

WEST BERKSHIRE DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

Appeal No APP/W0340/A/08/2064920/NWF

Application No: 07/01717/FUL Validated: 3rd August 2007

Section 73 – Variation of condition 5 of permission 00/01195/FUL (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 LPA 14 days prior to the event commencing) to permit access to and from the river via the cut by Consuta without advance notification to the LPA.

Variation of condition 7 of application 00/01195/FUL (No mooring of boats shall take place on Beale Lake other than during those days when events are taking place) to allow permanent mooring of a floating boathouse to berth 'Consuta'.

APPEAL BY THE CONSUTA TRUST

**CHILD BEALE WILDLIFE TRUST, BEALE PARK, LOWER BASILDON,
READING**

STATEMENT OF CASE

Hearing: tba

Venue: Council Offices
Market Street
NEWBURY
Berkshire

GARY LUGG
Head of Planning and Trading
Standards
West Berkshire District Council

INDEX

Contents

1. PRODUCTION OF PLANS AND DOCUMENTS	1
2. APPLICATION BY THE APPELLANT	2
3. THE APPEAL SITE AND ITS SURROUNDINGS	4
4. PLANNING POLICIES	5
5. HISTORY OF THE APPEAL SITE AND SURROUNDING AREA	7
6. THE CASE FOR THE COUNCIL	8
7. CONCLUSION	13

APPENDICES

APPENDIX 1 PLANNING POLICY (not previously submitted)

APPENDIX 2 DECISION NOTICE 00/01195/FUL

PLANS

ND1 SHOWING THE APPEAL SITE EDGED RED

ND2 SHOWING THE AREA IN WHICH THE APPEAL SITE IS LOCATED

2. Application by the Appellant

2.1. The Appeal relates to Application No 07/01717 validated 3rd August 2007, submitted by The Consuta Trust for the variation of conditions attached to planning permission reference 00/01195 which permitted the construction of a new cut between Beale Park Lake and the River Thames to allow occasional boat access to and from the lake. The appeal proposal sought to vary conditions to avoid providing advance notification to the Local Planning Authority and to allow the permanent mooring of a floating boathouse to berth 'Consuta'.

2.2. The application was refused by the District Planning Authority on 27th September 2007 for the following reasons:

"1 The variation of condition 5 of permission 00/01195/FUL to allow the use of the cut by Consuta without prior notification to the Local Planning Authority would result in unmonitored use of the cut. The Local Authority would therefore not be in a position to enforce the restriction of the frequency of use of the cut. An unenforceable condition is not acceptable as it would fail to meet the six tests for the validity of a planning condition as set out in Government Circular 11/95 "The Use of Conditions in Planning Permission". The planning reason for the original imposition of this condition is considered to remain valid.

2. The variation of condition 7 of permission 00/01195/FUL to allow the permanent mooring of a floating boathouse would greatly intensify the use of the lake, given the current restrictions that are in place allowing only intermittent use of the lake by boats. The permanent presence of a boat house structure, which would be visually prominent in its setting due to the undeveloped nature of the area, would detract from the existing uncluttered appearance of the lake and as such would be harmful to its character. The site, which is located in a particularly prominent, sensitive and attractive position in the North Wessex Downs Area of Outstanding Natural Beauty, comprises the lake with surrounding trees and open fields. Condition 7 seeks to conserve the character of the area, therefore the variation of this condition to allow a permanent mooring which would intensify the use of the site and introduce a permanent structure on the lake which would be visually intrusive in the landscape is not acceptable. The proposed variation of condition 7 conflicts with the objectives of government guidance in Planning Policy Statement 7 "Sustainable Development in Rural Areas", policy EN1 of the Berkshire Structure Plan 2001-2016, and policy ENV1 of the West Berkshire District Local

Plan 1991-2006, which collectively seek to protect and enhance the special landscape qualities of the AONB.

3. The Appeal Site and its Surroundings

- 3.1. The appeal site is the cut between Beale Park Lake and the River Thames. Conditional planning permission for the cut was approved in November 2001, reference 00/01195/FUL, and the variation of conditions is the subject of this appeal. The lake at Beale Park was included within the blue line boundary of the submitted plan for application 00/01195/FUL.
- 3.2. The lake and the cut are located in the open countryside within the North Wessex Downs Area of Outstanding Natural Beauty. The lake is situated to the north of the Beale Park Wildlife Trust. The River Thames is situated some 40 metres east of the lake. There is a man-made cut between the lake and the River Thames. The car park for Beale Park is located to the west of the lake and Church Farm is located to the north, comprising open fields.
- 3.3. The site is rural in character with far reaching views across the River Thames to hilly countryside, which is within the boundaries of South Oxfordshire District Council. There is a buffer of trees between the lake and the River Thames. The only structures surrounding the lake comprise some post and rail fencing. There is also a modestly sized landing jetty on the lake.

4. Planning Policies

- 4.1. The statutory development plan, for the purposes of Section 54A of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, is Regional Planning Guidance for the South East (RPG9), the Berkshire Structure Plan 2001-2016 (BSP) (adopted 2005) and the West Berkshire District Local Plan 1991-2006 (WBDLP) (adopted 2002) Saved Policies (September 2007).
- 4.2. Policies DP6 and EN1 of the BSP and policies OVS2 and ENV1 of the WBDLP are applicable in this case.
- 4.3. Section 54A of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that determinations under Planning Acts shall be made in accordance with the development plan unless material considerations indicate otherwise. The development plan is thus the starting point and it is necessary to see whether the proposal is in accordance with the relevant policies of the plan.
- 4.4. If the proposal is not in accordance with the Development Plan, it is then necessary to see whether there are nonetheless any other material considerations of sufficient weight that indicate that the development should be allowed.

- 4.5. Policy DP6 of the BSP relates to development in the open countryside and seeks to safeguard the countryside as a non-renewable natural resource.
- 4.6. Policy EN1 of the BSP and policy ENV1 of the WBDLP relate to the conservation of the landscape qualities in the countryside, with the objective of ensuring that areas of special landscape quality such as the AONB are conserved and enhanced.
- 4.7. Policy OVS2 of the WBDLP is a core policy. Its criteria seek to ensure that proposals are in keeping with the character of the area and that, among other things, important landscape and nature conservation features are protected.
- 4.8. Policy DP6 is attached at **Appendix 1**. Other policies referred to were previously submitted with the Inspectorate's questionnaire.

5. History of the Appeal Site and Surrounding Area

- 5.1. There is an extensive history of planning applications at the Child Beale Wildlife Trust.

- 5.2. Conditional permission was approved on 16th November 2001 for the following;

- 5.3. "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." Application reference 00/01195/FUL.

- 5.4. A copy of this decision notice is attached at **Appendix 2**.

6. The Case for the Council

6.1. Appeal APP/W0340/A/08/2064920/NWF relates to the proposal to vary conditions 5 and 7 of planning permission 00/01195/FUL in order to permit access to and from the river via the cut by Consuta without advance notification to the Local Planning Authority and to allow the permanent mooring of a floating boathouse to berth Consuta.

6.2. The supporting information submitted with the planning application states that Consuta is a historic steam launch.

6.3. The main issues of this appeal are considered to be;

6.4. The impact of the unmonitored use of the cut between Beale Lake and the River Thames,

6.5. The impact of the permanent mooring of a floating boathouse on Beale Lake.

6.6. The impact of unmonitored use of the cut

6.7. Planning permission for the cut between Beale Lake and the Thames was approved in November 2001, subject to a number of conditions. Condition 5 of the permission states the following;

- 6.8. "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.
- 6.9. Reason: To prevent the intensification of the use of the cut, which would result in an unacceptable impact on the character of the area."
- 6.10. The reason for the condition stated on the decision notice is the prevention of the intensification of the use of the cut, which would result in an unacceptable impact on the character of the area
- 6.11. The area's character is considered to be distinctly rural and tranquil. The lake is visually distinct from the river with a buffer of trees defining their separation. Therefore the movement of boats along the Thames does not impact on the calm setting of Beale Lake. The lake is partially used for angling. Boat access to the lake from the River Thames was made possible due to the construction of the cut from the Thames.
- 6.12. When the application was made for the construction of the cut, the impact of enabling boat movements on the lake was considered and it was deemed reasonable to impose a condition restricting the frequency of the cut's use in

order to safeguard the character of the area. The area's distinctive character is considered worthy of conservation, not least due to its status as AONB, which should be afforded the highest status of protection, equal to that of a national park, as stated in Planning Policy Statement 7 "Sustainable Development in Rural Areas".

- 6.13. The purpose of condition 5 of permission 00/01195/FUL, for the restriction of the frequency of boat movements, is considered to be appropriate in order to ensure that the character of the area is not significantly impacted by the disturbance of high levels of boat movements from the Thames to the lake.
- 6.14. In restricting the frequency of use of the cut, condition 5 requires prior notice of the details of each occasion of its use to be submitted to the Local Planning Authority. This requirement is considered to be reasonable to enable its use to be monitored. The proposal to vary the condition to allow unmonitored use of the cut by Consuta, would effectively invalidate condition 5 entirely.
- 6.15. If unmonitored use were to be allowed for one specific vessel, the frequency of the use of the cut would be unknown. Therefore, even if all other users of the cut were still required to notify the Local Planning Authority in advance, the overall frequency of occasions of use of the cut would be unknown. As a result, the restriction of the use of the cut to no more than 20 occasions per annum would therefore not be possible.

6.16. The proposed variation of condition 5 is therefore considered to be unacceptable as it would result in a condition which is not enforceable and would not meet the tests set out in circular 11/95 "The Use of Conditions in Planning Permissions".

6.17. The impact of a permanent mooring of a floating boathouse on Beale Lake

6.18. The mooring of boats on Beale Lake is currently only allowed in accordance with the conditions of planning permission 00/01195/FUL, namely conditions 5 and 7. Condition 7 states that the mooring of boats on Beale Lake is permitted only during days when events are taking place. Condition 5 restricts the events of boat use on Beale Lake to 20 occasions annually of no longer than 2 days duration per occasion.

6.19. Condition 7 is worded as follows;

6.20. "No mooring of boats shall take place on Beale Lake other than during those days when events are taking place.

- 6.21. Reason: To prevent the intensification of use of the site and to safeguard the character of the area.”
- 6.22. The reason given for restricting mooring on the lake by planning condition is to prevent the intensification of use of the site and to safeguard the character of the area. The existing undeveloped character of the area is strongly defined by the green natural setting of the lake and surrounding environs. The permanent presence of a floating structure on the lake would significantly impact the attractive visual qualities of the area, to the detriment of its character, which is considered to be unacceptable within a landscape that is designated as AONB.
- 6.23. The proposed variation of condition to allow permanent mooring of a boathouse is therefore considered to be contrary to the objectives set out in PPS7, as mentioned above, and the objectives of policies DP6 and EN1 of the Berkshire Structure Plan 2001-2016, and policies OVS2 and ENV1 of the West Berkshire District Local Plan 1991-2006 Saved Policies 2007, which collectively seek to ensure that the undeveloped nature of the countryside is protected for its own sake and that areas of particular landscape importance such as AONBs are conserved.

7. Conclusion

- 7.1. Condition 5 has two main purposes, namely, to restrict the frequency of the use of the cut and to monitor its use, in order to ensure that the imposed restriction is adhered to. The reason for restricting its use, to prohibit intensification of boat traffic entering the lake from the Thames, is considered to remain valid due to the open, uncluttered, tranquil character of the lake, which is worthy of conservation. Monitoring the cut's use is a necessary measure of enforcement of the condition, which could not be effectively carried out if the condition were varied to allow unmonitored use by Consuta. The proposed variation of condition is therefore not acceptable as it would result in an unenforceable condition that would not comply with the guidance set out in Circular 11/95.
- 7.2. The purpose of condition 7 is to prevent intensification of use of the lake for mooring in order to safeguard the character of the area. The permitted frequency of use of the lake for mooring is currently extremely low. Therefore any increase above existing levels of use would constitute a significant intensification of mooring on the lake, thereby resulting in an unacceptable impact on the undeveloped, open character of the area contrary to the objectives of government guidance and current development plan policy.

7.3. In conclusion, neither of the variations of condition proposed are considered to be acceptable for the reasons expressed above and the Inspector is respectfully requested to dismiss the appeal.

7.4. The Council does not request any planning conditions in this case due to the fact that the appeal is for the variation of two specific conditions of a previously approved permission.