

North Yorkshire Council

Community Development Services

Richmond (Yorks) Area Committee Planning Committee

14th November 2024

ZD24/00397/FULL - Retrospective planning application for the removal of a five-inch cast iron pipe at gully one and replaced with a 12 inch concrete drainage pipe

At: Dalton Woods, Dalton on Tees, North Yorkshire, DL2 2NR

On Behalf Of: Mr Robert Pickersgill

Report Of The Assistant Director Planning– Community Development Services

1.0 PURPOSE OF THE REPORT

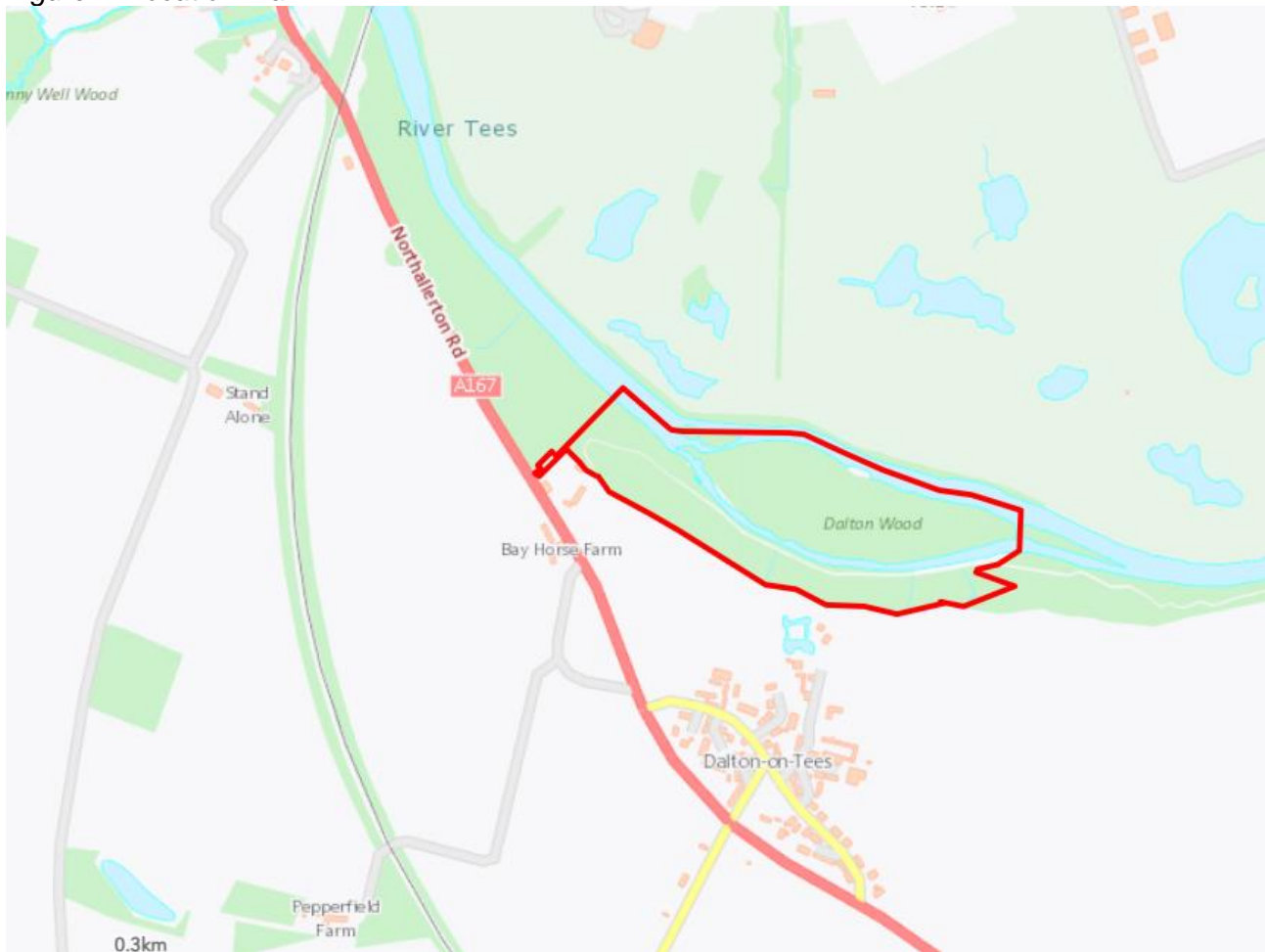
- 1.1. To determine a planning application for retrospective planning permission for the removal of a five-inch cast iron pipe at gully one and replaced with a 12-inch concrete drainage pipe at Dalton Woods, Dalton on Tees.
- 1.2. This application is brought to planning committee due to significant material planning consideration arising from being sited within an Ancient Woodland and potential harm to this irreplaceable habitat.

2.0 SUMMARY

RECOMMENDATION: That planning permission be **REFUSED** subject to the reasons outlined below.

- 2.1 Works have been undertaken at Dalton Woods without the benefit of planning permission. Subsequently the applicant is seeking retrospective planning permission for the removal of an existing five-inch cast iron pipe, and this has been replaced with a 12 inch concrete drainage pipe within an Ancient Woodland.
- 2.2 The application is recommended for refusal due to changing the drainage system in an Ancient Woodland against advice provided by Natural England and Forestry Commission; and insufficient information on trees, ecology and flooding.

Figure 1: Location Plan



3.0 PRELIMINARY MATTERS

- 3.1. Access to the case file on Public Access can be found here:-
<https://planning.richmondshire.gov.uk/online-applications/applicationDetails.do?activeTab=externalDocuments&keyVal=SGGBO7NA00S00>
- 3.2. The site has an extant permission following the grant of a Certificate of Lawfulness in 1994 (Planning Reference: 94/00016/CLE) for a motorcycle trails riding and practice. This covers the majority of Dalton Wood.
- 3.3. There is further live application for Dalton Wood to the north-west: 21/00791/FULL- Full planning permission for engineering and excavation works to create yorkshire sandstone rock tracks measuring 1.5 To 2m wide and between 10m and 40m in length (part retrospective).

4.0 SITE AND SURROUNDINGS

- 4.1 The application site is located within Dalton Woods, Dalton on Tees which is located approximately 400 metres northwest of the village of Dalton-on-Tees. The River Tees flows approximately 50 metres to the north of the application site.
- 4.2 Dalton Woods has recently (December 2023) been designated as an ancient woodland by Natural England and has a public right of way running through the woodland. Furthermore,

the site is adjacent to a residential property known as Clervaux and is adjacent to a scheduled monument of a medieval settlement and associated field system.

5.0 DESCRIPTION OF PROPOSAL

- 5.1 The application seeks retrospective planning permission for the removal of an existing five-inch cast iron pipe and this has been replaced with a 12-inch concrete drainage pipe. This is an alteration to the initial submission which sought planning permission for the installation of u-shaped drain near to the public right of way, along with further works to other gullies by varying the drainage pipes. These works have not been undertaken and were non-retrospective.
- 5.2 Following discussion with the Council these elements were removed from the application, and the applicant now only seeks retrospective permission for works to one gully as detailed above.

6.0 PLANNING POLICY AND GUIDANCE

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

Adopted Development Plan

- 6.2 The Adopted Development Plan for this site is:

- Richmondshire Local Plan 2012-2028 Core Strategy, adopted 2014
- Saved Local Plan Policy 23 of the Richmondshire Local Plan 1999-2006
- The Minerals & Waste Joint Plan 2015 – 2030 adopted 2022

Emerging Development Plan – Material Consideration

- 6.3 North Yorkshire Council is preparing a new Local Plan, however, it is at too early a stage to be a material planning consideration.

Guidance - Material Considerations

- 6.4 Relevant guidance for this application is:

- National Planning Policy Framework 2023
- National Planning Practice Guidance
- National Design Guide 2021

7.0 CONSULTATION RESPONSES

- 7.1. The following consultation responses have been received and have been summarised below.
- 7.2. **North Yorkshire Council Ecology** – No ecology assessment has been submitted with the application and subsequently drainage improvements have the potential to have impacts upon the ancient woodland, both in terms of direct impacts during works and also hydrological changes resulting from the increased drainage capacity. This application should not be looked at in isolation from 21/00791/FULL cumulative impacts should form part of the ecological assessment for each application.
- 7.3. **North Yorkshire Council Highways** – No objections
- 7.4. **Natural England** – No Objections. Advises that the Local Planning Authority should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of

the NPPF. Natural England and the Forestry Commission have produced standing advice for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

7.5. **Public Rights of Way** - This application cannot be considered without reference to 21/00791/FULL, and our comments on that application remain relevant here, and are as follows: 'in order to ensure the safety of members of the public using the public footpath and permissive path and to preserve the amenity of the public footpath it is recommended that the area of woodland between the permissive path and boundary of the wood, hatched in red on the attached map, is not used by motorcycles, except for access to the site on the track to the north east of the car park (shown in blue on the map). Signs should be installed and maintained on the access track advising motorcyclists of the presence of the public footpath and permissive path. Any obstacles or earthworks should be removed from the hatched area and the woodland allowed to naturally revegetate.'

7.6. **Dalton on Tees Parish Council** – Objected to the application.

- The works have been undertaken within a steep bankside adjacent to the residential property of Clervaux and adjacent farmland, with the River Tees. It is evident that land slippage has occurred and a professional survey should be undertaken along with a drainage report
- The applicant has requested ongoing maintenance and therefore the Parish Council query what is ongoing maintenance.
- Dalton Wood has been designated by Natural England as an Ancient Woodland, and no revised ecological assessment has been provided.
- The site is in close proximity to, two scheduled ancient monuments and share a boundary with Dalton Wood and therefore the works/ground works may potentially have an impact on these protected sites.

It was impossible from the block plan dated 14.9.22 to determine exactly what was proposed in terms of the "metal pipework" referred to, where this pipework was currently located, what function it currently serves, and why it needs to be replaced.

7.7 **Historic England** – Comments awaited

7.8 **Ramblers Association** - Ramblers do not wish to comment on the operation of and infrastructure provided for motorcycle trials in and around Dalton Woods but clearly have a view on any impact for users of the footpath which passes through the site.

7.9 **Woodlands Trust** – Objection

The Woodland Trust objects to these applications on the basis of loss and deterioration of Dalton Wood, designated as an Ancient Semi Natural Woodland (ASNW) on Natural England's Ancient Woodland Inventory (AWI). The proposals in question would involve (or appear to have involved) the loss of ancient woodland as a result of excavation, trenching and various ground works within ancient woodland that constitute loss of ancient woodland soils and loss of available habitat. Furthermore, the proposed use of the site is likely to lead to deterioration of the ancient woodland as a habitat for wildlife and should also be refused on these grounds. We consider the following impacts are likely to occur:

- Direct loss of ancient woodland.

- Deterioration of irreplaceable habitat through disturbance, pollution and other indirect impacts
- Impact on local biodiversity as a result of impacted habitats
- Encroachment on the root systems and rooting environments of trees within the ancient woodland.
- Damage to soils, ground flora, fungi and understorey.
- Intensification of human activity and recreational disturbance.
- Increased vehicle use and traffic emissions.
- Threats to long-term retention of trees from increased need to manage trees for safety purposes.
- Cumulative effect of the above impacts resulting in long-term deterioration.

7.10 A site notice has been posted and neighbours have been consulted on the application. One letter of objection has been received in regard to this application with their comments summarised below:

- No detailed drainage drawing or specification has been provided
- No Flood Risk Assessment has been provided
- No tree survey has been provided despite works which has involved excavation around tree roots
- No ecological assessment provided considering the site is an Ancient Woodland
- No Ground Stability Report has been provided despite the works being undertaken within a steep bank

8.0 ENVIRONMENT IMPACT ASSESSMENT (EIA)

8.1. The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environment Statement is therefore required.

9.0 MAIN ISSUES

9.1. The key considerations in the assessment of this application are:

- Principle of development
- Impact of the Development on the Ancient Woodland
- Impact on Heritage Assets
- Impact on Flooding
- Impact on Public Right of Way

10.0 ASSESSMENT

Principle of Development

10.1 Policy CP1 of the Council's Core Strategy states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the plan area.

10.2 It is noted that the site is located within or adjacent to several designated areas which needs to be considered in accordance with the National Planning Policy Framework. The site is located within a designated Ancient Woodland, within Flood Zone three and adjacent to a

scheduled monument. Therefore, the principle of development will be assessed through the various sections to determine if the development is acceptable in principle or not.

Impact on Ancient Woodland

10.3 In December 2023 Natural England designated Dalton Wood an ancient semi natural woodland. Ancient woodland is an irreplaceable resource of great importance for its wildlife, soils, recreational and cultural value, historical and archaeological significance, and the contribution it makes to our diverse landscapes. It is a scarce and threatened resource, covering only 2.5% of England's land area, and has a high level of protection in planning policy.

10.4 Natural England and the Forestry Commission have produced standing advice for ancient woodland and is a material planning consideration for local planning authorities. Ancient woodland takes hundreds of years to establish and is defined as an irreplaceable habitat. It is a valuable natural asset important for wildlife; soils; carbon capture and storage; contributing to the seed bank and genetic diversity; recreation, health and wellbeing; cultural, historical and landscape value.

10.5 Dalton Wood is an area that has been continuously wooded since at least 1600 and includes an ancient semi-natural woodland mainly made up of trees and shrubs native to the site, usually arising from natural regeneration. Ancient woodlands have equal protection within the National Planning Policy Framework, where paragraph 186c states the following:

“When determining planning applications local planning authorities should apply the following principles:...

c) 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 and a suitable compensation strategy exists.”

10.6 Within the NPPF further commentary is provided in regard what is considered wholly exceptional reasons which are infrastructure projects (including nationally significant infrastructure projects under the Transport and Works Act and hybrid bills) where the public benefit would clearly outweigh the loss of deterioration of habitat.

10.7 When making planning decisions, Councils should consider conserving and enhancing biodiversity; avoiding and reducing the level of impact on the proposed development on ancient woodland and veteran trees. Planning permission should be refused if the development will result in the loss or deterioration of ancient woodland unless both of the following apply:

- There are wholly exceptional reasons
- There's a suitable compensation strategy in place

10.8 It is important to assess the direct and indirect effects of the development on the ancient woodland. Natural England and Forestry Commission 'Ancient woodland, ancient trees and veteran trees: advice for making planning decisions' sets out that development, including construction and operational activities can affect ancient woodland and the wildlife they support on the site or nearby. Direct effects of development can cause the loss of deterioration of ancient woodland by:

- Damaging or destroying all or part of them (including their soils, ground flora or fungi)
- Damaging roots and understorey (all the vegetation under the taller trees)
- Damaging or compacting soil

- Damaging functional habitat connections, such as open habitats between the trees in wood pasture and parkland
- Increasing levels of air and light pollution, noise and vibration
- Changing the water table or drainage
- Damaging archaeological features of heritage assets
- Changing the woodland ecosystem by removing the woodland edge or thinning trees – causing greater wind damage and soil loss

10.9 Indirect effects of development can also cause the loss or deterioration of ancient woodland by:

- Breaking up or destroying working connections between woodlands, or ancient trees or veteran trees, affecting protected species such as bats or wood-decay insects
- Reducing the amount of semi natural habitats next to ancient woodland that provide important dispersal and feeding habitat for woodland species
- Reducing the resilience of the woodland or trees and making them more vulnerable to change
- Increasing the amount of dust, light, water, air and soil pollution
- Increasing disturbance to wildlife such as noise from additional people and traffic
- Increasing damage to habitat, for example trampling of plants and erosion of soil by people accessing the woodland or tree root protection areas
- Increasing damaging activities like fly-trapping and the impact of domestic pets
- Increasing the risk of damage to people and property by falling branches or trees requiring tree management that could cause habitat deterioration
- Changing the landscape character of the area

10.10 As part of the standing advice it states that applicant should provide a tree survey and ecological survey, with both documents including mitigation measures in their development to avoid and reduce harm on the ancient woodland. Neither of these documents have been provided by the applicant and subsequently the Council cannot quantify the harm that the development has caused to the ancient woodland. Within the standing advice provided there are several methods in how to compensate for the loss of deterioration of ancient woodland. However, no information has been provided and it is considered that the replacement of a larger pipe in an existing gully has a direct impact on the ancient woodland as this changes the drainage of the area which could have a detrimental impact on the soil communities in the area and subsequently it is considered that the development is contrary to the overarching principles of the NPPF together with paragraph 186 specifically.

Impact on Heritage Assets

10.11 The application site is adjacent to a scheduled monument which is the medieval settlement of Dalton upon Tees and associated field system. The monument includes extensive earthwork and buried remains of the medieval village of Dalton upon Tees, including a moated site, a set of fishponds and parts of the surrounding medieval field system. It is located on elevated ground on the south bank of the River Tees, in fields around the present village. The monument is divided into three separate areas of protection. One area occupies the fields between the current village and the River Tees and contains the remains of the moated site and the core of the settlement. The second area occupies a field to the east of the current village and contains the remains of the field system. The third area occupies two fields south of the Northallerton Road and contains the fishponds and further remains of the field system.

- 10.12 The National Planning Policy Framework at paragraphs 200, 201 and 203 requires an assessment of the potential harm a proposed development would have upon the significance of a designated heritage asset and requires that harm should be weighed against the public benefits of the proposal.
- 10.13 Paragraph 206 of the NPPF states that any harm to, or less of the significance of a designated heritage asset should require clear and convincing justification. Substantial harm to or loss of assets of the highest significance notably scheduled monuments should be wholly exceptional.
- 10.14 Paragraph 205 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether the potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 208 of the NPPF states that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including where appropriate securing its optimum viable use.
- 10.15 Core Planning Policy CP12 states development will be supported where they conserve and enhance the significance of the plan area's natural and man-made, designated or undesignated assets. Development will not be supported which has a detrimental impact upon the significance of a natural or man-made asset and is inconsistent with the principles of an asset's proper management.
- 10.16 The scheduled monument is located in an elevated position above the ancient woodland which is located on a slope directly above the River Tees. It is considered that the physical works undertaken and the new drainage operationally could negatively impact land stability and there is insufficient information to rule this out. Land slippage and any unexpected waterlogging could impact the Scheduled Ancient Monument at the high level. It is therefore considered that the changes result in less than substantial harm on the heritage asset. When it is considered that there is less than substantial harm on the asset this needs to be weighed up against any public benefits with the change in drainage pipe. However, no public benefits have been presented to the Council. With a larger pipe this will result in an increase in flow of water to the River Tees which could lead to erosion of the ancient woodland along with any lasting impacts on the scheduled monument which is not considered to be a public benefit. Therefore, it is considered that the development is contrary to the overarching principles of the NPPF and the Council's Core Strategy Policy CP12. If comments are received from Historic England these shall be reported to Planning Committee.

Impact on Flooding

- 10.17 When reviewing the plans and the Flood Zone maps it shows that the site is within Flood Zone 3. Therefore, as the development is within Flood Zone 3. Core Strategy CP3 states that development will be supported if it promotes the natural drainage of surface water mitigating the effects of flash flooding of rivers, drains and drought.
- 10.18 Paragraph 165 of the National Planning Policy Framework states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. It is not possible for development to be in areas with a lower risk of flooding, the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed.
- 10.19 Paragraph 173 of the NPPF states when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Within the NPPF it states that a site-specific flood risk assessment should be provided for all

development in Flood Zones 2 and 3. As the site is located within Flood Zone 2 and 3 a flood risk assessment is required. No assessment has been provided and therefore the Council cannot assess the development to ensure that as a result of the development this will not lead to flooding elsewhere. It is therefore considered that the development is contrary to the overarching principles of the NPPF.

Impact on Public Right of Way

- 10.20 It is noted that a public right of way runs through the site (it's redline boundary). However, where the alteration of the gully has taken place is not adjacent to any public right of way and therefore it is considered that the change in drainage pipe will not have any impact on the users of the public right of way.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1 With the recent designated of Dalton Wood as an ancient woodland this has resulted in the land in question having special protection as detailed within the NPPF. The alteration of drainage of the site has the potential to impact on the soil communities and the drainage arrangements of the ancient woodland which could lead to irreplaceable damage. This is as detailed within the Standing Advice and the NPPF and in principle is contrary to Policy CP12 and paragraph 186 of the NPPF.
- 11.2 Furthermore the site is adjacent to a scheduled monument which is also afforded special protection within the NPPF. As the scheduled monument is in an elevated position above the physical works and altered operational drainage arrangement could subsequently result in less than substantial harm on the heritage assets. No public benefits have been presented which would outweigh the harm and subsequently it is considered that the development is contrary to the overarching principles of the NPPF and Policy CP12.
- 11.3 The site is also located within Flood Zone 2 and 3 and no flood risk assessment has been provided. Therefore, the Council cannot assess the development to see if this would prevent flooding elsewhere and is also contrary to the overarching principles of the NPPF and Policy CP2.

12.0 RECOMMENDATION

- 12.1. That planning permission be REFUSED subject to the reasons detailed below:

Reasons:

1. The drainage development has the potential to have negative impacts upon Ancient Woodland, both in terms of direct and indirect impacts during works and also hydrological changes resulting from the increased drainage capacity and flow speeds. No reports have been submitted demonstrating that the changes to the woodlands drainage system will not give rise to harm. As such, any changes to the drainage system is considered to result in harm to the Ancient Woodland and conflict directly with advice from Natural England and Forestry Commission 'Ancient woodland, ancient trees and veteran trees: advice for making planning decisions', Paragraph 186c of the National Planning Policy Framework 2023 and Policy CP12 of the Richmondshire Local Plan 2012-2028 Core Strategy adopted 2014.
2. Insufficient information has been submitted in the form of an ecological assessment and tree survey and thus the Local Planning Authority has not been able to assess the impact to the ancient woodland on these aspects. The development is considered to be contrary to Paragraph 186c of the National Planning Policy Framework 2023 and Policy CP12 of the Richmondshire Local Plan 2012-2028 Core Strategy adopted 2014.

3. The development is adjacent to an Ancient Scheduled Monument of a medieval settlement of Dalton upon Tees and associated field system. The physical drainage works and operational phase of the new drainage system may impact on the woodland slope it is sited within particularly land stability. Insufficient information has been provided to demonstrate the slope stability will not be affected, and thus the Ancient Scheduled Monument is not affected by the development. A potential less than substantial harm on the heritage asset cannot be ruled out. No public benefits have been presented that outweigh the harm caused and subsequently it is considered that the development is contrary to paragraph 208 of the National Planning Policy Framework 2023.
4. The site is located within Flood Zone 2 and 3. National Planning Policy Framework 2023 Paragraph 173 requires all development in Flood Zone 2 and 3 to provide a site specific flood risk assessment. No flood risk assessment has been provided to the Local Planning Authority and subsequently the applicant has failed to demonstrate that the development will not result in increased flooding elsewhere and is contrary to Paragraph 173 of the National Planning Policy Framework 2023.

Target Determination Date: 18th November 2024

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