

# **Appeal under section 78(2) of the Town and Country Planning Act 1990 (as amended)**

**Planning Appeal Reference: APP/D1265/W/24/3348224  
Local Planning Authority Reference: P/FUL/2022/06840**

## **Proof of Evidence of Oliver Rendle BSc PIEMA, Dorset Council November 2024**

### **Site address:**

**Knoll House Hotel, Ferry Road, Studland, Swanage, Dorset, BH19 3AH**

### **Description of development:**

**Redevelopment of existing hotel to provide new tourist accommodation including 30 hotel bedrooms apartment and villa accommodation and associated leisure and dining facilities**

### **1.0 Professional Background**

1.1 My name is Oliver Rendle. I hold a BSc in Environmental Science of the Earth and Atmosphere from the University of Reading. I am a member of the Institute of Environmental Management and Assessment (IEMA), achieving Practitioner status (PIEMA) in 2011.

1.2 I am the Senior Environmental Assessment Officer at Dorset Council. I have held this role since October 2010, having worked for the predecessor councils West Dorset District Council and the Dorset Councils Partnership prior to the formation of Dorset Council in 2019.

1.3 During this period, I have been responsible for assessing the impacts of development proposals upon European Sites in Dorset through the Habitats Regulations Assessment (HRA) process. I have also written policy and strategy to address issues relating to European Sites in Dorset, including the 'Interim strategy for Mitigating the Effects of Recreational Pressure on the Chesil Beach and the Fleet SAC, SPA and Ramsar' (April 2020).

1.4 I have over 19 years of experience of working in environmental assessment and town and country planning, working for a range of public and private sector organisations.

1.5 The evidence which I have prepared and provide for this appeal in this proof of evidence is true, is within my scope of expertise and experience and has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions.

## **2.0 Introduction**

2.1 This proof of evidence addresses Reason for Refusal 3. In this proof evidence I address the risk that the proposal would adversely impact the Dorset Heaths (Purbeck and Wareham) and Studland Dunes SAC, and Dorset Heathlands SPA and Ramsar protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (“the Habitats Regulations”). I refer to those protected sites collectively as “Heathlands”.

2.2 This proof of evidence addresses the risk of an impact on the Heathlands arising from recreational pressure.

2.3 The outstanding issue of the effects of the proposed development upon supporting habitat of the Heathlands and Nightjar, a qualifying feature of the Dorset Heathlands SPA, is also considered in this proof of evidence (section 6). I acknowledge that this did not form a reason for refusal, but the purpose is to bring this unresolved HRA issue to the Inspector’s attention.

## **3.0 The application**

3.1 The proposed development is for the redevelopment of existing Knoll house Hotel to provide new tourist accommodation including 30 hotel bedrooms, 18 apartments and 26 villa accommodation and associated leisure and dining facilities.

### *The villa/apartment component*

3.2 I understand that there is a dispute between the Appellant and the Council as to whether or not the application requires an amendment to remove reference to market housing. The application refers to “tourist accommodation” in the

description of development. However, the application form itself refers to “market housing” and the gain of residential units. In the application documents the Appellant has also referred to the proposal as entailing C3 uses<sup>1</sup>.

3.3 The reference to market housing on the face of the application form and C3 uses in the application documentation has created uncertainty about what the Appellant is actually proposing on the site. The Appellant has stressed repeatedly that it wants to deliver “holiday accommodation” or “tourist accommodation”. However, tourist accommodation covers a wide range of uses – from hotel uses at one end of the scale to second holiday homes and short term let self-catering accommodation at the other. To date it has not been agreed that the reference to market housing on the application form should be removed. For the purposes of the HRA assessment, the proposed uses of all aspects of this resort proposal need to be clear in order to ascertain whether or not there would be an impact on the Heathlands.

3.4 How those elements of the proposal should be classified in terms of the Use Classes Order is a matter that is addressed in the planning evidence of Ms Fitzpatrick. Furthermore, whether or not the Appellants’ proposals are or are not consistent with the description of market housing or require an application to amend the application, I understand it will be addressed in legal submissions at the inquiry. I therefore do not address those particular issues in this proof of evidence. Furthermore, as things stand a section 106 agreement has not been agreed which sets out in detail what restrictions the Appellant is proposing on the nature of occupation of the accommodation in the resort and how exactly it will be operated. I understand that discussions on all of these issues are ongoing and, whilst Dorset Council are reasonably confident that a resolution can be found, this proof of evidence has been submitted to assist the Inspector in understanding the risk the proposal poses to the Heathlands, in the event that appropriate and sufficient limitations on the uses at this proposed resort, and mitigation measures, are not agreed.

3.5 This proof of evidence has therefore been prepared on the assumption that the application is either:

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<sup>1</sup> ‘Knoll House – a Five Star Resort – Operations Report’ published by Kingfisher Resorts, October 2022

- a) amended to remove reference to market housing; or
- b) That the Inspector decides that the reference to market housing in the application form does not require amendment and can remain but is prepared in principle to impose conditions on the use of the villas and apartments in particular to a C1 use or some form of short term let holiday accommodation.

3.6 I first set out why the introduction of residential uses as part of this proposal would pose a risk to the Protected Sites before considering the risk to the Protected Sites posed by the introduction of accommodation in C1 uses.

#### **4.0 Residential uses**

4.1 According to Natural England advice, the intensification of residential development across Southeast Dorset and the resulting population increase near to the heath is causing adverse effects upon heathland ecology.

4.2 In response, the Local Planning Authorities in Dorset have been operating a strategy for the protection of the Dorset Heaths since 2007, the most recent iteration of which is the adopted Dorset Heathlands Planning Framework 2020-25 SPD.

4.3 According to the Dorset Heathlands Planning Framework 2020-25 SPD, various studies have found that public access to lowland heathland from nearby development has led to impacts<sup>2</sup> including:

- an increase in arson and wild fires;
- changes to heathland hydrology from rapid runoff from urban areas, changes in the quality of water supplied to the heath (pH, nutrient status, turbidity), and leakage from underground pipes and sewers;

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<sup>2</sup> A full list of the impacts is presented in Figure 1 of the Dorset Heathlands Planning Framework SPD 2020-25, which may be viewed here:

<https://www.dorsetcouncil.gov.uk/documents/35024/309543/Dorset+Heathlands+2020-2025+SPD+Adopted.pdf/bda03d74-cbc9-57c9-b3be-6253ba2825fb>

- increased predation of ground nesting birds and reptiles by pets, foxes and rats;
- noise and light pollution;
- enrichment from dog excreta causing vegetation change;
- trampling causing vegetation loss, creation of bare ground, and soil erosion; and
- disturbance from heathland visitors causing changes in breeding bird and animal distribution, delayed breeding, and a reduction in breeding success.

4.4 These impacts have caused an adverse effect upon heathland ecology, which is reflected in the unfavourable condition of large parts of the Dorset Heathlands European Site, including some areas of adjacent to the site.

4.5 The effects of urban development are most marked for development within 400m of the Dorset Heathlands. These effects may act synergistically for development within 400m of the heath, to create an overall adverse effect which is greater in magnitude than each individual effect.

4.6 In my view, and in accordance with the Dorset Heathlands Planning Framework 2020-25 SPD, it is not possible to effectively mitigate against these impacts for development within 400m of the heathlands due to the magnitude of impact and proximity to the heath. For this reason, the Dorset Heathlands Planning Framework 2020-25 does not permit additional residential development within 400m of the Dorset Heaths European Site.

4.7 I appreciate that the Appellant's case is that the proposal is not going to be "residential" in nature. As an initial point, for the purposes of understanding and assessing impacts on the Heathlands, the impacts resulting from additional normal market housing and short-term holiday let type accommodation/self-catered accommodation are similar and so when I refer to "residential" uses it encompasses both types of occupancy.

4.8 This is supported by the SPD which states that for self-catering accommodation, which the villas/apartments represent in this scenario:

*“proposals are likely to have broadly similar impacts upon the heathland to those arising from residential development”*

- 4.9 The proposed development currently includes 18 apartments and 26 villas. I have read the Operations Report submitted with the application prepared by Kingfisher Resorts to try to understand what exactly is proposed in particular terms of the use of this element of the proposal.
- 4.10 The reason this particular element of the proposal requires close scrutiny is that villas and apartments on the face of it appear to be self-catering accommodation (for instance they have kitchens and dining space etc). The villas and apartments therefore may well provide more independence than the current hotel rooms, giving more freedom to bring dogs and bicycles for walking and cycling on the nearby heathlands and visit for longer periods, resulting in a greater magnitude of impact. Indeed, exploring the open countryside adjacent to the villas and apartments is likely to be a key attraction for visiting the villas and apartments given the setting. As I have said above, in line with the Dorset Heathlands Planning Framework 2020-25 SPD, is that this type of self-catering accommodation has similar impacts to standard residential development. For this reason, the SPD advises that the same approach to net additional self-catering units and residential dwellings, which is that:

*“any net increase in self-catering and touring proposals will not be allowed within 400 metre heathland area.”*

- 4.11 The Operations Report states that what is proposed is a “luxury resort”. This states at para. 2.10:

*“operationally, there will be no distinction between those staying in the hotel or other forms of accommodation”.*

- 4.12 At para. 2.13 it states that:

*“The provision of basic facilities in the villas and apartment, such as kitchenettes will be an additional feature, as opposed to being a core facility. This is considered further in section 3. It is commonplace in such facilities providing a luxury feature to provide flexibility for quests and to enable private dining with a private chef, for example, rather than for day-to-day self-catering which would be*

*incompatible with the proposed brand and, also, unlikely from Kingfisher's experience elsewhere."*

- 4.13 At para. 3.3 it asserts that these units will be "*self-contained, but there will be restrictions on how they are operated which differentiate them from traditional self-catering units*". It also asserts at para. 3.8 that "*the kitchens are not used for self-catering*". It then explains that the villas will be sold on a nightly basis (\*not restricted to week long bookings).
- 4.14 It may be that the Appellant will clarify those restrictions in due course (although I have real misgivings about how in practice sufficient control could be exercised on guests that have access to their own villas with kitchens). But from an HRA perspective, I should emphasise that it is not the self-catering element in itself that is the issue (it is obvious that the fact that someone can cater for themselves does not cause any impact on the Heathlands). The issue is the higher level of independence and freedom that the apartments and villas offer for recreation on the heaths, coupled with the degree of control over what the occupiers can do that is the issue, and self-catering accommodation is by its nature much less controllable by the site owner than (for instance) hotel accommodation.
- 4.15 Despite the assertions in the Operations Report that the use of the villas and apartments is different from "standard" short term let accommodation, I am not currently satisfied that this is the case, not least because I have not seen a set of those restrictions referred to in the Kingfisher Operational Report.
- 4.16 My concerns are heightened by the fact that the Appellant has referred to other resort case studies operated by the same operator to explain how the proposed resort will operate. Those case studies refer to "self-contained accommodation". Paragraph 4.4 for example refers to one example and says "*It is similar to the proposals at Knoll House insofar as it provides a mix of self-contained accommodation and a hotel with facilities.*" They also refer to C3 uses. All of this creates uncertainty and means that there is a real risk that, despite some assertions to the contrary in the Kingfisher Report, that in fact and reality this accommodation is self-contained and therefore is not different in substance (from an HRA perspective) to residential or short-term holiday let accommodation.
- 4.17 Therefore, based on my understanding of what is currently proposed, if in reality what is proposed is self-contained holiday accommodation, this would pose a

similar risk to the Heathlands as “standard” residential housing. If that is the case, the magnitude of those impacts would not be able to be mitigated (in line with the Dorset Heathlands Planning Framework 2020-25) , as this development is located approximately 60m from the Heathlands.

- 4.18 Therefore, in my view, taking into account the Dorset Heathlands Planning Framework 2020-25 and the position of Natural England, the appropriate nature conservation body under the Habitats Regulations, if this accommodation was to be used in substance as “standard” residential accommodation or self-contained holiday accommodation, the proposed development of market housing within 400m of the Dorset Heaths would result in an adverse effect upon the integrity of the Dorset Heaths.

## **5.0 Accommodation in Use Class C1**

- 5.1 In this section, I consider the impact of the proposed development should be it be restricted to hotel accommodation (Use Class C1). Use Class C1 is:

“use as a hotel, boarding or guest house or as a hostel, where, in each case, no significant element of care is provided”.

- 5.2 The Dorset Heathlands Planning Framework 2020-25 SPD explains that for hotel accommodation:

*“The nature of hotel users is highly variable and within the 400m area cases will be treated on a case by case basis with advice from Natural England.”*

- 5.3 In order to determine whether or not the proposed development (on the assumption it is or can be restricted to Use Class C1 across all forms of proposed accommodation that this resort entails – i.e hotel rooms, villas and apartments and staff accommodation) would result in unacceptable impacts upon the Heath, it is necessary to firstly consider whether or not the proposal would result in a net increase in visitor numbers and therefore recreational pressure.

- 5.4 The proposed development will result in a decrease in occupation in terms of overnight accommodation, as the total capacity for people staying overnight has been calculated by the appellant as 339 people in the existing hotel and 280 people in the proposed development. On the face of it therefore, since there is a net decrease in overnight occupancy, that would mean that there would be no



net increase in recreational pressure on the Heathlands and therefore no adverse impact on the Heathlands' site integrity.

5.5 However, the occupancy figures do not take into account for the number of day visitors to the spa and restaurant complex, who may also choose to access the heathland whilst visiting the new facilities. These must also be taken into consideration when determining the potential number of heathland visitors from the proposed complex. My understanding from the description of the spa and restaurant in the application form (which refers to "associated uses" that these facilities will be an ancillary use to the primary hotel use. If this is the case, then I would expect that the spa and restaurant would not be available for use by those not staying at the complex, and I would not expect there to be an increase in external visitors to the spa and restaurant. However, if the restaurant and spa is not clearly restricted to an ancillary use, and access to additional visitors is not expressly prevented by condition, the potential for additional visitors to the restaurant and spa complex would need consideration. I understand that the Appellant has indicated that these facilities might be accessed by "local people". Therefore, I do not currently have sufficient reassurance from the controls proposed by the Appellant to date to satisfy myself that there wouldn't be an increase in visits to the spa and restaurant, and also the Heathlands, should visitors wish to take advantage of the countryside setting.

5.6 The occupancy figures currently include the 57 bedrooms used by staff living on site. In future, the number of staff will be 152, living off site. The overnight occupancy figures alone do not take into account the visits from future staff, since they will be living off-site. However, there are likely to be visits to the heath from future staff members which need to be accounted for when determining the likely future recreational pressure. It is unclear what the number of future visits to the site from staff will be, although I understand that Natural England have indicated that adding 20% of future staff onto the overnight occupancy may provide a means of estimating the visits from future staff. However, there remains uncertainty about the number of visits to the heath from future staff members.

5.7 Given the uncertainties above as to what is exactly is proposed in relation to the spa and restaurant facilities and the heathland visits from future staff members, it

is therefore in my view not possible to conclude that there would be no increase in the number of visits to the heaths or any increase in recreational pressure following the proposed development.

5.8 The applicant has proposed some limited mitigation to address the potential impacts of the proposed scheme.

5.9 Details of the proposed mitigation scheme are scant at this time. To my understanding, the following mitigation measures have been offered in the 25<sup>th</sup> October 2024 draft of the S106 Head of Terms:

- Dog occupancy controls: it is proposed that a Dog Permit Scheme is submitted to and approved by the council. Annual monitoring report for 5 years. The Dorset Heathlands Planning Framework 2020-25 SPD states that “Whilst individual applicants may seek to reduce some of the impacts e.g. by restricting pets there is considerable uncertainty about whether, over time, such agreements would be effective and therefore such proposals cannot be supported. The restriction of pet ownership does not in any case restrict all impacts likely to arise”.

5.10 Other mitigation measures which are relevant to recreational pressure include the following, which have been suggested through discussions or the application process, but have not yet been secured through a planning obligation:

- Installation of boundary fencing: details of the location and type of fencing yet to be determined. There are potential issues with land ownership and landscape impacts;
- reinstatement of a former heathland mire: located on the southern site boundary;
- prohibiting cats; and
- A circular dog walk on adjacent land: final details of the location of the dog walking route and the facilities (e.g bins, benches etc) are yet to be determined. The lease on this land is believed to run out in 20 years, resulting in uncertainty whether the circular walk can be delivered in perpetuity. Furthermore, part of the proposed walk is upon land which is outside of the control of the developer. According to case law, mitigation can only be considered at the Appropriate Assessment stage of HRA

when it is sufficiently certain that the mitigation measures will be effective in avoiding harm, applying the precautionary principle<sup>3</sup>.

5.11 Further case law has established that the competent authority must be able to guarantee beyond all reasonable scientific doubt that the mitigation will result in the project avoiding an adverse effect upon the integrity of a European Site in question<sup>4</sup>.

5.12 This approach to considering mitigation is reflected also in the Government's Planning Practice Guidance (PPG)<sup>5</sup> on Appropriate Assessment, which advises that:

*“Any measures used to inform the decision about the effects on the integrity need to be sufficiently secured and likely to work in practice”.*

5.13 The PPG guidance on the Habitats Regulations<sup>6</sup> asks the competent authority to consider “how confident you can be that mitigation measures will be effective” through the Appropriate Assessment process and requires the competent authority to “*be sure that the mitigation will be effective*”.

5.14 Given the uncertainties about the way the Appellant intends to operate the spa and restaurant facilities in particular, and uncertainty about the reliability of mitigation method and delivery of mitigation in perpetuity, in my opinion there still remains substantial doubt that the effects of the proposed development may be mitigated against. Therefore, in my view, it is not possible to conclude that the mitigation measures would, with sufficient certainty and beyond all reasonable scientific doubt, result in the proposed developing avoiding an adverse effect upon the integrity of the Dorset Heaths European Site.

## **6.0 Impacts from Light Disturbance upon Supporting Habitats**

6.1 The proposed development site is approximately 60m from the heathlands, with the land immediately surrounding the site to the north and west located adjacent to the Heathlands.

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<sup>3</sup> Dutch Nitrogen Cases, Cases C-293/17 and C-294/17 §126 [CURIA - Documents \(europa.eu\)](#)

<sup>4</sup> Grace and Sweetman, C-164/17 §51 [CURIA - Documents \(europa.eu\)](#)

<sup>5</sup> [Appropriate assessment - GOV.UK \(www.gov.uk\)](#)

<sup>6</sup> [Habitats regulations assessments: protecting a European site - GOV.UK \(www.gov.uk\)](#)

6.2 This surrounding land may provide habitat which is suitable for foraging Nightjar, a bird species which is a qualifying feature of the Dorset Heathlands SPA. The surrounding land is functionally linked to the adjacent heathland, since it provides habitat which supports the population of Nightjar inhabiting the adjacent Dorset Heathlands SPA. In my opinion, there is insufficient evidence to support the view that Nightjar do not use the habitat surrounding the site. This position is supported by Natural England.

6.3 Since Nightjar are largely active at night, they are sensitive to light disturbance. Therefore there is a lighting strategy is required to mitigate against the impacts of light pollution upon Nightjar, as requested by Natural England in their letter dated 22 December 2023 which states that:

*“Natural England advise that in the absence of evidence concerning the foraging use of the site by bats (an emergence survey only is available), as well as any assessment of the sites use by nightjar, it is proposed that the applicant be required to produce a lighting strategy. This will ensure that in the interface between the development and the woodland area to the west and north the light spill into the woodland will be avoided and that the lighting will accord with BCT standards. The applicant should provide a suitable strategy prior to commencement with correspondence from their ecological advisor that the appropriate lighting quality and directional management is in place to avoid harm.”*

6.4 The submitted Lighting Strategy would not be effective in reducing light levels to the extent that acceptable light levels would be achieved, particularly to the north and west of the proposed development, on land which represents supporting habitat for the Dorset Heathlands SPA.

6.5 This would result in adverse effects upon the Nightjar population associated with the heathlands, to the extent that an adverse effect upon the integrity of the Dorset Heathlands SPA cannot be discounted.

## **7.0 Summary and Conclusion**

7.1 This position statement has considered two scenarios, which are that the proposed development includes residential/short term holiday accommodation use or is entirely hotel accommodation (C1 use).

- 7.2 It was shown that the first scenario (i.e residential use, which for the purposes of my analysis includes self-catering holiday accommodation), comprising 18 apartments and 26 villas, approximately 60m from the Dorset Heaths would be unacceptable under the Dorset Heathlands Planning Framework 2020-25 SPD and according to Natural England's position an increase in residential dwellings development within 400m of the Heathland is not permitted.
- 7.3 If the proposed development comprised of entirely hotel accommodation, based on the current information, it would not be possible to conclude that there would be no increase in the number of visits to the heaths following the proposed development. This is primarily due to the uncertainties in relation to the "associated" facilities in particular the new spa and restaurant and whether or not they would lead to an increase in external visitors, and the contribution of heathland visits from future staff. Therefore, as things stand and based on the current information before me, mitigation would still be required to avoid an adverse effect upon the integrity of the Dorset Heaths.
- 7.4 In my opinion, it is not currently possible to conclude that the mitigation measures would, with sufficient certainty and beyond all reasonable scientific doubt, result in the proposed development avoiding an adverse effect upon the integrity of the Dorset Heaths European Site. This is due to the absence of detail on the mitigation proposed to control visitor behaviour and minimise recreational pressure, the uncertainty about the reliability of mitigation methods and delivery of mitigation in perpetuity.
- 7.5 Therefore currently, in both scenarios, the HRA for the proposed development should in my view conclude that the proposed development would result in an adverse effect upon the integrity of the Dorset Heaths which cannot be mitigated. The appeal should subsequently be rejected under Regulation 63(5) of the Conservation of Habitats and Species Regulations (2017).
- 7.6 Natural England, the appropriate nature conservation body under the Habitats Regulations, support this position in their representations for this application. Case law<sup>7</sup> has found that the views of expert statutory consultees in the field of

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<sup>7</sup> Hart District Council, R (on the application of) v Secretary of State for Communities & Local Government & Ors [2008] EWHC 1204 (Admin) (01 May 2008)

nature conservation are to be given weight by decision-makers and that cogent and compelling reasons are required for departing from such advice.

- 7.7 I also raised concerns about the effects of light spill upon supporting habitat for the Dorset Heathlands SPA, which would result in an adverse effect upon the Nightjar population associated with the heathland habitat.