

**APPEAL UNDER
SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING APPLICATION BY
MILLER HOMES LTD**

**OUTLINE PLANNING APPLICATION
WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS,
FOR UP TO 80 DWELLINGS WITH ASSOCIATED LANDSCAPING, OPEN SPACE,
INFRASTRUCTURE AND VEHICULAR AND PEDESTRIAN ACCESSES**

LAND AT COLWELL FARM, HAYWARDS HEATH, RH17 7TB

**Appeal Ref: 6005786
LPA Ref: DM/25/0445**

Inquiry Sitting Days: 28-29 July and 4-6 & 13 August 2026

**APPELLANT'S RESPONSE TO
COUNCIL'S AND RULE 6 PARTY'S
CLOSING SUBMSISIONS**

RESPONSES

The following responses are not intended to be exhaustive and an absence of reference does not indicate agreement/acceptance.

RESPONSE TO THE COUNCIL'S CLOSING SUBMISSIONS

[12]: The Appellant concurs with much of the Council's summary of the general approach to the NPPF test and its confirmation that the Handbook should be used for decision-making, including in this case.

In particular, there must be per [12(a)] a clear and positive conclusion that there is ancient woodland on site. The standard is, as per 12(b) the balance of probabilities. With regard to 12(c) and (d), the Rule 6 Party has plainly not demonstrated that there is PAWS on the site and a "hedge" does not qualify as a "plantation". A plantation is an area of woodland planted as a crop for harvesting. Plantation is not a synonym for anything that has been planted, and a hedge or hedgerow would never be described as a plantation.

The Appellant maintains that the Handbook should be used for decision-taking, and that the methodology should be applied in full, using the specific Phases referred to, including required data at Phase 1. There is no other available or appropriate guide that can be used. Therefore, in this case, the Appellant's position that the Handbook can and should be used for a site-specific analysis.

[13(c) and (d)]: Ultimately both parties get to exactly the same position. The Council and the Appellant are therefore at one that there is no ancient woodland on the site, and there will be no loss or harm that can prevent the grant of planning permission.

[13(b)]: The Appellant concurs with the Council's position that even if the north-eastern boundary were to be considered ancient woodland (which the Appellant also does not agree, and indeed has strongly contested through Mr Forbes-Laird), then that area can be excluded from the developable area of the site at the reserved matters stage. Mr Billington addressed this very point in cross-examination.

Heritage

[16] Mr Smith's evidence is that the asset can only be seen except in very limited circumstances (glimpsed wintertime views). The Appellant remains of the position that there would be no harm. However, even if harm were to be identified, this would plainly be at the very lowest end of the scale of less than substantial harm, bearing in mind the same factors that guided Mr Smith's conclusions: the distance, intervening features and the nature of the asset (e.g its main aspect).

[18] The Appellant concurs with the Council's concluding position that even if one was to conclude that there was less than substantial harm to Colwell House, then the NPPF 215 test still clearly weighs in favour of the grant of permission. Again, Mr Billington has expressly addressed this scenario in his Proof. The Council and the Appellant also noted this position in the SoCG Addendum (CD8.2).

RESPONSE TO THE RULE 6 PARTY'S CLOSING SUBMISSIONS

Site Visit

[2]: The Rule 6 Party are entirely wrong that they are somehow "entitled" to a site visit in any circumstances, and certainly not on the facts of this case. The refusal in this case was not unusual and was based on the complete absence of any evidenced justification for doing so. As we have set out in detail already, there is no substance to any of their objections, most notably their misunderstanding of the Handbook and the role of botanical surveys in identification of ancient woodland (which was the main stated justification). As Mr Forbes-Laird has carefully explained, AWI surveys cannot overturn a substantial body of cartographic evidence. As the Appellant's evidence has demonstrated, the Rule 6 Party never undertook that exercise properly at any stage. There was also no substance at all in the objections in respect of reptiles. The Rule 6 Party accepted in their SoC that the 10% net gain would be met, and there was plainly no basis for a site visit on that basis either.

There is no principle that an appellant must allow site access in any case. The Rule 6 Party in this case failed to provide any actual evidence to justify a site visit. It was particularly notable that its ecologists did not make any effort to contact the Appellant, as Mr Carpenter confirmed. The Rule 6 Party failed to provide any site survey, to explain exactly where it wanted to go and why. Mr Forbes-Laird confirmed that such a site brief is the basic minimum, and here nothing at all was provided. In particular, they provided no cartographic evidence, an essential component of any ancient woodland case.

There is therefore no substance to the Rule 6 Party's case that it should have been permitted to enter the site. There is a further contextual point which situates matters. As Mr Billington noted in cross-examination, the Rule 6 Party has a history of last-minute attempts to object

to the application: CD4.42, a letter issued by its solicitors on the day of the Council's determination and not sent to the Appellant. There is also a longer history of multiple objections (12+) by a single member of the Rule 6 Party during the application, every one of which was dismissed comprehensively by Place Services: CD4.33 (leading to no RfR on this basis). The Appellant considered that there was no justification for a site visit, but given the history, it was reasonable to conclude that there the Rule 6 Party was simply trying to expand issues which had already been comprehensively addressed at the application stage and run new points without any merit. In terms of the Rule 6 Party's tendency to run points without merit, one need look no further than the way in which the Rule 6 Party made submissions on BNG, which were then only eventually withdrawn during the inquiry itself in Mr Carpenter's oral evidence.

Transport

[36] As the Rule 6 Party accepts: "[The Tool] does not determine whether a location is sustainable." It is therefore of very limited utility in this case. The Government (MHCLG) have not placed significant emphasis on the test and it is not a national planning policy requirement to do so.

[58] The Rule 6 Party is wrong that 800m is to be treated as any kind of ceiling, and Mr Russell accepted this. As Mr Marshall has set and as the other appeal decisions confirm, one has to look at to the MfS reference to 2km. All destinations in Walnut Park are well within that distance and the Town Centre is only just over that distance when measured from the midpoint.

[64] The test of "genuine choice" cannot be limited to "dark hours", bearing in mind that as Mr Russell had to accept the majority of people would use the Footpath to access the primary school, the convenience store, the GP, pharmacy and the bus stops would be during daylight hours.

Ecology

[86]-[87]: The Rule 6 Party has clearly mischaracterised Mrs Barratt's evidence. She explained in detail how the Appellant's team had laid a substantial amount of refugia across the Site. She has exercised professional judgement, guided by their knowledge of the grassland based on their own multiple site visits over the course of an extended period of time.

[88] and [92]: Mr Carpenter has not provided any evidence at all that the receptor should be any larger, or have any other proportion of light/shade. Mrs Barratt's assessment, grounded in the methodology set out in the EcIA, is plainly should be preferred. The Reptile Mitigation Strategy will take the design forward and can be considered by Place Services at that stage.

[92]: There will be no breach of the Wildlife and Countryside Act 1981. Place Services' position should be accorded great weight in this respect and there are no compelling reason to take any different view.

[93]: The Rule 6 Party are wrong to suggest that there will any breach at the point of felling. The trees will only be removed following survey by a licensed ecologist, trained in and well aware of the Bat Mitigation Guidelines.

Ancient Woodland

[104]: As throughout, the Rule 6 Party has simply not understood the importance of historic cartographic evidence. The maps are not merely “highly useful”, the Handbook expressly directs to their use and specifically the Epoch 1 map to ensure a common reference point. The Rule 6 Party’s case largely depends on ignoring counter-indications as to antiquity in maps, both prior to 1840 and afterwards.

[105]: Mr Forbes-Laird confirmed with 100% certainty that the central hedgerows are not ancient woodland. That is plainly borne out by the cartographic and aerial photography evidence. As the Council have observed at their [13(d)] that is really the end of the matter, because there will be no loss of harm to ancient woodland within the Site.

[105]: As to the north-eastern boundary feature, Mr Forbes-Laird has made clear that on the balance of probabilities (to a very high percentage of confidence), the north-eastern boundary feature is again very clearly not ancient woodland. Again, as Council have observed at their [13(b)] the point goes no further because it can be excluded from the developable area of the site at the reserved matters stage.

[125]-[128]: The Rule 6 Party’s approach of “no knock-out blow” is entirely the wrong test. The Rule 6 Party had to provide positive evidence, and notably it assembled a case that largely ignored the absence of cartographic evidence both from 1600-1840 and in the later maps, notably the Epoch 1 onwards.

[134]: Once again, the Rule 6 Party has entirely misunderstood the Handbook’s specific position precautionary principle and very limited circumstances in which it can apply. This is no sense a “finely balanced” case. The Rule 6 Party’s submissions have only arisen because of their repeated misunderstanding of the NPPF test and its failure to apply the Handbook methodology.

[137]: The Technical Note correctly summarised the position: that the Rule 6 Party made absolutely no attempt to refer to a single piece of cartographic evidence or the Handbook in any correspondence prior to the Proofs of Evidence. As set out above, on that basis, there was no justification for a site visit and Mr Forbes-Laird’s detailed evidence has confirmed the same.