



Appeal Decision

Site visit made on 22 July 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2024

Appeal Ref: APP/C1435/W/24/3336886

Bowl Water, The Boat House Bistro, Bowlbridge Lane, Cousley Wood, Wadhurst 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 Bowl Events (Salomons UK Ltd) against the decision of Wealden District Council.
 - The application Ref: WD/2021/2924/F.
 - The development proposed is extensions and alterations to the Boat House Bistro, replacement of the adjacent fishing facility building and change of use to form 6 x 1 bed and 5 x 2 bed tourist units, creation of a café with terrace, with some sailing club facilities retained.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by the appellant against the Council. This forms the subject of a separate Decision.

Preliminary Matters

3. I have used the description of development included on the Council's decision notice as it more accurately describes what has been applied for. I note that the Council notified the appellant of the change to the description of development during the planning application stage.
4. I note objections have been received asking for the appeal to proceed by way of a hearing or a public inquiry instead of through the written representations procedure. Neither party has supported this request and in view of the determining issues in this appeal I do not consider it necessary for oral representations or cross examination, and I am content for it to proceed under the written procedure.
5. A significant number of objections have been received to the proposals, which I have considered in assessing this appeal. The objections raised are considered within the main issues and other matters sections of this decision.
6. I am aware that amended plans were submitted during the planning application. For the avoidance of doubt, I have assessed this appeal against the

final set of plans that were considered by the Council's Planning Committee North in the determination of the planning application.

Main Issue

7. The main issue is the effect of the development on the High Weald National Landscape, with particular regard to (i) the dark skies of the area, (ii) noise and disturbance from a more intensive use of the building, and (iii) the scale and form of the building.

Reasons

8. The appeal site is a large, detached building located at Bewl Water reservoir within the High Weald National Landscape (HWNL). Bewl Water is an established tourist and recreation attraction providing a range of leisure facilities throughout the year.
9. The National Planning Policy Framework (the Framework) at paragraph 182 states that great weight should be given to conserving and enhancing the landscape and scenic beauty in Areas of Outstanding Natural Beauty (now known as National Landscapes), which have the highest status of protection in relation to these issues. It is evident that Bewl Water reservoir makes an important contribution to the open landscape, tranquillity and intrinsic beauty of the HWNL.

The dark skies of the High Weald National Landscape

10. Paragraph 191 of the Framework requires decisions to limit the impact of light pollution from artificial light on local amenity and intrinsically dark landscapes. The need to protect and promote the special qualities of the area such as tranquillity and dark skies is recognised in the High Weald AONB Management Plan. I note that the High Weald AONB Partnership has an unresolved objection to the application due to the impact on the HWNL arising from what they consider to be a substantial increase in lighting and noise. I discuss noise in further detail in the next section of this decision.
11. The building, one of only a limited number on the reservoir shore, occupies a prominent position close to the northern shore of the reservoir. The southeast elevation of the existing building faces towards the reservoir and is the most prominent and dominant part of the building in terms of potential impacts on the HWNL. Whilst there are already several existing windows and openings on the frontage, they are predominantly contained to the central part and end section adjacent to the northeast elevation.
12. In contrast, the appeal proposal would add new windows and openings where they currently do not exist in the roof as well as to the end section of the frontage adjacent to the southwestern elevation. The overall impact of this would be an increase and spreading of openings across almost the full width along the building's frontage. All of the scheme's windows would emit light from the proposed year-round use of the building, which would result in a change to the appearance of the area at night in terms of light spill.
13. The appellant contends that the existing building can be used throughout the year without any restrictions. Whilst I acknowledge and attribute some weight to this, the existing building is not currently used all year round. Accordingly, without mitigation the proposed year-round use along with the increase in

openings has the potential for the dark skies of the HWNL to be adversely affected from an increase in light spill contrary to the provisions of the development plan and requirements of the Framework.

14. In terms of mitigation, the appellant has sought to reduce the impact of light spill by amending the application to reduce the amount of glazing and including other measures such as angled louvres at first floor level. I am also aware that the appellant has agreed to accept conditions to require use of smart glass technology that could further address light spill from the development.
15. However, whilst these appear to be positive amendments, there is no evidence before me on the difference in light spill impact between the existing and proposed use, and whether the smart glass and other measures would address it to an acceptable level. Without this, it is difficult to come to an objective conclusion that the proposed smart glass and other measures would be effective in ensuring the HWNL dark skies are not adversely affected by the scheme including a proposed increase in openings on the building's most prominent elevation within the HWNL.
16. I am aware that the nearby fishing lodge building was granted planning permission at appeal¹ for conversion to holiday lets. The Inspector in that decision discussed the impact of the proposal on the dark skies and considered that whilst light spill would be increased, with conditions it would not have a significant impact. Weight was given in that decision to it being an existing building, a condition could ensure external lighting was kept to a minimum, and presence of other buildings, car park and streetlights that already emit light around the fishing lodge.
17. The fishing lodge is, however, a much smaller building than the appeal site and not located in as prominent a location. In contrast, the appeal proposal before me is much larger and would have a proportionately greater impact than the fishing lodge. Moreover, as set out, the information before me does not provide any determinative analysis of the relative impact of the proposal versus the existing baseline, including the cumulative impact of the fishing lodge decision. As a result, I do not agree that the fishing lodge appeal decision provides any justification for the appeal before me as each appeal must be considered on its own merits.
18. To conclude, it has not been sufficiently demonstrated that the smart glass condition and other proposed measures would be effective in ensuring the HWNL landscape dark skies are protected. The proposal is, therefore, contrary to Saved Policy WC14 of the Wealden Core Strategy 2013 (WCS) and Policies GD2, EN1, EN6, EN27 and EN29 of the Wealden Local Plan 1998 (WLP), which amongst other things require development to be sustainable and, within the HWNL, conserve or enhance the natural beauty and character of the landscape taking particular care to scale and design and have regard to the High Weald Management Plan. The proposal is also contrary to the provisions of Paragraph 182 and 191 of the Framework.

Noise and disturbance

19. The site and its surrounds are set within a peaceful and tranquil environment, which contributes positively to the quality and character of the HWNL. The

¹ APP/C1435/W/22/3294192

- existing building, however, can be used for functions and events throughout the year at present without any restrictions. This could include events with large groups of people that extend into the evening, and which have potential to create noise and disturbance when in use. I understand from the information before me that the proposed change of use of the building to year-round holiday lets would likely be an intensification in terms of the duration of the use of the building compared to how it is currently used.
20. Nonetheless, due to the size of the units the proposal would likely to be mostly used by couples and families as opposed to large groups. Accordingly, it is unlikely that occupancy by couples and families would create significant levels of noise and disturbance when compared with the unrestricted existing use of the building for functions and events when it is in use.
21. I also give weight to the noise attenuation measures that have been designed into the scheme through amendments that provide further assurance that noise and disturbance from the proposal would be minimised. Furthermore, I note that the nearest residential properties are located some distance away meaning that with noise attenuation the proposal would be unlikely to create a significant amenity impact on their living conditions. In this context, I am satisfied that the proposal would not be materially more harmful than the existing building when it is in use for events and functions.
22. Moreover, no evidence has been presented of there being an existing issue in terms of noise and disturbance at the reservoir. Notwithstanding this, the appellant has confirmed they would extend an existing Noise Management Plan (NMP) that is in place for the nearby temporary camping use and apply it to this development. I understand that this NMP has been effective in managing any noise complaints at the nearby camping site, which provides assurance that such measures have been effective in limiting the impact on the HWNL with regard to noise and disturbance. I have also had regard to the fishing lodge appeal decision², which similarly included a condition for a management plan to be submitted to control the use of that building in respect of noise and disturbance.
23. Finally, I acknowledge and give weight to the existing use not being subject to any restrictions and, whilst not the case currently, could also be used all year round. The imposition of a condition requiring the management plan would, therefore, be a demonstrable enhancement when compared to the existing situation.
24. To conclude, the impact of noise and disturbance on the HWNL is a separate issue to the impact of light spill on the dark skies discussed above. In this regard, the proposal would create 11 small holiday let units within a structure that can already be used all year round without any restrictions. I am satisfied that the information before me demonstrates that the building and its use can be effectively controlled to ensure that noise and disturbance would be mitigated to an acceptable level through the proposed attenuation measures and requiring a management plan to be secured by condition.
25. Accordingly, subject to the imposition of a suitably worded condition the proposal would not result in harm to the HWNL from noise and disturbance and is in accordance with Saved Policy WC14 of the WCS and Policies GD2, EN1,

² APP/C1435/W/22/3294192

EN6, EN27 and EN29 of the WLP, which amongst other things require development to not create an unacceptable adverse impact on adjoining development and preserve the tranquillity of the HWNL.

Character and appearance of the building

26. The site lies outside of development boundaries as defined in the development plan. Policy DC7 of the Wealden Local Plan 1998 (WLP) allows for tourist accommodation to be provided outside of development boundaries within the countryside through the conversion of rural buildings where the building's form, bulk and general design are in keeping with the surroundings.
27. Policy TM1 of the WLP similarly supports proposals for new or extended tourist facilities where development would respect and where possible enhance the character, make an important contribution to diversifying and upgrading tourist facilities and ensure particular care is given within the HWNL to siting, design and appearance in accordance with Policy EN6. Saved Policy EN6 of the Local Plan seeks not just to conserve or enhance the natural beauty of the AONB, but also its character, and has regard to traditional settlement patterns and building style.
28. As set out above, the building is located on a prominent location on the northern shore of the reservoir but already of a significant size. The proposal would increase the ridge height of the building through a roof extension with gable end projections on each elevation to provide accommodation in the roof space. The amended proposals would increase the height of the building by just over 1m, which would not appear as a prominent change given the substantial scale of the existing structure and open setting it sits within.
29. The changes including replacement and additional windows would also rejuvenate the current tired and utilitarian appearance to a more modern and updated building. The materials used would be similar to those used on the existing building, which would ensure the benefits of the renovation would be realised whilst at the same time respecting the character and appearance of the existing structure and how it appears within the HWNL.
30. Overall, I am satisfied that the proposed design of the building is acceptable and would not result in harm to its character and appearance and how it would appear within the HWNL. The proposal in terms of its external appearance, therefore, accords with Saved Policy WC14 of the WCS and Policies DC7, TM1, GD2, EN1, EN6, EN27 and EN29 of the WLP, which amongst other things require development to respect the character of adjoining development and landscape character in respect of design and materials. The design of the proposal would accord with the requirements of Paragraph 135 of the Framework by being sympathetic to local character and landscape setting.

Other Matters

31. 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 implications of that 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.
32. However, the proposal falls beyond the 7km buffer zone of the Ashdown Forest Special Protection Area (SPA). Accordingly, there is no requirement to consider the implications of the proposal upon the integrity of the SPA in view of the conservation objectives.
33. The development has potential to impact on the Ashdown Forest Special Area of Conservation (SAC). The qualifying features that underpin 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.
34. 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, therefore, create an impact pathway through vehicle emissions that could adversely affect the SAC if it contributes to an exceedance in critical values.
35. I understand from the information before me that the Council had proposed a quantum of development in its new Local Plan in 2019 that Natural England was satisfied would not adversely affect the integrity of the Ashdown Forest SAC. Natural England advised that no mitigation measures were needed in regard to air quality impacts on the SAC arising from the quantum of growth proposed in the 2019 draft Local Plan, which has since been withdrawn.
36. The development proposed, however, does not exceed the quantum of growth previously being planned for in the 2019 draft Local Plan. Accordingly, Natural England has not objected to the proposal on any grounds including the impact of the SAC. The view from Natural England as the national advisor on such matters can be attributed substantial weight. From the information before me, I too am satisfied that the development, alone or in combination, would not adversely impact the integrity of the Ashdown Forest SAC.
37. A substantial number of objections have been made in relation to the impact of the development on gull populations. In particular, the Sussex Ornithological Society (SOS) and other representors highlight that Bewl Water is internationally important for two gull species and considers the proposal would lead to disturbance to wildlife at the reservoir. These objections refer to an independent ecological report on the issue that concluded that it would be more probable that gull populations would permanently abandon the site as a result of further tourist development at Bewl Reservoir.
38. I also note a petition is currently underway seeking that Southern Water halt development at Bewl Water to protect birds and other wildlife. I further note that the objectors consider that Bewl Water satisfies the conditions to be designated as an SSSI and RAMSAR site albeit Natural England have declined to do so at the present time. Any such designation would also be a matter for separate legislation to take forward and I therefore cannot give this matter any weight in this decision.

39. The appellant has carried out all the necessary ecology surveys and assessments. These have been reviewed by the Council's Biodiversity Officer, who has not objected to the amended proposals, which includes various light and noise attenuation measures, on ornithological or any other ecological grounds subject to conditions being attached to any grant of planning permission. Whilst I acknowledge the concerns raised by the SOS, Sussex Wildlife Trust and others, the measures proposed have been concluded to be acceptable by the Council in terms of impact on gull populations. Overall, and having carefully considered the information and objections before me, I am not persuaded that reaching a different conclusion to the Council's is justified in terms of the development's impact on gull populations.
40. The Grade II Old Farmhouse, Beaumans Farmhouse and Beaumans Oast are sited across the reservoir to the south. The duty under Sections 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require that special regard be paid to the desirability of preserving listed buildings, their settings, and any features of special architectural or historic interest that they possess.
41. The Framework advises 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. In view of the proposal converting an existing building using similar materials, I find that the building would have a similar appearance to the existing situation ensuring there would not be any harm to the significance of the aforementioned listed buildings and their settings.
42. Other objections have raised concerns that the proposal would lead to further urbanisation of Bewl Water, not benefit the local community, increase vehicle movements, have adverse impacts on wildlife, reduce the provision of existing sailing and fishing facilities, affect drainage, harm the nearby Ancient Woodland as well as there not being a need for further tourist facilities and some of the proposed conditions being unenforceable. These matters did not form part of the Council's reasons for refusal and as I have found the appeal to be unacceptable in other respects it is not necessary to consider these further in this decision.

Planning Balance and Conclusion

43. The appellant has highlighted that the provision of new tourist facilities is a key strategic priority for the Council highlighted in the existing development plan as well as the new emerging plan that is currently at Regulation 18 stage of its preparation. I recognise also the support for tourist development in the Framework and acknowledge that the scheme would provide significant benefits in this regard.
44. However, protecting the status of the HWNL is a matter of considerable national significance to which I attribute great weight. In this regard, I am not satisfied that it has been adequately demonstrated what the extent of light spill from the development would be, and whether it can be controlled through conditions to a level that would not materially harm the dark skies of the HWNL. As a result, the proposal does not accord with the development plan or relevant provisions of the Framework. Whilst I recognise the tourist benefits of the proposal, they do not outweigh the potential harm from light spill on the

dark skies of the HWNL given the weight of protection afforded to such designations.

45. For the reasons given above, the proposal is not consistent with the policies of the development plan as a whole and there are no material considerations that would lead me to a different conclusion. I therefore conclude that the appeal should be dismissed.

N Perrins

INSPECTOR