

TOWN & COUNTRY PLANNING APPEALS

**(DETERMINATION BY INSPECTORS)
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

APPEAL BY

Kingfisher Resorts (Studland) Ltd

against the decision of Dorset Council

**to refuse planning permission for the proposed redevelopment of existing
hotel to provide new tourist accommodation, including: 30 hotel bedrooms, apartments
and villa accommodation and associated leisure and dining facilities**

at

Knoll House Hotel, Ferry Road, Studland

PINS reference: APP/D1265/W/24/3348224

LPA reference: P/Ful/2022/06840

CLOSING SUBMISSIONS OF THE APPELLANT



Birmingham · Bristol · London

1. Introduction

- 1.1. As set out in opening, the most important element of this appeal by Kingfisher Resorts is that it is made in respect of a proposed redevelopment. This is no proposal to introduce development on a greenfield site in the designated landscape but a significant regeneration scheme that has evolved over many years to replace the existing Knoll House Hotel at Ferry Road, Studland. This has been a lengthy process – it has taken at least six years to get to this point. That extensive history is set out in the evidence of Mr Read.¹ The revised scheme was to specifically address the Reasons for Refusal from the first scheme.²
- 1.2. During the evolution of the appeal scheme, the fabric of the existing hotel has continued its decline. Its principal attraction is not due to the quality of the facilities on offer but its location and the nearby natural assets.³ There is no drainage, there is no infrastructure, it has a failing carbon-intensive heating system, it is not regulated in terms of its accessibility or in terms of access to the heath, and the buildings are incredibly inefficient.⁴
- 1.3. The existing operation is not sustainable.⁵ The options are limited. A greater intensification of the current operation would have considerable negative environmental consequences, particularly upon the protected heathland. Any essential refurbishment of the existing facilities is not commercially realistic⁶ as it would involve circa £15 million.⁷ Moreover, the do-nothing option is the retrograde approach.
- 1.4. The Council agree that redevelopment is necessary⁸. It has the advantage of bringing with it all of the controls and benefits, which can only be seen to be positive in planning terms. This scheme, as Mr Sneesby explained, presents a rare opportunity to develop a site which is tired. It is a rare opportunity that we should

¹ Mr Read Evidence and Appendices, agreed with Ms Fitzpatrick in XX.

² Read EiC.

³ CD9.13, Greenslade §5.3.

⁴ Read EiC.

⁵ Read EiC.

⁶ Read EiC.

⁷ CD9.13, Greenslade §6.1.

⁸ Ms Fitzpatrick PoE and in XX.

not let slip through our fingers.⁹ Dorset Council (“the Council”) has lost sight of this important context in its assessment of the proposed redevelopment.

1.5. Following the testing of the evidence, we now have a situation in which considerable common ground has been reached. The Council considers this to be a “brownfield site”¹⁰. There is no inherent “*design*” objection. Both Ms Ede and Ms Fitzpatrick consider the appeal proposals to be of a good design, their issue was in respect of its location¹¹. There is no objection in ecology terms. There is no objection in respect of the HRA terms if the described development is restricted in planning terms to C1 use¹². Furthermore, even if the villas and apartments are considered to fall within a C3 use then they would have no different impacts to a C1 use if tied to the operation of the hotel.¹³ The Council are now satisfied that the proposed scheme would make adequate provision for drainage and the same can be secured by way of a condition.¹⁴

1.6. We will now explore each of the main issues set out in the CMC note (insofar as they remain):¹⁵

- a. Whether the proposal would conserve and enhance the landscape and scenic beauty of the Dorset Area National Landscape;
- b. Its effects on the character of the Heritage Coast;
- c. Its effects on biodiversity, including whether it would have significant adverse effects on European sites;
- d. Its effects on protected trees;
- e. Whether the proposed scheme would be of an acceptable design.

⁹ Sneesby EiC

¹⁰ Ede EiC.

¹¹ Ede XX, and Ms Fitzpatrick EiC.

¹² Confirmed by Ms Fitzpatrick in EiC, and Mr Rendle XX.

¹³ Planning SoCG and Ms Fitzpatrick XX.

¹⁴ Note that the drainage issue has now fallen away. See pre-commencement condition 15 by way of example.

¹⁵ Dated 4 October 2024.

2. Whether the proposal would conserve and enhance the landscape and scenic beauty of the Dorset Area National Landscape

- 2.1. Unsurprisingly, the principal parties agree that the baseline is the essential starting point when considering the impacts of the appeal scheme.¹⁶ The existing hotel largely trades off its location in terms of its proximity to the coast and the beauty of the surrounding area.¹⁷ This is corroborated in many of the guest reviews,¹⁸ referencing the beach, coast path and walking in the local area.
- 2.2. The site currently comprises approximately 30 buildings scattered across the site with large amounts of gravel and hardstanding. The existing developed footprint is approximately 13,100 sqm. It is spread over several buildings/structures many of which have reached the end (or nearing the end) of their practical lives.
- 2.3. The existing development predates these designations and makes a mixed contribution to the landscape character. Some elements have historical associations (Enid Blyton amongst others has been mentioned) which may contribute to local character. Other aspects, like the sprawling western development, cannot reasonably be said to contribute to the landscape setting.
- 2.4. The appeal proposal would result in significant investment¹⁹ and meet the overall aims of Policy E4²⁰. It would provide accommodation all year round.²¹ As previously indicated, there is no dispute that the principle of redevelopment is acceptable.²² The inclusion of self-contained apartments would allow it to be used more widely, including by families.²³ Families are a clientele that tend to spend more in the local area.²⁴ The ageing condition of the fabric of the hotel requires the business to operate at and at a lower value than the redevelopment scheme.²⁵

¹⁶ Common ground

¹⁷ CD9.13 Appendix 1.

¹⁸ See CD9.13, Guest Experience - §4.3 of Greenslade Proof.

¹⁹ Ms Fitzpatrick XX.

²⁰ Ms Fitzpatrick XX.

²¹ Ms Fitzpatrick XX.

²² XX

²³ Put to Ms Fitzpatrick in XX who explained that she recognised the different needs.

²⁴ Ms Fitzpatrick XX, seen evidence of that and has no reason to disagree with specialists on that issue.

²⁵ Ms Fitzpatrick no reason disagree..

- 2.5. The Appellant has never shied away from the fact that the site sits within a highly sensitive location. In this context it is to be noted that the LVIA methodology is all agreed with the Appellant. This has helped to inform the long iterative process of consultation, scrutiny and re-design. The appeal scheme team have learned from the earlier refused scheme,²⁶ taking on board the previous concerns and criticisms. Notably, the evidence has demonstrated clearly how the appeal scheme has evolved in response to the previous refusal, with a new team and fresh landscape-led design ethos.
- 2.6. Both Mr Alkerstone and Mr Sneesby explained how the design team undertook a comprehensive site analysis over several months, involving multiple site visits and professional assessments to understand the site's constraints and opportunities. The process included extensive consultation with stakeholders, including the National Trust²⁷ leading to refinements in the landscape approach and material choices.
- 2.7. The design evolution focused particularly on the relationship between built form and landscape, with careful consideration of views, massing, and integration with the surrounding environment. Notable among them are the fact that the buildings were set back further from the southern boundary, the spa building was relocated further from Ferry Road, the building heights were adjusted to ensure they remained below tree canopy levels, and materials were refined through consultation²⁸ following concerns raised over glare and visual impact.

Landscape-Led Approach

- 2.8. This approach is manifested through integrating the development with site topography, creating meaningful connections to the surrounding heathland by bringing the heathland into the development through the courtyard and using local materials, including Purbeck stone and timber. The green roof and landscaping strategy means that the outward landscape is brought into the development in a

²⁶ Mr Alker Stone EiC and Mr Sneesby EiC.

²⁷ Mr Alker Stone EiC.

²⁸ Mr Alker Stone EiC.

way that it does not currently. There was, in Mr Sneesby's words, a real opportunity for this Site.²⁹

- 2.9. Mr Sneesby explained that this was fundamental to the approach and there was (he having joined the project in year 5) clear evidence of the landscape-led approach and of primary mitigation, meaning that the scheme does not itself require mitigation.³⁰
- 2.10. The proposal responds directly to the surrounding context and far-reaching site views. The low-level development is focused on the south of the site, with greater density to the north of the site with open central green space.³¹ There is a green roof on the sunken spa facility and a reduction of accommodation overall, with low-density site coverage. There is also an open green central space, and, overall, 1-3 storeys above ground, and no increase in the maximum number of storeys.³²
- 2.11. All of that can be sharply contrasted with the brilliant white buildings which are currently on site.³³ They are much more obvious, even from 800m away in views from Addlestone Rock. This is not a valued development.³⁴
- 2.12. The Site is a "complete obstacle course" at present and is very non-inclusive.³⁵ From the South, there is a complete "dog's dinner" of a landscape response, which needs addressing. This is in Mr Sneesby's view, undoubtedly a good change. It is clear that the existing hotel is not an asset to the National Landscape.
- 2.13. Turning to the Council's identified concerns:

Scale and massing

- 2.14. First, Ms. Ede asserted that the development would approximately double in size.³⁶ This assessment was confined to being a volumetric-focused calculation.

²⁹ Sneesby EiC.

³⁰ Sneesby EiC

³¹ CD1.40, §4.3

³² Ibid.

³³ Sneesby EiC

³⁴ Sneesby EiC.

³⁵ Sneesby Eic.

³⁶ Ede XX

When contemplating whether one should assess this development on a density calculation (on which Council sought to rely) we ask you to note that Mr Alkerstone (a very experienced architect) said that he had never been asked for a volumetric calculation on a scheme throughout his entire career.³⁷ Whilst the Gross Internal Area would increase, the building footprint would increase by only approximately 190 sqm. That is essentially the size of a tennis court.³⁸ Volume is not the relevant metric, particularly when compared with massing, i.e. how that volume is arranged across the site. The relevant consideration is neither mathematical nor volumetric, but impact.

- 2.15. When considering massing, it is clear that the redevelopment makes good use of the site, reflecting and working with the topography to make efficient use of the area whilst retaining a comparison with the existing height (above AOD) of existing structures. The largest increase is less than 3m or less than one storey in height. This has been proposed alongside a rationalisation of the site boundaries and opening up of the central portion of the site, welcoming the landscape in. None of that has been challenged by the Council.

- 2.16. The design team made strategic decisions to concentrate development in certain areas to free up space for landscape enhancement. The evolution of the layout is considered in some detail in the DAS³⁹ (and Mr AlkerStone was clear that this only represented a representative sample of the extent of the work undertaken by the design team).⁴⁰ There has been a demonstrable design evolution process with a professional analysis of views and massing. That this professional landscape led design process had been undertaken was agreed by Ms Ede, albeit she did not endorse the end result.⁴¹

- 2.17. It is somewhat curious that the principal focus for the Council has been upon a crude assessment of volumetric data. Design is imperative when we are looking at this scheme and it was acknowledged that there is no volumetric policy test

³⁷ AlkerStone XX..

³⁸ Ede XX.

³⁹ CD1.40, §4.2.

⁴⁰ AlkerStone EiC.

⁴¹ Ede XX.

(either national or local).⁴² This is because it is the perception of scale and massing needs to be considered. In that exercise, we would commend the visual montages to the Inspector.

- 2.18. It is also important to consider the visual and landscape improvements delivered by the proposed scheme. These include the consolidation of the existing dispersed car parking into a tucked-away corner to minimise the visual impact and enhance the site within its rural setting.⁴³ There is also a considerable undergrounding of significant parts of the development. Concealing services and car parking underground was a fundamental element of the design ethos, significantly reducing the above-ground footprint.⁴⁴ The modest height increases were carefully considered, with buildings designed to sit comfortably below tree canopy levels⁴⁵ using topography to minimise visual impact. The reduction in massing (and the evolution of the proposals in that regard) are overlaid in the Proof of Mark Alker Stone, and these demonstrate the buildings are not significantly larger than what is there now.⁴⁶
- 2.19. It appeared to be suggested in the XX of Mr Sneesby and Mr Alkerstone that this was a scheme which has been driven by economics. That is not what has been proposed in this case. Not least because this is designed to be a luxury resort with a demonstrably considered professional design ethos.

Materials and Design Quality

- 2.20. Another important component of this scheme relates to the materials and the design quality. The existing development pays little or no discernible respect to the local vernacular. Evidence was presented regarding the appropriateness of the contemporary design approach. All parties agree that a modern approach can be satisfactory in a rural setting.⁴⁷ The Conservation and Design Officer even

⁴² Fitzpatrick xx.

⁴³ CD9.4, §3.16.

⁴⁴ CD9.4, §3.19.

⁴⁵ AlkerStone EiC.

⁴⁶ CD9.4, §3.23.

⁴⁷ Ede XX.

supported the bold, modern design approach as appropriate for avoiding "*nondescript, disconnected structures*."⁴⁸

- 2.21. Contrary to this support from the Conservation and Design Officers of the Council,⁴⁹ much has been made by Ms Ede of an "*urban character*" of proposed buildings with concerns about lack of integration with surroundings. But this criticism is manifestly not justified. The DAS explains very clearly how and why the choices for proposed materials have been made. They reflect local character and include Purbeck stone, timber, pre-weathered zinc, and green roofs. They will also be from earthier tones, designed to assimilate more easily into the landscape.
- 2.22. The Council now seek to suggest that the ambit of their Design Team consultation responses were focused only upon on heritage. However, Ms Fitzpatrick fairly conceded that the Appellant is entitled to regard a Conservation and Design Officer as encompassing matters of design, not only in name, but also in substance. The two consultation responses⁵⁰, from different conservation and design officers, also, materially grapple with issues concerning design – see references to the two additional suggested conditions⁵¹ and the substance of the comments, which *inter alia* talk about the design approach.⁵²

Major Development?

- 2.23. While the Council contends the scheme constitutes "*major development*" under NPPF footnote ("fn") 67, this rests heavily on its assertion regarding size. But this must also be considered in the context of the limited increase in the actual footprint, a careful, considered approach to important views and the visual impacts. It also brings substantial underground development.
- 2.24. Paragraph 190 of the NPPF requires that, when considering applications for development in national landscapes, permission should be refused for "*major*

⁴⁸ Ibid, page 4.

⁴⁹ CD3.10 and CD3.24.

⁵⁰ CD3.10 and CD3.24.

⁵¹ CD3.10, suggested conditions (2) and (3)

⁵² Ibid. page 4.

development” (unless the exceptions are met). “*Major development*” is then defined in what is now fn 67. That reads as follows:

“67 For the purposes of paragraphs 190 and 191, 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.”

2.25. A fundamental flaw in Ms. Fitzpatrick's evidence is her approach to determining whether the proposal constitutes “*major development*”. Her analysis is overly narrow, focusing solely on footprint.

2.26. First, when considering the **nature**, **scale** and **setting** of the development, this is a previously developed site. Those factors require proper assessment:

a. **Nature.** It is agreed that the appeal scheme proposes tourism accommodation.⁵³ This is fundamentally the same as the present use on the site.⁵⁴ Moreover, the proposed use will have less impact through reduced traffic movements (some 510 pd) with fewer people staying overnight.⁵⁵ The other observable impacts include an increase in terms of the BNG.

b. **Scale.** The area concerned is 2ha. The site (as proposed) is the same. The baseline is that there is already major development here.⁵⁶ There are only marginal increases in terms of heights but reductions in many other ways. That previously developed baseline is highly relevant, as explained by Mr Read when considering the operation of fn 67.⁵⁷ This is wholly different to a greenfield site where tourist accommodation is being proposed

⁵³ Fitzpatrick XX

⁵⁴ Fitzpatrick XX.

⁵⁵ See TA

⁵⁶ Fitzpatrick XX.

⁵⁷ Fitzpatrick clarified that in her §5.5 she had included in inverted commas matters which do not form part of the

de novo. Mr Read gave examples of how different this was to other schemes he had worked on which were greenfield.⁵⁸

- c. **Setting.** It is obvious that the setting is in the National Landscape. That is true of the entire designation and if that were the only relevant feature, then the test would be an entirely circular one. The reality is that this is a brownfield site.⁵⁹ Furthermore, Ms Fitzpatrick agreed that there was no alleged harm to the wider setting of the National Landscape.

2.27. Second, the threshold when looking at whether or not this is “*major development*” is whether a proposal could have a “*significant*” adverse impact. It is respectfully suggested that even if you did consider that there could be an adverse effect arising from an increase in the nature and scale of the development in this setting, it would not reach that high threshold of being a “*significant*” adverse impact. Again, the existing context is an important component of your assessment.

2.28. Third, even if both of those criteria were met, the proposal would have to have a significant adverse impact “*on the purposes for which the area has been designated or defined*”.⁶⁰ The purposes of relevance have been set out in the Officer’s Report.⁶¹ These can be summarised in the following way:

- a. **Uninterrupted panoramic views** are necessary to appreciate the complex pattern and textures of the surrounding landscape. On panoramic views (those agreed to be most important)⁶², are critiqued by Ms Ede, but the Council have never asked for any further viewpoints/visuals. Mr Sneesby was clear that he walked around the general area for days without being able to see the Site, and that one could see it at a distance only with binoculars.⁶³ Ms Ede’s criticisms about visual impacts should be seen in the context of the A0

⁵⁸ He gave example of 50 homes on a greenfield site, by way of example.

⁵⁹ Ede XX.

⁶⁰ Fitzpatrick XX.

⁶¹ CD3.46 – page 41

⁶² SoCG.

⁶³ Sneesby EiC.

panoramas – as panoramas are agreed to be most relevant in the SoCG. From views from the Black Down Mound (Viewpoint 5b) as well as Viewpoints 6, 7, 8 and 9⁶⁴, the Proposed Development is either barely perceptible or not perceptible at all. Finally, whilst Ms Ede now takes issue with the visualisations, one must remember that they also do not consider the landscape features protected as part of the LEMP. They are merely an aide so that you can form your own view of the acceptability of the proposals.

- b. **Tranquillity and remoteness.**⁶⁵ The Operations Report⁶⁶ considers how there will be reductions in terms of the impacts on tranquillity and remoteness, including a decrease in numbers and traffic movements.⁶⁷ In simple terms, the impacts of the proposed scheme upon these purposes would be less than presently exist.

- c. **Dark night skies.** In terms of dark night skies, this is – again – not emblematic of the appeal site. Lighting is unrestricted at present. There is a detailed light spill mitigation report (Nov 2024).⁶⁸ That is managed for an ecological consideration of a low level (0.5 lux).⁶⁹ Despite the issue of lighting being raised through Ms Fitzpatrick’s evidence, a lighting strategy secured through condition has been supported by the AONB Board, who support Natural England’s suggestion that this can be agreed upon through a lighting strategy.⁷⁰ However, through the agreed lighting strategy,⁷¹ there will be clear management of lighting impacts from the scheme. That greater control over the baseline clearly amounts to a benefit.

⁶⁴ CD10.007, page 41.

⁶⁵ Ibid.

⁶⁶ CD1.61.

⁶⁷ Operations Report.

⁶⁸ CD9.6

⁶⁹ Light spill beyond the site boundary has been minimised to below 0.5 lux everywhere and therefore this is not deemed intrusive to the surrounding environment. That is below the requirement for light management for national landscapes.

⁷⁰ CD3.025 where AONB Unit endorse Natural England in CD3.018.

⁷¹ CD9.24 and the film to be placed on the windows is at CD9.25.

- d. **Undeveloped rural character.** As a developed site, which is substantial in terms of its footprint and impact, this cannot rationally be said to be a site emblematic of an undeveloped rural character. This is clearly a developed site, and the appeal scheme makes no additional contribution to the purpose for which the area has been designated.
- e. **An exceptional undeveloped coastline.** Similarly, the site is not contributing towards the undeveloped coastline. Quite the opposite is true. This Site is clearly developed,⁷² and the appeal scheme will not materially change that position. The same is evident from Mr Read's Appendix 2, the setting will not change.⁷³
- f. **Wildlife of national and international significance.** Recreational pressure aside, the assessments have concluded that the scheme would deliver beneficial effects over the baseline, including, *inter alia*, lighting, drainage, fire risk, cat predation, which would all reflect lesser impact or better controls. As per the evidence of Dr Brookbank, there is an agreed set of measures to manage the impacts of the proposed scheme, including, *inter alia*, the nutrient budget calculation. The only issue remaining is recreational pressure, despite there being agreement that there would be a net reduction in overnight accommodation.

You have heard detailed evidence on this point. There is clearly no restraint at all upon the recreational pressures on the heathland as things stand now. Aside from the C1/C3 debate covered in further detail below, the Council is content with regard to the C1 use class,⁷⁴ and so there is no basis upon which the scheme should be refused – and it can be seen to be capable of being acceptable in planning terms as a consequence⁷⁵ (as it is clear that the scheme can be managed as

⁷² Fitzpatrick XX.

⁷³ Fitzpatrick XX.

⁷⁴ Confirmed through Mr Rendle and Ms Fitzpatrick

⁷⁵ Clarified through Fitzpatrick XX.

a C1 resort⁷⁶ albeit that is not the Appellant's preference⁷⁷). There is no likely significant effect on the heathland, and therefore, no objection is reasonably sustainable in those terms. On that basis, there can be no conflict with that special quality either.

2.29. When considered against those special qualities identified in the Officer's Report there is clearly no reasonable basis for finding that the redevelopment, when considered in the context of fn 67, can be "*major development*". In summary, that analysis is not supported by the nature, scale and setting of the development, nor is it supported by the fact that there would not be a significant adverse impact on any of the purposes for which the area has been designated or defined. On that basis, the proposal passes the test in paragraph 190. As Ms Fitzpatrick fairly concluded, if this satisfies that test, then the Inspector can stop there and revert to development plan policy.⁷⁸

Exceptional circumstances

2.30. Should you not agree with that analysis, then we respectfully contend that the appeal scheme also satisfies the "*exceptional circumstances*" test in paragraph 190. In Ms Fitzpatrick's Proof, there is an arguable conflict with only one part of the three limbs of that test. Taking matters which are agreed first:

- (a) The first requirement is to demonstrate the **need and impact on the economy**. This is a form of development set within the visitor economy, which is the "*backbone*" of the Dorset economy.⁷⁹ Significantly, the proposal has the express support of both the Dorset LEP and Chamber of Commerce,⁸⁰ who came to speak in favour of the scheme on day 1. In this regard, there is clear, cogent and uncontested evidence of the economic benefits to the local

⁷⁶ Rendle EiC and XX.

⁷⁷ As explained by Read EiC and XX.

⁷⁸ Fitzpatrick XX

⁷⁹ See App 1 of Mr Read Proof, a Report by Mr James Greenslade.

⁸⁰ Evidence on Day 1 of the inquiry.

economy. That will have knock-on benefits to the wider area. Ms Fitzpatrick agrees that there is no conflict with this part of test⁸¹.

(b) The second requirement is to consider the **cost and scope of developing elsewhere**. The proposal relates to a redevelopment of an existing hotel, so of course, these are location-specific re-development proposals. It would not be practical or viable to develop the proposal outside of the designated site.⁸² Ms Fitzpatrick helpfully agreed that there is no issue with this criterion either.

2.31. It is only the third of those tests with which Ms Fitzpatrick takes issue. But crucially, this test is more than just a narrow landscape consideration; it also requires consideration of environmental effects and recreational opportunities. In terms of the other factors not addressed by Ms Fitzpatrick in her proof in respect of paragraph 190(c), these can be taken as follows:

(a) **environmental effects**, the scheme plainly performs better than the appeal proposal, which clearly delivers biodiversity net gain - 38.5% (habitat) and 17.38% (hedgerow creation). It also involves planting 134 new trees, a regularised surface water drainage strategy using SUDS treatment and controlled discharge rates, delivery of renewable energy and air quality improvements. In addition, the sustainability credentials of the scheme are improved. As Ms Fitzpatrick noted the “fabric first” redevelopment would achieve a more sustainable level of building for the future. This would be a benefit to its sustainability credentials⁸³ in environmental terms. The green roofs, and carbon sequestration benefits are all acknowledged by the Council as welcome improvements.⁸⁴

⁸¹ See Fitzpatrick §4.5.

⁸² See Fitzpatrick §4.5.

⁸³ Fitzpatrick XX.

⁸⁴ Fitzpatrick XX.

(b) **recreational opportunities**, the proposed redevelopment will retain existing opportunities for recreation and will promote tourism in the area. It will also deliver important benefits insofar as the designated sites are concerned. This is extensively explained in the evidence of Dr Brookbank and Mr Jenkinson.⁸⁵ Notably, as Dr Brookbank explains, the proposed redevelopment will result in a net decrease in overnight accommodation and will further draw tourists away from the heath with the enhanced offering at the Site itself, which includes luxury features that will increase dwell time and the provision of alternative recreational space.⁸⁶ The proposals will also introduce a number of new beneficial controls that will secure a net decrease in dog numbers and positively influence site access and responsible recreation through the provision of boundary fencing and visitor information⁸⁷; those are all recreational benefits.

2.32. Ms Fitzpatrick has fallen into the trap of only looking at **landscape** considerations when considering whether or not the paragraph 190 (c) test is passed. But that would be to misinterpret and/or misapply the policy. As set out above, the redevelopment makes good use of the site, reflecting and working with the topography to make efficient use of the area. This is an effective approach in meeting the accommodation requirements and requisite facilities whilst remaining sensitive to its location.

2.33. Taking factors (a) – (c) together, exceptional circumstances are clearly made out.

2.34. Mr Read concludes that all these factors demonstrate that the appeal proposal accords with the provisions of Policy E1. It also accords with the national policy tests in respect of major development in the National Landscape. In meeting both the development plan and national policy requirements, the proposal conserves the natural beauty of the National Landscape, and there are elements of enhancement.

⁸⁵ CD9.15.

⁸⁶ Brookbank EiC.

⁸⁷ See condition 29.

3. Its effects on the character of the Heritage Coast.

3.1. Much was made of the effect on the Heritage Coasts. In terms of landscape designation, it really does not take the Council's case much further. Ms Ede and Ms Fitzpatrick fairly agreed that if one was to comply with the policy, then one would *de facto* comply with any further policy protection in relation to the Heritage Coast.

4. Effects on biodiversity, including whether it would have significant adverse effects on European sites.

4.1. The only issue that remains between the parties relates to the effects on biodiversity, namely from impacts on the heathlands. All other matters, including lighting – it is now agreed can be managed through planning conditions based on the lighting assessment.⁸⁸

4.2. Despite being explained multiple times, the Council has consistently failed to understand what the proposed development is. The description of development (since the application form) has referred to "*tourist accommodation*". The only reason that market housing box was ticked on the application form was because there was no box which would adequately describe what was proposed.

4.3. Mr. Rendle's evidence appears to suffer from a basic misunderstanding about the nature of the proposed redevelopment despite the same being (very) extensively explained in the evidence base. This includes the application form,⁸⁹ the Environmental Statement, and the Operations Report,⁹⁰ which explain precisely how the Proposed Development is going to work. Mr Rendle's analysis proceeds on the incorrect premise that this is a housing development when the description of development has consistently and explicitly referred to "*tourist accommodation*".

4.4. Mr Rendle's position disregards the established operation of the existing hotel. He fails to appreciate the proper baseline. In so doing, the Council has also disregarded current

⁸⁸ Brookbank EiC

⁸⁹ CD1.41.

⁹⁰ CD1.61

unregulated visitor movements and ignored existing patterns of heathland use by hotel guests. Currently, it is a relatively affordable offering, which has a restaurant, spa and pool and is relatively well-occupied in the summer. This is used as a base for exploring the local area – the beach, the heaths, and the wider features in the Isle of Purbeck and Poole Harbour⁹¹.

4.5.As Dr Brookbank explained, this is a very dog-friendly establishment; there is a dedicated dog-friendly dining area, and walking routes are promoted from the hotel to the offsite areas, including the heath.⁹² There are no controls on the length of the stay, the ability to bring dogs, the ability to walk directly into the designated health.⁹³

4.6.The SPD⁹⁴ focuses on overnight accommodation and primarily types of residential dwellings used permanently. This is because research has shown that this drives regular patterns of access, influenced by daily recreational needs, principally for dog walking.⁹⁵ In approaching this issue, the Council have materially failed to grapple with what is proposed in two material ways.

4.7.The first is that this is a proposal for tourist accommodation, not market housing. The villas cannot be used as anything other than an integral part of the resort; there is a single booking system for example. The Council has also completely failed to acknowledge the integrated nature of the proposal, including the shared servicing corridors (for example, all washing will be undertaken through the centralised system), consolidated parking arrangements (no partaking at villas), community heating network, unified site-wide utility strategy, integrated access and management.⁹⁶ The Council has also failed to get to grips with the operational reality of modern resort developments, the effectiveness of planning conditions in controlling use, and the precedent of similar developments elsewhere.⁹⁷

⁹¹ Brookbank EiC.

⁹² Brookbank EiC.

⁹³ Brookbank EiC.

⁹⁴ CD5.6

⁹⁵ Brookbank EiC.

⁹⁶ All discussed with Dr Brookbank in Re-X.

⁹⁷ See the operations report.

4.8. Not only has there been a failure to get to grips with the scheme itself, but also the failure to properly consider the comprehensive package proposed which offers a betterment against the existing situation. This appears to be because the Council have become entirely fixated on this being C3 accommodation. But there has never been, and there is still no proposal for this to be unconstrained C3 accommodation. That was abundantly clear from the statement of case.

4.9. The extremely curious nature of the Council's concern is perhaps best illustrated by the fact that they are entirely content (and there is no issue at all) if this is classified as a C1 development. But no design change is proposed at all whether it is C3 or C1 development.⁹⁸

4.10. Moreover, the bare assertion (from Mr Rendle) that there is a difference between the C3 and C1 operation is just that – a bare assertion. There is an absence of any quantified impact assessment to substantiate Mr Rendle's assertions, a failure to consider comparable developments⁹⁹ and no evidence at all about how and why villas in this type of area will be a more "permanent" residence.

4.11. That is a red herring. The focus ought to be on the impact in order to assess each proposal on a case-by-case basis. When one properly focuses on what is relevant, namely the impact(s), then the proposal is an undeniable improvement as against the baseline.

4.12. There are also further enhancements, including enhanced boundary treatments and the creation of circular walking routes. There will also be a suite of management measures, including regulated dog walking arrangements, visitor information packs, staff training programs, and monitoring commitments.

4.13. The simple reality is that if the accommodation is secured as tourist accommodation, then Mr Rendle is satisfied.¹⁰⁰ The UU, by way of Schedule 4, clearly controls the use of dogs through the "Dog Permit Scheme", and the number of people to be allowed to stay has been reduced by design (reducing the number of rooms).

⁹⁸ All discussed with Dr Brookbank in Re-X.

⁹⁹ See the operational report.

¹⁰⁰ Mr Reed Appendix 10.

4.14. The only remaining issue is whether or not the proposed development should be controlled as restricted C3 accommodation rather than general C3 accommodation. The limitation to “*holiday accommodation*” is precisely what was imposed in *Meudon* appeal¹⁰¹ where the Inspector saw fit to impose condition 23, which states that the holiday units shall “*be used as holiday accommodation only and shall not be occupied as a person’s sole or main place of residence*”. The Appellant in light of the Council’s remaining uncertainty, is prepared to accept a condition in largely the same terms¹⁰².

4.15. If permanence remains an issue, the Appellant is also prepared to accept a limitation on the length of the stay. Though Dr Brookbank did not consider that two months would be considered to be permanent (and therefore give rise to an issue such that it would not be seen to be necessary to impose the condition¹⁰³) if you consider it necessary, any residual concern about people staying for permanent periods of time and developing problematic patterns of behaviour for the heathland could be controlled through the new proposed condition 34.

4.16. We respectfully invite you to reject Mr. Rendle's characterisation of the development as housing, to recognise the comprehensive benefits package proposed, acknowledge the reduction in overnight capacity and associated benefits, apply appropriate weight to the integrated nature of the resort proposal and consider the effectiveness of proposed planning conditions and obligations in controlling impacts.

4.17. The non-sensical nature of the Council’s case is perhaps encapsulated by the entirely unwarranted (11th hour) suggestion of a C3 condition to protect this asset as a C3 primary dwellinghouse (to protect against second home ownership) where an occupant would have to be registered on the electoral register in order to stay in the villas. That is to fundamentally undermine the Council’s own case and to entirely misunderstand what is proposed – how can the Council, on one hand, suggest that C3 dwelling is inappropriate and then seek to suggest that is how the use of the dwellings should be secured. With respect, the Council’s approach makes no sense at all. The

¹⁰¹ ID4.

¹⁰² It is worth noting that Mr Rendle suggested that controls should be in a UU but this issue was not raised in a timely fashion and so the UU has now been executed. Nonetheless, the condition provides adequate control in any event, and this is consistent with what the Meudon Inspector concluded was appropriate.

¹⁰³ As she was concerned with the “permanence” of the stay

Council's suggestion that this will be revisited is obviously welcomed. Its removal is now agreed.

4.18. Finally. Ms Fitzpatrick agreed¹⁰⁴ on behalf of the Council that its concerns over securing the use of the villas and apartments for tourist or holiday use only could be addressed through a condition and monitoring process as expressly envisaged in Policy H14 of the recently adopted development plan. Furthermore, such an approach would be entirely consistent with adopted development plan policy. It begs the question "*what's the problem?*".

5. Impact on protected trees

5.1. The degree (and timing) of the Council's engagement is relevant when considering the issue of the impacts on trees. The Appellant first received comments on December 12th, 2023, when the application was submitted in October 2022, over 12 months earlier. Those comments came too late to be incorporated into the Officer Report. To move the discussion forward, the Appellant sought clarification on the scope of the Council's case as far back as 10th September 2024, seeking further detail on specific tree concerns. There was no further engagement by the Council.

5.2. Many of the issues Mr Douglas raised for the first time as part of the Proof. Unfortunately, there has been a very poor history of engagement from the Council on this issue, and new issues were introduced through the Round Table Discussion. They are not insurmountable issues, and given the lateness of their advancement, the weight to be attributed to those concerns should be reduced. Insofar as they are relevant, the response is briefly set out below.

T40

5.3. The Appellant notes the Council's concerns, first regarding the impacts of the pool assembly.

5.4. When asked by Mr Neill about how the pool proposal near T40 proposal came about, Mr Read explained very clearly that there was a detailed design process and that this was informed both by the previous scheme and through the input of the arboriculture consultant and design team.¹⁰⁵ Having consulted the relevant experts, the Appellant is sufficiently certain that this design response is achievable. Mr Douglas' concerns that he had never seen this done before,¹⁰⁶ with respect do not take the Council's case very far.

5.5. It is a B category tree¹⁰⁷ in reasonable proximity to the building and has a bund close by. The works will not happen within the root protection area, and as Mr Cleverdon explained, this would not involve works within the RPA, nor would it involve any significant lifting of the crown. Mr Read explained that he was keen to see this tree retained. That Mr Douglas is now belatedly criticising the proposal is largely due to the absence of a response from the Council. However, there is a simple answer to this point. The relevant test for the refusal of a pre-commencement condition is that there is "*no prospect at all of the action in question before performed within the time limit proposed*" (emphasis added).¹⁰⁸ The proposal has been carefully designed with a structural engineer and with a specialist arboriculturist. The essential point is that the engineering drawing demonstrates how this can be achieved (and this is much more than would ordinarily be expected at this stage in the design process) (RIBA Stage 2/3). There may also be other solutions.

5.6. Concerns about how impacts upon the tree can be appropriately managed must be seen in the context of this being a managed/operated site, with regular staff and lifeguards on hand to deal with leaf/debris drop.¹⁰⁹ That should at least in part overcome the concerns of the Council regarding the impact, if any, of chlorinated water, too; however, as mentioned, a glass screen would go some way to protecting the tree in that regard.¹¹⁰ Alternative approaches may also be possible, albeit it is impossible for the Appellant to

¹⁰⁵ Read XX

¹⁰⁶ Douglas RTD

¹⁰⁷ Read XX

¹⁰⁸ Paragraph: 009 Reference ID: 21a-009-20140306, Revision date: 06 03 2014

¹⁰⁹ Read RTD.

¹¹⁰ RTD

comprehensively react on these matters regarding alternatives when Mr Douglas raised them for the first time, off the hoof, in a roundtable discussion.

5.7. The simple (and necessary) point is that you need only to be satisfied that there is more than a *nil* prospect of a solution being devised to the satisfaction of the Council. Though it may not be the “*finished article*”, more detail than would ordinarily be provided at this stage of design development has demonstrated that it is possible to find a solution – and certainly, more than a *nil* prospect that a solution will be found. Mr Read also explained that the Council’s position is at odds with their conclusions in respect of the first application around T40, where they accepted operational development within the root protection area and a balcony in the canopy.

Tree removal

5.8. Mr Read explained that for the first scheme, 50 trees were proposed to be removed, whilst in the revised scheme, that is just 29. There was no objection from the tree officer for the first scheme, so the Council’s comments regarding tree removal must be considered in that context. Consistency in decision-making is both material and relevant.¹¹¹ Plainly, it is regrettable that trees will be removed, but there will be extensive planting, which clearly outweighs the harm from removal.

Green Roofs

5.9. The delivery of green walls and roofs were confirmed as technically feasible, though detailed designs would be secured through conditions. Nonetheless, work has been frontloaded at this stage to provide a degree of comfort. Concern in relation to the feasibility of the Green Roofs must also be seen in the context that Mr Sneesby is a very experienced landscape architect. He is (amongst other things) one of the leading judges at RHS Chelsea flower show and is confident that a solution will be deliverable, particularly in terms of irrigation.¹¹² The Council have adduced no evidence to the contrary. That is to be secured by condition¹¹³ and there is more than a *nil* prospect that this will be delivered.

¹¹¹ Fitzpatrick XX.

¹¹² Sneesby XX.

¹¹³ See Condition 12.

Trees as part of the Landscaping Strategy

5.10. With regard to the planted trees, they are all controlled by condition, and Mr Sneesby is confident that a scheme will come forward. Mr Sneesby explained the extent to which this would be fleshed out in direct consultation with the Council. The Landscaping Strategy, including the species of trees to be used, would include plants from the list native to the local area.¹¹⁴

5.11. Ms Ede's questions about the proposed landscaping strategy's deliverability are also entirely baseless. The LEMP leaves the ability to approve (or not) the detailed design and that is entirely within the gift of the Council. As Mr Sneesby and Mr Read explained, currently, the Appellant at this stage is only explaining to a proportionate level of detail. There is still work to be done, but the acceptability of what is proposed is entirely within the gift of the Council and is controlled by the LEMP¹¹⁵ and the Landscape Management Plan¹¹⁶

LEMP

5.12. The Council is seeking to cast doubt on whether or not the LEMP is enforceable.¹¹⁷

5.13. The LEMP is an inherently sensible approach to deliver beneficial effects in the surrounding woodland.¹¹⁸ Mr Read explained that his approach was consistent with that used in the Meuden decision, where a LEMP in a wooded valley was found to be appropriate. The National Trust are the freehold owners, they have a productive working relationship with Kingfisher, and Kingfisher have a statutory right to renew the lease on the land. As Mr Read explained, the LEMP was going to be used instead of a woodland management plan over the longer term. There has been no objection from the National Trust, and as Mr Read explained his experience, they want to work

¹¹⁴ Sneesby EiC

¹¹⁵ Condition 14

¹¹⁶ Condition 13

¹¹⁷ Fitzpatrick EiC.

¹¹⁸ Read EiC

together with the Appellant – in fact, they say they would expect a condition in their consultation response. There is certainly no evidence before the inquiry that there is a “*nil prospect*” of this condition being discharged or that an acceptable scheme will not come forward.

5.14. This also has the potential to have some further examples of benefits. It could remediate the “*fingers*” which extend from the Site into the woodland beyond. It also has the potential to offer a range of additional benefits, including through Dr Brookbank’s Map 2¹¹⁹ where there would hopefully be opportunities to include a dog agility trail, a 2km circular route, visitor interpretation, additional seating, woodland and grassland management.¹²⁰ Those are not mitigation measures, but benefits.

6. Whether the proposed scheme would be of an acceptable design.

6.1. The issues have been significantly narrowed in relation to design, the Council’s case has been clarified through the evidence of Ms Ede and Ms Fitzpatrick. The essential point, however, is that both witnesses for the Council accept that the design of the scheme.

6.2. In terms of design, the fundamental principle is whether or not the proposed development complies with E12,¹²¹ there can be no doubt that there is effective compliance with the policy. The reasons for that are set out in Mr Sneesby’s §6.5.4¹²². When compared with the baseline the redevelopment clearly (and comfortably) outperforms the baseline condition.¹²³ It also suggests that there is an unhelpful contradiction in Ms Ede’s case where she agrees that the site must be redeveloped whilst also promoting the idea that there is little wrong with the existing site. This is a circular argument and the Council’s evidence is both convoluted and contradictory and

¹¹⁹ CD9.16 – Map 2

¹²⁰ Ibid.

¹²¹ CD4.3, Policy E12.

¹²² CD9.3 Proof.

¹²³ See (a) positively integrates with their surroundings; (b) reflects localised traditions of building materials found across Purbeck; (f) supports biodiversity through sensitive landscaping and in-built features; (h) supports the efficient use of land taking account capacity in existing infrastructure and services, access to sustainable means of transport, the local area’s prevailing character and the requirement to deliver high quality buildings and places; and i. provides buildings which are accessible to all”.

distracts from the glaringly obvious conclusion that the site must change and that the proposal does adhere to the relevant policies on landscape matters.

7. Compliance with the Relevant Development Plan Policies & Planning Balance

7.1.**E1** is the policy which deals with landscape issues. All parties agree that if the terms of E1 are met, then tests in the NPPF, and the statutory duties will have also been discharged as they reflect each other¹²⁴. Mr Sneesby considers there to be no harm in landscape character terms and an enhancement in visual terms, and the Inspector has the detailed evidence of the parties. The fundamental point is that with regard to the baseline position, there cannot be said to be “*major development*”, and the exceptional circumstances test will have been met in the alternative. s

7.2.**E7 and E8** are the policies which reflect the terms of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) (species in E7 and the Heathland in E8). The issues have been extensively canvassed above. However, there will be no development plan conflict in view of the Council’s evidence before this inquiry. Whether the development sought is restricted to C1 use or a restricted /controlled C3 use, then any issues would fall away¹²⁵.

7.3.Finally, in relation to **E12**, the evidence of Mr Alkerstone and Mr Sneesby addresses the terms of this policy extensively. This is in the context of Ms Fitzpatrick and Ms Ede confirming that the design is, in principle, acceptable and that the parties are merely arguing about the acceptability of the design in this location. That can only realistically amount to even an arguable conflict with part (a) of E12, and whether this is a design that “*positively integrates with their surroundings*”. Plainly, for the reasons set out above, the design team has worked hard to produce a scheme which is informed by, and assimilates with, its surroundings.

¹²⁴ Fitzpatrick XX; Ede XX.

¹²⁵ Fitzpatrick XX.

7.4. On the rest of E12, Ms Ede agreed, there has been a professional and considered design ethos which sits behind the proposals.¹²⁶ In the interests of completeness and insofar as any other criteria from that policy are relevant:

- a. The scheme has clearly reflected localised traditions of building materials found across Purbeck; modern design is not precluded, and the materials have been considered and justified.¹²⁷
- b. Lighting impacts have been addressed above, including that the light spill is proposed to be mitigated by condition, and the same will be secured.¹²⁸
- c. On biodiversity, energy consumption and renewables, efficient use of land, sustainable transport, high-quality buildings, and accessibility, it is respectfully suggested that the proposed re-development excels when compared against the baseline.

7.5. We commend the professional evidence of Mr Alkerstone on this subject which demonstrates no conflict with E12.

7.6. Consequently, the proposed redevelopment accords with an up to date (and recently adopted) development plan. In such circumstances, the clear instruction in the NPPF is that it should be approved without delay.¹²⁹ It benefits from the presumption in favour of sustainable development and the statutory support in s.38(6) of the Planning and Compulsory Purchase Act 2004. Furthermore, the significant benefits as demonstrated in the planning balance conducted by Mr Read are compelling.

7.7. Even should you consider that there is a conflict with the development plan, the deteriorating condition of the building and the extent of the proposed benefits secure a future for the site, the heathland and provide a compelling economic rationale supported by members of the community, the Chamber of Commerce and the LEP which mean

¹²⁶ Ede XX.

¹²⁷ Ede XX and Fitzpatrick

¹²⁸ Ms Fitzpatrick in response to the Inspector agreed that the lighting impacts had been agreed in the SocG and that she was not resiling from that.

¹²⁹ §11(c) Of the NPPF.

that there are material considerations as to why planning permission should be granted in any event.

7.8. For these reasons, we respectfully invite you to allow the appeal.

PAUL CAIRNES KC
SIONED DAVIES
No5 Chambers

19 December 2024