

APPEAL DECISION REPORT

Ward: Out of Borough (adjacent authority)

Appeal Nos.: APP/Q3115/C/23/3320180 and /3320181

Planning Ref: 220761/ADJ

Site: Caversham Lake Watersports, Henley Lake, Caversham, RG4 9RA

Proposal: (Summary) 2x Appeals against Enforcement Notices requiring the cessation of use of the land for watersports and remediation of the site.

Decision level: Enforcement Appeals

Method: Public Hearing 5 December 2023

Decision: Appeals Dismissed and Enforcement Notices upheld

Date Determined: 18 January 2024

Inspector: A. Walker MPlan MRTPI

1. Background

- 1.1 Caversham Lakes is a low-lying area which directly adjoins the Borough boundary in the eastern extremity of Caversham, within South Oxfordshire District. The appeal site itself comprises a large lake, set within a complex of several other lakes which were previously a gravel pit. A single-track lane with passing places leads southwards towards the appeal site from its junction with Henley Road. The land at Caversham Lakes has been in unauthorised use as an outdoor watersports centre for a number of years. The centre provides opportunities for various non-motorised watersports, open-water swimming, associated changing/shower facilities, bar/food structures, 'beaches' and amenity spaces and parking.
- 1.2 The use was commenced without applying for planning permission and retrospective planning applications to attempt to retain the uses have been refused. Reading Borough Council was consulted on a retrospective application in 2022, application reference 220761 (South Oxfordshire Reference: P22/S1691/FUL). The Reading Borough Highway Authority objected to the proposals and these objections were presented to the South and Vale DC Planning Committee on 20th July 2022. These objections were subsequently forwarded to South Oxfordshire District Council and the planning application was refused on numerous matters including Highway safety.
- 1.3 The applicant (Cosmonaut Leisure Limited) however continued to operate the facility and as a result South Oxfordshire District Council (SODC) issued two Enforcement Notices ("Notice A" and "Notice B") to the landowner both dated 1st March 2023. An appeal was lodged against these Enforcement Notices, in an attempt to modify or dismiss their requirements.

2. Enforcement Notices

- 2.1 Notice A alleged the following breach of planning control was (in summary): Without planning permission the material change of use of the Land from gravel extraction to water based sport and recreational use, with a wide range of associated ancillary activities and equipment.

South Oxfordshire Council's reasons for issuing Notice A were:

- a) That the unauthorised development was not immune under the 'ten year rule'
- b) The full extent of the ecological impacts arising from the unauthorised material change of use of the Land and related ancillary activities have not been adequately assessed and there was therefore harm to biodiversity
- c) The material change of use of the Land has been facilitated by an eclectic mix of portable toilets, caravans, trailers, containers, tents, marquees, bins, buoys, used tyres, artificial grass, outdoor furniture, generators, machinery, sport and recreational equipment, fences and gates, other chattels and paraphernalia of a utilitarian character and appearance that 'sit uncomfortably within the tranquil rural character and appearance of its lakeside, landscape setting'.
- d) The increased traffic generated by the unauthorised material change of use of the Land is likely to have an adverse impact on the highway safety of the existing road network at the point that the shared access road to the site joins the signalised intersection of Henley Road.
- e) The unauthorised material change of use would increase the number of vehicular movements along the shared access road, which does not contain adequate provision for pedestrians and significant parts of which fall outside the site operator's control. The site does not provide safe and convenient pedestrian access and access to public transport sufficient to support the unauthorised sport and recreational use.
- f) The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

2.2 Notice B alleged the following breach of planning control:

Without planning permission the undertaking of building, engineering and other operations, comprising:

- (i) the laying of sand and pea shingle to create artificial beaches
- (ii) creation of areas of hardstanding by the laying of gravel and artificial turf
- (iii) erection of various buildings
- (iv) the construction of a bridge and fences

2.3 South Oxfordshire Council's reason for issuing Notice B were as follows (in summary):

- a) The above breaches are not immune from enforcement action under the 'four year rule'
- b) The full extent of the ecological impacts arising from the unauthorised development have not been adequately assessed
- c) The unauthorised development is utilitarian in character and appearance, which sits uncomfortably within the tranquil rural character and appearance of its lakeside, landscape setting.
- d) The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections.

3. Summary of Decision(s)

3.1 **Notice A:** The appeal was technically held to 'succeed in part', specifically in relation to the use of fireworks on the site which was not proven by SODC to the

Inspector's satisfaction. The Inspector directed a modification to the Notice only in that respect, and in all other respects, **the Enforcement Notice was upheld**. The detailed requirements of the Notice are (in summary) to cease the use and remove all associated facilities and structures within four months.

3.2 **Notice B** The appeal was dismissed, the **Enforcement Notice was upheld** and planning permission refused. The detailed requirements of this Notice are (summarised) to remove all earthworks and related structures and undertake landscaping/ecological works within nine months.

4. Key issues for Reading Borough

4.1 This information appeal report shall concentrate on the key issues for Reading Borough, which are impacts on highway and pedestrian safety.

Highway Matters

4.2 Reading Borough Highway Authority provided both written and in person evidence at the Appeal Hearing in relation to point (d) (trip generation and the access road suitability) and (e) (pedestrian safety and accessibility to the site) of Notice A and supported Oxfordshire Council (OCC) as the adjacent Highway Authority. RBC was represented at the Hearing on Highways matters only, by Darren Cook, Highways Development Control Manager.

4.3 RBC Highways' main concern at the Hearing related to the increased number of vehicle movements at the T-junction with A4155 Henley Road and the impact this could have in regard to accidents given the unusual nature of the junction design, with it being very close to the A4155 Henley Road / C103 Caversham Park Road signalised T-junction.

4.4 Although the Inspector agreed with the trip rate data presented by the Appellant, the Inspector ultimately agreed with the Highway Authority regarding impacts on the junction highlighting that access into and out of the private access road would be difficult resulting queues of vehicles. The Inspector concluded that as a result of the significant increase in traffic and queues within the junction, there was a reasonable prospect that this could result in an unacceptable effect on highway safety.

4.5 Both highway authorities had concerns for the lack of pedestrian and cycle facilities between the A4155 Henley Road and the Appeal site. This concern was also shared with OCC who were responsible for assessing the internal highways aspect of the Appeal site.

4.6 The Planning Inspector agreed with the Highway Authorities that the access road has no designated pedestrian walkway and that the narrow width of the access road, which does not accommodate two way vehicular traffic, results in conflict with pedestrians walking to and from the Appeal site.

Character and Appearance

4.7 The Inspector found that although the lake is man-made through its excavation as part of the wider gravel pit complex, it has now been reclaimed by nature, with well-established, extensive vegetation around its edges, which provides numerous

habitats for a variety of wildlife. Overall, the lake provides an open, tranquil environment that makes a positive contribution to the character and appearance of the area and as a result the extensive range of temporary-looking structures provided on the site produces a harmful visual impact on the character and appearance of the area.

Biodiversity

4.8 The Inspector found that as a result of the Appellant not providing a biodiversity baseline of habitat units for the site, it was not possible for them to determine whether biodiversity net gain (BNG) was achievable and what measures may be appropriate. As a result the appeal failed in this regard through being demonstrably harmful to biodiversity.

Other matters

4.9 SODC and the Environment Agency raised issues of flood risk in these appeals, but at the Hearing agreed that these could be adequately mitigated by conditions, were the development otherwise acceptable.

4.10 Other aspects of the Appellant's appeal, that the notice requirements were excessive and that compliance periods were too short, were not accepted by the Inspector.

HEAD OF PLANNING, TRANSPORT & PUBLIC PROTECTION SERVICES COMMENT

Overall, the Enforcement Notices which have been upheld by the Planning Inspector require the Appellant to undertake numerous works on the site to restore it to its natural condition with timescales for certain works to take place between 4 and 9 months.

Officers welcome the dismissal of these appeals on highway and pedestrian safety grounds, which has been RBC's consistent position with respect to the unauthorised use. As can be seen from the above, the Inspector also found the unauthorised use and associated events, structures, etc. were materially harmful to the rural character of the area and had not proven suitability in terms of biodiversity. Although these concerns are beyond RBC's interest in these appeals, it is also welcomed that these concerns from South Oxfordshire/South and Vale DC were agreed by the Inspector.

It is not known at this point whether the Appellant is proposing to comply with these Notices or to challenge them in the Courts.

Case Officer: Richard Eatough