

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. 3—REBUTTAL PROOF



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## **R1 Introduction**

### **R1.1 Authorship**

This Rebuttal Proof of Evidence addresses issues relating to ancient woodland in relation to proposed development. It has been prepared by me, Julian Forbes-Laird, under the same instructions and undertakings as my main Proof.

### **R1.2 Direction of further evidence**

My Rebuttal is directed towards a single paragraph within the evidence of the Local Planning Authority's ecology expert Mr Tom Clarkson, paragraphs 3.1.16-17 (I do not repeat my earlier evidence and therefore my silence on the other points made by Mr Clarkson should not be taken to indicate agreement) . Mr Clarkson appears for the Local Planning Authority in relation to ecological matters. For the Inspector's convenience, I reproduce both these two paragraphs here in full:

**3.1.16** It should be noted that in Natural England's standing advice on the protection of ancient woodland it notes the following:

*"Where a proposal involves the loss or deterioration of ancient woodland, or ancient or veteran trees you should not take account of the existing condition of the ancient woodland or ancient or veteran tree when you assess the merits of the development proposal. Its existing condition is not a reason to give permission for development. A woodland or tree in poor condition can be improved with good management".*

**3.1.17** As such the current condition of the ancient woodland, and indeed the potential for the scheme to secure or deliver improved woodland management should not be taken into account when assessing potential deterioration of the ancient woodland.

## **R2 Mr Clarkson’s misinterpretation of the *Standing Advice***

**R2.1** Mr Clarkson’s paragraph 3.1.17 fundamentally misinterprets the extract he quotes (at 3.1.16) from the *Standing Advice* (**CD7.8**), which is jointly published by Natural England and Forestry Commission (“NE/ FC”).

**R2.2** Contrary to Mr Clarkson’s assumption, the passage in question from the *Standing Advice*, is not expressed to relate to assessing whether there would be deterioration of ancient woodland. It is expressed to relate to assessing the merits of the proposed development in circumstances where there would be deterioration.

**R2.3** This is plain from the wording used in the *Standing Advice*. It also avoids the following absurdities which Mr Clarkson’s interpretation would result in. In particular, it would clearly be illogical for NE/ FC to advise decision-makers to ignore the baseline condition of a habitat when considering whether there would be an effect on it, either a) at all, or b) with specific regards to irreplaceable habitats, including ancient woodland. Specifically:

- (a)** It would be illogical because in every (other) field of environmental impact assessment the essential first step is to gain an understanding of the baseline. Without this understanding, it is not possible to assess whether an impact would occur, and thus there is no way for the decision-maker to know whether an adverse effect would occur. Simply, a failure to consider the baseline would make a nonsense of the process, yielding no useful or usable answer.
  
- (b)** It would be illogical with specific regards to irreplaceable habitats, including ancient woodland, because the policy within the Framework that protects them, NPPF 186c, specifically protects against “deterioration”. This inevitably begs the question, ‘deterioration compared to what?’ This unavoidable question demands an answer, and so confirms that baseline condition is a necessary datum – it is the starting point against which the question of whether there would be deterioration is to be assessed.

**R2.4** If the *Standing Advice* were intended to be read the way that Mr Clarkson has read it, NE/ FC would be advising decision-makers to treat irreplaceable habitats differently to all other habitats (SSSI, SAC, SPA, and so on), for which there would be no rationale whatsoever. Clearly, this is not the intention of the text or those who drafted it.

### **R3 The correct interpretation**

**R3.1** The effect of the quoted passage from the *Standing Advice*, properly interpreted, that in considering the planning merits of a proposed development that would cause loss or deterioration of an ancient woodland, the condition of that woodland does not alter its value as an irreplaceable habitat and thus the weight to be given to the harm in the planning balance: all such woodlands are to be treated within the planning system as of equal importance. It is for this precise reason that the *Standing Advice* emphasises that a plantation on an ancient woodland site (“PAWS”) is to be given the same protection as an ancient and semi-natural woodland (“ASNW”). Indeed, the definition of ancient woodland within Annex 2 of the Framework sets these two as equivalents, making no distinction between them. Of course, PAWS are, almost always, of significantly inferior interest compared to ASNW, but this is not material to the planning decision.

**R3.2** Read in this, correct, light, the question of whether “deterioration” would occur to an ancient woodland as a result of development is a finding antecedent to the attachment of weight, and to the subsequent assessment of acceptability. If a decision-maker finds that deterioration would occur relative to baseline, the decision-maker is advised not to downplay this where the baseline is one of unfavourable condition. For the avoidance of doubt, no such argument is being made or is relied upon by the Appellant.

**R3.3** Instead, the Appellant has identified that the woodland’s path network is in poor condition, with this being a point of agreement between the parties. It is further agreed that the poor condition of the paths is causing collateral adverse impacts on the SSSI, for example from path spreading as visitors try to bypass impassible areas. The question now is whether the condition of the paths would a) become worse, b) stay the same, or c) improve were planning permission to be granted via this Appeal.

**R3.4** For the reasons set out above, it is both necessary and proper for this question to be asked in light of the situation on the ground today, and the *Standing Advice* does not, would not and rationally could not seek to prevent that from happening. Insofar as this must be so, it is to be hoped that Mr Clarkson will assist the Inspector by revisiting his position at 3.1.17.

*Julian Forbes-Laird*