

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

**OPENING STATEMENT BY THE LOCAL PLANNING
AUTHORITY**

Introduction

1. These are the opening 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 opening submissions do not rehearse all the arguments and evidence that 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 remaining issues in dispute

2. Five reasons for refusal were originally advanced by the Council, which can be summarised as relating to following: impacts on landscape (RfR1), impacts on the Dorset Heathlands European Protected Site (“the Heathlands”) (“RfR2”), insufficient information on drainage (“RfR3”), inadequate information on biodiversity (“RfR4”), and insufficient information regarding the impact on trees and landscaping (RfR5).
3. Of those reasons for refusal, only RfR1, RfR2 and RfR5 are still being pursued. In light of further information submitted by the Appellant in relation to drainage and biodiversity (and specifically the new survey carried out in the area where a proposed drainage headwall is proposed to be located, and a new lighting assessment submitted), RfR3 and 4 are no longer being pursued.
4. Therefore, of the main issues identified in the Case Management Conference Note, the following are the remaining issues:

- a. Whether the proposal would conserve and enhance the landscape and scenic beauty of the Dorset Area of National Landscape
- b. The proposal's impact on the character of the Heritage Coast
- c. The proposal's impact on Heathlands
- d. The proposal's impact on protected trees
- e. Whether the proposal is of an acceptable design.

Landscape impacts

5. RfR 1 refers to on the impact of the proposal and in particular its impact on the Dorset Area of National Landscape and the Heritage Coast. As to landscape impacts, the issues between the parties are set out in the Landscape SoCG [CD 7.004] dated 21 November 2024 at paragraph 17. There are two fundamental difference of opinion between Ms Ede and Mr Sneesby, the Appellant's landscape witness, relating to (a) whether or not the proposal amounts to major development for the purposes of paragraph 182 of the NPPF and (b) whether the landscape and visual effects of the proposal are beneficial or adverse. Turning to each of those, there are two points the Council wishes to emphasise at the outset:

- a. The NPPF 183 FN 63 makes it clear that whether a proposal is a 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*". 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 more than doubles the floorspace currently on site, introduces materially taller buildings and a significant amount of new built form into a highly sensitive location. That location

is located in an area that has been recognised internationally for its landscape and ecological value. The Council will seek to demonstrate that the Appellant's position that this proposal does not even have the potential to affect the purposes for which the Dorset National Landscape has been designated is plainly untenable.

- b. As to the landscape impact of this proposal, there is a clear difference of expert opinion between the parties' landscape experts, Miss Ede and Mr Sneesby, on that issue. Those differences of opinion will need to be explored in cross-examination and ultimately will be a matter of planning judgment for this inquiry to determine. The Council's position is that the Appellant's case that this proposal, which is on any reasonable analysis substantially greater in scale, mass and volume than the current existing hotel, does not result in any landscape harm at all is clearly and plainly wrong.

Design

6. Linked to the question of landscape impact is the question of the design of the proposal, since how a site relates its local and wider context engages questions of design. The RfR expressly referred to policy C1(c) of the AONB Management Plan [CD5.001] expressly refers to the need for high quality design is required of developments within the AONB. For this reason, the evidence of Joanna Ede, the Landscape expert who will be called by the Council, focusses on the elements scheme design that affects the local area's prevailing landscape character. Ms Fitzpatrick's evidence covers other aspects of scheme design which are relevant to local character over and above specific landscape considerations. Whether this scheme is of high design quality is ultimately a matter of planning judgment but those aspects of the scheme which cause the Council concern from a design perspective (e.g the levels of glazing the urban character of the design, the scale and extent of retaining features required to accommodate the proposal on the Site, the lack of integration of the proposals with its surroundings will be explored in cross examination with Mr Alker Stone, the Appellant's architectural witness).

Impact on trees.

7. This is a highly constrained site, and the question of the impact on the protected trees (for example T40 by the swimming pool on the southern edge and T73 and T75 on the western

edge) forms a reason for refusal in its own right. But the impact on trees, not just on trees protected by TPOs but also trees that are proposed for retention, is also highly relevant for the purposes of assessing the landscape and visual impact issue of the proposal (as already explained in detail by Ms Ede). For example, the Appellant's decision to site the tallest buildings in this scheme on the highest part of the Site (it is called Knoll House for a reason) assumes and is reliant on the retention of the tree cover currently to be found to the west and north of the Site.

8. The Council does not consider that this inquiry has sufficient information to satisfy it that with, for example, the substantial level of groundworks required (in some places the levels are to be raised by over 6m) and with the siting of parts of the buildings so close to trees of high amenity value, that harm to trees will not arise whether in the construction or operational phase. The assumptions as to what trees will be retained set out in the Appellant's Arboricultural Impact Assessment are sound. Mr Douglas, the Council's senior arboricultural officer, will explain those concerns in more detail when this matter is explored in the roundtable session

Impact on Heathlands.

9. There remains an issue between the parties regarding whether or not the proposal will have an adverse effect upon the integrity of the Heathlands caused by increased recreational use of the Heathlands. The resolution of that issue turns on the precise nature of the proposal and in particular what uses are proposed in respect of the three distinct elements of the scheme (the hotel building itself, the crescent of villas and the apartments), and what restrictions the Appellant proposes to ensure no impact arises in relation to those latter two elements.
10. The reason why the Council has drawn and continues to emphasise the distinction for the purposes of assessing the impact on the Heathlands between the introduction of a C1 use and a C3 use has been and will be explained in the evidence of Mr Rendle: a C3 use (i.e residential) is likely to result in a more intensive and frequent use of the Heathlands.
11. This is in complete alignment with Natural England's consultation response. It is also reflective of the approach in the recently adopted Local Plan Policy E8, which draws a

distinction between residential uses and other such uses (with an increase in the former requiring clear restrictions on use in perpetuity were they to be acceptable).

12. Whether a hotel use is proposed or a residential use is proposed is therefore not simply a matter of form and mere planning designation under the Use Classes Order, as the Appellant seems to suggest: it is a clear matter of substance and, in the Council's submission, is directly relevant to the degree of impact on the Heathlands.
13. The Appellant's own application draws a distinction in terms of how these separate elements of the scheme will be used. Yet the Appellant has continued to assert that all three elements of the scheme will be operated and used in precisely the same way (most recently in the evidence of Mr Read, the Appellant's agent and planning witness). That is a fundamentally contradictory position. If all elements of the accommodation are to be operated and used in the same way, by definition they should all be in the same use class.
14. The Council has therefore, perfectly reasonably, has been seeking from the outset clarity from the Appellant on what its position is in particular in terms of the proposed use of the two of the three forms of accommodation proposed, i.e the villa and apartments, and in particular what restrictions it proposes on the way those types of accommodation is controlled to align with how the Appellant says it wishes to operate that accommodation.
15. The Council has real concerns that without such restrictions on operation what in reality is coming forward is several units of independent, self-contained accommodation right on the edge of an internationally protected site which could be sold on and operated entirely independently. They have all the hallmarks of such accommodation on the plans (kitchens, separate accesses, etc). This is not only in clear breach of local policy but also would lead to adverse impacts on the Heathlands.
16. The easiest and simplest way for this to have been dealt with is for the Appellant to agree to amend its application to refer not to residential accommodation but to a C1 use for this element of the accommodation. This would have meant this issue could have been agreed long ago.
17. Regrettably, the Appellant has refused to do so, apparently - according to discussions between the parties' experts - for funding reasons. Whatever the Appellant's internal

reasons are, this inquiry has to assess the position in planning terms, and the Appellant's refusal to agree to appropriate restrictions is highly problematic.

18. Discussions continue but as things stand at present, without going over the course of discussions in detail, based on the Unilateral Obligation ("the UU") that has been submitted by the Appellant, the Appellant is still advancing two alternative positions in terms of the villas and apartment element of the scheme to this inquiry (see Schedule 3): Option 1 proposes a C1 use in its entirety, Option 2 proposes that the villas and apartments be limited to "holiday accommodation", in turn now defined (after the Council sought clarity on this) as "temporary sleeping accommodation".
19. In terms of Option 1, as long ago as 28 October, the Council entirely reasonably and in an attempt to narrow the issues down, made it clear that if the proposal was restricted to a C1 (i.e a hotel use) in its entirety (i.e Option 1), then subject to appropriate controls and restrictions, the Council would be able to agree that for the purposes of the Habitats Regulations Regulations, and subject to the application being amended to remove reference to residential uses, it would not have any objection to the appeal scheme.
20. Having reviewed the restrictions now proposed by the Appellant by way of planning obligation in the Unilateral Undertaking, the Council has confirmed on this basis that subject to the Inspector being satisfied that such an amendment was acceptable, it would not pursue this as a RfR in light of the restrictions proposed by the Appellant (which include restrictions on dogs being brought to the hotel).
21. The real, and only remaining issue, between the parties lies in the continued promotion of the Appellant of Option 2. The Appellant has called this as "Restricted C3 use" but that begs the question as to whether or not it is sufficiently restricted. The Council's position is that merely calling this accommodation "holiday accommodation" and then placing reliance simply on the same controls as proposed for the C1 use (i.e a Dog Permit Scheme) is not satisfactory, either to demonstrate no adverse impact for the purposes of the Habitats Regulation or to comply with Policy E8. The Appellant has accepted the need for a condition or restriction in the UU tying the operation of the villas and apartments to the hotel, but is not prepared to include this by way of planning obligation and the wording of the condition has not been agreed.

22. That is the nub of the issue between the parties, and whilst discussions continue, should the Appellant's position remain unchanged, may have to be dealt with in evidence during the course of the inquiry.

Planning balance

23. The parties' difference on the planning balance is reasonably clear: there is no issue between the Council and the Appellant in terms of the undoubted economic benefits of the scheme. A further issue (linked to the issues raised in RfR 3) relates to whether or not the measures proposed by the Appellant in relation to the Heathlands result in benefits or are in fact merely mitigation. Where the balance lies will be a matter for this inquiry to determine as a matter of planning judgment having heard the evidence of Ms Fitzpatrick for the Council and Mr Read for the Appellant. In the Council's submission the question turns largely on the question of landscape impact, as its position is that this harm alone is sufficient to justify the refusal of this scheme.

JAMES NEILL

Landmark Chambers

11 December 2024