

- a) **DOV/21/00311 – Groundworks to include infill with inert material to stabilise bank for the protection of (Tree Preservation Order) trees - Woodland adjacent to Hours, Church Road, Coldred**

Reason for report – Number of contrary representations received

- b) **Summary of Recommendation**

Planning permission would have been refused.

- c) **Planning Policy and Guidance**

Core Strategy Policies (2010)(CS)

CP1 – Settlement Hierarchy  
DM1 – Settlement Boundaries  
DM15 – Countryside  
DM16 – Landscape

National Planning Policy Framework (NPPF) (2019)

7, 8, 11, 127, 170, 197

- d) **Relevant Planning History**

21/00283	(Works to trees with a TPO) 1no. oak - lateral crown reduction by three metres	Approved
18/00249	(Works to trees with a TPO) Fell one Oak	Refused

- e) **Consultee and Third-Party Responses**

Shepherdswell Parish Council – Given historical heritage of the ex-rail line site, asked if it would be possible to protect the trees with less infilling or none.

DDC Trees – It was noted that there is a blanket TPO across this area. However, it was also acknowledged that the former railway cutting pre-dates the trees and the TPO, so was open to further discussions and alternative solutions to safeguarding the oak trees whose roots are exposed to the air. They accepted the findings of the submitted arboricultural report. These views were confirmed via email which is visible on the system.

DDC Ecology – Does not wish/need to make any comments on the application.

KCC Public Rights of Way – No comments.

KCC Archaeology – The application involves the infilling of a cutting of the (dismantled) East Kent Light Railway (EKLR). The EKLR was opened in stages from 1911/12 and was constructed to support the development of new collieries and formed part of Colonel Stephens's group of light railways. The EKLR ran from its terminus at Shepherdswell (where there was a connection to the mainline) to Port Richborough, with a branch to Wingham. Smaller branches along the line served various collieries at Tilmanstone and Hammill. The cutting in question forms part of a branch-line that connected to Guilford Colliery, located about 1km to the east of the application site.

It is understood that the rails were lifted from the Guilford Colliery branch of the EKLR in 1937, although rails were later re-laid over part of the branch to provide stabling for rail-mounted guns during WW2.

The remains of the EKLR are of industrial archaeological interest, both in their own right, but also as part of the story of the East Kent Coalfield. The remains of the railway should be thought of as a non-designated heritage asset. The infilling of the cutting and loss of this section of the former track-bed would be regrettable.

The applicant notes the infilling is necessary to stabilise the roots of trees subject to a Tree Preservation Order (TPO 1997, 6 – self-seeded woodland). It is for your council to determine whether the infilling of the railway cutting as a non-designated heritage asset is justified by the safeguarding of the TPO trees. I would note however that the TPO does not identify any specific individual trees but covers the “self-seeded woodland with a canopy predominantly of Ash and Sycamore over an understorey dominated by Hawthorn”. The arboricultural evaluation survey submitted with the application seemingly identifies that the majority of the trees present are mature Ash trees that show varying evidence for Ash die-back and many are identified for felling because of this. The application form states the works are required to preserve the life expectancy of root-exposed oak trees. Three oaks are listed in the arboricultural evaluation survey, however based on the grid-references provided only two of the oaks fall within the cutting. I wonder therefore whether more localised works might be possible, that would serve to protect the two oak trees without resulting in the infilling of the former railway cutting?

Environment Agency – No comments.

Public Representations:

**4 members of the public have objected to the proposals** and the material considerations are summarised below. Matters such as impact on an individuals' property value, financial intentions of the applicant etc. are non-material considerations and are not included below.

- Local history should not be buried.
- The cutting to be infilled pre-dates the trees covered by the blanket TPO.
- The cutting is evidence of the industrial and cultural past of the area.
- The site should be preserved for future generations.
- A small oasis for wildlife.
- The site should be kept as it is; a site of history/heritage and an area of woodland for wildlife and nature.

**9 members of the public support the proposals** and the material considerations are summarised below.

- Works would save trees slipping down slopes.
- Infill would make it safer for trees and humans.
- Only front section would be infilled, the rear section would still be visible from the footpath.
- Vital to preserve woodlands.
- Better for flora and fauna.
- Opposite side of road infilled and line of cutting remains clear from the trees.
- No longer evident it is a former cutting, just an overgrown, dangerous hole.

f) **1. The Site and the Proposal**

- 1.1 The application site relates to a section of a former railway cutting associated with the former local collieries, joining up with the wider East Kent Light Railway. The existing cutting, whilst evident by the deep (4m) trench to the north of Hours (a residential property), has been subject to erosion and landslip in the past and now roughly forms a 'V' rather than a crisp rectilinear cutting. A number of trees (largely ash alongside other varied species, including oak) have self-seeded in the cutting. There is a blanket TPO which covers all self-seeded trees.
- 1.2 The former cutting has been cut into two separate sections; one section which runs the full length of the residential land of Hours (and adjoins Hours) and ends at a public footpath crossing (ER94), and a second section of cutting beyond the footpath (to the east) surrounded by open farmland. These two sections of the cutting are some of the only remaining unfilled parts of the former rail line in this area and are considered to be non-designated heritage assets. Both sections of the cutting are in the ownership of Hours but do not constitute residential or garden land.
- 1.3 The application seeks to infill the front section (north-west from the footpath crossing) with inert spoil (mainly chalk) with a layer of topsoil above. The works are ostensibly to safeguard 2no. Oak trees which have had their root systems largely exposed and are at risk of falling. Although no details were provided within the application, it is the intention to remove the diseased Ash trees and replant the area with new native species to reinforce the woodland and to infill the cutting with inert spoil to bring the land levels up to match that of the garden of Hours for the section of the cutting adjacent to Hours. The additional desire is to make the area safer for the use of the owners of the land (although there is no suggestion of a change of use to residential land such that the applicants wish to include the land within the residential curtilage of Hours) and to help reinforce the public footpath to the south-east of this front section, which is privately maintainable.
- 1.4 The application is the subject of an appeal against Non-Determination lodged by the applicants. As such, we are asking a determination as to what the Council's decision would have been were this application to have been dealt with by Planning Committee. The application is now with the Planning Inspectorate to determine.

**2. Main Issues**

- 2.1 The main issues for consideration are:
- The principle of the development
  - Impact on Ecology, Biodiversity and Protected Trees
  - Impact on a Non-designated Heritage Asset
  - Impact on Character and Appearance of the Countryside and Landscape

**Assessment**

**Principle of Development**

- 2.2 The site lies outside of settlement confines identified in Policy DM1 and is therefore in the countryside for planning purposes.

### Impact on Ecology, Biodiversity and Protected Trees

- 2.3 No concerns were raised with regard to ecology, habitats or potential contamination as a result of the proposed infilling, using inert material, nor were any ecological or biodiversity concerns raised with regard to the existing state of the cutting by the Environment Agency or DDC Ecology. DDC Trees has confirmed the blanket Tree Preservation Order as TPO 1997, 6 – self-seeded woodland. It was also acknowledged that the cutting pre-dates both the trees within the cutting and the TPO.
- 2.4 The trees, a number of which are suffering with Ash Dieback, require removal to safeguard uninfected Ash trees. Any other trees requiring removal would need permission from DDC (not Planning), as they're subject of the blanket TPO.
- 2.5 Of major concern are 2no. mature Oak trees, the roots of which have become exposed to the air due to continued erosion into the cutting. Ideally, these tree roots need to be re-buried in some form to prevent them falling into the cutting. It is unlikely that these trees would fall into the garden land of Hours but this cannot be ruled out at this stage. Whilst the back filling required to provide an adequate base for these 2no. trees would be significant, it would not require the full infilling of the cutting. DDC Trees have confirmed that they would be open to discussions about alternative safeguarding measures to safeguard these 2no. Oak trees. DDC Trees also recognised that the cutting pre-dates the trees and the TPO and that a balance needs to be struck between safeguarding protected trees and safeguarding a heritage asset. It's noteworthy that DDC Trees do not raise an in principle objection as such to the loss of these two trees. No alternative schemes to safeguard these 2no. trees has been presented as part of the supporting documentation.

### Impact on a Non-Designated Heritage Asset

- 2.6 Paragraph 197 of the NPPF states: 'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.' As has been previously noted, much of the eastern parts of the former East Kent Light Railway has been infilled, with farmland or woodland above. This makes the remaining exposed sections of the cuttings more significant in terms of the historical understanding of the previous railway line which supported the nearby collieries.
- 2.7 Whilst the proposal does not result in the full loss of a non-designated heritage asset, as the application site comprises only a small section of the former railway line, it would result in a further erosion of this asset's significance and remove more of the asset from view. It would also further reduce the legibility of the route the former railway took between the mainline railways (with access to Port Richborough) and The Winding House on Singledge Lane (part of the former Guilford Colliery). Whilst the treeline does retain this line to some degree, this is only legible in maps and in aerial views, not from the ground where it would appear as simply a woodland. This new development, in addition to all the other infills, has a cumulative impact that is greater than the actual development itself. Given this, it is considered that there would be harm to this non-designated heritage asset through the loss of a further section of the former railway line/cutting, contrary to Paragraph 197 of the NPPF. This conclusion was agreed

with DDC Heritage who also agreed the wording of these paragraphs. Whether this harm can be balanced by other material considerations is discussed below.

### Impact on the Character and Appearance of the Countryside and Landscape

- 2.8 The proposal would have only a limited impact on the character and appearance of the countryside and landscape as it would only be visible to any degree from the public footpath crossing the cutting. However, the change to the views from this part of the footpath would be significant. Where once there was a clear ditch to both the north-west and south-east of the footpath, the land levels would be brought up to the level of the footpath to the north-west. From this vantage point, the loss of the non-designated heritage asset would be readily seen. It is considered that this would result in some level of harm to the character and appearance of the countryside and the landscape, albeit limited – the main concern would be the heritage loss. The backfilling to support the 2no. Oak trees, rather than the full infilling of the cutting, would have far less visual impact on these views and as such, alternatives should be explored.
- 2.9 Whilst this application does not seek to change the use of this land to residential, a conversation with the applicant during a recent site visit suggests that the intended use of the land once the cutting was filled, would have a more formal/managed appearance than it does at present. Even if this falls short of a formal extension of the existing garden at Hours, such an arrangement is more likely to erode the prevailing unspoilt rural character at this point. Notwithstanding, in strict countryside impact terms, given the relatively discrete nature of the site, it is not considered that the proposal would result in harm to the wider character and appearance of the countryside or the landscape (relative to Paragraph 170 of the NPPF and Policies DM15 and DM16 of the CS) sufficient for this to be the basis of an objection that could be sustained at appeal.

### **3. Conclusion**

- 3.1 It is concluded that the proposed infilling of the former railway cutting would cause harm to what is a non-designated heritage. Despite being limited in extent, the cumulative impact of this proposal as noted in para 2.7 would be harmful to the significance of the heritage asset and its future understanding. Whilst the proposal would help to safeguard 2no. self-seeded Oak trees, it has been recognised that the proposal may not be the only way to ensure their survival. Furthermore, any risk to these 2 trees (which form part of a wider tree group) are considered, on balance, to be more than outweighed by the harm that would be caused to the loss of the non-designated heritage asset. Strong concerns have been raised to the loss of the cutting by KCC Archaeology. The DDC Heritage Officer has also supported their position. No comments have been received by DDC Trees to suggest that this conclusion is inappropriate. Overall, therefore, it is considered that the harm which would be caused by the proposal in terms of heritage loss, would not be outweighed by the need to safeguard the protected trees in question. It is considered that the proposed development would fail to comply with the aims and objectives of the NPPF and the CS.
- 3.2 Given the above, it is recommended that the application would have been refused for the reasons stated below. As previously noted, Members will not be determining this application but will determine what recommendation they would have reached. This will provide evidence in the appeal against non-determination.

**g)**

**Recommendation**

- I Permission would have been REFUSED for the following reason/s:
  - (1) The proposed infilling of the historic cutting would result in unjustified harm to a non-designated heritage asset through the loss of the legibility of a rare remaining section of cutting of the East Kent Railway and the local industrial heritage, without overriding justification. The proposal would fail to comply with Paragraph 197 of the National Planning Policy Framework (2019).
- II Powers to be delegated to the Head of Planning, Regeneration and Development to settle any necessary issues set out in the recommendation and as resolved by the Planning Committee.

**Case Officer**

Andrew Wallace