ID 15

PINS Ref: APP/B3438/W/24/3344014

LPA ref: SMD/2019/0646

APPEAL BY LAVER LEISURE (OAKAMOOR) LIMITED

LAND AT MONEYSTONE QUARRY

APPLICATION FOR APPROVAL OF RESERVED MATTERS UNDER OUTLINE PLANNING PERMISSION FOR THE USE OF THE SITE AS A LEISURE PARK/VILLAGE (SMD/2016/0378)

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. It is to be hoped that the outcome of this inquiry should be the end of the process to finally realise the 14-year commitment by the Appellant to deliver a high end leisure park at the former Moneystone quarry, and to thereby fulfil the Council's longstanding commitment in its tourism strategy to bring this site forward for high quality overnight accommodation[1]. Throughout that period, the Appellant has sought to bring forward this development in a manner completely at one with the plan led system[2]:

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1 See the Churnet Valley Masterplan March 2014, CD7.6; and the Staffordshire Moorlands Tourism Strategy 2022 – 2027 CD 7.2.

2 See full chronology at Appendix A

1.1. From October 2010 it worked with the LPA to inform the LPA's production of the Churnet Valley Masterplan.

1.2. Initially consultation had taken place upon a proposal for a much larger scheme[3], however, upon careful consideration of the objections from both the LPA and consultees, that scheme was significantly refocussed, such that the current proposals precisely align with the CVMP.

1.3. In 2016, a revised outline application ('the Revised Outline PP') was submitted for the development now being pursued through this appeal. This was approved in 2016.

1.4. That application had been preceded by a previous – broadly similar – proposal ('the First Outline Application'), which had been recommended for approval, but refused by members and was then the subject of an appeal with an inquiry which started in late 2017.

1.5. In the summer of 2017, the Appellant fought and won a judicial review challenge against the Revised Outline PP. That was followed by a contested application for permission to challenge that High Court decision in the Court of Appeal. That application was firmly rejected by the Court of Appeal, described as a hopeless proposition. This meant that the Revised Outline PP was – finally - free from challenge. The following day the Appellant withdrew its appeal against the refusal of the First Outline Application, and immediately turned its attention to securing detailed consent under the Revised Outline PP.

1.6. The original plan had been for the leisure park and the now operational solar park to both be brought forward on the former quarry site at the same time. However, whilst that too had been the subject of unsuccessful

[3] 640 lodges, 100-120 bedroom hotel and conference centre, 60 yurts, car parking area, recreational and activity facilities, new residential properties and a touring caravan area.

challenges in the High Court its path to a detailed consent has been somewhat more rapid – and it has been generating substantial amounts of renewable energy to the grid for the last 8 years with enough energy to power the equivalent of over 1,000 homes, and will also offer the potential to reduce carbon dioxide production by some 52,000 tonnes over the life of the project..

1.7. The above, brief synopsis provides some hint as to why it is that the reserved matters application for phase 1 of the Moneystone Leisure Park has been so protracted. Mr Suckley explained that even after 2017, that the progress of reserved matters has not been a smooth one. It has been robustly opposed by those who have opposed the previous consents on the site

1.8. The application for the reserved matters ('RMA') subject of this appeal was submitted in October 2019 and eventually refused, contrary to the clear recommendation of officers, in November 2023.

1.9. Finally, Laver Leisure, through all of that, arrive at this inquiry, initially scheduled for 6 days, to test the reason for refusal.

2. On any measure, the delay, challenge and obfuscation towards this scheme, has been a test of commitment for the developers. When one considers the evidence offered to this inquiry by the LPA and third parties, it is also a damning indictment of the planning system that they were ever required to wait this long.

3. Fairly, as Mr Phillips accepted in XX, it would be "lunacy" if this scheme (ie the Revised Outline PP) were to expire because these reserved matters ('RMs') were refused and the appeal dismissed[4]. That was accepted because, as we set out below, the criticisms raised by Mr Phillips amount to little more than *"...most*

[4] Phase 2 for 60 lodges remains underdetermined and could be granted but it would no longer be possible for there to be a resubmission of reserved matters on the remainder of the site.

aspects of the reserved matters proposals are pretty good, but in one respect, I think that there could be a few, relatively modest, improvements"[5].

4. Since those improvements could all be addressed through condition, were the Inspector to agree with the Council's case on design, that explains Mr Phillips' ready acceptance of the characterisation of a dismissal being 'lunacy'. That said, the Appellant strongly maintains that no such conditions are required because this is a good, well-designed scheme in accordance with policy. But rather that if the Inspector thought that there was anything in one or more of Mr Phillips' points – then that could be readily addressed by conditioning an approval – e.g. the pitch of the roof, the direction of the cladding of the walls etc.

5. Before turning to the issues of relevance to the determination of this appeal, it is important to say something about those issues which are emphatically **not** of relevance, however much they arise from strongly held views from some of the local residents. It would seem beyond doubt that some of the third parties have dedicated substantial amounts of time and energy over the years to resisting this family holiday development. Unfortunately, many of the points raised by them at this inquiry (highways, access etc.) are of no relevance to this appeal, one example should suffice.

The Cumbrian Coalmine Case

6. One point that was raised early in the proceedings by Mr Housiaux, relates to the consideration of "downstream effects" following the judgment of Holgate J in *Friends of the Earth v SOSLUHC* [2024] EWHC 2349 (Admin). Although it is of

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5 NB not a quotation from Mr Phillips but Mr Pullan's characterisation of his evidence.

no relevance to this case, we undertook to address it in closing, and do so briefly, therefore.

7. The case concerned the grant of planning permission for the Cumbria Coalmine proposals, and the issue for the court was the approach taken within the Environmental Statement ('ES'). Following the Supreme Court decision in *Finch*[6] a planning judgment has to be formed, when scoping such an ES, as to which of the "downstream environmental effects" should be assessed as sufficiently proximate to arise as a potentially significant environmental effect which inevitably flows from the development for which permission being sought.

8. In *Finch* it was the effect of the burning the oil that would have been worked from the permitted oil well, which could give rise to green house gas emissions. In the Cumbria Coalmine case, it was the greenhouse gas emissions from the burning of coal that fell to be considered. Because no assessment had been made, which led to those downstream effects not being considered in the Environmental Statement, Holgate J found the permission was unlawful. He also assessed an argument around substitution (that the Cumbria coal would replace imported coal and so would be net zero in terms of impact – coal was going to be burned in any event), Holgate J found the approach to this issue was also unlawful. On a fair reading of his judgment Holgate J. seemed to be somewhat incredulous to think that there were not inevitable, sufficiently proximate causes of greenhouse gas emissions from a proposal to mine and then burn coal.

9. In this case, the ES has properly assessed the relevant impacts of the development and there have been no omission in the identification of downstream environmental impacts identified of the type in either *Finch* or the Cumbria coalmine case. A conclusion which is reinforced by a fair consideration of the

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6 *R (Finch on behalf of the Weald Action Group) v Surrey County Council* [2024] UKSC 20; [2024] PTSR 988

consultation responses on the update ES. Fascinating as both judgments are, they are - with respect - not relevant to this appeal.

2024 Environmental Statement Update

10. In accordance with Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regs'), additional information has been provided to supplement the ES for the original OPP ('2024 Addendum') responding to the direction issued by PINs.

11. Following Regulation 25(7) of the EIA Regs, a 30-day consultation period was undertaken. This period ended on 27th September 2024.

12. No issues have been raised which require addressing further, and it is agreed with the LPA that there are no new likely significant effects on the environment (not previously assessed) and that the information in the ES is now up to date. The Pollution Officer of Staffordshire Moorlands District Council (SMDC) and High Peak Borough Council accepts the air quality assessment that impact is both negligible and not significant[7].

13. The assessment of the adequacy of the ES is a matter for the decision maker, subject to the test of irrationality – a very high bar. An ES is only going to be ruled unlawful if "*...that the deficiencies are so serious that the document cannot be described as, in substance, an environmental statement*"[8]

14. It is clear from the detail of the information submitted as part of the ES, alongside the additional detail within the 2024 Addendum, that the original conclusion of the Council that the ES was adequate, was a rational one, and remains robust. The complaints made

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7 A s.106 UU has been drafted to address her concerns but it is not considered to be necessary – and the Inspector is invited not to trigger the obligation therefore.

8 *R. (Blewett) v Derbyshire CC* [2004] Env L.R. 29 at [68]

by third parties in relation to the ES are, with respect, examples of the approach which Sullivan J was cautioning against.

The Appeal

15. The Appeal Scheme seeks approval of the reserved matters of Layout, Scale, Appearance and Landscaping[9] for Phase 1 of the leisure development at Moneystone Park. The reserved matters application was reported with a clear recommendation for approval to the Council's Planning Committee on 26 October 2023, after an inordinately long process, but was then refused for a single reason which relates to the design of the individual lodges.

16. The reason for refusal was drafted in very specific terms, as is required by the DMPO. It alleges conflict with policies SS1, SS11, DC1 and E4 of the Staffordshire Moorlands Local Plan ('SMLP'). Importantly, it only related to one aspect of the RM proposals – the remainder are unobjectionable in the eyes of the LPA. It is perhaps regrettable that a split decision was not issued by members. Whilst that still would have led to this appeal in respect of their views on lodge design, it would, at least have allowed the Appellant to have 'got on' with delivering other aspects of the proposal. Indeed, on Mr Phillips evidence, members could properly have maintained their concerns but granted the RM application and imposed conditions to address those modest aspects of the proposals about which they had concerns. That they did not do so, is perhaps telling.

17. The Inquiry did hear from Mr Wilkinson, speaking as a member of the public, though confirming that he was chair of the Planning Committee that refused the RMA. Mr Wilkinson confirmed that <u>his</u> main concern with the details in the RM related to drainage – notwithstanding that this matter had been resolved at outline

[9] As defined in the Town and Country Planning (Development Management Procedure) Order 2015

stage. On the limited design point, he indicated that his concern was that they were caravans within the statutory definition. However, had they been constructed on site, rather than brought to site prefabricated, then he would not have had any design issue. This exchange, at the outset of the inquiry, was an early indication of the hollow nature of the Council's argument, and the paucity of reasoning underlying the decision.

18. The concerns alleged in the RfR relate to materials and a lack of green roofs; lack of architectural detailing on the lodges; and, that somehow they have not been designed to reflect the sensitivities of the site. Mr Phillips ('BP') for the LPA was careful not to stray beyond the precise terms of the RfRl. He clarified in XX that any criticism of layout within his proof and appendices was not of the layout as defined in the DMPO, but the consequences of how the deficiencies of the design would be exacerbated in lodges which had been laid-in the way proposed terms of how their design related to the surroundings.

19. There were several points of agreement with BP in oral evidence:

19.1. The site is well contained and separate to a considerable degree from the nearest settlement.

19.2. The landscaping proposed is of a high quality.

19.3. That a 'polite/understated' form for the lodges in their setting is "*a sensible design driver*".

19.4. That where the Officer Report ('OR) (CD6.2) at paragraph 9.24 finds that the lodges are a simple form this would accord with his vernacular study where the forms were all simple.

19.5. That the key question for the Inspector is whether the design of the lodges is high quality. That the lodges fall within the statutory definition of a caravan is a matter of indifference if they do.

19.6. That design is more than simply aesthetic appearance – it relates to a host of other aspects such as sustainability and functionality.

19.7. There are no design objections to the Hub building (or any other aspect of the RMA save for the design of the lodges). The hub is, in his view, a building of high-quality design. The issue relates solely to the lodges.

20. BP's criticism of the materials used was based upon his vernacular study included in his proof of evidence ('POE'). There is no policy requirement for a vernacular study in either Local Plan[10] policies relied upon by BP (SS11 and DC1). Nor is it a requirement of the Churnet Valley Masterplan[11] ('CVMP'). In fact, the first anything was said about requiring a vernacular study was in BP's proof of evidence. It was not raised at any other point in the long history of this site by any of the officers, consultees – statutory or non-statutory, or third parties. It only become a requirement when BP was instructed to justify the reason for refusal ex post facto. How it can be a criticism that the Appellant hasn't done such a study remains baffling therefore.

21. In cross examination, BP moved away from suggesting that the policy required some form of slavish adherence to the vernacular. How a scheme responds to local vernacular is, he agreed, a matter of judgement (upon which there are a range of potential views). One might say, and BP agreed that this would be acceptable, that development in an existing settlement may pick up visual cues in terms of its design from the local vernacular; but a self-contained former quarry that is some distance away from a settlement might sensibly take fewer of those design cues. He accepted that this would be a different approach to his, but that it would not be

10 CD7.3
11 CD7.6

an approach which is necessarily 'wrong'. Notwithstanding that he accepts this approach is an acceptable one, there is nothing in Mr Phillips' proof that looks at how one can tackle the judgement call on the role of context in design, it simply isn't there. That BP has effectively presented one side of such a range of considered approaches to design. However, stepping back, it is little more than evidence that the exercise was essentially to support the RfR, not an objective analysis of the design.

22. BP accepted that when assessing the RMs, the starting point is to consider the scope of the OPP and its conditions. In this case, condition 14 was specifically drafted to control the design of the lodges through the reserved matters stage "*shall be in accordance with the principles contained within the submitted Design and Access Statement and incorporate the Mitigation Measures set out in Table 8.9 of Chapter 8, Landscape and Visual of the Environmental Statement*".

23. The requirements of the DAS (CD1.22), as Mr Pullan set out in his evidence, are fully met in the design of the RMs. See page 57 for the key lodge design requirements:

23.1. "*it is anticipated that units will either be delivered as a complete structure by lorry, or assembled on site utilising smaller prefabricated sections*" – the DAS, approved in the OPP, already envisioned prefabricated off site construction.

23.2. "*in sensitive site locations consideration might also be given to smaller pad/beam foundations or lodges positioned on driven pile/ stilts*" – the use of stilts, as seen in the RMs, was already envisaged.

23.3. "*Given the sensitivity of the location, the lodges within the park should utilise a limited material pallet that reflects the local architectural character. Use of timber, stone, slate, or metal cladding and roofing in a muted colour range could be a suitable mix, that would allow the units*

to blend with the surrounding context" – As we set out below, the proposed mix of wood cladding to the lodges was considered acceptable through the DAS.

24. Two points were taken against the design that they didn't include green roofs and that the "skirt" around the base was timber clad rather than stone. These points go literally nowhere. Firstly, the DAS states only that green roofs "*could*" help in areas of visual sensitivity, not that they would or should be used. Secondly, if the Inspector were, for some reason to consider them to be essential, then they could be conditioned. That applies equally to the "skirt" around the base of the lodges. Far too much time was spent examining the skirts of the proposed lodges. If the Inspector considers the proposed wooden base not to be high quality design, which the Appellant strongly pushes back on, then that could also be conditioned. This might include different cladding or securing yet further planting.

25. The DAS does also indicate that some lodges will be two storey. If the Council had wanted two storey on this phase, it could have asked. It did not. Indeed, if the direction is for two storey lodges on the next phase, then it can easily be provided. To that end it is to be noted that the Indicative Cross Sections in the OPP only showed 2 storey lodges in Quarry 2 (ie the area of the quarry which is the subject of the as yet undetermined application).

26. The height of BP's argument was that the palette of materials identified in his vernacular study – red brick, stone, slate roof – was not represented in the design of the scheme. He was not in fact advocating for all of these to be on site, but that there should be more of a mix; and even then he did not advocate for all those materials to be used, just for slate roofs. If that is it, then when asked directly if it would be "ludicrous" to dismiss the appeal on that basis, BP replied, perfectly reasonably, "potentially so, yes".

27. The same applied to the objection on the direction of the cladding – horizontal v vertical – BP agreed that this was also some that could be addressed through a

condition and that the cladding was an appropriate design response. Although the appellant's case remains that it makes not a jot of difference to whether the scheme is high quality design, which is the test that is to be applied.

28. A further objection related to roof pitch on the lodges, although again BP agreed this was a matter that could be addressed through condition if necessary. And, again, it was a point on design from the Council that went nowhere. The roof pitch has been designed to deliver the polite, understated approach to the landscape. A design strategy that BP specifically endorsed in XX. As Mr Pullan set out in XC, the roof pitch was designed to allow the eye to be drawn to the landscape setting, not to the incongruous pitched roofs of the lodges. The star of the show is the wider rural landscape, it does not need loud exuberant lodges to try and steal the limelight. As both urban designers agreed – that would be the wrong solution.

29. Ultimately, BP accepted that there was a strong resemblance between what was proposed in the DAS (CD1.22 page 57) and what is being proposed. Condition 14 requires accordance with the DAS. It does not include an adjective to describe the level of accordance – see *Swire v Canterbury City Council* [2022] EWHC 390 (Admin) at [42] and [43]. As such there is a greater scope in the judgement of what accords with the DAS.

30. If BP is right, and the Appellant agrees with him, that there is a strong resemblance between what is proposed and the DAS, then it is robustly submitted that the design must comply with condition 14 of the OPP. If that is right, as BP agreed, then the development must comply with policies SS1, SS11, DC1, and E4.

31. The other requirement of condition 14 is that the design accords with table 8.9 in Chapter 9 of the ES (CD1.37). The mitigation measures in that table are directed toward minimising the landscape and visual impact of the development, and integrating the development into the landscape. The council expressly do not raise any landscape and visual objection to the RMA, and so it must be assumed that

the landscape and visual mitigation measures in this table have therefore been satisfied.

32. Those requirements include integrating the lodges into the topography of the site and that the lodges are of a high-quality design. As we set out above, the specific design of the lodges, including the use of stilts where appropriate, is a targeted, sensible design response to the topography of the land. As to the high-quality design, and indeed construction, of the lodges, that much was clear in the evidence from Mr Pullan and Mr Bratherton.

33. The design of the lodges is entirely appropriate for a site with planning permission for a "*High quality leisure development comprising holiday lodges*". The Planning Committee plainly knew what would come forward under reserved matters because they restricted it to the DAS. The lodges themselves are sensitive to the location with a deliberately limited palette of materials; they respond to the topography of the site and they represent high quality design.

34. It was telling when the Inspector asked BP where the (supposed) design harm would be experienced from, and he responded that it would be from within the site. This answer exemplifies the consequences of the agreement that the site is self-contained. It does not, with respect, have any visual link to nearby settlements. The question for the Inspector is not whether the lodges are designed to fit in with the vernacular of a settlement some distance away with which it has no visual relationship. The question for the Inspector is whether the design properly responds to its rural landscape, to its use as a leisure park, to its wider landscape design. It is clear from the plans, from the CGIs, and when one visits the site, that this scheme responds well to all of those contextual points, making it a high-quality design overall.

35. Turning finally to the characterisation of the lodges as a "*caravan in cladding in a skirt*". That phrase neatly encapsulates the error in the Council's analysis. The Council is obsessing process – i.e. that the lodges are within the definition of the

Caravan Act and are therefore somehow unacceptable in principle, rather than focusing upon the out-turn as to whether the design is of a sufficiently high quality. It is of course true that the lodges are intended to fall within that definition, but that is neither the beginning nor the end of an assessment of the quality of the design. Whether one starts with a caravan or a carp, what matters most is what you get at the end – here, is the outcome a high quality lodge?

36. Instead, the Inspector should do as Mr Pullan and Mr Bratherton have done, and look at the design of what is proposed, irrespective of whether it is within the statutory definition of whether the lodges will be 'caravans' or not. Viewed through that prism it is respectfully submitted that the only conclusion is that it is well designed.

37. The quality of the lodges proposed, as Mr Bratherton sets out, has significantly moved on from the negative design connotations that sit with old-style lower quality static caravans. The proposed lodges are bespoke manufactured to the specific requirements of the company. They are then transported to site pre-fabricated and the final construction takes place on site. The fact is, as both design experts agreed, that being within the statutory definition of a caravan does not fundamentally effect what it looks like.

38. It is a sustainable form of construction and it is one that has been used in numerous high quality lodge parks. It is one which allows the leisure park to be up and running far faster than would be the case with traditionally constructed buildings – and it will be obvious that half a leisure park is not likely to sustain the extensive high quality facilities – and for obvious reasons the Appellant does not want to launch a scheme which is only part constructed and part opened[12]. The approach speeds up the delivery of the resort and allows for the publicly recognised benefits

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12 Phase 2 is an obvious break and can be brought forward further down the line – but even it will need to be fully constructed before that phase can sensibly open.

to be realised. As Mr Suckley set out in EIC, all of these are material considerations in favour of allowing the appeal.

39. Mr Suckley has been involved in this case for nearly 14 years. Whilst the time it has taken to get to a consent is not a model for the planning system, the approach of the appellants has been exemplary. They have engaged with the LPA throughout and they have promoted the site through the development of policy documents, including the CVMP.

40. The Churnet Valley Masterplan sets "*a comprehensive framework for future development in the area*"[13]. The section of the CVMP on the Moneystone Quarry Opportunity Area[14] supports the creation of "*a high quality leisure venue to complement other recreational and leisure attractions and enhance the area but needs to be of a scale which does not undermine the tranquillity and character of this sensitive part of the Churnet Valley and other businesses*". The LPA does not raise a point against the RMs that they would undermine the character of the area or its tranquillity. The focus is on the quality of the design of one part of the scheme. The CVMP expects the site to come forward as holiday lodges, there is nothing that requires them to be built on site, or that they cannot be built off site, or that they cannot be within the statutory definition of a caravan. Even the artists impression of a two storey lodge in zone 2[15], is noted as only an idea for the potential development of that zone. And, as BP and CP set out, if the Council want to have two storey lodges in phase 2, that is perfectly possible.

41. Finally, the Council's tourism strategy 2022 – 2027[16] is fully supportive of the scheme. From that document it is plain that one of the Council's primary strategic

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13 CD 7.6, para 1.0.2.
14 CD 7.6, page 94.
15 Page 100.
16 CD 7.2.

objectives is providing more high-quality overnight accommodation. This is precisely what my clients have been seeking to do with this scheme.

42. The policies cited in the RfR are all supportive of leisure development in this location. SS1 supports the development that will increase economic prosperity and opportunities for employment, plainly that is the case with this development. S11 promotes "*the expansion of existing tourist attractions and facilities and the provision of compatible new tourist attractions and facilities*" in the Churnet Valley. The holiday park at Moneystone Quarry squarely fits that requirement.

43. It was put to Mr Suckley that S11 requires that the development is of a design by reference to the whole of the Churnet Valley area. This is plainly not what the policy requires as it would be impractical for all development to reference the whole of the Churnet Valley. The CVMP assists[17] in the Design Principles section, stating that the design should respect the "*valued characteristics of the Churnet Valley in terms of it's site context, including the wider setting*". The focus is on the setting of the proposed development, here the rural setting of the quarry. The policy position is explicitly supportive of the design approach taken by the Appellant.

44. DC1 encourages development that creates accessible active spaces with good links for pedestrians and cyclists – the proposal here will open to the public previously inaccessible areas for walking and cycling. Finally, E4 directs tourism accommodation development to the areas identified in the Churnet Valley.

45. The overarching policy framework suggests that the LPA should be supportive of bringing forward this development, not actively hostile to it. It was disappointing then that BP was unable or unwilling to provide the Appellant with details of what design amendments would make the scheme acceptable to the Council. The process, which has not been short of time or opportunity, should have meant the

[17] CD7.6, page 121

LPA engaged positively with the Appellant to resolve any residual design issues. Particularly since those issues, as was clear in BP's evidence, are minor and would have been easily capable of resolution in any of the 5 years since the RMA was submitted.

46. The design elements of the policies cited in the RfR seek "*high-quality*"[18], a "*high standard of design*"[19] and "*of an appropriate quality*"[20]. This is consistent with the NPPF §131 and 133 that seeks a high quality of design. Pausing briefly, the test is not that the design is the "*best possible*" design, a point which BP initially seemed to take in XX and then, rightly, abandoned.

47. The design of the lodges are polite, they interact with the rural context, making that the 'star' of the scheme. The design of the overall scheme deliberately designed to make the landscape and the setting of the holiday park the main attraction. The lodges themselves are of high-quality design, they are sustainably produced and rely on modern, sustainable energy to heat them through the use of ASHPs.

48. Drawing this together, it is clear that the RM details accord with condition 14 in the OPP, the DAS and table 8.9 in the ES; furthermore they accord with policies SS1, SS11, DC1 and E4 of the SMLP, and the NPPF. The Officer report got it right first time. It is a high quality, thoughtfully designed scheme that should be approved. There has been nothing presented in evidence to undermine the position set out by Mr Pullan.

49. In XX, Mr Suckley presented a clear route map to allowing the appeal:

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18 SS1 and DC1
19 SS11
20 E4.

49.1. The scheme accords with the development plan and there are no material considerations that indicate it should be dismissed – the Appellant's primary case. Permission should be granted without delay.

49.2. If the Inspector has some residual concern with the design, then the first port of call should be whether that concern can be addressed by the imposition of condition(s) that/those require those specific matters to be addressed in a later discharge application. This was the part of the process that members seemed not to have thought about.

49.3. If conditions cannot remedy those concerns, then the planning balance still indicates that the appeal should be allowed because the benefits of the proposed scheme – all set out in Mr Suckley's proof[21] – clearly outweigh the limited harm caused by the proposal.

50. Mr Phillips was right about one thing; this is not a close-run planning balance. Unfortunately, he was on the wrong side of that assessment. As Mr Suckley said in EIC the only witness on planning matters, this is not a close-run case, it is clear as day that the appeal should be allowed, and this scheme should not have taken 14 years to deliver.

Other matters

51. The R6 parties and members of the public raised a number of other concerns at the Inquiry, they are not relevant to this appeal.

51.1. The ecological impact of the development has been assessed as part of the ES and is acceptable. There is no evidence to assert a harmful

[21] Page 110 – 112.

ecological effect from the proposal. It forms no part of the Council's RfR (despite the fact that the SSSI gets an inexplicable mention). In fact, as is clear, the scheme delivers a landscape led scheme that will deliver an ecological benefit and open this site to the public.

51.2. The issue of the water safety is not a matter for this appeal. Laver Leisure take the safety of its guests extremely seriously. It will work with the relevant bodies to ensure the highest levels of health and safety on site. In terms of the appeal, safety of the water bodies was deemed acceptable at outline and is not part of this RMA appeal.

51.3. Issues of land stability have been exhaustively addressed at outline stage (it was at this stage the Council sought advice from Wardell Armstong). There are also several draft conditions attached to the phase 1 RM which deal with slope stability.

52. The private law issue of restrictive covenants is not a material consideration for a planning inquiry, unless it could be conclusively established that such a covenant means that the scheme could not be delivered.

53. A letter has been provided by the Appellant's solicitors which explains that it is highly likely that any restrictive covenant has been extinguished. Within the application boundary exist multiple titles. All relevant titles within the boundary are held by Laver Leisure, likely unifying the title. A detailed reconciliation exercise is presently underway to confirm this position.

54. Even if a restrictive covenant remains, it is solely a private law issue, enforceable only by the owner of the land which benefits from the covenant and not by the wider public. No evidence suggests such a beneficiary exists, let alone one who might want to derail the delivery of the scheme. Were one to come forward, an application to remove the covenant from the title could be negotiated or sought to be removed by an application to the Upper Chamber.

55. Finally, and most importantly, as confirmed by the contents of the letter issued by Blacks Solicitors, none of the lodges are placed on any parts of the site which are actually covered by restrictive covenants. This is a factor that would have been evident to anyone cross referring the titles to the RM application plans. The fact that this point is still being pursued means that either that this simple task hasn't been done by those raising it, or that those raising it don't care that it isn't a point which goes anywhere --- it is yet more mud thrown in opposition to the scheme in the hope that some will stick

56. This is not, and never has been an issue relevant to determination of this appeal.

Conclusion

57. There has been no "dumbing down" of the development. The site was purchased by Laver Leisure in 2010 with the aim of a high-quality leisure development. It was promoted through the Churnet Valley Masterplan as a high-quality leisure development. Outline planning permission was obtained for a high-quality leisure development comprising holiday lodges. Conditions on that permission control how those lodges would come forward at RM stage. The proposal before the Inspector is in accordance with those design requirements. The out turn of which will be a high-quality, policy compliant, leisure development. Nothing has changed about this scheme from inception, to this stage. It is just a shame it has taken so long to get here. The appeal should be allowed.

PAUL G. TUCKER KC

PHILIP ROBSON

24 September 2024

KINGS CHAMBERS

London, Manchester, Leeds, Birmingham

ANNEX A – Planning chronology

- **August 2007:** application for 30 hectare extension to quarry refused
- **October 2009**: amended restoration scheme approved by SCC
- **February 2010**: Laver Leisure acquire the site
- **October 2010:** leaflet produced to raise awareness of Churnet Valley Masterplan (CVM); Churnet Valley Living Landscape Partnership (CVLLP) roadshow events – raise awareness about CVM.
- **March 2011**: Cessation of Quarry activity; CVM Visioning event at Consall Hall Gardens
- **January 2012**: CVM Options Consultation
- **March 2014**: Adoption of CVM; Approval of revised Restoration Masterplan by SCC
- **October 2014**: Original Outline Planning Application submitted
- **April 2015**: Solar Farm application submitted
- **December 2015**: Original Outline Planning Application refused & Solar Farm application formally approved.
- **March 2016**: Appeal against Original Outline Application Refusal
- **June 2016:** Revised Outline Planning Application submitted
- **October 2016:** Revised Outline Planning Application approved
- **February 2017:** Legal Challenge to Revised Outline permission
- **September 2017:** Dismissal of Legal Challenge
- **October 2017:** Legal request to Court of Appeal refused

- **November 2017:** Withdrawal of Planning Appeal against Original Outline Planning Application Refusal
- **October 2019:** Phase 1 Reserved Matters Application submitted
- **November 2019**: Original Outfall Application & Change of Use of Lab Building submitted
- **September 2021**: EN1 & EN2 Enforcement Notices first issued, to take effect in September 2022
- **January 2022**: Revised Outfall Application submitted
- **September 2022**: EN1 & EN2 Enforcement Notice varied to take effect in December 2023
- **October 2023**: Staffordshire Moorlands Planning Committee; Submission of Phase 2 Reserved Matters Application
- **November 2023**: Formal Refusal of Phase 1 Reserved Matters; Approval of Revised Outfall Application
- **December 2023**: EN1 & EN2 Enforcement Notice varied to take effect in May 2024
- **January 2024**: Formal approval of Change of Use Permission for Lab Building
- **May 2024**: Submission of Planning Appeal to PINS; EN1 & EN2 Enforcement Notices varied to take effect in May 2025
- **September 2024**: Public Inquiry