Knoll House Hotel, Ferry Road, Studland, Dorset, BH19 3AH

APPEAL BY KINGFISHER RESORTS STUDLAND (LTD)

APP/D1265/W/24/3348224

LPA Planning Application Reference P/FUL/2022/06840

CLOSING SUBMISSIONS BY THE LOCAL PLANNING AUTHORITY

INTRODUCTION

1. These are the closing submissions by Dorset Council ("the Council") in its response to the appeal by Kingfisher Resorts Studland Ltd ("the Appellant") brought under section 78 of the Town and Country Planning Act 1990 against the refusal by the Council of the above planning permission. These closing submissions do not rehearse all the arguments and evidence that the inquiry has heard. The Council will rely on to demonstrate why the appeal should be refused. Rather, they seek to set out what the main remaining issues are between the Appellant and the Council, and why in summary the Council still considers the appeal should be refused.

THE IMPACT OF THE SCHEME ON LANDSCAPE CHARACTER AND THE PURPOSES FOR WHICH THE NATIONAL LANDSCAPE WAS DESIGNATED

2. The relevant statutory duty is that set out in section 85 Countryside and Rights of Way Act 2000 ("CROW"). That sets out a duty not just to have regard to the purposes for which an AONB has been designated but a duty to further the purpose of conserving and enhancing the natural beauty of AONBs.

3. The relevant policy test (which is common ground is replicated in Local Plan Policy E1) is that set out in paragraph 189 and 190 NPPF namely that:

> *"[189] Great weight should be given to conserving and enhancing landscape and scenic beauty in … National Landscapes which have the highest status of protection in relation to these issues… the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas."*

> *[190[When considering applications for development within National Parks, the Broads and National Landscapes, permission should be refused for major development67 other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of: a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.*

Landscape designations

4. There is little if no difference between the parties as to the sensitivity of this location, situated as it is in the Dorset AONB and the Purbeck Heritage Coast. The latter has also attracted international recognition in the form of the European Diploma for Protected Areas (CD10.5). As Ms Ede explained in her evidence, this is one of only five areas in England which hold this particular Diploma,[1] a fact not acknowledged in the Appellant's LVIA nor the Appellant's Landscape Expert's proof of evidence. He did not agree that it meant it should be placed in the highest degree of sensitivity according to his scale[2]. Whatever his approach to that particular ranking in his scale, the international recognition of the landscape value of this area is clearly a highly material consideration when understanding its sensitivity.

Purposes for which the AONB and key features of the South Purbecks Heath LCA.

5. The key characteristics of the South Purbeck Heath LCA are set out in the Landscape SoCG.[3] They include " *tranquil and remote character derived through perceived naturalness and the absence of built development*". It is concerning that the latter aspect of this key characteristic of the relevant LCA was not even mentioned in either the LVIA or the evidence of Mr Sneesby.

6. The purposes for which the AONB has been designated are also set out in the Landscape SoCG (they have been extracted from the AONB Management Guidelines). Its special qualities ("SQs") include "*contrast and diversity – a microcosm of England's finest landscapes*". That SQ comprises "*uninterrupted panoramic views to appreciate the complex patter and textures of the*

[1] Ede PoE para. 3.5
[2] Reserved apparently to cases such as the "Taj Mahal". That does not render this categorisation of much practical utility.
[3] CD10.004. para. 3.10

surrounding landscapes", "*tranquillity and remoteness*", and "*undeveloped rural character*". It also includes "*a living textbook and historical record of rural England*", including "a*n exceptional undeveloped coastline*". Therefore it is an essential part of the special quality of the AONB is the lack of built form. That characteristic is echoed in the designation of this area as part of the Purbeck Heritage Coast, whose designation in 1981 reflects the fact it that it was one of the best "*stretches of undeveloped coast in England*".

The details of the proposal in the application documentation

7. It stands to reason that the more sensitive a location, the greater need for sufficient information at the stage of considering the application than might otherwise be in the case. To assess the extent to which the proposal will affect those purposes and those SQs in a sensitive location like this clearly requires a sufficient level of detail to be provided. Mr Sneesby quite rightly stated that that a proposal, in a location like this, demands "*serious interrogation*".[4]

8. It is a matter for you to decide whether Mr Sneesby did really carry out a sufficiently serious interrogation of the proposal. He had not, for example, ascertained where the construction compounds would go. He also fairly accepted that the details for example of the green roof (on the sensitive southern side of the scheme) were not available and that "*an element of trust is needed*"[5]to ensure that this roof would be effective in terms of minimising the visual impact of the increased built form on this southern boundary. Nor did he provide any reassurance as to what would be the implications in landscape terms of the significant amount of earthworks that would be required, as he had not considered the Geotechnical Study,[6] which in any event was clearly out of date and prepared for the 2018 application.

9. Whatever view you take as to the weight to be attached to Mr Sneesby in light of this, on any analysis , the application has a number of alarming omissions and inaccuracies which are material to the ability of this inquiry to really understand what the landscape and visual impacts of this scheme will. Ms Ede set out in detail and explained them in detail in her evidence in chief, to which there has been no real challenge. She is an external landscape

[4] Sneesby Day 2, XIC
[5] XX Sneesby Day 2
[6] CD1.055, dated 17 March 2018,page 22, under Earthworks; "Currently, no extensive earthworks are expected for this site".

expert, entirely independent of the Council, and her review was clearly detailed and thorough. The following in particular are substantial omissions of direct relevance to understanding the true landscape impact of this proposal:

a. Earthworks. The Geotechnical Report submitted in support of this application was dated 2018.[7] It stated that no significant earthworks are required.[8] That is plainly not the case. In the north-western corner, a building platform of up to 6m (i.e a raising of the ground levels by 6m) is proposed.[9]

b. Site levels. It is very hard to determine where the existing ground levels are on most of the plans, because a proposed contours plan was not provided, and therefore how the tie in with site levels particularly at the site boundary. The late provision (by way of rebuttal evidence) of one plan of sections providing some of that detail is tantamount to an acknowledgement that this level of detail could and should have been provided site wide.[10]

c. Construction phase. The inquiry has no information on where during the construction phase the operational areas will be placed. Nor is there any actual evidence (beyond the mere assurances of the Appellant's design witness that it could all be done within the site) that construction operations can be contained within the site boundary, which in places is only a few metres from where considerable earthworks and piling will take place. This is a proposal where much of the built form is in effect being pushed right up to the edges of the site.[11] This ought to remain a matter of serious concern. It is no answer to say this can all be left to conditions and dealt with via a Construction Management Plan – the inquiry needed that information now, even if only an indicative basis – to understand whether or not what is being asserted is really achievable.

d. The western boundary and the areas omitted from the plan (the "no man's land").[12] Again, it is no answer to say all of this can be left to a Landscape and

[7] CD1.055
[8] See e.g. CD2.014 (DAS Addendum, page 4).
[9] Ede PofE para. 6.5.
[10] CD9.027
[11] See CD9.027 and Figures 7.7 and 7.10 in Ms Ede's PoE CD9.011 pages 51 – 52.
[12] See Figure 6.3 Ede PoE page 34.

Environmental Management Plan. Even if the agreement to such a plan is the subject of a Grampian condition, such a plan cannot secure what happens off-site.

e. Finally, the visualisations are plainly inaccurate. A number of trees that will be removed (i.e even on the Appellant's own analysis and as part of their proposal) have clearly been omitted.[13] The two storey villas do not even appear in the some of the photomontages.[14] The Appellant's landscape expert's dismissive approach to these inaccuracies and attempt to downplay them was not convincing. They are self-evidently material omissions that informed the LVIA, a significant application document which the public and planning decision maker rely on to understand the visual impact of the proposal.

10. The attempt by the Appellant to suggest that any particular criticisms of the LVIA were not raised by the Council and that for the purposes of the EIA Regulations no issue was taken is a stock response by an Appellant whose LVIA has been found wanting. It is no substantive answer to the lack of detail in the current application.

The baseline

11. The main, and indeed central point of difference between the parties' landscape experts, concerns the baseline and in particular the value or contribution the current hotel building make to landscape character and the purposes for which the AONB has been designated.

12. Highly material to this assessment is the very fair concession by Mr Sneesby that if the proposal were to be viewed on its own (i.e without taking into account the existing built form) it would have a significant adverse landscape impact. So on his analysis, the inquiry would need to find at least a significant current adverse impact caused by the presence of the existing buildings. That ultimately is a matter of planning judgment for this inquiry to make of course, but the following is relevant to the analysis.

[13] See Figure 6.5 Ede PoE page 38
[14] See for Figure 6.7, Ede PoE page 39

13. First, Ms Ede's evidence explained how the existing hotel elevation sites well in the landscape and makes a positive contribution to the character and identity of Studland Bay. She was not alone in that view: the LVIA came to a similar conclusion at 6.100.[15]

14. Second, Mr Sneesby also referred to the value of the original historic eastern façade in his written evidence, and Mr Alker Stone's own evidence refers to the central part of the hotel and described it in terms as being "*locally recognised for its architectural significant and charm*".[16]

15. Nonetheless, Mr Sneesby considered that the existing building are "inherently harmful". The LVIA which he wrote stated that that the current buildings constitute an *"anomaly*", an "*alien set of buildings*", "*not built to blend in*" (CD1.059, para 6.123). It is hard to align such a conclusion with the acknowledgment that of the clear value which the current hotel building and in particular its eastern frontage makes to local character. Even if there are some negative features arising from the scattering of low rise buildings behind the main existing hotel buildings, it is hard to see how it makes so negative contribution as to justify (on Mr Sneesby's analysis) the adverse significant harm caused by the proposal itself. The purported retention of that element of the façade (when it reality the main feature of it – the lantern – is being removed and only a few pillars retained) is no answer to this point.

16. Third, it is highly material that Mr Sneesby, again rightly, acknowledged the positive contribution of the current trees to landscape character. Yet it is part of this proposal that at least 80 trees of the 120 on site will actually be felled, including 16 pine trees on the western edge. Even with the proposed planting, the felling of the very features that make a positive contribution to the site is relevant when assessing the degree to which the harm caused by this proposal is "offset" by any negative or detracting features of the existing site.

The impact of the proposal

17. The critical issue here is the sheer amount of additional built form which this proposal will introduce into the landscape, and in particular the increase in height, scale, bulk and massing.

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[15] CD1.059
[16] Alker Stone PoE page 26

(1) Scale and massing

18. Again, it will be a matter for the inquiry to judge the degree to which there will be an increase in built form and how that may affect landscape character. Contrary to the Appellant's attempt to mischaracterise it, the Council has not simply approached the analysis of landscape impact from a purely mathematical or arithmetical analysis. It is plain that on any level a visitor to the Site will perceive a much greater level of built form: the Inspector need only look at some of the pre and proposed views to see how much more built form will appear for example on the sensitive frontage to Ferry Road, particularly at the northern and southern ends where the "stepping down" of the current building is replaced by a continuous level of built form.

19. The Appellant's own architect referred to "*massing studies that focussed on the scale, volume and spatial arrangement of the buildings, comparing them to existing structures on site*". [17] Therefore it is surprising that Mr Sneesby should have attempted to downplay the huge and undeniable increase in volume (which the Appellant had chosen not to calculate but Ms Ede had – a 29,000 m3 increase on existing built volume). Even factoring in an element of that being underground due to the parts (but not all) of the basements being below ground level,, on any analysis that is a huge increase in built form. The Appellant only provided GEA figures late in the day – those too show a massive increase in floorspace.[18] In terms of footprint, little weight should be placed on the Appellant's inclusion of significant areas of existing gravel car parking and the emphasis both Mr Sneesby and Mr Read attempted to place in their evidence on the current "*developed area*".[19] That is clearly not a particularly helpful indicator as to whether there would be an increase in scale i.e in actual built form.

(2) Height

20. On a site as sensitive as this, the increase in height (and by that I mean to ridge height) is not 3 metres as the Appellant's planning witness asserted. It is more than that: see JE PoE paras. 7.5 – there is an increase of over 5m from 33m to 38.6m AOD, all on the highest part of the site. The Appellant's response to all of this was to emphasise what can be

[17] Alker Stone proof page 19 (Section on Massing)
[18] See CD10.001 and CD10.002 – proposed GEA 15813m and GIA CD10.002. Compare this to the current GIA and GEA in the application form CD1.041.

perceived is more important – but the fact is that anyone visiting this site will perceive a taller level of building, even if that is not visible from the road and the most sensitive viewpoints.

21. As to other impacts, such as construction impacts, as referred to above, Mr Sneesby could not explain where the working compounds would go and how that might affect his analysis.[20] The earthworks strategy was clearly wrong in suggesting no significant earthworks and had not been updated to reflect the new scheme, which in the Council's submission reduces the weight to be attached to his and the LVIA's assessment of tranquillity (a landscape feature).

VISUAL IMPACTS

22. Whilst Ms Ede's concerns focussed in the closer views and experience of the site from Ferry Road in particular but here will clearly be adverse visual impacts from further afield. As to what those impacts are, it is hard for this inquiry to be certain as there was no convincing answer to the shortcomings identified by Ms Ede in those visualisations, which are set out above. Mr Sneesby's answer to say that he had never claimed for them to be accurate is frankly bizarre, given how important they are, not just to the inquiry but to members of the public, who would have relied on them when considering the scheme.

Southern boundary

23. Mr Sneesby, consistent with his LVIA, evidence is that the southern boundary is the most sensitive part of the site in terms of possible visual impact. He accepted that the new buildings would be more visible from the south than the existing ones.

24. A significant concern, referred to above, which in the Council's submission was not satisfactorily addressed is the effectiveness of the green roof, which will be visible on the southern boundary of the site from significant distances. In the Council's submission there is insufficient evidence as to whether such a green roof will be effective (and therefore

[20] XX Sneesby: "I have no idea what will happen with construction effects", and, in relation to construction compound "I have not idea where it will go"

remain green), despite the reassurances of Mr Sneesby and Mr Alker Stone that it could work.

Western boundary

25. What is particularly concerning is the heavy reliance placed by Mr Sneesby on the current screening of the site on its western edge on the existing tree cover, which appears to be the rationale for the decision to place the mass of the site on the highest part of the knoll. For the reasons explained by both Ms Ede and Mr Douglas, it is concerning that such a significant amount of construction and groundworks will have to take place so close to the site boundary.

Northern boundary

26. The inquiry has the point about the fact that the Appellant's own ecologists in their Woodland Management Plan,[21] submitted with the first application, are proposing considerable thinning of Compartment 1 and therefore the very tree cover which the Appellant relies on to argue that the visual and landscape impacts will not be significant in this location.

POOR DESIGN

27. Linked to landscape impact is the question of the design of the proposal. Ms Ede covered aspects of design which had a direct impact on landscape character and the following are the key features which the Council suggests shows that this design is far from "landscape led". Mr Alker Stone's assertions that it was landscape led are undermined by the facts that (1) before Mr Sneesby was appointed in September 2022 no landscape architect had been involved in the scheme design; and (2) according to Mr Sneesby's own evidence before he was appointed the scheme's major design principles had already been determined. Mr Alker Stone fairly and rightly accepted (and consistent with what Mr Read confirmed on Day 5) that his brief included trying to achieve a "*similar level of accommodation*". The Council is not suggesting there is anything "improper" about that[22]– of course a developer will want to maximise the opportunities of the site. But it is relevant to understand that the reality

[21] CD1.062, page 18, section 7.1, fourth bullet
[22] As Mr Cairnes KC tried to impute to the Council's line of questioning on this

of what the Appellant really means when it uses the term "landscape led scheme": this is a scheme, like most schemes, has involved compromises have to be made: and it was, after all, Mr Sneesby's own evidence in the LVIA that a "trade off" between what he considered the most sensitive southern part of the site and the massing in the north western corner for economic viability reasons.[23]

Failure to integrate with surroundings

28. Scale, height and massing are of course the most important features that the Council considers are the most negative features of this design but relevant too are the other features of the site which mean that it does not positive integrate into to its surroundings (i.e the test in Policy E12(a))[24], including the perimeter road, sunken in parts, and the significant retaining walls are not features that indicate an integration with the surroundings or which add to "permeability" – rather than present a hard edge to a site and are symptomatic of an approach of trying to "*push too much out to the edge*".[25]

Other urbanising features

29. The crescent shape of the villas, the terracing effect, the cramped distances between the villa blocks, and balconies again are all aspects of the design of this proposal which in the Council's submission mean that this does not integrate with its surroundings. There will also be a significant increase in the amount of extra glazing – Mr Alker Stone fairly accepted that - and, even if the lighting levels are as the Appellant's lux assessments suggest they will be, and there will not be any impact on the "night skies" special quality of the AONB, on any analysis the extra lighting will contribute to the urbanising effect of this proposal.

30. All of these points taken together mean that not only does the proposal not meet the policy C1(c) of the AONB Management Plan [CD5.001] (referred to in the Reason for Refusal) but also fails to comply with Policy E12(a).

IMPACT ON TREES

[23] CD.1059LVIA para 6.377 (electronic page 60).
[24] CD4.018
[25] Ms Ede's XiC

31. There is clearly a considerable risk to retained trees on site, all of which gives rise to a risk of harm in its own right but also which feeds into the landscape analysis. It is – to use Mr Douglas' words – "baffling" as why or how in a scheme (that is allegedly "landscape led") that a swimming pool has been placed not only within the RPA of protected tree T40 but right up against it, necessitating the use of a "suspended" swimming pool design and an irrigation system. That tree was accepted by the Appellant's planning witness Mr Read as being one of the trees with the greatest amenity value.

32. Mr Douglas, an experienced arboriculturalist of over 30 years experience, explained clearly and compellingly why in his view the scheme should have avoided going near this "specimen" oak tree, which has yet to reach full maturity. It is no answer for the Appellant to complain that the Council should have raised its concerns earlier in the application process (as Mr Read repeatedly sought to do). The point about contamination from pool water may not have been mentioned before, but it is not the primary concern. The primary concern is the (a) the possibility of construction impacting on the tree and (b) the self-evident conflict between the use of the pool and a deciduous tree which is located above it. The Appellant knew well before the appeal that the Council had concerns over trees, and knew it was a reason for refusal. It could, and should, have produced evidence before this appeal (even if just via construction method plans) as to how it thinks it could achieve building this suspended pool above the RPA without a risk of harm to the tree. As it was the inquiry is left with assurances from the Appellant's arboriculturalist and planning witness that this could be done, but no actual evidence that could properly be tested.

33. Mr Douglas also raised valid concerns about the extent of work to be carried out on the western boundary, where the protected chestnut tree T75 is located whether by sheet piling or by the construction of what would need to be terraced gabions (which Mr Alker Stone had mentioned but which don't appear in the plans). It is not just the protected trees on these boundaries which is a concern but a more general concern that the amount of engineering necessary means that it is inevitable that the works will or may have to spill over into the woodlands to the west and north in particular.

IS THIS MAJOR DEVELOPMENT IN THE AONB?

34. The relevant test is that set out in the new NPPF at FN67 to paragraph 190 i.e "*whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.*"

35. FN67 refers to "could" not "will": i.e it refers to whether something is likely to have an effect. Mr Sneesby rightly and fairly recognised that there was a risk of this proposal having a serious adverse impact ,[26] but whether it did so in his view was dependent as this proposal is on his "primary and secondary" mitigation approach. Again, this is a planning judgment for the inquiry but in the Council's submission it is plain having heard the evidence of Ms Ede, an experienced landscape architect who clearly had seriously interrogated the scheme, not only that there is a risk, and potential, for such an effect to occur, but a clear likelihood.

36. The Council's position is that this is plainly major development in the AONB, essentially for the reason set out by Ms Ede that there would be a significant adverse impact on the AONB and the purposes for which it has been designated. The following factors are also relevant:

Nature

37. Properly characterised, this is a proposal for a major new luxury resort development, comprising of 3 distinct elements in terms of accommodation, i.e a hotel, new apartments and two entirely new blocks of villa accommodation, a new spa open to local members and a new restaurant. It is described in terms by the Appellant as a *"single boutique resort, providing a mix of accommodation types*". It is not therefore merely a replacement of one hotel for another: it is the introduction of a new resort development. It is clear that the nature (i.e the introduction of a new resort complex to replace an existing hotel) points towards it being a major development.

Scale

38. The scale of the proposal is on any analysis, either on its own and when assessed relative to the existing situation, significantly greater. It is accepted that these questions are not merely

[26] Sneesby XX: "*there is a risk of serious adverse impact*"

arithmetical, a refrain relied on by the Appellant faced with the uncomfortable truth that all relevant metrics point towards a significant increase in scale. The inquiry must of course determine for itself whether the scale of this proposal has an impact on the purposes for which the area has been designated and of course reference to numbers alone is not the only consideration. But they are objective points of reference to which this inquiry is perfectly entitled to have regard. It is plainly inconsistent for the Appellant's own architect to have made express reference to volume when carrying out its massing studies, which informed the allegedly landscape led approach, yet for the Appellant's planning agent to then seek to downplay the weight to be attached to the huge increase in volume when questioned on it.

EXCEPTIONAL CIRCUMSTANCES AND THE PUBLIC INTEREST

39. Relevant to the exceptional circumstances test is the degree of landscape harm, which the Council considers, for the reasons explained by Ms Ede, as significant.

40. The Council has, rightly and fairly, not sought to dispute two of the factors advanced by Mr Read as part of the three factors which form part of the assessment required by paragraph 190 of the NPPF the need for re-development of this site and (in light of that need) the scope for developing outside the designated area or meeting the need in some other way (as explained by Ms Fitzpatrick).

41. Where it mainly differs with the Appellant on this issue is the question of the detrimental effect on the environment and the landscape. The Council considers that the harm to the SPA (addressed below) and the harm to landscape (addressed above) clearly means that exceptional circumstances do not exist and the development would not be in the public interest.

IMPACT ON HEATHLANDS

42. The evidence of Mr Rendle and the advice of Mr Squirrell on behalf of Natural England demonstrated that the introduction of a C3 use in the form of holiday accommodation as described in the Appellant's UU will (a) have a significant likely effect caused by increased

recreational use of the Heathlands (thus triggering the need for an appropriate assessment under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (amended) ("the Habitats Regs") and (b) would have an adverse impact on site integrity for the purposes of Reg 65(3). It goes without saying that for the purposes of an HRA significant weight should be attached to the views of Natural England, the statutory adviser on nature conservation.

43. The Appellant has not advanced any active case on whether there are imperative reasons of overriding interest (and for the avoidance of doubt there are none) for the purposes of Regulation 64(1). Therefore, if the evidence of Mr Rendle and the advice of Natural England is accepted, then Option 2 of the UU should not be accepted by this inquiry not least because of the clear risk, acknowledged in the SPD and in the recently adopted Local Plan E8, of adverse impacts on the Heathlands arising due to recreational impacts from the introduction of a C3 holiday use in close proximity to the heath. To be clear, the Council accepts that this risk only arises if that Option in the UU is followed and if the Inspector considers that it is inappropriate to impose a C1 condition on the proposal (I deal with in more detail below).

The harm to the Heathlands were a C3 Holiday Accommodation Use to be permitted without further restrictions beyond the limitation to "temporary sleeping accommodation"

44. Mr Rendle's evidence was clear that residential occupiers of self-contained (i.e self-catered) holiday accommodation are likely to behave differently to hotel occupiers. That is because, as he explained, they would be able and therefore likely to stay for longer periods of time, would be able to bring more recreational equipment such as bicycles etc and explore outside the resort. The inquiry has heard in detail from Natural England too and Mr Squirrell's evidence as to the risk of an increase in recreational pressure from the use of this type of holiday accommodation.

45. The evidence of the Appellant's ecological witness, Dr Brookbank, was based on assumptions that the behaviour of the two types of occupier of the different elements of the accommodation (i.e a hotel occupier and a "residential occupier") are the same. That does not accord with common sense:

a. Her refusal to admit the basic and common sense proposition that the longer an individual stays somewhere, the more likely they are to explore was unreasonable. It was after all, her own evidence was that the "*more permanent form akin to a residential use*" would give rise to an impact. The Council is not saying that what is being proposed is permanent accommodation (which the Appellant in re-examination wrongly sought to characterise as being the Council's position). The point being put to her was that there is a link between duration of stay and impact, and she did not have a convincing answer to that.

b. When asked to look at the actual plans of the villas, with their own accesses, kitchens and dining rooms, she was not able to explain in what way the accommodation as described in the application forms differed in any physical way from self-contained holiday accommodation, other than repeated reference to lack of "washing machines". That is bordering on absurd: there is nothing to prevent such an installation in the villas.

Are there sufficient additional restrictions on the C3 Holiday Use proposed via Option 2 in the UU?

46. The Appellant's key argument that no such impact would arise in HRA terms is squarely based on its argument that all occupiers of the all three types of accommodation would behave the same way, and that since it is common ground that a C1 hotel use would be acceptable in HRA terms no such impact will arise. Such an argument clearly gives rise to the question as to what <u>use</u> could those types of accommodation be put. It is the key question which then informs whether or not there are sufficient restrictions.

47. It is here that the misconceived approach of the Appellant to this particular part of the appeal arises, which lies in the fundamental contradiction between how it this Appellant as an individual operator says it will operate the scheme, and what it has actually applied for in use class terms. Contrary to Mr Cairnes KC's repeated attempts in questioning and submissions to characterise the issues of what use classes are actually been sought by the Appellant as a "*confected issue*", it is a fundamental flaw in how the Appellant has approach its appeal against this reason for refusal.

48. It is obvious that a planning decision maker should ensure that as far as possible when permitting a scheme, that there is clarity on the use to which all elements of any scheme could be put. Mr Read accepted that in evidence. Unfortunately the Appellant's approach in the written evidence it has presented to this inquiry has done anything but provide that clarity to this inquiry. In discussions not only with the Council but with Natural England its failure to align its application with its assertions as to how it wishes to operate the scheme, have been confused and confusing.

(1) *What is actually being applied for by the Appellant in terms of the villas and apartments?*

49. The starting point to understanding any proposal is of course the description of development (which in this case refers to tourist accommodation). That in itself doesn't clarify matters sufficiently, as tourist accommodation can cover a wide range of uses (hotels, hostels, second homes, and commercial holiday lets).

50. So the rest of the application form is also highly relevant as that tells the decision maker what is actually been sought in further detail. And the application form here (1) expressly refers to residential units – Mr Read accepted that and it is stated in terms on page 9 - and (2) clearly draws a distinction between the villas and apartments in terms of use and the main hotel element.

51. The plans are clearly relevant too. Through gritted teeth, Mr Read accepted that the degree of self-containment of accommodation is a differentiating factor between a C1 hotel use and a C3 residential use. It isn't just not irrelevant, it is one of the key factors that distinguishes between the two. And it is clear here that the villas and apartments on the face of the plans which will form part of the planning permission is granted have all the hallmarks of such a self-contained use. i.e a C3 use.

52. It is therefore clear that when residential units were sought on the face of the application form, and from the plans that form part of the application, that what was applied for is a C3 use. That remains the proposal before this inquiry: Mr Read has confirmed he did not wish to apply for any amendment to what has been sought.

(2) How does the Appellant say it will operate the resort?

53. The source of the confusion – entirely caused by the Appellant – lies in its repeated assertions in evidence to this inquiry (to address the HRA concern) that it will operate and use all elements of the accommodation in the same way (in particular in the Operations Report,[27] but also in Mr Read's proof of evidence), yet at the same time applying for different uses on the face of the application form and seeking two different uses in the UU via Option 2. That has created a clear disconnect between how the Appellant's evidence as to how it intends to operate the resort and what it has actually applied for.

(3) Are there sufficient restrictions provided by the Appellant to satisfy the Inspector that there would not be an adverse impact on the Heathlands?

54. The answer to this is plainly not.

55. Mr Rendle indicated what would be required to satisfy the Council such that no adverse impact would arise. What was required is something to tie in the assumptions in the Operations Report, such as a length of stay which clearly brings the level of use down to a level that there would remove any risk of increased recreational pressure (30 days proposed for the first time overnight is clearly far too long), and detailed operational controls to ensure all elements of the scheme would remain in perpetuity under the same operation, in particular obligations preventing the sale of the individual units. These are not achievable merely by condition. It could and should have been set out in a planning obligation. Rather than produce those meaningful controls when invited to by the Council well before proofs were exchanged, instead the Appellant wants to have its cake and eat and it has persisted with Option 2. [28]

56. It completely misconceived for the Appellant to persist in inviting this Inspector to accept Option 2 in the UU – thereby seeking to introduce a different use between the hotel element of the scheme and the villas and apartment - at the same time as asserting that the UU provides sufficient restrictions to satisfy any HRA concerns, given that:

    a. The premise of the Appellant's own HRA expert's evidence is that all elements of the scheme would be operated together.

[27] CD1.061

[28] See Appendix CD9.013 (Appendix to Mr Read's evidence), and the invitation by Ms Fitzpatrick on 16 October and the response to that by Mr Read.

b. Mr Read has accepted that a condition restricting the use of the villas and apartments to a C1 Hotel Use would be acceptable in planning terms and to his client;[29]

c. That he agrees that the use which his client proposes "aligns with a C1 use";[30]

d. And that he agreed, in use class terms, the villas and apartments , if tied to the operation of the hotel, would the same as a C1 use.[31]

e. Mr Read rightly accepted in cross-examination[32] that there was no material planning reason as to why a C3 use should be permitted.

57. Furthermore, and in any event, the only "restriction" in the UU refers to temporary sleeping accommodation. That does not take matters any further forward in terms of restricting the self-contained accommodation elements of the proposal effectively enough to prevent recreational impacts on the Heathlands arising.

58. All of this means that had the Appellant not pursued Option 2, there would have been no need for any ecological evidence to have been called and this issue would have been resolved. But either way, there are still no additional restrictions on the C3 use proposed in the application form which properly achieve the "alignment" in uses the Appellant has relied on.

What are the consequences for the determination of the HRA issue?

59. This leaves the Appellant in a very difficult position, entirely of its own making and caused by its long-standing refusal, stemming from well before the application was determined, to amend its application to remove reference to C3 uses.

60. As things stand, it is still formally applying for a C3 use yet there are no proposed restrictions on that use in the UU other than Option 1 (the C1 use).

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[29] Mr Read XX Day 5. See also CD [ ]
[30] PoE, para. 4.17
[31] Planning SoCG CD7.007 para. 2.3 "Option 2, if tied to the operation of the hotel, would be no different to a C1 use."
[32] Read XX Day 5

61. The difficulty with this approach (or the imposition of a condition restricting the use to C1) is that such a restriction would be directly contrary to the what has been sought in the application. It would constitute a substantial amendment to the application and would therefore offend the substantive limitation on amendments to applications set out in *R(Holborn Studios) v LB Hackney* [2017] EWHC 2823 (Admin):

> "[*65] There are three ways in which a planning permission may be granted for such a development: the initial application may itself be amended; permission may be granted only for part of the development applied for; and permission may be granted subject to a condition that modifies the development applied for. Quite apart from any requirements for notification and consultation, there are substantive limitations on the changes that can be effected by such methods. These limitations have been variously described but they are all concerned with whether the result is the grant of permission for a development that is in substance something different from that for which the application was initially made."*

62. The issue is not – as the Appellant seems to be suggesting in the questions put to Ms Fitzpatrick - whether or not a condition alters the description of development: there is nothing in *Holborn Studios* that suggests that the substantive limitation on the power to impose a condition only prevents amendments to descriptions of development rather than what has been applied for in the application form. If the Inspector agrees that this is the case, then a C1 condition cannot lawfully be imposed.

63. All of this means is that the premise of the Appellant's own ecological evidence - that there would be no increased recreational pressure because overnight occupancy levels will be reduced because the operation would be uniform – is flawed. All that is before this inquiry is a proposal for self-catered holiday accommodation without any further enforceable restrictions at all which would prevent an impact on the Heathlands.

64. In short, this inquiry has not been presented by the Appellant with sufficient restrictions on the C3 self-contained use of the villa and apartment element of the scheme to prevent an adverse impact on the Heathlands to demonstrate that there would be no adverse impact on the site integrity of the Heathlands.

65. Therefore, granting permission for such a use would not only contravene Regulation 63(5) of the Habitats Regulations but would also be directly contrary to Policy E8.

PLANNING BALANCE

66. As to the benefits of the proposal, the Council does not doubt the economic benefits advanced in Mr Read's proof. Again, what weight to be attached to those is a matter for this inquiry but the Council submits that the degree of landscape harm alone is sufficient to outweigh those benefits.

67. In terms of the other benefits advanced by the Appellant in the evidence of Mr Read, the following is material to the weight to be attached to them:

    a. The ecological benefits are not benefits but mitigation (for the reasons explored with Dr Brookbank – essentially whether or not there is a risk of significant likely effect requiring mitigation)

    b. The enhancements referred to in Mr Read's Proof of Evidence at paragraph 6.10- are not plainly deliverable. This is because they are on land owned by a third party: the National Trust is the freehold owner. There is no actual evidence that the National Trust, the freehold owner, has consented to the imposition of planning conditions being imposed on its land requiring it to be managed in a particular way. Worse still, their three consultation responses raise concerns about those enhancements and expressly requested that an agreement be entered into with them before planning permission is granted. No such section 106 agreement has been forthcoming. The Appellant's suggestion that the test to refuse such conditions is that there is no prospect at all of them coning forward is wrong: that test (in the PPG at paragraph 9) relates to conditions requiring the implementation of specific <u>works.</u> It would be bizarre if such a high test was to be applied for the imposition of management restrictions by conditions on third party land without the consent of that landowner.

68. Therefore, for the reasons set out in Ms Fitzpatrick's evidence , the Council consider that the proposal would be contrary to Policy E1, E8, E12, (and for the same reasons EE4) of the recently adopted local plan, to which full weight should be placed and is therefore contrary to the development plan as a whole. It does not conserve and enhance the AONB, and pursuant to paragraph 189 of the NPPF, that is a matter to which great weight should be placed. It is contrary to paragraph 190 of the new NPPF, because it constitutes major development in the AONB and no exceptional circumstances exist which justify it nor is it

is in the public interest for this scheme to proceed, given the significant landscape harm it would cause. Nor are there any other material considerations of sufficient weight to outweigh that conflict.

69. For these reasons the Inspector is respectfully requested to dismiss the appeal.

JAMES NEILL

Landmark Chambers

19 December 2024