



# Appeal Decision

Hearing held on 15 July 2008

Site visit made on 15 July 2008

by **G M Hollington MA, BPhil, MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

Decision date:  
13 August 2008

## Appeal Ref: APP/W0340/A/08/2064920

### Lake at Child Beale Trust, Lower Basildon, Reading, RG8 9NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by The Consuta Trust against the decision of West Berkshire Council.
- The application Ref. 07/01717/FUL, dated 31 July 2007, was refused by notice dated 27 September 2007.
- The application sought planning permission for "construction of a new cut between Beale Park Lake and the river Thames, with footbridge; the purpose of the development is to allow occasional boat access to and from the lake" without complying with conditions attached to planning permission Ref. 00/01195/FUL, dated 6 November 2001.
- The conditions in dispute are Nos. 5 and 7, which state that: (5) "The proposed cut shall only be used for a maximum of 20 days per calendar year, with a maximum of 2 days duration per occasion. Details of each occasion, together with its duration, shall be submitted to the Local Planning Authority 14 days prior to the event commencing"; (7) "No mooring of boats shall take place on Beale Lake other than during those days when events are taking place".
- The reasons given for the conditions are: (5) "To prevent the intensification of the use of the cut, which would result in an unacceptable impact on the character of the area"; (7) "To prevent the intensification of the use of the site and to safeguard the character of the area".

## Application for Costs

1. At the Hearing, an application for costs was made by The Consuta Trust against West Berkshire Council. This application is the subject of a separate Decision.

## Decision

2. I allow the appeal (in part) and grant planning permission for "construction of a new cut between Beale Park Lake and the river Thames, with footbridge; the purpose of the development is to allow occasional boat access to and from the lake" at Lake at Child Beale Trust, Lower Basildon, Reading, RG8 9NH in accordance with the application Ref. 07/01717/FUL dated 31 July 2007, without compliance with condition number 5 previously imposed on planning permission Ref. 00/01195/FUL dated 6 November 2001 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

The proposed cut shall only be used for a maximum of 20 days per calendar year, with a maximum of 2 days duration per occasion. Details of each occasion, together with its duration, shall be submitted to the Local Planning Authority 14 days prior to the occasion commencing.

### **Procedural Matters**

3. The agreed description for the planning application with reference to condition 5 states that its purpose is "to permit access to and from the river via the cut by *Consuta* without advance notification to the local planning authority". The Trust is not seeking unmonitored use of the cut but wishes the steam launch *Consuta* to be able use it without a need for more than one day's advance notice. Passages without advance notification have already taken place.
4. In respect of condition 7, the agreed description is "to allow permanent mooring of a floating boathouse to berth *Consuta*". *Consuta* has used the lake as a mooring, but without a boathouse. At the Hearing, the Trust explained it now considers "permanent" not to be the correct term: it is seeking the ability to moor for most of the year a floating boathouse, capable of navigation, to berth *Consuta*. My view is that the intended mooring is tantamount to being permanent: though movable, the boathouse would be present for most of the time.

### **Main Issue**

5. I consider the main issue in this appeal to be whether the conditions satisfy the tests set out in Circular 11/95: *The Use of Conditions in Planning Permissions*, having regard to the effect on the character and appearance of the surrounding area and other material considerations.

### **Reasons**

6. I shall consider in turn each of the disputed conditions in relation to the Circular's tests, but the underlying reason for them is to avoid harm to the area's character. It is not disputed that the lake is in an attractive setting, adjacent to the River Thames (to which it is joined by the permitted cut) and within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). Although it was formed by gravel extraction, I consider the lake has a naturalised appearance with an absence of any significant structures.
7. Despite its occasional use for boat shows or events and the sounds of road and rail traffic nearby, the lake itself has an air of tranquillity. Neither this or its rural setting and appearance are undermined significantly by the adjacent, well-landscaped car park for the large number of visitors to the Beale Park wildlife park and gardens, nor by that attraction's buildings, which impinge only slightly on views of one corner of the lake.

#### Condition 5: Use of the cut

8. Without the control which this condition seeks to achieve, use of the cut could be greatly intensified and I consider this would harm unacceptably the rural character of the lake and its surroundings. Access to the lake by boats is possible also via the slipway, but the infrequency of its use does not affect the present degree of tranquillity. No increase in the maximum of 20 days per

- year is sought but, without also having a means of monitoring this and requiring a period of notice for the Council to consider and respond to this, the harm which I have identified could easily be caused. The condition therefore remains necessary.
9. I acknowledge that *Consuta's* pattern of use typically entails only a small number of transits of the cut, and that the launch is of graceful appearance and I would not expect it to be noisy, but to depart from this condition's requirements for this boat or others raises questions about enforceability.
  10. A condition should not be imposed if it cannot be enforced. There is no permanent Council watch over when or how the cut is used and the Council accepts the difficulty of monitoring and enforcement – but in my experience rarely is any local planning authority able to monitor continuously a use and reliance is often placed on informal monitoring and reports by interested parties or members of the public.
  11. The cut was permitted in 2001 and *Consuta* has made occasional use of it since 2002; there have also been major events such as the Thames Boat Show and an Inland Waterways Association festival or rally. However, the Council is not aware of any notice of use ever having been given and it accepts that it could be reasonable to require a record of use of the cut to be kept and made available for inspection. While this could be a reasonable alternative, I consider it is practical to enforce the condition in its present form.
  12. It is not disputed that this condition is relevant to planning. Although it is of limited relevance to the low intensity of use by *Consuta*, I am in no doubt the condition is relevant to the development to be permitted, i.e. construction of a cut and footbridge for occasional boat access, as it is justified by both the nature of this development and the effect on its surroundings.
  13. On a quick first reading, the wording of the condition may appear to be clear but it seems to me some ambiguity arises from use of the terms "occasion" and "event". An event could mean either a transit of the cut or a boat show entailing many transits, and this uncertainty undermines monitoring and enforceability of the condition. The condition therefore fails the test of precision, but a minor amendment to its wording could remedy this.
  14. I can understand why the Trust feels it is unreasonable to require 14 days' notice of use of the cut by *Consuta*, given the unpredictability of weather and river conditions, but the condition relates to use generally of the cut and I consider it is not unduly restrictive or onerous. Any exception just for *Consuta* is not justified as the application does not seek mooring by *Consuta* in the absence of the boathouse and I explain below why I consider the boathouse would be unacceptable.
  15. Overall, I consider that, in the interests of the surrounding area's character and appearance, condition 5 meets all the tests for conditions set out in Circular 11/95, with the exception of precision, which could be addressed by revised wording.

Condition 7: Mooring on the lake

16. Full details of the design of the boathouse and its intended position did not form part of the planning application, but the Trust's illustrative sketch shows a structure with the appearance of a traditional college barge. It would be about 21.3m long, 4.9m wide, 3m high and capable of navigation but, except during special events on the lake or for maintenance elsewhere, its envisaged mooring would be near the south-west corner of the lake. These matters could be controlled by conditions if necessary.
17. In my view, mooring generally on the lake (other than during events) would harm its open, largely undeveloped appearance and detract from the natural beauty of the AONB's landscape and countryside, which Planning Policy Statement (PPS) 7: *Sustainable Development in Rural Areas* states should be given great weight. Without the existing restriction, the lake's naturalised appearance could change to resemble a marina, whereas the nearby existing informal boat moorings along the edge of the Thames do not impinge greatly on their surroundings or on the openness of the lake.
18. The site of the intended mooring for the boathouse would have the advantage of being relatively close to some of the Beale Park buildings, and less exposed than some other parts of the lake – it would have limited impact in views from the Thames towpath when trees are in leaf – but it would be plainly visible to visitors to the park. Such a large structure would harm the uncluttered, mostly open appearance of the lake and its surroundings.
19. To construct the boathouse in the form of a college barge is a novel idea which I expect some people would regard as attractive, and such barges are a traditional feature of the Thames. However, I feel that such a sizeable structure on an open lake would appear as an alien feature. I do not consider it comparable to a folly in a landscaped garden or park, as it would not be terminating any defined view. This condition therefore remains necessary in order to avoid harm to the character and appearance of the surrounding area.
20. The appellant contends that condition 7 is not relevant to planning because boats are not subject to planning, as shown by case law. It is not disputed that the boathouse would be moveable and would be licensed as a boat, but the condition has been imposed to control the use of the lake rather than simply being a planning restriction on boats. Furthermore, unlike (it seems) the 2 cases briefly referred to, this appeal concerns planning conditions, and such conditions often control matters which do not in themselves amount to development. I therefore consider the condition to be relevant to planning.
21. The Trust similarly questions the relevance to the development to be permitted but I am in no doubt about the continued relevance to both the development originally permitted and the change now sought, in order to safeguard the area's character and appearance.
22. Enforceability of this condition has some of the same difficulties as condition 5, but I consider it also to be practical to enforce. The use again of the term "events" could be ambiguous, but rewording of condition 5 could help to resolve this.

23. The Trust accepts that, in general, this condition could possibly be regarded as reasonable, but not when applied to *Consuta*. In my opinion, it is not unduly restrictive in relation to the development originally permitted or unduly onerous on those who applied for the permission (the Child-Beale Trust). The condition is not unreasonable.
24. My overall view on condition 7 is that, in the interests of the surrounding area's character and appearance, it also meets all the tests for conditions set out in Circular 11/95, with the exception of precision, which could be addressed by amending the wording of condition no. 5.

#### Other Considerations

25. It is not disputed that *Consuta* is of local and national historic importance, having been built locally in 1898 as an umpire's launch using a pioneering form of construction. She is a Designated Vessel on the National Register of Historic Vessels and has been restored with support from, among others, the Heritage Lottery Fund.
26. To maintain *Consuta* in working order (rather than being a static museum exhibit) and so that she can be fully appreciated by the public, the charitable Trust needs for her a safe mooring, away from flood flows on the river, and weather protection which also facilitates maintenance and safe removal from the water. A boathouse on the lake at Beale Park would meet these requirements and it would be associated with a recreation park which already attracts many visitors. Other locations have been considered but not found to be suitable.
27. The Council does not consider the historic status of *Consuta* to be a material planning consideration, as planning controls do not apply to boats. However, the need for the appeal arises from the imposition of conditions which, as I have already indicated, can control matters which do not themselves amount to development.
28. Any matter which relates to the use or development of land may be a planning consideration and it is my view that the importance of *Consuta* and the need for a suitable berth are relevant to whether the conditions should be varied. I consider them to be material considerations which weigh in favour of the proposal.
29. However, important though *Consuta* and the need for protection are, I consider that a large and prominent floating boathouse of the type and in the location envisaged would not outweigh the importance, also of national significance, of protecting the character and appearance of the surrounding area, part of an AONB.
30. My overall conclusion is that, apart from the need for amendment to condition no. 5 by replacing the word "event" by "occasion", the disputed conditions satisfy the tests set out in Circular 11/95: *The Use of Conditions in Planning Permissions*, having regard to the effect on the character and appearance of the surrounding area and other material considerations. To vary them otherwise would conflict with the aims of policies EN1 and DP6 of the Berkshire Structure Plan 2001-2016, policies ENV.1 and OVS.2 of the West Berkshire

District Local Plan 1991-2006 and PPS7. No additional conditions would make the proposal acceptable.

*G M Hollington*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr B W Smith	Trustee, The Consuta Trust, 19 Mill Bank, Kintbury, Hungerford, Berks., RG17 9UW
Mr A Cundick	Trustee, The Consuta Trust, 39 East sands, Burbage, Wilts., SN8 3AN
Mr D Eager	Trustee, The Consuta Trust, Island Reach, Thames Drive, Charvil, RG10 9TP
Mr M A Smith	19 Mill Bank, Kintbury, Hungerford, Berks., RG17 9UW
Mr P Smith	19 Mill Bank, Kintbury, Hungerford, Berks., RG17 9UW
Mrs M D Smith	19 Mill Bank, Kintbury, Hungerford, Berks., RG17 9UW

### FOR THE LOCAL PLANNING AUTHORITY:

Miss H Pritchard	Planning Officer, West Berkshire Council
------------------	--

### INTERESTED PERSONS:

Mr N Bailey	Director, Beale Park, c/o Beale Park, Lower Basildon, Berkshire, RG8 9NH
-------------	--

## DOCUMENTS

- 1 Appellant's case for claiming costs against the LPA  
Submitted by the local planning authority
- 2 Letters of notification of Hearing and lists of people notified
- 3 Policy RL.5A, West Berkshire District Local Plan 1991-2006
- 4 Defence to an award of costs against West Berkshire Council