

APPENDIX 1

S18/0567 Moorelake House - Application for proposed water sports facility

OBJECTIONS AND LEGAL CHALLENGE

Objections received from Tallington Lakes Ltd on 28 December 2018 and resent on 9 June 2020.		
	Objection from Tallington Lakes	SKDC Response
1	Entirely contrary to the written description of the proposal (as above), there is no water skiing and wakeboarding facility at the residential property Moorelake House, and no such facility exists, or has ever existed.	The description of the proposal has been amended to include reference to a 'commercial water skiing and wakeboarding facility'.
2	No planning permission exists for the use of the residential property as a water skiing or wakeboarding facility.	The description of the proposal has been amended to include reference to a 'commercial water skiing and wakeboarding facility'.
3	The proposal wholly fails to apply for a conversion and change of use from a long-established residential property, to a brand new and substantial commercial enterprise.	The residential properties, Moorelake House and Moorelake Lodge, have been removed from the red line of the application site.
4	Furthermore, the planning application does not include the land which comprises the lake (which lake is plainly necessary for and proposed water skiing and wake boarding} in any event.	The red line of the application site has been amended to include the lake and other associated land with the proposals.
5	For these four reasons the planning application is fundamentally and fatally flawed.	See answers to 1-4.
6	SKDC Planning Policy SP1 requires and specifies 'a need to be met' for the proposed new use/ new business.	The Core Strategy has been replaced by the Local Plan. The application has now been assessed by the Local Plan. LP Policy SP1 refers to the spatial strategy for the District in allocating land for housing and employment use. It does not include reference to 'a need to be met'. The application has been assessed against other relevant policies in the Local Plan.
7	However, there is no unmet demand or unmet need for the proposed new water skiing and wake boarding business, or	See answer to question 6.

	for the proposed new caravan accommodation or caravan pitch business.	
8	We run a niche, highly specialist, unusual business (water skiing and wakeboarding) with relatively low naturally occurring demand. However, this proposal seeks planning permission for another niche, highly specialist, unusual business with relatively low naturally occurring demand to start trading immediately next door to us. This is deliberate and intentional damage to our niche, specialist business.	Paragraph 8.1.4 assesses the application against Policy E7(b) which addresses the point regards competition between the proposals and Tallington Lakes leisure park and draws out differences between their existing offer and the proposed use at Moorelake House.
9	We have 6 large water-ski and wakeboard lakes immediately neighbouring the proposal and at best they are lightly used. We can accommodate and cater for 10 times the current number of customers and the current level of demand.	Noted.
10	We have made a huge investment (financial and organisational) in our longstanding (since the early 1970s) water ski and wakeboard business.	Noted.
11	We have 5 water ski and wakeboard boats and associated equipment with a value of more than £300,000 and this investment is placed in jeopardy, directly contrary to both national and local planning policies in respect of sustainable development.	Paragraph 8.1.4 assesses the application against Policy E7(b) which addresses the point regards competition between the proposals and Tallington Lakes leisure park and draws out differences between their existing offer and the proposed use at Moorelake House.
12	We have 5 members of employed staff for the water ski and wake board business and 2 managers. These members of staff are paid at commercial and proper levels of pay. However this planning proposal intends to use family members to run the proposed new water ski and wakeboard business who plainly will not be paid at commercial and usual levels of pay, thereby directly undercutting the costs which we have to pay in providing commercial proper levels of pay for our business. Our employment costs are our most significant overhead (in common with most businesses). Therefore, we will quickly	<p>Paragraph 8.1.4 assesses the application against Policy E7(b) which addresses the point regards competition between the proposals and Tallington Lakes leisure park and draws out differences between their existing offer and the proposed use at Moorelake House.</p> <p>It is noted that Tallington Lakes have not put forward any persuasive or substantive evidence to demonstrate the impact on the viability of their business. The application has been assessed against Local Plan and NPPF policies on the basis of the information provided by the applicant.</p>

	be put out of business by this artificial and non-commercial arrangement and all of our employees will lose their jobs and this existing and very long-standing business will close.	
13	The planning proposal is plainly and clearly not sustainable development, it is in fact highly damaging development, and it is directly contrary to the relevant sections of both the Revised NPPF and SKDC Local Plan.	The application has been considered against relevant policies in the Local Plan and NPPF. It is considered to be sustainable development and would be in accordance with the Local Plan, taken as a whole.
14	We have plots for over 600 caravans and lodges immediately neighbouring this property and 30+ units available for rent. We can accommodate and cater for 10 times the number of customers and the current level of demand.	Noted.
15	We have made a huge investment in our longstanding (since the 1970s) caravan and lodge business (and infrastructure) of more than£ 15M and this investment is placed in direct jeopardy (contrary to the planning policy).	Paragraph 8.1.4 assesses the application against Policy E7(b) which addresses the point regards competition between the proposals and Tallington Lakes leisure park and draws out differences between their existing offer and the proposed use at Moorelake House.
16	We have up to 100 members of employed staff across the site - their jobs are placed in direct jeopardy (contrary to the planning policy).	Paragraph 8.1.4 assesses the application against Policy E7(b) which addresses the point regards competition between the proposals and Tallington Lakes leisure park and draws out differences between their existing offer and the proposed use at Moorelake House.
17	The planning proposal is plainly and clearly not sustainable development, it is in fact highly damaging development, and it is directly contrary to the relevant sections of both the Revised NPPF and SKDC Local Plan.	The application has been considered against relevant policies in the Local Plan and NPPF. It is considered to be sustainable development and would be in accordance with the Local Plan, taken as a whole.
18	There is absolutely zero financial or income information provided with the planning application. It is an essential prerequisite that highly detailed and robust financial information and analysis be provided for any sustainable new business - especially in a rural location. No decision can be made on sustainability because zero financial	Additional information has been provided with the amended application comprising a Business Plan. The level of information provided is considered to be acceptable to allow an assessment of the proposal on the local economy to be undertaken.

	information has been provided with the application. This is a significant omission and fatal flaw.	
19	Were accurate financial information to be submitted it would be quickly established and verified that the proposal is financially unviable for the reasons comprehensively set out above.	Additional information has been provided with the amended application comprising a Business Plan. The proposal would be a family run business with the owners both living and working from the site assisted by other family members.
20	Demand for water skiing and wakeboarding has been falling nationwide year on year ever since the financial crisis in 2009 due to people having less disposable income against the background of low, or zero, wage increases. Were a proper viability and financial study to be undertaken, it would be quickly established that there is simply no demand, there is no unmet need, and certainly no possible reason to locate a new niche specialist business right next door to the same existing niche specialist business. Both identical niche businesses cannot co-exist immediately next door to one another.	Paragraph 8.1.4 assesses the application against Policy E7(b) which addresses the point regards competition between the proposals and Tallington Lakes leisure park and draws out differences between their existing offer and the proposed use at Moorelake House. They are not considered to be identical niche businesses.
21	The proposal does not provide any proper detailed analysis in respect of the disposal of foul water and sewage. A vague suggestion that 'a treatment plant' will be installed is totally inadequate.	The applicant has provided plans and specification for the proposed disposal of foul water and sewage. This is covered in paragraph 8.3.10 of the report. Anglian Water and the Environment Agency have confirmed that they are satisfied with the proposed treatment plant.
22	The lakes are all interconnected and spring fed and the source of all the water in all the lakes (including Moorelake) is Lagoon Lake on our property.	See answer to 21.
23	The natural spring water is exceptionally clean (a copy of a recent water test report is attached).	See answer to 21.
24	A treatment plant is wholly unacceptable in this location. These treatment plants ALWAYS leak sewage at one time or another. The only acceptable means of disposal of foul water and sewage is by direct pumped connection into the main sewer.	See answer to 21.

25	During the course of a year, many thousands and thousands of people bath in and use these interconnected lakes for open water swimming, skiing, windsurfing, sailing etc.	See answer to 21.
26	Many people (accidentally or otherwise) drink the water.	See answer to 21.
27	We use the lake water for the misting system on the dry ski slope and this water cannot be contaminated from a proposed sewage treatment plant discharging adjacent into the lakes.	See answer to 21.
28	Comparatively our fully pumped and fully controlled sewage system which was vastly expensive to install and is likewise very expensive to maintain, is fully connected to discharge into the mains sewers.	See answer to 21.
29	It is totally unacceptable that our immediate neighbour can just casually and vaguely suggest (as he does) that he will install a 'treatment plant' for a significant amount of sewage (20 caravan units, changing rooms, toilets and a clubhouse) but which discharge which will inevitably find its way into all the fresh water lakes. These treatment plants frequently malfunction and they frequently discharge raw sewage; - we have 3 of them at other site locations in the UK and we know exactly their reliability and their frequent failures.	See answer to 21.
30	There has been no contact, no consultation, no specification for any such crucial sewage system.	See answer to 21.
31	There will be significant noise and disturbance generated to many of the occupiers of Tallington Lakes by this new significant business operation taking place (loud boats in operation, people shouting and yelling whilst skiing and wakeboarding, noise from the clubhouse, and from 20 caravans, etc) immediately adjacent to them. This is wholly unacceptable.	The matter of potential noise impact arising from the proposed use is covered in paragraph 8.3.8 of the officer report. It concludes that there would be no adverse noise impact from the proposed use on neighbouring residential uses and having regard to the noise generating uses in the surrounding area.

32	The proposal site boundary directly joins to the side of Lagoon Lake and Lagoon Bank which is occupied by a large number of people. Lagoon Lake is our designated 'quiet lake' and we do not permit motorised activity on this lake. Our customers specifically chose this location because it is the designated quiet lake at the Tallington Lakes complex.	See answer to 31.
33	As detailed above we have decades of experience of running a wakeboard and water ski facility and we are well aware of the very high noise levels that these commercial activities generate.	See answer to 31.
34	The noise disturbance and the noise pollution to all of these occupants to a new and separate water ski and wakeboard facility operating immediately adjacent to them will be excessive and unacceptable, especially against the specific background that these customers chose this location in the first place for the peace and quiet that it provides.	See answer to 31. The cable two training facility will be position on the opposite part of the lake furthest away from residential lodges at Tallington Lakes.
35	In addition to this there will also be substantial noise pollution from the proposed new clubhouse and proposed 20 new caravan plots, all of which are likewise immediately adjacent to Lagoon Bank and Lagoon Lake.	The proposed club house and caravan site will not be positioned immediately adjacent to Lagoon Bank and Lagoon Lake. Rather they will be positioned on the banks of Moorelake on the opposite side of the site.
36	Water skiing and wake boarding are high risk activities involving the use of high-powered V8 ski boats in close proximity to people in the water and within the close confines of a small lake.	See answer to 31.
37	The risk of physical injury from the activities themselves is high, and the risk of serious injury or death from the boats is always present in the background. From decades of experience and knowledge we are well aware that it is essential to have properly qualified and trained staff, with all of the correct equipment on hand in order to run such a business.	This is not a material planning consideration, however, the applicant has provided information regarding the experience and coaching qualifications of their staff.
38	As only one recent example, we had a water skiing customer go into cardiac arrest in November 2018. It was	See answer to 37.

	<p>only because of the facilities, the equipment and the staff that we have available at Tallington Lakes that this person's life was saved. The process involved having a sufficient and suitable area to land an air ambulance helicopter (and experienced staff available to coordinate this), whilst other members of staff attended to the casualty with a special waterproof stretcher and a defibrillation machine.</p>	
39	<p>However, this planning proposal provides no proper or detailed information as to the proposed experience or qualifications or knowledge of the staff and instead suggests that 'family members' will be employed to run the new business. This is not only hopeless but totally unacceptable in terms of the health and safety for any potential customers, as well as anyone involved in the proposed new business.</p>	<p>See answer to 37.</p>
40	<p>The High Court quashed the original planning permission for this proposal many weeks ago on 5 October 2018 and the SKDC have waited quite intentionally until 19 December 2018, just prior to the Christmas break, suddenly requiring representations (to a completely unchanged planning application), to be provided by 11 January 2019. These timings were deliberate in order to cause the maximum distress possible to the largest number of our customers over the Christmas period, and to cause us additional work over the Christmas period, when SKDC are well aware that staff are likely to be on holiday; - as indeed that the SKDC are away for the vast majority of the time throughout the entire year. This is against the comparative background that when we attempted to contact SKDC planning staff on 19 December 2018, they were all absent from work (again) in the middle of the afternoon.</p>	<p>The timing of the neighbour notification and consultation period is reflective of when the applicant submitted amended information on the application. It is not deliberately undertaken at a time to cause disturbance to local residents. Planning staff are available by phone or email, or can return calls and emails if out of the office. Further consultation was carried out in January 2019.</p>

41	This latest development in this matter exactly mirrors our long experience of SKDC and their malicious and vindictive activities against us.	No comment required.
42	Frankly, the planning proposal itself could best be described as a bad joke.	No comment required.
43	For the facts and reasons stated above the proposal is completely untenable and completely unacceptable.	The application has been comprehensively and thoroughly assessed against Local Plan and NPPF policies.
44	In planning terms, the proposal directly contradicts the significant and relevant parts of the Revised NPPF and the SKDC Local Plan.	The application has been comprehensively and thoroughly assessed against Local Plan and NPPF policies.
45	We vigorously oppose this planning proposal and we are ready, and stand fully prepared to take further action in the High Court to once again have quashed any further ridiculous planning permission that SKDC should wrongly and vindictively grant in this matter.	Noted, no comment required.
46	Finally, this matter is the most disgraceful waste of public money and a gross abuse of public resources by the SKDC. On 5 October the High Court ordered SKDC to pay our legal costs of £8,560 and this money came straight out of taxpayer's funds. The SKDC are now seeking to repeat the entire situation, and once again using other people's money. Without question none of the SKDC staff would risk their personal money in taking such abusive and speculative action in what is essentially perpetuating a long running vendetta against us.	No comment required.
Legal Points raised in Judicial Review, August 2018		
1	Requirement to demonstrate need First, the Council failed to consider in relation to CS policy E1 whether the proposed development was necessary to meet the needs of recreation or tourism. The OR did not mention need at all. Accordingly, the Council left out of account a consideration made relevant and important by	The Core Strategy has been replaced by the Local Plan. LP Policy SP1 refers to the spatial strategy for the District in allocating land for housing and employment use. It does not include reference to 'a need to be met'. The application has been assessed against other relevant policies in the Local Plan.

	development plan policy and/or failed to apply an element of the policy. Further or alternatively, the Council misinterpreted CS policy E1 in not requiring need to be demonstrated and/or failed to give any reasons in relation to this issue.	
2	<p>Employment and economic growth</p> <p>Secondly, in concluding, in the absence of any or any real evidence, in relation to CS policy E1 and SAP DPD policy SAP4, that the development “would support the economic growth of the area through the creation of employment and the provision of a sustainable tourism offer” the Council: (a) left out of account, failed to apply or misinterpreted the requirements of those policies that proposals would need to demonstrate that they will help to support the rural economy and in particular that they will provide local employment opportunities which make a positive contribution to supporting the rural economy; (b) left out of account important considerations, namely that the adjoining site is in a similar leisure use, competition, and the impact on existing businesses as a result of competition (see further the third ground below); (c) reached a conclusion which was irrational and/or without an evidential basis; (d) failed to give any, or any proper and adequate, reasons for reaching this conclusion</p>	Core Strategy policy has been replaced by Local Plan policies E1, E2 and E3 which are not relevant to the consideration of this application. Site Allocations and Policies DPD policy SAP4 has been replaced by Local Plan policies E7 and SP5. The application has been assessed against these policies in paragraphs 8.1.2 and 8.1.4 of the officer report.
3	<p>Material considerations</p> <p>Thirdly, in taking the view that “the fact that the adjoining site is in a similar leisure use is not a material planning consideration” and/or that “competition, the presence of other existing businesses of a similar nature, and the impact on existing businesses as a result of competition, are not material planning considerations”, the Council erred in law. Such matters are capable in law of being material considerations as they relate to the use and development</p>	Paragraph 8.1.4 assesses the application against Policy E7(b) which addresses the point regards competition between the proposals and Tallington Lakes leisure park and draws out differences between their existing offer and the proposed use at Moorelake House.

of land, both the application site and the adjacent site. Moreover, financial and viability matters can be material considerations if they relate to the proposed development.

Further, these matters were considerations which the Council had to take into account in this case. They were important considerations pursuant to CS policy E1 and SAP DPD policy SAP4 as part of considering (1) whether there was a need for the proposed development, (2) whether the proposed development would support a sustainable rural economy, and (3) whether the proposed development would provide local employment opportunities which make a positive contribution to supporting the rural economy. It is simply not possible to consider these policy issues without considering the matters which the Council says it did not take into account.

If all the development would be doing would be competing with the immediately adjacent and virtually identical business at the Tallington Lakes Leisure Park, which has considerable spare capacity, then it would not be diversifying the rural economy, it would not be meeting the needs of recreation or tourism, it would not be supporting a sustainable rural economy, and it would not be providing local employment opportunities which would make a positive contribution to supporting the rural economy. There would not be a positive effect on local rural employment or the local rural economy, which is what the policies are seeking.

In this case, the fact that the adjoining site is in a similar use, and the impact of competition between the existing and the proposed uses, were material considerations that

	<p>the Council had to take into account as:16 (a) they were relevant to the provisions of the statutory development plan in CS policy E1 and SAP DPD policy SAP4 and were therefore statutory mandatory material considerations under s70(2) of the 1990 Act; and/or (b) they were so obviously material to the decision in this case that anything short of direct consideration of them would not be in accordance with the relevant statutory scheme in s70(2) of the 1990 Act and s38(6) of the 2004 Act.</p> <p>Accordingly, the Council erred in law by leaving out of account material considerations.</p> <p>Alternatively, the Council failed to give any, or any proper and adequate, reasons for concluding that these matters were not material considerations in this case.</p>	
4	<p>The use of the lake</p> <p>Fourthly, the Council wrongly proceeded to consider the application on the assumption that the lake could be used for water sports in connection with the proposed new development. This was fundamental to whether the planning permission would lead to “the establishment of a water skiing and wakeboarding leisure facility”, as the OR assumed. However: (a) the existing use of the site, including the lake, was residential, as stated in the application documents, with any use of the lake for water sports activities being part of that residential use; the lake has not been used for commercial water sports activities of any sort; (b) the OR stated that there was “no relevant planning history”, showing that no previous planning permission had been given for the use of the lake as a leisure facility; and (c) the red line of the application did not include the lake, so the lake was not covered by the planning application.</p>	<p>The description of the proposal has been amended to include reference to a ‘commercial water skiing and wakeboarding facility’. The red line of the application site has been amended to include the lake and other associated land with the proposals.</p>

	<p>A further planning permission would be required to enable the use of the lake as a commercial water sports leisure facility in association with the new caravans and clubhouse. This was a necessary step before the “leisure facility” described in the OR could operate and before the new employment described in the DAS of the water skiing and wakeboarding instructors/operators would be realised.</p> <p>Accordingly, the Council took into account irrelevant considerations (that the planning permission would lead to the creation of a leisure facility and/or to the creation of new water sports jobs), left out of account a relevant consideration (that there was no planning permission for the use of the lake as part of a new commercial water sports leisure facility in association with the caravans and clubhouse), and/or failed to give adequate reasons for concluding that the planning permission would lead to “the establishment of a water skiing and wakeboarding leisure facility”.</p>	
5	<p>Conditions</p> <p>Fifthly, the Council failed to impose conditions to limit the development to that for which permission was sought, namely (1) touring caravans, (2) occupied in relation to water sports use of the lake, (3) only during March to October, and (4) with the caravans removed from site outside this period. Instead, Condition 4 requires caravans to be “occupied for holiday purposes only”. The use permitted is different from, and wider than, that for which permission was sought. This was irrational.</p>	<p>The description of development specifies that the proposal is for touring caravans. Planning conditions are proposed to ensure that the touring caravans would be used for holiday purposes only. It is not necessary to place restriction on the number of months a year that the caravan site may be in use.</p>

<p>Further or alternatively, in granting planning permission which was not subject to conditions to ensure that the development would be undertaken as described in the application documents, the Council was acting procedurally unfairly in that no notice was given to any member of the public, including the Claimant, of what would actually be permitted. It would be expected that the grant of planning permission would include conditions to limit the development to that for which planning permission had been sought in the application documents. Otherwise there would not be a fair opportunity to comment on the application.</p>	
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