
Appeal Decision

Site visit made on 28 February 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 24 March 2017

Appeal Ref: APP/P3040/W/16/3162194

Wistow Wharf, Main Street, Zouch, Nottinghamshire LE12 5EQ

- 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 J Champneys against the decision of Rushcliffe Borough Council.
 - The application Ref 16/01542/FUL, dated 7 June 2016, was refused by notice dated 11 October 2016.
 - The development proposed is described as retention of an existing container but modified by reduction in height and timber cladding.
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Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of a container used for the storage of items used in connection with the use of the site as riverside moorings at Wistow Wharf, Main Street, Zouch, Nottinghamshire LE12 5EQ in accordance with the terms of the application, Ref 16/01542/FUL, dated 7 June 2016, the plan numbered AT/C17.2 and the other plans submitted with the application, subject to the conditions in the schedule at the end of this decision.

Procedural matter

2. The container, which is the subject of the appeal, is present on site. As it is movable it is not a building as defined in the Town and Country Planning Act 1990. In addition, the description of the development that appears on the application form includes use of the word 'retention' which is not development. For these reasons, I agree with the appellant that a more accurate description of the development is 'use of land for the stationing of a container used for the storage of items used in connection with the use of the site as riverside moorings'. I shall therefore use this description in the determination of the appeal.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Application for costs

4. An application for costs was made by Mr J Champneys against Rushcliffe Borough Council. This application is the subject of a separate Decision.

Reasons

5. Wistow Wharf is located on the northern bank of the River Soar in between the sporadic development of riverside chalets and moorings associated with the
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- leisure use of the river. Given that the appeal site is located to the west of the cluster of buildings that form Zouch it is located within the open countryside rather than within this small village.
6. Within the open countryside policy EN19 of the Rushcliffe Borough Non Statutory Replacement Local Plan (NSRLP) requires that new development does not have a significant adverse impact upon the open countryside, landscape features or views. Policy EN20 of the NSRLP though, as an exception to its general policy of restraint, is supportive of development for outdoor recreation and other uses appropriate to the countryside. Policy GP2 of the NSRLP requires that new development is well designed. Whilst not part of the development plan the NSRLP is used for development control purposes. As policy EN20 supports sustainable rural tourism and leisure development which respects the character of the countryside, it is consistent with paragraph 28 of the National Planning Policy Framework ('the Framework'). Similarly, policy EN19 in seeking to protect the countryside and policy GP2 in requiring good design are consistent with the Framework. I therefore attach significant weight to these policies.
 7. The container which is the subject of the appeal provides storage for tools and equipment associated with the maintenance and use of the moorings at Wistow Wharf. It also stores solid fuel and sanitary chemicals for moored boats and contains meters for the electrical hook ups to the moorings. In my assessment, it is no larger than is reasonably needed for these purposes. Consequently, it is a facility that supports the leisure use of boats on the river. As the moorings are located within the open countryside the container needs to be located next to it.
 8. The River Soar in the vicinity Zouch weaves its way through an open level landscape of agricultural fields. The northern side of the river has a different character to the open fields of pasture present on the southern side of the river. Here, trees along the grassed river banks are interspersed with chalets, moorings and boats which gives it an attractive busy character and pleasant appearance.
 9. In this context, the utilitarian appearance of the green painted steel container with its ribbed sides detracts from the character and appearance of the area. The adverse effects caused in this regard are also apparent from Main Street owing to the container protruding above the height of the boundary fence. However, reducing its height would prevent it from being visible from the highway and, in my judgement, the poor appearance of the container could be addressed if it was suitably clad in timber. Both these improvements could be secured by condition. In my view, in combination with the softening effect of the three mature tall trees present in front of the container, this would result in the development complementing the character and appearance of the river and countryside in which it is located.
 10. Reference has been made to dismissed appeals lodged twenty years ago against enforcement notices requiring the removal, amongst other matters, of two timber sheds from the site. However, each application is assessed on its merits. I have not been provided with details of the sheds concerned and they would have been assessed against the development plan and national policy that has since been superseded. As a result, reference to these structures has not altered my findings in relation to this issue.

11. Taking all these matters into account, I therefore conclude that the development, subject to compliance with conditions, would complement the character and appearance of the area. It would therefore comply with policies EN20, EN19 and GP2 of the NSRLP and policy 10 of the Rushcliffe Core Strategy. Policy GP2 requires the protection of the character and appearance of a locality through high quality design that respects local design features.

Other matters

12. The container is located within Flood Zone 3 where there is a significant risk of flooding. However, as it is used for storage purposes associated with the use of the wharf and would not materially reduce floodplain storage, in flood risk terms the development is acceptable.

Conclusion

13. For the reasons given above, and having regard to all other matters raised, the appeal should be allowed.

Conditions

14. For the avoidance of doubt and in the interests of proper planning the use of the container needs to be restricted to the ancillary storage of equipment used in relation to the moorings. In order to improve the character and appearance of the container so that it is acceptable it needs to be lowered. I have required these matters by condition, revising the Council's suggested conditions where necessary to better reflect the requirements of Planning Practice Guidance.
15. The purpose of condition three is to require the appellant to comply with a strict timetable for dealing with external cladding in order that the development complements its countryside setting. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
16. Conditions have been suggested regarding granting temporary permission, additional landscaping and making the lower sections of the container flood resilient. In relation to a temporary permission, as Planning Practice Guidance makes clear, a condition limiting use in this manner when the development complies with the development plan, as it will in this case if the conditions attached to the permission are complied with, will rarely pass the test of necessity. For this reason, such a condition is unnecessary. In relation to landscaping, as the trees around the container will adequately soften its appearance once it has been clad and lowered further landscaping is unnecessary. In terms of flood risk, as the container is steel in the event of a flood its structure would not be harmed and no permanent damage would occur. A condition in relation to this matter is therefore also unnecessary.

Ian Radcliffe Inspector

Schedule

- 1) The use of the container shall be solely in connection with the ancillary storage of equipment used in connection with the moorings and for no other use.
- 2) Within two months of the date of this decision the container shall be lowered in height in accordance with the approved plans and shall thereafter remain at this lowered height.
- 3) The use hereby permitted shall cease and the container shall be removed within 31 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within one month of the date of this decision a scheme for the timber cladding of the elevations of the container shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within eleven months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.