



Appeal Decision

Site visit made on 20 March 2025

by **N Duff BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 September 2025

Appeal Ref: APP/F1040/W/24/3356576

Knights Lodges, Knights Lane, Bretby, Burton On Trent DE15 0RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Dean Willshee against the decision of South Derbyshire District Council.
- The application Ref is DMPA/2024/0042.
- The application sought planning permission for the erection of a leisure building with associated access, parking and landscaping without complying with a condition attached to planning permission Ref DMPA/2022/0836, dated 5 September 2022.
- The conditions in dispute are Nos 2 and No 6 which state that:

Condition 2

The development hereby permitted shall be carried out in accordance with plan(s)/drawing(s) ref; Site Location Plan, drawing no. 1560W 20 rev. D, Proposed Site Plan Scale 1:200, drawing no. 1560W 19 rev. D, Proposed Site Level Plan, drawing no. 1560W 22B, Ground Floor Plans and Elevations, drawing no. 1560W 18 rev. A, Materials Schedule, drawing no. 1560W 21 rev. A, Leisure Building 3D Indicative Visuals, Tree Planting Proposals, drawing no. GL0797 05E prepared by Golby and Luck Associates, CONFIDENTIAL Business Plan, prepared by Marrons Planning, Ecological Impact Assessment April 2022, prepared by Ecolocation, Ecological Condition Discharge Letter January 2021, prepared by Ecolocation, Landscape and Ecological Management Plan, prepared by Golby and Luck Associates, Landscape Visual Impact Assessment (June 2022 update), prepared by Marrons Planning, Flood Risk Assessment, prepared by PRP and the following drainage documents: Drainage Construction Details, drawing no. 108 rev. P1, Drainage Layout, drawing no. 105 rev. P10, Package Plant Maintenance Schedule, Infiltration Rates, Maintenance Schedule, Management Schedule for Surface water during Construction, Trial Pit Logs, Greenfield Runoff Rates, 1 in 1 year, 1 in 30 year, 1 in 100 year + 40% climate change and 1 in 100 year storm calculations unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Condition 6

The development of a leisure building hereby approved shall solely be used as an ancillary facility to the existing Knights Lodge tourism accommodation in situ and shall solely be used by customers residing in the tourism accommodation on site and guests of those customers. A register shall be kept of customers and their guests using the facility, their lodge/cabin numbers and duration of stay at the cabins and made available for viewing upon the request of the local planning authority. The development shall not be for general public use.

- The reasons given for the conditions are:

Condition 2

For the avoidance of doubt and in the interests of achieving sustainable development.

Condition 6

To ensure that the site is solely used for the purposes of tourism and leisure in connection with the National Forest Vision and in the interests of highways safety.

Decision

1. The appeal is allowed and planning permission is granted for the erection of leisure building with associated access, parking and landscaping at Knights Lodges, Knights Lane, Bretby, Burton On Trent DE15 0RT in accordance with the application Ref DMPA/2024/0042 without compliance with condition numbers 2 and 6 previously imposed on planning permission Ref DMPA/2022/0836 dated 5 September 2022 and subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Dean Willshee against South Derbyshire District Council. This application is subject of a separate decision.

Preliminary Matters

3. I consulted with the Council to confirm the list of plans that were before the Council when it made its decision, due to a query within the appellant's evidence. The Council has confirmed and corrected the list of plans relating to condition 2 as a result. I am satisfied that the list is correct.
4. A plan was listed in the appellant's evidence in the final comments: *Leisure Plan, drawing no. 20 rev. E*. The Council has confirmed that this plan was not before the Council when it made its decision, and the appellant has confirmed that this should not have been listed in the evidence, and therefore shall not be included in the list of approved plans as it does not form part of the appeal before me.
5. A unilateral undertaking has been submitted with the appeal to secure that a prior approval at Shades Farm, which is under the ownership of the appellant would not be implemented should the appeal be allowed. The Council has been given an opportunity to comment on the Unilateral Undertaking, therefore I am satisfied that the Council would not be prejudiced by my taking it into account.

Background and Main Issue

6. Planning permission was granted for the development of a leisure building at Knights Lodges, including associated access, parking, and landscaping, subject to conditions. The appellant seeks to remove Condition 6, which restricts use of the leisure building to those residing at Knights Lodges and their guests. This condition was originally imposed to ensure the site remained aligned with its tourism and leisure function under the National Forest Vision and to safeguard highway safety. The Council refused the Section 73 application, citing concerns that removing the condition would lead to unsustainable trips to the facility and unnecessary traffic generation. The Council also considered the proposed fallback position insufficient to outweigh the potential harm to the highway network. The main parties agree that the leisure building contributes positively to tourism and leisure function within the National Forest and South Derbyshire.
7. As part of the proposals to remove condition 6 a revised parking layout plan has been provided which would result in consequential amendments to condition 2, which sets out the approved plans.
8. The main issue in this appeal is the effect that removing condition 6 would have upon the local highway network and traffic generation.

Reasons

9. The appeal site is the ancillary leisure building at Knights Lodges, which is a tourist accommodation site off Knights Lane. The accommodation is located near Bretby, a rural village as defined by Policy SDT1 of the South Derbyshire Local Plan (SDLP), with both Swadlincote and Burton-upon-Trent located a short distance away. The site is open in character and is surrounded by fields. Knights Lane is relatively straight and has no streetlighting or pavements near to the appeal site.
10. Removing Condition 6 would allow the building to be used by members of the public together with residents of the site. The leisure building includes a swimming pool, sauna and gym along with other ancillary spaces. The appellant states that the premises will be operated on a membership basis for members of the public whilst still operating for those residing at the site. Although the Council questioned whether demand for memberships had been demonstrated, details of the website for the building demonstrates that memberships are available at the site, together with pay as you go options and details of classes.
11. Having regard to travel to the site, in my view, it is likely that most visitors would arrive by car, given the rural setting and the convenience it offers, despite the site's proximity to nearby population centres. Whilst walking is possible via the public right of way network, this option is more viable during daylight hours and favourable weather conditions, as Knights Lane lacks street lighting and footpaths. However, due to the relatively short distance from Burton-upon-Trent, Swadlincote, and surrounding villages, and given the area's suitable topography, I consider cycling to be a realistic alternative. This could help reduce overall traffic generation to the site, furthermore, cycle storage is proposed and would be secured by condition thereby providing facilities for cyclists supporting sustainable travel.
12. Having regard to parking provision, the appeal site has a long access road and a reasonably sized car parking area with some residents' parking provided at the individual lodges. Therefore, the car park would generally serve staff and outside visitors, including those using the leisure building. I find that even if the car park were full, the access road within the site could most likely accommodate some overspill parking if required, preventing spillage onto the highway. I find therefore that the proposed parking arrangement is sufficient for increased site usage.
13. The transport note¹ indicates that removing Condition 6 would result in one extra vehicular trip every 7-8 minutes, this has been described as an imperceptible increase in traffic. I am satisfied with the robustness of the transport evidence and that the increased intensity of the use would not cause harm to the highway network by way of a significant increase in traffic.
14. Having regard to the access to the site, I am satisfied based on the information provided and my observations on site, which show adequate visibility in both directions and a wide access, that the access can safely accommodate additional traffic generated by the removal of the condition, allowing members of the public to use the facilities.
15. The Council has submitted evidence regarding Repton School, located several kilometres away from the appeal site, which offers leisure facilities including a swimming pool and gym, along with public membership options, and is very close

¹ Transport statement: Magna Transport Planning Ref: 23/295/11A, December 2023

to a bus route. While these amenities are available, Repton is further away from the larger population centres of Swadlincote and Burton-upon-Trent compared to the appeal site. I find that this would make it a less convenient option for residents from those areas, due to distance, and more convenient for residents of Repton and surrounding villages. Based on the traffic assessment, I am satisfied that both sites could operate concurrently without placing undue pressure on the road network.

16. Whilst other leisure facilities are available locally, the majority of these appear to be situated within urban areas and the evidence before me does not demonstrate that there is an oversupply of such facilities in the area.
17. For the reasons set out above, I conclude that due to the small scale of the leisure facility, the use of the building by the public would not cause unacceptable levels of traffic, and due to the location of the site, notwithstanding the provision of other leisure facilities in the area, I am satisfied that it would not have an unacceptable impact on the road network. Therefore, the removal of condition 6 would not be contrary to Policy INF10 of the SDLP insofar as it relates to the main issue, which seeks to ensure that tourism development will seek to maximise opportunities to deliver new, or improve existing sustainable access arrangements including walking and cycling provision where appropriate, and recognises the need for flexibility in rural areas where there are often fewer opportunities for sustainable access in these locations.

Other Matters

18. The appellant has put forward a fallback position which includes the development of a building on a nearby site 'Shades Farm', under permitted development which has prior approval from the Council. This building would provide a leisure facility, albeit without a swimming pool, converted under the provisions of Class R of The Town and Country Planning (General Permitted Development) (England) Order 2015. The appeal has been accompanied by a Unilateral Undertaking to ensure that should the appeal be allowed the appellant would not implement the alternative scheme. Therefore, the two schemes would not operate concurrently.
19. Given that the appellant has sought prior approval for the alternative site to provide a leisure offering, there is a greater than theoretical possibility that, if the appeal is dismissed, the appellants may pursue the fallback scheme. Consequently, the fallback position is a material consideration in my determination of the appeal.
20. The Committee Report includes an extensive list of pertinent development plan policies. However, I have only been provided with details of the policy which the Council considers to be directly relevant, notably Policy INF10 of the SDLP relating to tourism development. I conclude that there will be no conflict with this policy as a result of the removal of condition 6 for the reasons set out in the main issue.
21. I note the comments raised by Bretby and Newton Solney Parish Councils, the objections raised relate mainly to highways matters and the provision of other facilities locally, these matters have been addressed in the main issue. The matters raised regarding the handling of the planning applications by the Council and the retrospective nature of the planning applications sit outside the scope of this appeal.

Conditions

22. Planning Practice Guidance outlines that decision notices for the granting of planning permission under Section 73 should restate the conditions imposed on earlier permissions that continue to have effect. I shall impose all those that I consider remain relevant. If some have, in fact been discharged, that is a matter which can be addressed by the main parties.
23. Having regard to the existing conditions on the planning permission, I have deleted condition 1 setting out a time limit as this is no longer relevant as the development has commenced. Former Condition 2 (now condition 1) will be amended to reflect the new plans for the car parking area, with drainage plans omitted as these are covered in a separate condition (now condition 2).
24. Condition 3 requires the implementation of the parking plan, I will amend this suggested condition in line with the list of conditions provided by the Council, however I will change the date of implementation to 2 months to allow more time which I consider to be reasonable. Condition 4 will be amended to include have 2 Electric Vehicle Charging Points to reflect the new car park configuration. Condition 7 will be amended to require 2 secure cycle parking spaces and a time limit for details to be submitted to the Local Planning Authority for approval added to the condition. Conditions 12 and 13 will be replaced with a condition to include details previously approved by the Council.
25. Two additional conditions have been suggested by the Council. The first is set out as condition 5 in the Council's suggested list of conditions, which requires the appellant to provide a summary of the sustainable transport measures. However, this condition does not state who this information should be provided to and is more onerous than the existing planning permission which does not impose such a requirement, and due to this, taken together with the small scale of the site, I do not consider this additional condition to be reasonable, necessary or precise and would therefore not meet the tests in the Planning Practice Guidance (PPG) and the National Planning Policy Framework (the Framework).
26. A second proposed condition listed as condition 14 in the list suggested by the Council would limit use of the site to residents, their guests, and members only, requiring detailed booking and scheduling information, effectively placing a restriction on who could use the building. However, due to the site's small scale, proposed parking arrangements, and limited capacity for visitors as demonstrated in the appellant's evidence, I consider this restriction to be unnecessary, overly onerous and not easily enforceable for the Local Planning Authority. I therefore consider that the site can be safely managed by the site operators without such a condition. Therefore, I do not consider that the condition would meet the tests as set out in the PPG or the Framework.

Conclusion

27. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

N Duff
INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan, drawing no. 1560W 20 rev. F
 - Proposed Site Plan, drawing no I9 rev G, dated 08/04/2024
 - Proposed Site Level Plan, drawing no. 1560W 22 rev. C
 - Ground Floor Plans and Elevations, drawing no. 1560W 18 rev. C
 - Materials Schedule, drawing no. 1560W 21 rev. A
 - Leisure Building 3D Indicative Visuals
 - Tree Planting Proposals, drawing no. GL0797 05E prepared by Golby and Luck Associates
 - CONFIDENTIAL Business Plan, prepared by Marrons Planning
 - Ecological Impact Assessment April 2022, prepared by Ecolocation
 - Ecological Condition Discharge Letter January 2021, prepared by Ecolocation
 - Landscape and Ecological Management Plan, prepared by Golby and Luck Associates
 - Landscape Visual Impact Assessment (June 2022 update), prepared by Marrons Planning
- 2) The development shall take place accordance with the drainage proposals outlined within the following documents and plans;
 - Flood Risk Assessment, prepared by PRP and the following drainage documents:
 - Drainage Construction Details, drawing no. 108 rev. P1
 - Drainage Layout, drawing no. 105 rev. P10
 - Package Plant Maintenance Schedule received 9th June 2022
 - Infiltration Rates received 9th June 2022
 - Maintenance Schedule received 9th June 2022
 - Management Schedule for Surface water during Construction received 9th June 2022
 - Trial Pit Logs received 9th June 2022
 - Greenfield Runoff Rates of 1 in 1 year, 1 in 30 year, 1 in 100 year + 40% climate change and 1 in 100 year storm calculations received 9th June 2022
- 3) Within 2 months of the date of this permission the parking and manoeuvring space shown on drawing ref: 1560 19G shall be complete, laid out and marked and maintained throughout the life of the development free of any impediment to its designated use.
- 4) Prior to the first use of the development hereby approved 2no. electric vehicle charging points shall be provided. The point of installation and specification of the charging point to be provided shall be submitted to the local planning authority for approval in writing on a prior to first use basis. The charging point shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. The electric vehicle charging point shall be provided in accordance with the stated criteria and approved details prior to the first use and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

- 5) Within 2 months of the date of this permission approved provision for the secure parking of 2no. cycles shall be provided. The specification and siting of this shall be submitted to the local planning authority for approval in writing. The approved scheme shall be implemented on site and maintained in good repair thereafter for the lifetime of the development.
- 6) The development hereby approved shall be carried out in accordance with the biodiversity enhancement recommendations in Section 5 of the Ecological Impact Assessment 2020 - 11(08) produced by Ecolocation received 9th June 2022. The measures shall be implemented and retained as such thereafter.
- 7) The facing and roofing materials and fenestration to be used shall follow the details as described within the submitted Materials Schedule Drawing No. 21a. The stone used to be used on the main face of the building shall be constructed using irregular patterning within the mortar layers and irregular sizes of stone, to avoid straight horizontal lines across the plain of the face of the walls to replicate the impression of a dry stone wall, and given more of a rural appearance to blend in with the countryside location. The development shall be constructed using the approved facing, roofing and fenestration materials.
- 8) No external lighting shall be installed until details of the intensity, angling and shielding and the area of spread of the lighting has been submitted to the local planning authority for approval in writing. The lights shall be installed in accordance with these details and thereafter retained in conformity with them. The submitted scheme shall comply with the latest guidance published by the Institute of Lighting Engineers.
- 9) The approved Landscaping Scheme shall be implemented in full in the first planting season following the occupation of the development. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in accordance with the approved scheme and timetable; and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the local planning authority gives written consent to any variation.
- 10) The infiltration pond shall be retained and maintained in accordance with the following details previously approved by the Local planning Authority:
 - Drainage construction details (dwg no 108 rev P2) received 17 July 2023.
 - Maintenance Schedule received 17 July 2023.
 - Pond soakaway sections (dwg no 111 rev P1) received 17 July 2023.
 - Proposed drainage layout and external levels plan (dwg no 105 rev. P13) received 22 April 2024
 - Manhole Schedule (dwg no 107 Rev P2) received 22 April 2024.
 - Site plan extract showing pond soakaway (dwg no 109 rev P2) received 22 April 2024
 - Storm Network Design ref: 81270 received 22 April 2024

- 11) The drainage system shall be retained and maintained in accordance with the approved details and verification provided within Foul and Surface Water Drainage Verification, prepared by PRP Environmental.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (Or any other revoking and re-enacting that order with or without modification), no external extension or alteration to the leisure building hereby approved shall be carried out without express planning permission first being obtained from the Local Planning Authority.

End of Schedule