



Appeal Decision

Hearing held on 5 October 2022

Site visit made on 6 October 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal Ref: APP/U2235/W/20/3259300

Monk Lakes, Staplehurst Road, Marden, Kent TN12 9BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Monk Lakes Ltd against the decision of Maidstone Borough Council.
 - The application Ref 11/1948, dated 4 November 2011, was refused by notice dated 12 March 2020.
 - The development proposed is the retention of two lakes known as Bridges and Puma and works to create 3 additional lakes all for recreational fishing, erection of clubhouse building and associated works and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. An interested party, David Padden, considers that the appeal was not valid because the appellant is different from the applicant. It is therefore necessary to establish whether the planning appeal was correctly made and is thus capable of being lawfully determined. This matter was discussed with all parties at the hearing. This procedural matter forms the main issue in this case.

Reasons

3. Section 78 of the Town and Country Planning Act 1990 (the Act) provides the right to appeal against planning decisions but this is explicitly limited to 'the applicant'. No alternative options are provided and there are no third party rights of appeal to a refusal of planning permission.
4. The original planning application was made by Monk Lakes Ltd (MLL). MLL has since entered into liquidation proceedings. However, the second Gazette notice has not yet been issued, which is the point at which MLL would be dissolved. MLL therefore still exists as a going concern and can, in principle, pursue the appeal as the appellant.
5. However, the liquidator, Quantuma, has submitted a letter, dated 22 September 2021, appointing a separate company, Taytime Ltd (Taytime), to take over full responsibility for the appeal. The letter also confirms that Pegasus Planning (the agents) and James Pereira KC (the legal representative) are instructed by Taytime, not MLL. It was also verbally confirmed at the hearing by some of the consultant team that they had been instructed by

Taytime and not MLL. In addition, the Statement of Common Ground (SoCG), dated December 2021, has been signed by Taytime, not MLL. The appellant has offered to re-sign the SoCG this time by MLL, but this would not change the existing document, which is what has been submitted in support of the appeal. I do not view Taytime as an agent for MLL. The appointed agent is the Pegasus Group, as set out in the appeal form, and supporting documents. The combination of the Quantuma letter and the instruction of consultants by Taytime demonstrate that it is now Taytime pursuing the appeal, as the appellant, and not as an agent.

6. MLL is listed as the appellant on the appeal form, dated 11 September 2020, but this has now been overtaken by events, as described above. I acknowledge that the persons behind both MLL and Taytime are the same, ie Mr and Mrs Harrison, who are also listed on the application form. However, the applicant was explicitly listed as MLL and Mr and Mrs Harrison are no longer empowered to act for MLL due to the insolvency proceedings. For the reasons above, it is clear that the party now pursuing the appeal is Taytime, not MLL. The appellant is, therefore, not the applicant, despite the common thread of Mr and Mrs Harrison, who were not the applicant in an individual capacity and were not listed at all on the appeal form.
7. Consequently, there is no valid appeal capable of being determined. As the appeal has not been withdrawn, it must be dismissed. There is no merit, therefore, in assessing the planning merits of the case, whether these relate to character and appearance, heritage harm, flooding and groundwater, harm to living conditions, or any other matter.

Other Matter

8. A number of revised and additional documents and drawings were received prior to, during and after the hearing. In addition, an engrossed s106 planning agreement, dated 7 April 2021, has been submitted. However, because I have found the appeal to be invalid, it is not necessary to consider these further, other than those that relate directly to consideration of the validity of the appeal, which are listed at Annex B.

Conclusion

9. I conclude that the planning appeal was not correctly made and thus is not capable of being lawfully determined under Section 78 of the Act, irrespective of the planning merits. For the above reasons, the appeal should be dismissed.

O S Woodward
INSPECTOR

ANNEX A: APPEARANCES

FOR THE APPELLANT:

| | |
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| James Pereira KC | Francis Taylor Building |
| Jim Tarzey MRTPI | Planner – Pegasus Group |
| Claire Gayle IHBC | Heritage Consultant – Pegasus Group |
| Trevor Furze CMLI | Owner - Furze Landscape Architects Ltd |
| Andrew Dannatt MICE | SLR Consulting |
| Liz Mcfadyean | EIA Consultant – Pegasus Group |
| Beth Lambourne | Planner - Pegasus Group |
| Emily Harrison | Owner |

FOR THE LOCAL PLANNING AUTHORITY:

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| Megan Thomas KC | Six Pump Court |
| Richard Timms MATCP MRTPI | Principal Planning Officer – Maidstone Borough Council (MBC) |
| Jeremy Fazzalano IHBC | Principal Ecology Officer – MBC |

INTERESTED PERSONS:

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| James Maurici KC | Landmark Chambers |
| David Padden | Local resident |
| Rebecca Lord MRTPI | Director - Rebecca Lord Planning |
| Christopher Griffiths IHBC | Associate Director - HCUK Group |
| Andrew Smith CMLI | Fabrik UK |
| Dr Paul Ellis CGeol | Managing Director - Geosmart Information Ltd |
| Alison Armstrong | Local resident |
| Darryl Parker | Local resident |
| Lee Highwood | Local resident |

ANNEX B: DOCUMENTS

- 1 Letter from Duncan Best, Quantuma Advisory Limited, dated 22 September 2021
- 2 Letter from Richard Max & Co, dated 22 September 2022
- 3 Procedural Application in Respect of the Appeal by James Maurici KC, dated 30 September 2022, and associated appendices