

Appeal Decision

Site visit made on 14 September 2016

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 October 2016

Appeal Ref: APP/G1630/W/16/3152116

Wharf House, Tolsey House, Tewkesbury, Gloucestershire GL20 5AE

- 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 Mr Nick Walker against the decision of Tewkesbury Borough Council.
 - The application Ref 15/00123/FUL, dated 12 March 2015, was refused by notice dated 11 December 2015.
 - The development proposed is establishment of floating pontoon mooring. Erection of decking, fencing and bunded storage tank.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The Council's reason for refusal relating to flood risk is on the basis that a change of use from business to residential is proposed. The appellant no longer seeks to use the decking area for residential use, and wishes to retain its business use. Accordingly I have removed reference to this aspect of the proposal in the description of development above and have determined the appeal on this basis.

Main Issues

3. The main issues are:
 - The effect of the proposal on the living conditions of nearby residents, with particular reference to odour, fumes, noise and disturbance;
 - The effect of the proposal on the character and appearance of the Tewkesbury Conservation Area (TCA); and,
 - Whether the proposal would comply with local and national planning policy which seeks to steer inappropriate development away from areas at the highest risk of flooding.

Reasons

Living conditions

4. The proposal comprises an area of decking enclosed by glass panels with a gangway that leads to two mooring platoons located within the river Avon.
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Shakespeare Court directly adjoins the decking area and is in use as residential apartments.

5. During my site visit I saw that the decking area extends across the riverfront of Shakespeare Court and includes seating, a pizza oven and hot tub. A number of balconies with windows serving habitable rooms at Shakespeare Court are located directly above and close to the decking area. I understand that the site has previously been used in association with a riverboat cruise business. However, as the Council note, this would have involved passengers entering and exiting boats and therefore noise and disturbance would not be prolonged.
6. In comparison, the decking area with seating, pizza oven and hot tub could allow a sustained period of activity close to the apartments at Shakespeare Court. In addition, I am concerned that odours and smoke rising from the pizza oven and wood burner would have a harmful effect on neighbours residing at the apartments above. I note some of the objections to the proposal are from neighbours at Nailors Court. However, objections from residents at Shakespeare Court are also before me and relate to noise, disturbances, smoke and odours from the decking area. These objections add further weight to my concerns regarding the proposal's impact on neighbouring living conditions.
7. I have also taken into consideration that the business use of the site would remain. However, irrespective of whether the site was in use as a domestic garden or for business purposes, the proposal would still enable a sustained and harmful level of noise, disturbance, odour and fumes close to residents at Shakespeare Court.
8. Therefore, I conclude that the proposal would have a harmful effect on the living conditions of nearby residents, with particular reference to odour, fumes, noise and disturbance. Consequently, the proposal does not meet the requirements of Joint Core Strategy (JCS) Policy SD15 which seeks to ensure development does not unacceptably harm the amenity of neighbouring occupiers.

Conservation area

9. I viewed the site from the public footpath along the opposite bank of the river Avon and also from the pedestrian footbridge. Owing to the modest scale of the decking and associated paraphernalia, the proposal did not appear prominent in the context of its surroundings. The use of glass and timber gives the proposal a lightweight and subservient appearance in relation to Shakespeare Court and surrounding buildings. In addition, the pontoon moorings and gangway are modest in scale and do not look out of place at a riverside setting.
10. Taken the above into account, I consider the proposal has not over developed the site, is well designed and has a neutral effect on the TCA as a whole. Therefore, I conclude that the proposal does not have a harmful effect on the character and appearance of the TCA. Consequently, the proposal meets the requirements of JCS Policy SD9 and saved Policy HEN2 of the Tewkesbury Borough Local Plan (TBLP). Combined, these policies require development to preserve the character and appearance of the TCA and make a positive contribution to local distinctiveness.

Flood risk

11. The appeal site is located within a Flood Zone 3a area which has a high probability of fluvial flooding. However, as the appellant has confirmed that the site would remain in business use, the proposal no longer involves the introduction of a 'more vulnerable' use as outlined in table 2, paragraph 66 of the Planning Practice Guidance. I also note that no objection has been raised by the Council or the Environment Agency to the external alterations in the context of flood risk.
12. Therefore, I conclude that the proposal complies with local and national planning policy which seeks to steer inappropriate development away from areas at the highest risk of flooding. Consequently, the proposal meets the requirements of JCS Policy INF3 and TBLP saved Policy EVT5. Combined, these policies seek to ensure inappropriate development avoids areas at risk of flooding and does not increase the level of flood risk to site occupants, the local community and the wider environment.

Other matters

13. I have considered concerns regarding the floating pontoon moorings. However, in the light of the Environment Agency granting flood defence consent, I am satisfied this aspect of the proposal is acceptable.
14. In addition, whilst concerns are raised regarding the fuel tank, the Council have raised no objection to this aspect of the proposal. As I have no reason to disagree with the Council's acceptance of this matter, I am satisfied the proposal is acceptable in this regard.

Conclusion

15. Whilst I have found no harm in relation to the proposal's effect on the character and appearance of the TCA and flood risk, these neutral factors are outweighed by the harm identified to the living condition of adjoining neighbours.
16. Therefore, for the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

B Bowker

INSPECTOR