

On the 7th February 2017, the Government published its White Paper on housing, *Fixing our broken housing market*.

Following the recent seminar on Ancient Woodland in the planning system, delivered jointly by Landmark Chambers and Sylvan, we are collaborating again to provide an update on the implications for this habitat of the 'Housing White Paper'.

At paragraph 118 bullet five of the NPPF, Ancient Woodland enjoys a presumption in favour of retention, save in the circumstance that:

...The need for, and benefits of, the development in that location clearly outweigh the loss

However, in its review of the NPPF of December 2014, the Communities and Local Government Select Committee recommended that Ancient Woodland be afforded the same status as designated heritage assets of the highest significance. This would elevate the test for loss to the standard set out in NPPF 132, namely *wholly exceptional*. The Government rejected this recommendation in its response to the CLG Committee's review.

The All-Party Parliamentary Group on Ancient Woodland & Veteran Trees, aided and abetted by the Woodland Trust, have continued to lobby for the protection afforded to Ancient Woodland to be increased. It and the Woodland Trust have maintained the call for the *wholly exceptional* test to be applied.

Prior to Publication of the Housing White Paper, it had been suggested in the press that protection for Ancient Woodland could be elevated to the same status as Green Belt, whereby its loss would require justification by *very special circumstances* (per NPPF 87). The test for acceptability of loss of Green Belt, is set out at NPPF 88 in the following terms:

'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations

The requirement for harm to be clearly outweighed is very close to the existing test for acceptability of loss of Ancient Woodland (NPPF 118.5).

With the backdrop of the calls for greater protection, the Housing White Paper provides an insight into the Government's contemporary view of the protection that should be afforded to Ancient Woodland (and veteran trees).

So, what if anything has changed, and what do any changes mean for existing and future development proposals that impact on Ancient Woodland?

The single proposed change in relation to Ancient Woodland is that the current list of policies at Footnote 9 to NPPF paragraph 14, which the footnote cites as examples, be expanded to include Ancient Woodland, and becomes explicitly a comprehensive list.

There is no proposal to elevate the protection to that afforded either to designated heritage assets of the highest significance (the *wholly exceptional* test), or to Green Belt (*very special circumstances* with harm *clearly outweighed*).

Ancient Woodland remains presumed for retention, unless needs plus benefits are clearly greater than harm.

Most importantly, in our view, Ancient Woodland remains a classification, and not a designation. This means that the inclusion of a woodland within the Ancient Woodland Inventory continues to be a matter open to further examination and, perhaps, evidence-based refutation as to ancientness.

Insofar as we already treat Framework 118.5 as a policy restriction on the Golden Thread Presumption, the proposed amendment to the Framework does not comprise a material change in the approach that we consider should be taken by decision-makers.

It follows that all current schemes that might impact on Ancient Woodland are not – if correctly construed – affected by the proposed changes. Therefore, the effect of the proposals in the White Paper, if implemented, would be neutral unless errors of interpretation regarding NPPF 118 had already occurred.

Regarding future development proposals affecting Ancient Woodland, providing that the correct approach is taken to Framework 118 as it presently stands, the proposed changes to Fn9 would have no additional effect.

Overall, the Government's view clearly remains that the Framework strikes the right balance between protection of Ancient Woodland and the objective of delivering sustainable development.

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