The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2023

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/C1435/W/22/3294192
Fishing Lodge, Bewl Water, Bewlbridge Lane, Lamberhurst, TN3 8JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bewl Events and Water Parks Ltd against the decision of Wealden District Council.
- The application Ref WD/2021/0638/F, dated 12 March 2021, was refused by notice dated 4 February 2022.
- The development proposed is change of use and extension of fishing lodge to form 4 x 1 bed tourist units.

Decision

1. The appeal is allowed and planning permission is granted for the change of use and extension of fishing lodge to form 4 x 1 bed tourist units at Fishing Lodge, Bewl Water, Bewlbridge Lane, Lamberhurst, TN3 8JH in accordance with the terms of the application, Ref WD/2021/0638/F, dated 12 March 2021 and is subject to those conditions set out in the attached schedule.

Application for costs

2. An application for costs has been made in respect of the appeal by Bewl Events and Water Parks Ltd against Wealden District Council. That application is the subject of a separate decision.

Main Issues

3. The main issues raised in respect of the appeal are the effect of the proposed development on: -

   a) The loss of accommodation that contributes to water based recreational activities at Bewl Water; and

   b) The dark skies of the High Weald Area of Outstanding Natural Beauty (the AONB).

Reasons

4. Bewl Water reservoir is located within the High Weald AONB and is an established recreation, leisure and tourist attraction providing a range of recreational facilities that are open to the public throughout the year. The reservoir is used by anglers and a sailing club.

5. The National Planning Policy Framework (the Framework) indicates that great weight should be given to conserving and enhancing the landscape and scenic beauty in National Parks, the Broads and AONBs, which have the highest status

of protection in relation to these issues. The site makes an important contribution to the open landscape and intrinsic beauty of the AONB in this locality.

Loss of Accommodation

6. Paragraph 84 of the Framework seeks to support economic growth in rural areas and supports the sustainable growth and expansion of all types of business in rural areas, both through the conversion of existing buildings and well-designed new buildings. Saved Policy TM1 of the Wealden Local Plan 1998 (the Local Plan) supports new or extended tourist facilities where they protect or enhance the quality of the area and assist in improving tourism facilities, diversifying and upgrading tourist attractions and facilities in the district. The proposed holiday lets would make a small-scale contribution to tourism accommodation in the area. I note that a proposal for two holiday lets at the site has previously been granted planning permission, but that permission has not been implemented. It was, however, for a different proposal that related solely to the conversion of the existing building.

7. The existing building is said to have been vacant since 2016 but prior to that has been used in connection with the administrative functions to support fishing at Bewl Water. This included boat and tackle hire, low-key administration/office duties related to the ticket system and an angling equipment shop.

8. Interested parties have directed me to policies in the Framework that seek to enable and support healthy lifestyles and that safeguard against the unnecessary loss of valued facilities and services. Concerns are expressed that the proposal would prevent the existing building being used for its original intended purposes (administrative functions). Notwithstanding this, the administrative functions that formerly took place at the building to support fishing have relocated to another building at Bewl Water that benefits from a permanent planning permission. Subsequent to that, the appellant advises that much of the administrative functions have moved online, such as, purchasing fishing permits, and this has greatly reduced the requirement for an administrative facility at the site.

9. I acknowledge that there is local objection to the proposal. The building could potentially still offer support for an administrative function connected with and supporting the existing water based recreational activities at Bewl Water. However, the historic administrative function it had is now provided elsewhere at Bewl Water reservoir or online. I have not been presented with any additional administrative or office function required in association with the recreational activities at the reservoir which the building could serve or which would support the landscape of the AONB or local community (whether locally or associated with the reservoir).

10. Moreover, the proposed holiday lets would make a small but positive contribution to tourism accommodation in the area of which the Council indicate there is presently an identified shortage. Furthermore, the proposal would facilitate year-round occupancy which will encourage greater long-term spending both on site and within the surrounding area and would return an empty building to economic use.

11. Bewl Water reservoir attracts visitors from this country and abroad, notably for fishing. In this way the activity contributes to the Wealden economy. However, there is no substantive evidence before me that might indicate that the proposal would bring about a change that might deter such visitors and negatively impact upon the local economy. Furthermore, the building is not in use. It is not clear what water-based fishing amenities the loss of the existing accommodation would impact that might bring the proposal into conflict with the Water Industry Act or East Sussex County guidelines for the management of the landscape of Bewl Water reservoir or any other Acts.

12. For these reasons, I conclude that the proposed development would not result in a harmful loss of accommodation that contributes to water based recreational activities at Bewl Water. As such the proposed development would comply with Saved Policies GD2, EN1, EN6, EN27, EN29 and TM1 of the Local Plan 1998 and Policy WCS14 of the Wealden Core Strategy Local Plan 2013 and the provisions of the Framework. These policies and the Framework seek, amongst other matters, to permit development for new and extended tourist attractions and facilities and that have regard to the High Weald AONB. I do not find that the proposal would adversely affect the attraction and contribution of Bewl Water to the rural scene area which is AONB.

Dark skies

13. The High Weald AONB Management Plan 2019-2024 recognises the need to protect and promote the special qualities of the area such as tranquillity and dark skies (Objective OQ4). The Framework sets the objective to limit the impact of light pollution from artificial light on intrinsically dark landscapes.

14. Glazed areas of the development, along with lighting of balconies and stairways, would emit light and bring about some change to the appearance of the area that benefits from dark skies at night. The development would create a prominent building with an elevated siting close to the reservoir. Nonetheless, this would not be an isolated building. It is located within an established recreational centre in close proximity to other buildings and car parks. Although the existing building may only have been used for daytime activities relating to its former administrative function, there is some artificial light already in the area emitted from buildings and street lighting.

15. The proposal has been amended to reduce the extent of glazing on the ground floor west elevation to reduce light spill, reflection and glare from the glazing. The Council has suggested the imposition of a planning condition requiring the details of the low-level lighting to be submitted for their approval. The condition would also prevent the installation of flood and security lighting and prevent other external lighting other than that approved by the Council. I consider such a condition would ensure that external lighting would be kept to a minimum and that the lighting could be controlled to be low level and directional. Taking into consideration there is an existing building, the amendments and condition would prevent any significant impact on the existing dark skies within the immediate area.

16. For these reasons, I conclude that the proposed development would not have a harmful impact upon the dark skies of the High Weald AONB. As such the proposed development would comply with Saved Policies GD2, EN1, EN6, EN27, EN29 and TM1 of the Local Plan 1998 and Policy WCS14 of the Wealden Core Strategy Local Plan 2013 and the provisions of the Framework. These

Policies and the Framework seek, amongst other matters, development to keep light spillage to a minimum and to conserve or enhance the natural beauty and character of the High Weald AONB landscape.

Other Matters

Community Infrastructure Levy (CIL)

17. The appellant is objecting to the payment of CIL contributions and seeks a judgement as to whether the scheme is CIL liable. The CIL Regulations (as amended) provide mechanisms for appeal. The CIL dispute, therefore, is not a matter for this appeal that is subject to section 78 of the Town and Country Planning Act 1990 (the Act). Notwithstanding this, the appellant seeks the Inspector to determine the use class of the holiday let accommodation as use class is a planning matter in order that this would inform the application of CIL and the wording of planning condition(s).

18. I have been referred to two enforcement appeal decisions in which the transient guest use of properties was considered to be different in character to that of a Class C3 dwellinghouse usage. However, the considerations pertaining to those appeals turned very much on their own individual merits. I have also been directed to the Sheila Moore v Secretary of State for Communities and Local Government and Suffolk District Council (2012) that considered the distinction between dwellings and holiday lets. This established that in each case it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation.

19. There is no definition of dwellinghouse in the Act. Nonetheless, the distinctive characteristic of a dwellinghouse can be its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It would not necessarily lose that characteristic if occupied for only part of the year, or at infrequent intervals, or by a series of different persons. Despite there being some interconnectivity between units and the units not meeting the Government's Technical Housing Standards in regard to floor area standards, the apartments would provide the facilities for day-to-day living, whether used individually or in connection with one another. For the purposes of this appeal, holiday accommodation can be treated as a dwelling in applying planning policy even if its occupation is restricted by condition. However, the application of CIL is a separate matter and not subject to determination by means of this section 78 appeal.

Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC)

20. The Conservation of Habitats and Species (Amendment) (EU Exit) Regulation 2019 requires that where a plan or project is likely to result in a significant effect on a European site, and where the plan or project is not directly connected with or necessary to the management of the European site, as is the case here, a competent authority is required to make an Appropriate Assessment of the implication of the plan or project on the integrity of the European site in view of its conservation objectives. In so doing, an assessment is required as to whether the development proposed is likely to have a significant effect upon a European site, either individually or in combination with other plans and projects.

21. The proposal falls beyond the 7km buffer zone of the SPA and as such, it is not required to consider the implications of the proposal upon the integrity of the SPA in view of the conservation objectives.

22. The qualifying features underpinning the SAC designation are the presence of European dry heath, North Atlantic wet heath and great crested newts. The conservation objective for the SAC seeks to ensure the favourable conservation status of its qualifying features by maintaining or restoring qualifying habitats. The heathland habitat of the Ashdown Forest is sensitive to changes in air quality. Exceedance of 'critical values' for air pollutants may modify its chemical substrate, accelerating or damaging plant growth, altering its vegetation structure and composition and cause the loss of typical heathland species. The development could result in an impact pathway that could adversely affect the SAC if it contributes to an exceedance in critical values.

23. The heathland habitat is vulnerable to atmospheric pollution from several sources including vehicle emissions from motor vehicles passing through or running adjacent to the SAC generated by increased traffic flows from new development.

24. The Council had proposed a new Local Plan in 2019 that sought to deliver extensive new homes and business floorspace within the district, although that plan has been withdrawn. Considering the effect on the quantum of growth proposed by the previous Local Plan, Natural England were satisfied that this would not adversely affect the integrity of the Ashdown Forest SAC in terms of air quality impact and mitigation was not required. Natural England are the national adviser on such matters and their advice can be attributed substantial weight. Although that Local Plan did not in the end become adopted, the development put forward by this proposal would be considerably less than the quantum of growth that was planned within that plan. When considered on its own or in combination, the development would not adversely impact on the integrity of the protected European site.

Other considerations

25. Since this appeal scheme was originally submitted two other applications have been submitted at Bewl Water, one relating to the conversion and extension of the boat house and the other for the conversion of the former sailing hut. Various interested parties that have made representation suggest that in combination with the other proposed developments the proposal should be treated as major development in the AONB. Concern is also raised to this proposal representing a piecemeal application and that a comprehensive plan for Bewl Water reservoir would be preferable with consideration given collectively with other applications proposed and/or other development that may come about. However, the proposal has been made and I am required to consider it on its own individual merits.

26. Concern is raised to the elevated prominent siting of the proposal and the proposal being out of keeping with local design with the site taking on an urbanised appearance. The proposed remodelling and extension would alter the appearance of the building, but this does not make it unacceptable by design. The external materials would include feather edged timber boarding and the external stairs and balconies would be timber and metal. This would respect and enhance the character of the existing cottage within the High Weald AONB.

27. The nearest existing residential occupiers are some distance from the appeal site. The degree of separation between the appeal site and those neighbouring occupiers would ensure that no significant impact would occur to their living conditions, particularly in relation to potential noise. The Council comments that their complaints department has recorded some noise related complaints over the past few years but there is no record of regular or serious noise and disturbance, noting there is a campsite at Bewl Water reservoir. The scale and nature of the proposal would be unlikely to give rise to significant noise levels.

28. Security is also raised as a concern. It has been advised that overnight security staff are in place all year round.

29. Sussex Ornithological Society (SOS) highlights that Bewl Water is internationally important for two gull species and considers the proposal would lead to disturbance to wildlife at the reservoir. I have been provided with bird counts at the reservoir. SOS also advise that Bewl Water satisfies the conditions to be designated as an SSSI and RAMSAR site, however this would be a matter to be agreed by way of separate legislation.

30. The Council's Biodiversity and Arboricularal Officer has not raised an objection to the proposal subject to the imposition of conditions that would control external lighting and biodiversity enhancements. Whilst concern is raised by the SOS, Sussex Wildlife Trust and others and that the appellant's survey does not recognise that Bewl Water is designated as a Local Wildlife Site, the appellant has carried out all the required ecological assessments that have been subject to the Council's Biodiversity Officer consideration.

31. The Council indicate that the site is not designated as a confirmed or potential national, European or International designated site to which the Council's Biodiversity Officer could raise objection on ornithological grounds. Furthermore, neither bird species cited are listed as a species of principal importance in England in section 41 of Natural Environment and Rural Communities (NERC) Act 2006. Although concern is raised to light pollution at night and activity during winter, there is historically an existing building at the site that could have been used at night with some light emitting from the building with activity in and around the building. Concern is also raised to fishermen staying over and fishing at sunset or into early evening. However, this could be controlled by the fishing permit system.

32. There is a duty to have special regard to listed buildings. The significance of listed buildings is generally their architectural and/or historic interest. There are a number of listed buildings sited across the reservoir to the south. Although I have not been provided the details of those buildings, the fact that they are listed indicates they host significance as heritage assets. In considering their setting the reservoir provides separation between the proposal and those heritage assets. In addition, the proposal would be seen within its existing context. The alterations to the building would not be harmful to the significance and setting of the listed buildings through development within their wider setting which has been substantially altered somewhat already by the creation of the reservoir.

33. It has been highlighted that there is ancient woodland in the wider area. There is no clear indication that the proposal would cause harm to this woodland even if those utilising the tourist accommodation visited such woodland.

34. Health and safety concerns have been raised relating to the building being close to water's edge. The appellant advises that there is already 24-hour security and night patrol guards on site. This would assist with matters concerning health and safety at the site.

35. The need for this type of accommodation has been questioned and I have been provided various lists identifying existing tourism accommodation in the area. It is also suggested that the holiday accommodation could be provided elsewhere in the district. The Council's Tourism Officer has not raised an objection to the proposal and highlights that the Council's tourism strategy supports opportunities to increase tourism accommodation. The proposal would be in line with the Council's strategy.

36. Concern is raised to increased traffic generation, noting that there are no facilities at Bewl Water for overnight visitors other than a small daytime café. The proposal is a relatively small scheme and unlikely to generate a significant amount of traffic. Furthermore, the Council has not raised an objection on highway grounds.

37. It has been highlighted that the road circulation plan is incorrect. The red line internal link road does not completely correlate with the existing road circulation directions at the site. Notwithstanding the details indicated on the site plan, occupiers of the holiday lets would be required to follow the directional flow of traffic that is in place at the time of their visit.

38. It has been suggested that there have been incidences of non-compliance with previous planning conditions and that any conditions imposed would be ignored and not enforced by the Council. The appellant advises that there are no outstanding issues relating to any conditions at Bewl Water. It is also suggested that the proposal would contravene the Bewl byelaws, however this would be a matter separate to the consideration of this appeal.

Conditions

39. I have considered the planning conditions suggested by the Council in light of paragraph 56 of the Framework and the advice in the Planning Practice Guidance. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.

40. To maintain the availability of the site as short-term holiday tourist accommodation conditions requiring a visitor register to be kept and to prevent occupation by persons as their sole or main place of residence are necessary. In the interests of the character and appearance of the rural area it is necessary to restrict outdoor paraphernalia, restrict permitted development rights and for external materials to be approved by the local planning authority. In the interests of protecting rural and residential amenities details of the background noise levels of the air source heat pump, management plan and lighting are required to be approved by the local planning authority. In the interests of safety, the provision of car parking is necessary to be controlled by condition.

41. To identify and ensure the survival and protection of important species and those protected by legislation details of the form and position of fencing and dust coverings to protect the woodland interface from construction activities

need to be approved by the local planning authority. For the same reason, a scheme for the enhancement of the site for biodiversity purposes should be approved by the local planning authority. These are pre-commencement conditions that are necessary in this case as the conditions seek to address biodiversity/ecology issues that are important to protect during the entire construction period of the development.

Conclusion

42. Having regard to the above the appeal should be allowed.

Nicola Davies

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates shall be commenced not later than the expiration of three years beginning with the date on which this permission is granted.

2. The development hereby permitted shall be used for holiday accommodation only and shall be used for no other purpose (including any other purpose within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or any Order revoking and re-enacting that order with or without modification.)

3. A register of all guests using the holiday lets shall be kept, including dates and durations of each stay by each guest, and the register shall be made available for inspection by the Local Planning Authority at 48 hours' notice.

4. No artefacts, equipment or structures, such as garden furniture, play equipment, shall be introduced into the open area within the site around the building in association with the holiday accommodation hereby approved.

5. The development shall not be occupied as a person's sole or main place of residence.

6. Notwithstanding the details submitted, prior to the first occupation of the holiday lets hereby approved, samples of materials to be used on the external surfaces of the development shall be made available for inspection on site and adequate notice given to the Local Planning Authority who will arrange inspection and thereafter approve in writing. The approved materials shall be used in the implementation of the development.

7. Prior to the first occupation of the holiday lets hereby approved, details of the air source heat pump to include the rating of the proposed plant and any attenuation required to either meet or be below 30dB (considered the typical night-time background noise level for this area) shall be submitted to and approved in writing by the Local Planning Authority, and the works carried out in accordance with the approved detail and thereafter retained.

8. Prior to the first occupation of the holiday lets hereby approved a Management Plan, incorporating the measures outlined in the agent's email dated 19 January 2021, shall be submitted for the written approval of the Local Planning Authority and the accommodation shall be managed to ensure compliance with the management measures outlined.

9. No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for lighting that is low level, hooded and directional, and has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained thereafter.

10. Before first use / occupation of the holiday lets hereby approved, the existing car parking spaces shown within the red site area on drawing no.0001 P2 date

stamped 8 April 2021 shall be provided for the use of the holiday lets and thereafter shall be retained for such purposes.

11. Prior to commencement of any development works, details of the form and position of fencing and dust coverings to protect the woodland interface from construction activities as specified in the submissions, shall be submitted to and be subject to the written approval of the Local Planning Authority. Such fencing shall be erected in the positions approved before the development is commenced and thereafter retained until completion of the development. The development works shall be undertaken in accordance with the precautionary working measures and ecological protection measures recommended in section 5 of the submitted Preliminary Ecological Appraisal date stamped 8 April 2021 and Section 5 of the Bat Emergence & Return Surveys date stamped 15 November 2021.

12. Prior to any works being undertaken to the building for the change of use or extension in accordance with the plans hereby approved, a scheme for the enhancement of the site for biodiversity purposes, in accordance with Section 6 of the submitted Preliminary Ecological Appraisal date stamped 8 April 2021 and Section 5 of the Bat Emergence & Return Surveys date stamped 15 November 2021 and to include mitigation measures to reduce impacts on roosting bird species as well as timescales for implementation and future management, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall incorporate any additional restrictions or requirements imposed by the relevant Natural England bat licence. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter so retained.

13. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures or works as defined within Part 1 of Schedule 2, Classes A and E inclusive of that Order, shall be erected or undertaken on the site.

14. The development/works hereby permitted shall only be implemented in accordance with the plans as set out within the plans list below: -
Site Plan no.0001 P2
Proposed Site Plan no.005 P3
Existing & Proposed Ground Floor Plan no.010 P3
Existing & Proposed First Floor Plan no.011 P3
Existing & Proposed Roof Floor Plan no.012 P3
Proposed Bike/Bin Store Plan & Elevations no.013 P2
Proposed Elevations no.025 P4
Proposed & Existing Visuals no.040 rev.P2

End of Schedule