

LAND AT ORCHARD FARM,  
PERSHORE

TOWN AND COUNTRY PLANNING ACT 1990  
(as amended)  
Section 78 — APPEAL

PINS Ref: APP/H1840/W/24/3347643

EXPERT EVIDENCE OF  
JULIAN FORBES-LAIRD

ON BEHALF OF THE APPELLANT,  
IN RELATION TO ANCIENT WOODLAND MATTERS

Vol. 1—PROOF & SUMMARY



*Prepared for:*                *Formula Land Ltd*

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## SUMMARY

I am Julian Forbes-Laird, expert witness for the Appellant on ancient woodland matters, and I will say:-

- i) *My evidence addresses ancient woodland matters as raised in objection by the local planning authority within Reason 2. I also deal with related points of objection made by the Worcestershire Wildlife Trust.*
- ii) *I explain that Tiddesley Wood was designated as a SSSI because it was ancient woodland, which is classed as ‘irreplaceable habitat’. From this it follows that harm to the SSSI is also harm to the ancient woodland, and the absence of harm to one reflects an absence of harm to the other. It cannot be otherwise.*
- iii) *I set out relevant aspects of National Planning Policy (paragraph 186 of the NPPF) and make reference to relevant national guidance, specifically the Standing Advice on ancient woodland published by Natural England and Forestry Commission.*
- iv) *The Worcestershire Wildlife Trust (WWT) manages the majority of Tiddesley Wood. I explain how I and my colleague, Alistair Baxter (who represents the Appellant on biodiversity matters) sought positive engagement with the WWT, with a view to overcoming their concerns, which we say are misplaced. Unfortunately, the WWT resolved at Board level to maintain an in-principle objection to any development of the Appeal Site.*
- v) *To inform our work, Mr Baxter and I undertook and/ or put in hand a number of different assessments of Tiddesley Wood, including its baseline condition and usage by the public. The surveys included a path condition assessment, and a discrete visitor survey.*
- vi) *The path survey found that the majority of the paths were in suboptimal condition, with many being only passable with difficulty if at all. Damage was occurring to the fabric of the woodland as a result of no or no proper visitor access management measures, and the SSSI was (is still) suffering deterioration as a result. Damage includes visitors widening paths in attempt to circumnavigate very muddy or flooded sections.*

- vii) *In my section 5, I explain that it is apparent from their published statements that the WWT is well aware that the condition of the woodland is being harmed by recreational pressure. The WWT claims, without evidence, to be seeking to manage this problem. We could find no significant evidence for such management during our extensive field work, with the reverse being true.*
- viii) *In a meeting with Natural England and representatives of the WWT, one of the latter confirmed that WWT was choosing not to put in hand more active measures to manage the recreational pressure. I set out my opinion that this laissez faire approach to management of a SSSI is not acceptable.*
- ix) *Separately, the WWT has stated its view that the woodland is “at capacity”. I examine this assertion and find that it is relativised to the (lack of) visitor access management, and is not working out here as an absolute concept. This being so, I explain how capacity for additional visitors, for example people wishing to visit Tiddesley Wood from the development as now appealed, could be increased significantly if proper mitigation were to be put in place.*
- x) *The WWT takes issue with the proposed depth of the buffer zone which would separate the development from Tiddesley Wood. However, in most cases, Natural England is satisfied with a minimum ancient woodland buffer depth of 15m, whilst the Woodland Trust seeks 50m. In relation to SSSIs, an aspirational figure for buffer depth is recommended of 50-100m. I explain that buffer zone depth in this case is 100-160m deep, thereby meeting if not greatly exceeding relevant guidance.*
- xi) *In my section 6, I explore the current management regime at Tiddesley Wood, noting that the WWT’s management plan is almost ten years old and significantly out of date. Notably, this management plan omits any response to recreational pressure or ash dieback disease, being the two most pressing issues facing the woodland today.*
- xii) *I conclude that WWT is not demonstrating competent stewardship of this important habitat, and that intervention is required to reverse this, irrespective of whether this Appeal is allowed.*
- xiii) *Also in section 6 I set out the mitigation measures that could result from long-term, development-related funding secured through planning obligations. These measures include upgrading the many damaged paths. This would both reverse the current deterioration of the SSSI, and provide headroom for additional visitors that might wish to visit the woodland from the new development.*

- xiv) *I set out a summary of the statutory obligations towards proper management of SSSIs, including Natural England's options for ensuring compliance with them.*
- xv) *Section 7 sets out my conclusions, in which I explain that the indivisible linkage in this case between the NPPF policies respectively protecting SSSIs and ancient woodland, means that if one is not engaged then neither can be the other.*
- xvi) *The withdrawal by Natural England of its original objection confirms that the SSSI policy (186b) is not engaged, from which flows the inescapable conclusion that the ancient woodland is not considered by this body to be subject to loss or deterioration due to effects arising from the Appeal Scheme. For this reason, the irreplaceable habitat policy (186c) is not engaged either.*
- xvii) *Finally, I explain that SSSIs are designated in the public interest, with this interest also residing in preservation of irreplaceable habitats. This being so, I conclude by noting that this same interest is strongly served by allowing this Appeal.*

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## **1 Introduction**

### **1.1 Authorship**

**1.1.1** This Proof of Evidence addresses issues relating to ancient woodland in relation to proposed development. It has been prepared by me, Julian Forbes-Laird, Senior Director of Forbes-Laird Arboricultural Consultancy Ltd (“FLAC”) and co-founder (together with Alistair Baxter) of Sylvan, a specialist bidisciplinary consultancy (arboriculture and ecology) covering ancient woodland, veteran trees, and historic landscapes in the planning system. Both FLAC and Sylvan have provided advice to this project since 2022.

**1.1.2** I hold the following relevant memberships and qualifications:

- Member of the Institute of Chartered Foresters (that is, I am a Chartered Arboriculturist)
- Member of the Royal Institution of Chartered Surveyors
- Member of the Expert Witness Institute
- Member of the Member of the Royal Society of Biology
- Professional Member of the Arboricultural Association
- Member of the Royal Forestry Society and holder of its 'Professional Diploma in Arboriculture'
- Technical editor for BS5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations'
- Chairman of the British Standards Institution technical committee on trees, B/213

**1.1.3** Full details of my qualifications and experience may be found at Appendix JFL1.

### **1.2 Instructions**

I am instructed on this occasion by Formula Land Ltd (“the Appellant”). My instructions arise pursuant to an appeal (PINS’ ref 3347643) against the failure by Wychavon District Council to determine an outline planning application, its ref: W/23/02112/OUT.

### **1.3 Scope of Evidence**

**1.3.1** My evidence addresses elements within deemed Reasons for Refusal 2 and 3. Specifically, my evidence addresses allegations within these Reasons that the proposals would result in loss and deterioration of ancient woodland.

1.3.2 My evidence should be read in conjunction with that prepared by my colleague, Mr Baxter.

1.3.3 Relevant sections of Reason 2 addressed in my evidence are highlighted in bold below. In full, this Reason is:

Reason 2

*The application site directly adjoins Tiddesley Wood, a designated Site of Special Scientific Interest (SSSI) and Ancient Semi-Natural Woodland (ASNW) and the development would result in the built developed edge of Pershore being significantly closer to Tiddesley Wood. **Further, the development would facilitate increased access to the wood from the rest of Pershore due to enhancements to the Public Rights of Way (PROW) network and easier parking, which could not be controlled. Consequently, the development would result in adverse impacts upon the SSSI and ASNW from future residents of the development, from further visitors to Tiddesley Wood which would be enabled by the proposal, along with their associated domestic pets, would result in incremental harm over time to the SSSI / ASNW and fail to accommodate effective dark corridors for light averse bat species. Further, the buffer zone and buffer planting would be inadequate in preventing visitors and residents, along with associated domestic pets accessing Tiddesley Wood, resulting in increased pressure and harm to the ASNW and SSSI habitats and wildlife. Taken together these harms would lead to deterioration and loss within the ASNW and SSSI on a long term and permanent basis, contrary to policy and legislation.** The development would therefore be contrary to Policy SWDP 22 of the South Worcestershire Development Plan, and the NPPF, in particular, Paragraphs 180 and 186 along with 11 d i which provides a clear reason for refusal.*

1.3.4 Within Reason 2, the alleged impact from domestic pets and all aspects of bats are addressed in evidence by Mr Baxter.

#### 1.4 Proof Structure

1.4.1 Following Section 1, my Proof is structured as follows:

2. National Planning Policy and Guidance
3. Pre-application background in relation to ancient woodland matters



4. Tiddesley Wood: Relevant baseline information
5. The current position of Worcestershire Wildlife Trust
6. The range of mitigation measures available to address visitor pressure
7. Conclusions

**1.4.2** My Proof is supported by the following Appendices (separately bound as Volume 3):

- JFL1** Qualifications & experience of the author
- JFL2** Tiddesley Wood SSSI Citation, July 1986
- JFL3** Letter from Sylvan to WWT, December 2022
- JFL4** Email to JFL from WWT Director, Colin Raven, January 2023
- JFL5** Sylvan's Path Serviceability Assessment, February 2024
- JFL6** Ancient woodland buffer zone case study: Manydown
- JFL7** Tiddesley Wood Management Plan, WWT, October 2015
- JFL8** Example options for path remediation/ mitigation
- JFL9** Revised Illustrated Masterplan with updated FLAC tree retention/ removal outcomes

### **1.5 Additional arboricultural impact arising from revised Illustrative Masterplan**

**1.5.1** The Revised Illustrative Masterplan at JFL9 has been prepared to show further enhancement of the public transport provision to new residents. The effect of the resulting alterations to the illustrative layout is the loss of 1x small pedunculate oak of TG3008 (one of the two existing trees in this small group), plus the removal of individual trees 3004 and 3005, being early-mature Turkey and pedunculate oaks respectively.

**1.5.2** All three of these additional losses are of moderate quality trees (BS5837:2012 category B). The percentage figure for the retention of B category trees changes from 89% to 86% retained (the former being the figure contained in the FLAC planning submission **CD1.37**). For the avoidance of doubt, I do not consider these changes to be material to the issues raised before this Inspector.

## **2 National Planning Policy and Guidance**

### **2.1 Contextual information**

**2.1.1** Reason 2 refers to the two aspects of Tiddesley Wood's planning identity as both Site of Special Scientific Interest and Ancient Woodland. Of high relevance is the principle reason why Tiddesley Wood came to be designated as a SSSI in 1986. Whilst the Citation is appended at JFL2, here is the material passage:

*Description and Reasons for Notification*

*Tiddesley Wood occupies a ridge of Lias Limestone and clays between the Bow Brook and the River Avon, to the west of Pershore. Historical documents show there has been woodland on the site since before the preparation of the Domesday Book in 1086.*

*The site has been selected as an example of ash-maple woodland which has developed on heavy basic soils. This type of woodland is unusual in the county, especially in the eastern part.*

**2.1.2** The Citation continues by listing the presence of certain species that add interest to the woodland (albeit one such, *Gnorimus nobilis* (Noble Chafer) is an orchard species found exterior to the woodland itself), none of which are outwith the species typically associated with woodland habitats. It is, therefore, apparent from the foregoing that Tiddesley Wood was designated as a SSSI for two reasons:

- i) Because it is ancient woodland (defined as *land continuously wooded since at least 1600AD*; NPPF Annex 2 **CD7.1**); and
- ii) Because it is a particular, locally uncommon, type of woodland.

**2.1.3** It follows from the reasons for designation, that harm to the SSSI and harm to the ancient woodland are indivisible. If one of these is harmed, so must the other be, and if one is not harmed, then the other cannot be harmed either. This interdependency is relevant to a consideration of several matters addressed in my evidence, including the planning policy position.

## 2.2 National Planning Policy Framework 2023

**2.2.1** Paragraph **186b** of the Framework applies protection to SSSI and is relevant here because the Appeal Site planning boundary borders Tiddesley Wood. The protection is applied in the following terms:

*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.*

**2.2.2** In addition, NPPF **186c** is also relevant: as ancient woodland, Tiddesley Wood is Irreplaceable Habitat. Paragraph 186c is worded as follows:

*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<sup>63</sup> and a suitable compensation strategy exists.*

**2.2.3** An illustration of the meaning of the term “*wholly exceptional reasons*” is given in **footnote 63**, which states:

*“For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.”*

**2.2.4** The Appellant accepts that these two paragraphs of the Framework are *relevant* to a determination of this Appeal. The matter between the Appellant and the Council is whether they are *engaged*, and through my evidence I conclude that they are not.

## 2.3 National-level guidance

**2.3.1** Natural England and Forestry Commission jointly publish Standing Advice titled *Ancient woodland, ancient trees and veteran trees: advice for making planning decisions*, January 2022<sup>1</sup> (**CD7.8**).

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<sup>1</sup> <https://www.gov.uk/guidance/ancient-woodland-ancient-trees-and-veteran-trees-advice-for-making-planning-decisions>

**2.3.2** The *Standing Advice* is relevant to the matters addressed in my evidence, specifically to issues of loss or deterioration of irreplaceable habitats, and the nature and role of mitigation for aspects of development that might otherwise (in the absence of mitigation) have these effects.

### **3 Pre-application background in relation to ancient woodland matters**

#### **3.1 General**

The planning history of the Appeal Site is set out in full in Mr Davies' evidence. He explains that the Site was subject to a draft allocation at Regulation 18 stage, which was then withdrawn for Reg.19 due to Natural England having concerns, at that time, around impacts on Tiddesley Wood SSSI. However, these concerns arose, at least in part due to careless drafting of the allocation boundary, which included that part of the woodland owned by the developer. Of course, the developer has never had any intention to insert residential development into the woodland, and so these concerns, whilst understandable, were unfounded.

#### **3.2 Pre-application discussions with the Worcestershire Wildlife Trust**

**3.2.1** Tiddesley Wood is under majority management by the Worcestershire Wildlife Trust (WWT), which manages it as the Harry Green Reserve. The WWT was a consultee on and objected strongly to the draft allocation, taking an in-principle position to any development on the Appeal Site.

**3.2.2** An early part of Sylvan's instruction was to engage with WWT to discuss its concerns, and explore what mitigation measures could be provided to address them at a technical level. In addition, the developer generously offered to transfer its landholding to the WWT, thereby enabling the entirety of Tiddesley Wood to be under the same ownership and management regime.

**3.2.3** Appended at JFL3 is Sylvan's letter to WWT of December 2022. This letter followed dialogue between ourselves and WWT's Steve Bloomfield (whom we understand is no longer to appear at the Inquiry on behalf of the Council), and is a summation of the developer's offer to the WWT, which was made in attempt to provide sufficient reassurance to overcome the WWT's concerns.

**3.2.4** As Sylvan's letter sets out, the developer was at that time offering three things:

- i) A very substantial setback of development relative to the woodland edge;
- ii) Land transfer both of the setback land and its area of Tiddesley Wood; and
- iii) Funding for woodland management.

**3.2.5** In relation to the last point, the letter states:

*Mindful of the many challenges faced by woodland owners, including the need to diversify the tree stock, promote the understorey, encourage ground flora, address deer and squirrel damage, and provide responsible access opportunities, the developer is keen to ensure that Tiddesley Wood directly benefits from any grant of planning permission at Orchard Farm.*

Each of the elements listed in this passage relates directly to our observations regarding the condition of the woodland.

**3.2.6** The timing of our letter to Steve Bloomfield, which, as noted, followed a period of dialogue, was not accidental: Mr Bloomfield had agreed to take the developer's offer to a meeting of the WWT's Trustees in January 2023. Whilst it is right to record that Mr Bloomfield had expressed no direct view of the offer, it is fair to say that in conversation with him I got the clear impression that he was favourably disposed towards the package of measures we had put forth.

**3.2.7** Appendix JFL 4 is a copy of an email I received from the Director of the WWT, Colin Raven, advising me that, having considered our letter, the Trustees had decided not to change their position and accordingly the developer's offer was declined. In other words, the Trustees had decided to maintain their in-principle objection to any development at Orchard Farm.

## **4 Tiddesley Wood: Relevant baseline information**

### **4.1 Field work and related studies that informed the baseline**

Sylvan's advice on this project has been ongoing since September 2022, and rests in large part on a considerable number of site visits. These include:

- i) A preliminary walkover assessment, September 2022
- ii) A woodland condition assessment and botanical survey, April-May 2023
- iii) A path serviceability assessment, February 2024, and
- iv) A visitor numbers and behaviour study, April 2024

### **4.2 Preliminary walkover assessment and pre-existing management issues**

Our preliminary walkover of September 2022 informed our view as to the condition and management needs of Tiddesley Wood, needs which we consider are some way from being met. As touched on in the preceding section, a number of management issues are present, several of which appear to be receiving no or no adequate attention. Insofar as the condition of the woodland is identical in all material respects to the condition of the SSSI, shortcomings in its management are a statutory matter.

### **4.3 Baseline condition of the paths**

**4.3.1** In order to establish a firm baseline for the condition of the paths within Tiddesley Wood, and to capture what mitigation measures were actually in hand, Mr Baxter and I undertook a path serviceability assessment in February 2024 (appended at JFL5). We walked and recorded a total of 10.85km of paths, around 80% of which were unmade in any respect. Almost 60% of the path network was found to be at least partly unserviceable, and 52% of the unmade path network's length was under mud.

**4.3.2** Just under 70% of the paths had no visitor infrastructure at all, including an absence of waymarkers. There was no evidence of dynamic path management (e.g. temporary closure of unpassable sections), or other responses to unserviceability. This is a well-known recipe for damage intensification and path spreading, as people try to find ways around the muddy or flooded sections of paths.

**4.3.3** As for wardening, in addition to the 22 (man) days we had spent on site prior to the path serviceability assessment, we then added six more days’ site attendance while we undertook that study. In the resulting aggregated and randomised 28 day period we saw no evidence of wardening. I am not saying that this does not happen, but that if it is, it appears to be based on very sparse attendance indeed.

**4.4 Current usage levels and visitor behaviour**

**4.4.1** In order to understand the existing visitor pressure on the woodland, a study was undertaken at what is known to be the busiest time of the year, the bluebell season which peaks in April. Sylvan arranged for a discreet visitor numbers and behaviour survey to be put in hand covering daylight hours for 28 days. Discretion was used, rather than (for example) a formal interview-based approach, as we were keen to avoid disturbing natural patterns of behaviour, which can often happen with overt visitor surveys, especially on contentious sites.

**4.4.2** Numbers of car arrivals and visitors were recorded, as was a headcount for dogs and whether these were on or off the lead. Also noted was the presence on site of representatives of WWT. The findings of this study are set out at Table 1.

*Table 1 – Tiddesley Wood visit summary for 0700-1900hrs, April 01-28, 2024*

<b>Week (dates)</b>	<b>Vehicles</b>	<b>People</b>	<b>Dogs on</b>	<b>Dogs off (%)</b>	<b>WWT seen</b>
1 (01-07)	289	617	112	85 (43)	3
2 (08-14)	410	792	149	96 (39)	2
3 (15-21)	371	536	135	83 (38)	4
4 (22-28)	225	494	99	59 (37)	0
<b>Totals</b>	<b>1295</b>	<b>2439</b>	<b>495</b>	<b>323 (39)</b>	<b>9</b>

**4.4.3** Given that the survey was conducted for 12 hours per day for 28 days, the data covers 336 hours. The mean number of visitors per hour during the peak month, was thus found to be 7.26. It is clear from the data that arrivals by vehicle clearly account for the majority of visitors: 53% at the minimum possible of one per vehicle. People arriving by car and finding the car park full (30-car approx. capacity) were observed to turn around and depart on several occasions.



On-foot arrivals from the adjacent PRoW were largely confined to the weekend, and tended to comprise family groups. No visitors were observed to enter the woodland other than at designated entrances along the paths (i.e. there was no diffuse entry).

**4.4.4** General observations of visitor behaviour included a broad range of activities including walking, dog exercise, floral/ faunal observation, wood collecting, and (occasionally) taking of cuttings. Visitors were noted to be generally well-prepared for the underfoot conditions, with most people wearing Wellington or walking boots. As such, poor path condition appeared to be little deterrent (if any), with many visitors being observed transiting very muddy or flooded paths. Others were noted to expand the path footprint by attempting to go around challenging areas. These behavioural observations are fully in line with and so validate the evidence gathered during our path serviceability assessment.

**4.4.5** Overall, the visitor study confirmed that Tiddesley Wood can be a busy site, possibly even a honeypot site, with this being subject to active promotion by WWT. It is, of course, highly predictable that a locally well-known bluebell wood will receive higher visitor numbers in April, which WWT itself knows to be the peak month for visitors for this precise reason. It is also highly predictable that typical climatic conditions would tend to leave the ground lying wet at this time.

**4.4.6** This all being so, it is very striking that only nine attendances were recorded by WWT personnel across the 28 day study period, accounting for a single warden visit per 271 members of the public. Given the size of the site and the extent of the unmade path network, this level of ranger/ warden attendance is woefully incapable of materially influencing public behaviour and protecting the vulnerable ecosystem.

**4.4.7** At no point during the visitor study was car park closure used as a means of reducing visitor numbers. This indicates either that WWT is happy with the current number of April visitors, or it is not actually being proactive even to the extent of securing a relatively easy win. It would appear from this that either the WWT does not consider current visitor numbers to be a problem, which somewhat nuances its position on the site being 'at capacity' (see my section 5.4), or that there is a problem which is not being addressed due to resource-based constraints.

## **5 The current position of Worcestershire Wildlife Trust**

### **5.1 Context**

WWT provided an initial consultation response in November 2023 (**CD12.10**), which it then supplemented with further comments in February 2024 (**CD12.11**). However, these latter comments do not go to the areas covered in my evidence, and hence I confine myself here to a consideration of the response of November 2022.

### **5.2 The general biodiversity objective and the WWT's assessment of woodland condition**

**5.2.1** The WWT's response refers to this in its first paragraph, noting that the objective is not merely maintenance of biodiversity at existing levels, but instead enhancement. This point is well made and I fully endorse it. In paragraph 2, the response, goes on to note that:

*The impacts of recreation are a significant concern for the Trust and are already affecting the woodland wildlife.*

**5.2.2** It then lists a number of adverse effects, before stating that:

*All of these issues are apparent in the wood to a degree, will certainly have impacts on a range of wildlife, and are proving difficult to rectify despite considerable investment in path management, signage and site wardening by the Trust.*

**5.2.3** Paragraph 3 refers to the woodland as being 'bluebell rich', and in this regard the response advises that:

*Evidence collected by the Trust already suggests a marked uplift in visits at that season.*

It was for this reason that the Appellant's visitor monitoring study was put in hand during this period, as outlined in section 4. As I also explain in section 4, we too identified that the woodland is already subject to harm from visitor pressure, and concur with the WWT on this point.

**5.2.4** However, where we differ is over the WWT's assertion that it is making a *considerable investment in path management, signage and site wardening*. Unlike the assertion, which has not yet been supported by an evidential base, we have collected direct evidence that demonstrates that these efforts are barely in hand.

**5.2.5** As such, I was surprised to read this claim, as path management and site wardening were not materially evident during any of our several site visits (amounting to 22 days by the date of the WWT response). Hence, of the three interventions referred to, only signage is apparent to a material degree, and even this seemed to us to be both patchy and inadequate.

**5.2.6** It is here fair to report that when we canvassed this point in the meeting we had with Natural England and WWT on 19 April 2024, one of the WWT attendees expressed resistance to a more active visitor management regime, stating (with my emphasis) that:

*The Trust could do some of these things ourselves **if it chose to do them...** but we haven't chosen to do them*

**5.2.7** Frankly, I was startled by this admission, which confirms that WWT is essentially sanguine about the existing, deteriorating condition of the SSSI, of which it is well aware. In my opinion, this position is wholly indefensible and calls into question WWT's stewardship of this important site. As I set out further below, unfortunately this is not an isolated example.

### **5.3 The WWT's (mis)understanding of the mitigation proposals**

**5.3.1** In paragraph 3 of its response, the WWT states:

*While we note that the applicants have made efforts to offset the clear risks to the SSSI and ASNW, we do not believe their proposals will be effective. This is particularly problematic because it seems likely that the additional harm would be incremental and continuous whereas any mitigation put in place would essentially be set-in-stone through conditions at the point of determination.*

*If, as is very likely, the SSSI habitats do decline following development, despite that mitigation, any capacity to undo that harm will be severely limited and the SSSI may be expected to deteriorate accordingly.*

This statement shows a surprising lack of familiarity with what is widely regarded as the most important element of any conservation management plan: monitoring, review and adjustment.

**5.3.2** I would say that any management regime which does not include this element is trying to do exactly what WWT says, and set the plan in stone. Actually, I am not surprised that WWT thinks this is what happens: its management plan (discussed further below) makes no mention of the need to check whether the operations set out therein are being effective in meeting the plan objectives. Failure to ask this question, and to respond appropriately to the answer, is unlikely to lead to a successful outcome. The reason for this is that nature is a dynamic system, the response to which of external stimuli (e.g. reinstatement of a coppicing cycle) must be monitored in order to be understood. This is a basic principle of conservation, and the fact that WWT seems not to understand it is troubling.

**5.3.3** For the avoidance of doubt, the management regime that the developer would support, includes long-term funding, up to in-perpetuity if necessary (provided at Natural England's request), precisely so that the ongoing response to nature's dynamic can remain adaptive to changing conditions on the ground, with management operations being adjusted accordingly.

#### **5.4 A closer look at WWT's "at capacity" assertion**

**5.4.1** In its consultation response on the application dated 22 November 2023, WWT state that:

*While we welcome visitors to Tiddesley Wood, the **impacts of recreation are a significant concern for the Trust and are already affecting the woodland wildlife**. Essentially, we consider the wood to be 'at capacity' for the visitor pressure it can absorb. Added recreational pressure, such as may be anticipated from 300 additional houses, **will exacerbate issues such as habitat loss as a result of trampling and creation of unauthorised paths through the wood**, increased dog disturbance and fouling along path sides and beyond, and noise and anti-social behaviour. **All of these issues are apparent in the wood to a degree, will certainly have impacts on a range of wildlife**, and are proving difficult to rectify despite considerable investment in path management, signage and site wardening by the Trust.*

**My emphasis.**

**5.4.2** As already noted, WWT is well aware of existing deterioration of the ancient woodland/SSSI. Of further note, WWT considers that Tiddesley Wood is “at capacity” and hence, so WWT says, it cannot accommodate any additional visitors without further deterioration of the habitat. However, it is important to place this assessment in the context of a general absence of the range of visitor access management arrangements that are employed successfully elsewhere in well-managed woodlands frequented by the public (please refer to Mr Baxter’s evidence for many examples).

**5.4.3** WWT believes, or, at least, claims, to already have in place a suite of measures to mitigate visitor pressure, however we could find no trace of them beyond a dog waste bin the car park; four interpretation boards (in this 76ha woodland); and a few waymarkers. The reality is that Tiddesley Wood is being damaged by visitors not *despite* a concerted management effort, but because of a lack of one. As Mr Baxter highlights (his Proof at 4.2.15f), Natural England’s assessment of the condition of the SSSI is “unfavourable, noting that:

*The unit/feature is not being conserved and will not reach favourable condition unless there are changes to the site management or external pressures...*

**5.4.4** Natural England also notes that *recreation has been identified as a threat* and that this needs *monitoring and appropriate management*.

**5.4.5** The reason this matters is that the “at capacity” assessment which leads WWT to object to the Appeal Scheme rests on a visitor management effort currently approaching zero. In this regard, **“capacity” is the relative ability of a site to tolerate additional visitors without this resulting in additional harm.** “At capacity” indicates that no additional visitors can be accommodated, whereas, of course, “spare capacity” would suggest that they could.

**5.4.6** Taking the example of Old Trafford football stadium, this has an “absolute capacity” of just over 74,000. However, this figure assumes that a number of things are in place: police, stewards, working turnstiles, unobstructed emergency exits, fire extinguishers, toilets and so on. If the suite of visitor management measures and facilities were to be reduced, for example by an insufficient number of crowd control operatives, the “working capacity” would clearly be reduced for reasons of safety.

**5.4.7** The position with Tiddesley Wood is identical. It has a capacity,  $n$ , beyond which harm occurs to the habitat. Insofar as harm is already known to be occurring, we can infer that the working capacity has been reached or even exceeded. But working capacity is not being set by *absolute* capacity, but by the relative presence (in fact, absence), of measures that control the effects of the visitors. To return to the analogy of Old Trafford, crowd control, fire extinguishers, toilets etc are lacking, so the ground cannot accommodate its full compliment.

**5.4.8** In relation to this SSSI, the relationship between management, capacity and condition can be conceptualised as follows:

- i) Current visitor levels are  $x$  leading to harmful impacts of  $y$ ,
- ii) Proper access management arrangements, including wardening, would reduce these impacts to at least  $0.2y$  or better, i.e. 80% of the existing problems would be solved
- iii) This means that visitor levels of  $2y$  could be accommodated with management, whilst still reducing harmful impacts to less than half those which pertain now ( $0.4y$ )
- iv) Even if visitor rates increased by a most unlikely factor of four, impacts would still be *reduced* (with proper management in place) compared to the present situation ( $4*0.2y = 0.8y$ )
- v) Thus *increased visitors + proper management = enhancement* compared to baseline, due to a reduction in harm.

## **5.5 WWT comments on the adequacy of the buffer zone**

**5.5.1** In paragraph 2 of the WWT's comments, it states that it takes a *different view* of the buffer zone to the Appellant, and considers that:

*The situation here is exactly the context in which the Standing Advice suggests that "Where assessment shows other impacts are likely to extend beyond this distance [15m], the proposal is likely to need a larger buffer zone."*

*In this case, we contend that in order to be effective that buffer zone must be very substantially larger than the one proposed in the application. This is incompatible with development on the Orchard Farm site.*

The text in quotation marks is taken from my reference 1.

**5.5.2** There are three parts to this assertion. **Firstly**, the Standing Advice recommends a minimum buffer depth of 15m to ancient woodland. The Woodland Trust (which does not object to the application as now appealed), seeks an ancient woodland 50m buffer zone as a ‘precautionary principle’<sup>2</sup>. In my experience, this latter is only very rarely provided (see case study example at JFL6). Buffer zones to SSSIs tend to be larger, with 50-100m being recommended<sup>3</sup>. In this case, buffer zone depth to actual development ranges from 100m to over 160m, thereby easily meeting all of these varying recommendations, including the gold standard 50m set by the Woodland Trust for ancient woodland.

**5.5.3** It follows from this that whilst WWT seeks to pray in aid the *Standing Advice*, it has not shown that the Appeal Scheme is non-compliant with this guidance. It is the Appellant’s position, which I support, that it is.

**5.5.4 Secondly**, I note with approval the fact that the WWT use the word “contend” in this context. They do indeed contend, and provide not one shred of evidence in support of their contention. The WWT’s assessment of the buffer zone as inadequate remains, therefore, an unsubstantiated assertion. In truth, this is of a piece with all of the WWT’s comments on the buffer zone, with none of them being grounded in either data or authority.

**5.5.5 Thirdly**, in an example wholly lacking in relevant precedent, the WWT seeks an SAC-style development exclusion zone for a habitat that is not in fact an SAC (or even a candidate SAC). It barely needs saying that this is not the position of the only body that could designate Tiddesley Wood an SAC, Natural England, which rather obviously it has not done.

**5.5.6** In short, the buffer zone provided by the Appellant far exceeds that sought for ancient woodland even by the Woodland Trust, instead matching (and in places exceeding) the upper end of the scale of the aspirational buffer zone for SSSIs referred to in NECR414 (which, anyway, NE has not formally adopted).

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<sup>2</sup> *Planners Manual for Ancient Woodland and Veteran Trees*, Woodland Trust 2019, p.20 **CD7.9**

<sup>3</sup> *Sites of Special Scientific Interest (SSSIs) in England: their historical development and prospects in a changing environment*, NECR414, June 2022, at Table 4.1 **CD7.10**

## 5.6 The current management of Tiddesley Wood

5.6.1 WWT's current Management Plan for Tiddesley Wood (appended at JFL7) is dated October 2015. This Management Plan includes the following:

*Tiddesley Wood is... a flagship reserve and receives many visitors so it is also used to communicate the message of the Wildlife Trust to the public through a variety of means.*

This statement leaves the reader in no doubt as to the importance that WWT attaches to this site, and yet its management plan is nearly a decade old. Collateral to its significant antiquity, there are two quite remarkable omissions from this document that further call into question WWT's stewardship of this SSSI.

5.6.2 The **first omission** is that, despite the woodland being designated as a SSSI due to its ash-maple complex, the Management Plan makes no mention of the challenge posed by Ash Dieback (fungal agent *Hymenoscyphus fraxineus*). Ash Dieback (aka Chalara) was well-established in lowland Britain by 2015, and in fact was recorded at Tiddesley Wood itself that year<sup>4</sup>.

5.6.3 It is actually rather bizarre that there is no response to this serious disease within the Management Plan, as this is surely the most obvious item to include. If the answer to this point is that ash dieback was not well understood in 2015 (which would not be accurate anyway), then this would still leave a question as to why the Management Plan has not been updated since, given that increasing numbers of the ash trees at Tiddesley Wood are dying. Indeed, Natural England's recent assessment of the SSSI notes "disease risk" as a high-risk threat (per Mr Baxter at 4.2.14).

5.6.4 The **second omission** is equally troubling: the Management Plan makes no reference to the effects of visitor pressure or its mitigation, despite these matters supposedly being at the heart of the WWT's concerns over the Appeal Scheme. We have found that there is existing, significant and progressive damage being done to the woodland fabric (an assessment shared by the WWT), which we ascribe to a lack of proper visitor access management arrangements. Rather astonishingly, the most we hear on this subject from the WWT is the following throwaway comment on the Tiddesley Wood microsite<sup>5</sup>:

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<sup>4</sup> <https://chalamap.fera.co.uk/>

<sup>5</sup> <https://www.worcswildlifetrust.co.uk/nature-reserves/tiddesley-wood-harry-green-reserve>



*Earth paths away from main track, some on slopes, will be muddy and slippery when wet.*

Setting aside the heavy understatement, this sort of laissez-faire attitude to the progressive deterioration of a SSSI (and ancient woodland) simply will not do.

**5.6.5** It is the position of the WWT that spare capacity cannot be achieved by *any* mitigation measures that the developer could provide. As Mr Baxter explains with the aid of many examples, this is not the typical experience: visitor access management measures are demonstrably effective if done properly. In my view, no weight should be given to the WWT's assessment of capacity and mitigation: it is clearly not gripping this issue properly (if at all).

**5.6.6** The reality is that spare/ additional visitor capacity could indeed be created at Tiddesley Wood: it simply requires the implementation of a suitable suite of well-known, tried-and-tested measures. Contrary to the WWT's assertions, no such measures are properly in hand. It is, therefore, unfortunately the case that the WWT is not commenting on the Appeal Scheme from a position of competent stewardship.

**5.6.7** In this regard, I wish to draw attention to one aspect of the *Chiltern Beechwoods SAC – Recreational Pressure Mitigation Strategy for Ashridge Commons and Woods Site of Special Scientific Interest*, which Mr Baxter's appends to his evidence, and discusses in more detail. This document, dated August 2024, was prepared by Buckinghamshire Council. It has since been endorsed by Natural England. Section 3.15, *Strategic Access Management and Monitoring Strategy (SAMMS) – Key Principles*, states (with my emphasis):

*3.15.1. The intention of the Strategic Access Management and Monitoring Strategy is to directly manage and avoid impacts at its source and to better educate those visiting the Chilterns Beechwoods SAC at Ashridge Commons and Woods SSSI, as well as to monitor the effectiveness of the measures being deployed.*

*3.15.2. These measures are in addition to the regular habitat management of the site, which is also undertaken by the National Trust. **Since the publication of evidence by Footprint Ecology which demonstrate harm to the integrity of the site, the National Trust have enhanced measures of their own across the site.** These do not form part of the cost of SAMMS, which solely relate to predicted harm arising from future growth in the Zone of Influence.*

**5.6.8** We see here the actions of a responsible and engaged management body, the National Trust, which, upon learning that the habitat under its care was suffering deterioration, responded swiftly with enhanced visitor access management measures. It did not elect simply to tolerate the harm, instead recognising that it had a duty to intervene. I would categorise this as very good conservation stewardship, with which WWT's approach at Tiddesley Wood compares most unfavourably.

## **6 The comprehensive range of mitigation measures available to address visitor pressure**

### **6.1 Summary**

**6.1.1** The full suite of potential mitigation measures is set out in Sylvan’s Technical Note 07 (“TN07”), as updated in September 2024 (please see Mr Baxter’s Appendices), as well as being found at Baxter 6.5.17-.19. In TN07, mitigation is offered under the two headings of *embedded* and *additional* mitigation measures (TN07 sections 2 and 3 respectively). The additional measures are themselves divided into two categories: capital/ up front measures, and ongoing management/ maintenance measures.

**6.1.2** An earlier version of this document was sent to Natural England ahead of the meeting we had with them in April, and it was agreed that the suite of measures was ‘comprehensive’. The totality of the mitigation package available can be thought of as a menu, from which a selection can be made both across the SSSI, and with reference to a particular path or area where specific challenges are present.

**6.1.3** In this regard, a key element of appropriate mitigation is adaptability in light of changing conditions, with this in turn requiring appropriate monitoring and ad hoc intervention. This approach is inherent in the proposed mitigation package and would, even by itself, result in a step-change improvement to the woodland’s condition.

### **6.2 Options for path remediation and protection options to expand site access capacity**

**6.2.1** Referring to our Path Serviceability Assessment (PSA) appended at JFL5, it is apparent that 24 of the 39 separate assessment units were in unfavourable, i.e. less than moderate, condition. Appended at JFL8 is an extract from the PSA to which I have added an additional column setting out various options for remediating or mitigating this unfavourable condition on a per-unit basis.

**6.2.2** These options reflect the condition and apparent usage level of the path sections concerned, as well as: their function in enabling access to particular areas of the woodland; the extent to which other paths offer viable alternative routing; and their legal status as public rights of way.

The options are intended to be read as examples, not prescriptions, as I recognise that the WWT may have its own views concerning how best to address unfavourable path condition in each case. What this exercise does demonstrates, is that the current laissez-faire approach is not the only (or, clearly, the best) way forward.

**6.2.3** In my opinion, the deployment of suitable remediation/ mitigation measures would substantially arrest path deterioration and spreading, as well as acting as a deterrent to any perceived need to create new ad hoc paths. These outcomes would confer an immediate benefit to the SSSI compared to the baseline situation, as well as significantly expanding the site's public access capacity without this leading to further deterioration.

**6.2.4** I offer this approach as a snapshot example of how proper visitor access management could and should be employed to protect Tiddesley Wood, and so further the conservation objectives of the SSSI. It is, of course, only one component of the menu referred to above, based on which the Inspector is invited to agree with me and Mr Baxter that allowing this Appeal would lead to a substantial positive effect on this important and irreplaceable habitat.

### **6.3 Funding overview**

Whilst Mr Baxter explains the funding arrangements that would be put in place, in summary these are an initial sum to fund up-front, capital works, followed by long-term provided to enable ongoing maintenance/ management operations as regards visitor pressure.

### **6.4 The statutory obligation towards proper management of SSSIs**

**6.4.1** As set out in guidance on gov.uk<sup>6</sup>, there is a legal obligation towards effective and appropriate management of SSSIs, including woodland management (where relevant). This obligation arises from Wildlife and Countryside Act 1981 (as amended). At section 28J(1) of this Act, Natural England has the power to *formulate a management scheme for all or part of a site of special scientific interest*. S.28J(2) provides that such management schemes may conserve and/ or restore inter alia the flora and fauna of special interest for which the land was designated a SSSI.

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<sup>6</sup> <https://www.gov.uk/guidance/protected-areas-sites-of-special-scientific-interest>

**6.4.2** S.28K enables Natural England to serve a management notice, requiring compliance with a management scheme formulated under S.28J(1), with Natural England having, under this provision, powers of entry and implementation to put in hand necessary work themselves. S.28P provides for a criminal offence for non-compliance with a management notice. Finally, should all else fail, S.28N gives Natural England powers of compulsory purchase of a SSSI where they conclude that proper management arrangements cannot be put in place.

**6.4.3** The downstream effect of this robust statutory framework is that, should the Appeal be allowed, the Inspector can have confidence that there is a mechanism in place for Natural England to ensure appropriate use of the management/ mitigation funding that would be provided. I make this point because, as already set out, we are here dealing with a management body that appears to a degree reluctant to actually undertake the necessary management. As such, whilst one would hope that the allowing of this Appeal would lead to a fresh approach being adopted by the WWT, recalcitrance on its part could be countervailed via statutory power if necessary.

## **7 Conclusions**

**7.1** Although Natural England originally objected (November 2023, **CD12.1**) to the proposals as now appealed, this objection has now been withdrawn. Insofar as Natural England is the government’s gatekeeper for biodiversity protection in the planning system, and has a statutory duty towards safeguarding SSSIs, the withdrawal of its objection confirms that it considers the SSSI will not be subject to harm in the event that this Appeal were to be allowed (assuming that appropriate mitigation is provided, supported by long-term funding arrangements). It follows from this that Natural England, in this regard the competent authority, does not consider that the proposals engage NPPF paragraph 186b, such that no “adverse effect” would arise.

**7.2** It will be recalled that Tiddesley Wood was designated as a SSSI due to its status as an ancient woodland of locally distinct type and quality. In this case, the SSSI and the ancient woodland are, therefore, the same habitat, with the same sensitivity, occupying the same space: the two are indivisible sides of the same coin. Accordingly, the absence of an adverse effect on the SSSI, can only mean an absence of an adverse effect on the ancient woodland. This being inescapably so, NPPF paragraph 186c does not engage either.

**7.3** With the policy position now understood in relation to negative effects, we can turn to delivery of positive effects. Being by their own words condemned, the WWT are aware of adverse effects from visitors on the SSSI, but are electing not to address them to the fullness of their ability to do so. We have, therefore, existing and progressive damage to a SSSI that could be arrested and reversed, if only both the will and the resources were made available.

**7.4** The will should, of course, come voluntarily, but if necessary it could come from a statutory management scheme. Whilst it is not for me to comment on the adequacy or otherwise of WWT’s resources, I can say that sufficient *additional* resources would flow from this Appeal being allowed to put in hand the comprehensive mitigation measures outlined in my and Mr Baxter’s evidence. There is no reason to doubt the proposition that this would lead to swift delivery of significant benefits. Equally, many case studies demonstrate that proper visitor access management, including as regards provision of suitably protected walking surfaces, enable otherwise sensitive sites to accommodate the public without material harm occurring. The issue of capacity should be seen in this light.

**7.5** The designation of a SSSI is made, overall, in the public interest. This same interest abides in the preservation of irreplaceable habitats, including ancient woodland. Both find their expression in the very strong policy protection of NPPF paragraph 186. It simply cannot be right to allow Tiddesley Wood, being both of these things, to continue to deteriorate, when the means of preventing this are at hand. In relation to my discipline, the case-specific and unavoidable conclusion is that there are strong public interest grounds that support allowing this Appeal.

**Statement of truthfulness and professional endorsement**

*Pursuant to Procedural Guide: Planning Appeals – England, September 2024, and specifically section 15 Expert Evidence, I confirm that the evidence which I have prepared and provide for this Appeal is true, and has been prepared, and is given in accordance with the guidance of my professional institutions (Institute of Chartered Foresters, Royal Institution of Chartered Surveyors and the Expert Witness Institute). I further confirm that the opinions expressed herein are my true and professional opinions.*

*Julian Forbes-Laird*