of 1 August 2011 from S Ashworth of HPBC to J Grimshaw
- 5 Emails between J Grimshaw and S Baker, County Archaeologist
- 6 Emails between J Grimshaw and S Baker
- 7 Costs application by HPBC