



Appeal Decision

Site visit made on 11 April 2017

by Nigel Burrows BA MRTPI

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

Decision date: 06 June 2017

Appeal Ref: APP/A1910/X/16/3162885

The Old Boathouse, Castle Wharf, Off Bridge Street, Berkhamsted, Hertfordshire, HP4 2EB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr David Cowham against the decision of Dacorum Borough Council.
 - The application Ref 4/01902/16/LDP, dated 11 July 2016, was refused by notice dated 6 September 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as "*Internal alterations within The Old Boathouse to infill three existing openings with glazing and timber panels.*"
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development for which a certificate of lawful development (LDC) is sought (set out in the fifth bullet point above) is taken from part E of the appeal form. I have adopted this wording in preference to that given on the original application form, as it gives a more precise description of the proposal. The Council has described the proposal in a similar way and I shall deal with the appeal on this basis.
3. At the site visit, I requested the parties to confirm which drawings were before the Council when it reached its decision upon the LDC application. Clarification of the relevant drawing numbers was subsequently given in the Council's email dated 2 May 2017 – they are listed as 749/14 and 749/15 (received 15/7/2016): 749/LP1 (Location Plan); 544/07B (Original Approved Elevations); 749/08 (Existing Ground Floor). The Council says that a 1:200 site plan was also received, but not cited in the decision notice.
4. The Council also indicates the appellant's versions of drawing numbers 749/14 and 749/15 forwarded to the Inspectorate are different to those that were considered as part of the application.¹ For the avoidance of doubt, copies of the versions before the Council were attached to the email dated 2 May 2017.² The appellant's representative subsequently confirmed these are the correct versions for the purposes of this appeal.
5. The final submissions lodged on the appellant's behalf also confirm the notations on the drawings are incorrect insofar as they state the existing roller shutters on the building

¹ Albeit they had the same date and reference numbers

² Copies also accompanied the Council's appeal statement

would be retained. The appellant intends to remove these shutters if the infilling of the openings is carried out. I have borne this in mind in my consideration of the appeal.

Background

6. The site known as The Old Boathouse is situated at Castle Wharf, off Bridge Street within the Berkhamsted Conservation Area. The site consists of a modern three storey house with an attached single storey boathouse upon the frontage to the Grand Union Canal. The buildings are constructed in yellow facing brickwork and were permitted as part of a boatyard redevelopment. The boathouse has large arched openings on its façade³ which are enclosed by roller shutters, with a similar opening on the side elevation to the slipway.
7. The parties have drawn my attention to the extensive planning history of the site, including the grant of planning permission in 2011 (ref. 4/01070/11/FUL) for what is described as '*Construction of new boathouse with restored slipway incorporating one dwelling and separate detached dwelling with associated parking (Amended Scheme).*'
8. Condition 1 of the 2011 planning permission, in effect, removed permitted development rights for the construction of windows, dormer windows, doors or other openings (other than those authorised by the permission). Condition 2 removed further permitted development rights contained within Parts 1 and 2 of the Town and Country Planning (General Permitted Development) Order 1995. Condition 5 also required the boathouse and slipway to be used solely as a boatyard for commercial purposes. There appears to be no dispute between the parties that the 2011 planning permission was implemented.
9. The Council confirms that details required by the conditions imposed on the planning permission were discharged in 2012. During 2015 the Council refused to issue an LDC for works to the boathouse, namely '*Proposed glazing of existing window openings*' (ref. 4/02036/15/LDP). However, following further legal advice, the Council issued an LDC for the works in 2016 (ref. 4/00186/16/LDP). The works involved the provision of clear glazing to the three openings existing on the elevation of the boathouse facing the canal.⁴
10. The current proposal involves the insertion of glazing and timber panels into the three openings upon the façade of the boathouse that extends along the frontage to the canal.

Main Issue

11. The main issue in this case is whether the Council's decision to refuse the application for an LDC for the development described in the fifth bullet point above was well-founded.

Reasons

12. Section 55 (2)(a) of the 1990 Act states the following operations shall not be taken for the purposes of the Act to involve development of the land:

"... the carrying out for the maintenance, improvement or other alteration of any building of works which -

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

and are not works for making good war damage or works begun after December 5, 1968 for the alteration of a building by providing additional space in it underground; "

13. The appellant's case was initially predicated on the argument that the works involved internal alterations to the building because they would be behind the lowered metal shutters. However, that argument now falls away, given that the shutters are to be removed - the works involve alterations to the external appearance of the building.

³ Which, in this case is the principal front elevation of the building facing the Grand Union Canal

⁴ Whilst the parties refer to 'clear' glazing, it could more properly be described as 'frameless' glazing

14. Consequently, it is necessary to consider whether the insertion of the glazing and timber panels would materially affect the external appearance of the building. It is generally accepted that the changes in question must be visible from a number of vantage points and be material to the appearance of the building as a whole.⁵ Inevitably, a degree of subjective and aesthetic judgement will be involved in reaching a decision on this matter.
15. The boathouse is a prominent structure upon this side of the Grand Union Canal. Its presence is readily apparent to the users of the canal, to users of the towpath upon the opposite side of the canal and to local residents. As I have previously indicated, the elevation affected by the works is the extensive facade of the boathouse. One of its most notable features is the existence of the three arched openings that punctuate its façade.
16. I observed the extensive linear form and simple design of the boathouse (including the general absence of glazed openings) distinguish it from the attached dwellinghouse to the rear, despite their matching yellow brickwork. The boathouse generally conveys a commercial form and character, presumably reflecting the terms of the 2011 permission.
17. In my view the insertion of glazing and timber panels into the three openings would result in a material change to the existing facade of the boathouse. The relatively intricate pattern of the glazing, mullions, glazing bars and transoms would be reminiscent of domestic-style fenestration. The simple, unadorned commercial character of the boathouse would be lost. The outcome would be a material change to the external appearance of the building as a whole. Furthermore, this would be readily apparent from the public realm.
18. The appellant derives support from Counsel's opinion obtained in relation to the Council's decision to refuse the 2015 LDC application. In effect, the provision of clear glazing was not considered to involve development - as such, it was not caught by condition 1 of the 2011 permission. In any event, Counsel also considered the Council's construction of the condition was wrong; it was intended to prevent new openings, whereas the openings already existed. The Council says the condition should not be constructed so narrowly - breaking it down, it can be read that no windows should be constructed, other than those authorised. Be that as it may, a proposal to insert glazing and timber panels was not addressed in the opinion obtained from Counsel; I must therefore give it limited weight.
19. The appellant also cites guidance from East Hampshire DC and the internet concerning non-material amendments to planning permissions, together with guidance given to householders by Leeds CC concerning the need for planning permission for house improvements. However, I do not find this guidance to be of particular assistance in this appeal, not least because of the specific facts of the case before me and the relevant planning history of the appeal site. I have given this guidance limited weight.
20. I conclude the works involve building operations that would materially affect the external appearance of the boathouse. I further conclude the works constitute development for the purposes of section 55 of the Act. They require planning permission by virtue of section 57.
21. It is therefore necessary to consider whether planning permission would be granted for the works under the provisions of section 59 of the Act and Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
22. The appellant alleges the boathouse is an integral part of the attached dwellinghouse. It is suggested the proposed works meet the limitations within Class A, Part 1, Schedule 2 of the GPDO (which deals with the enlargement, improvement or other alteration of a dwellinghouse). However, the evidence before me suggests otherwise.
23. Condition 5 of the 2011 planning permission required the boathouse (and slipway) to be used solely as a boatyard for commercial purposes. There is no firm evidence before me to suggest the building has been occupied in breach of this condition, or that it may lawfully be used as an 'integral part' of the dwellinghouse as alleged by the appellant.⁶

⁵ *Burroughs Day v Bristol City Council* [1996] EGCS 126

⁶ At the site visit, it was also confirmed there is no internal linkage between the buildings

24. A further consideration is the nature of the planning unit (which is briefly addressed in the submissions from the Council). It is not uncommon for a variety of activities to be carried out within one unit of occupation. It will often be a question of fact and degree as to whether these activities constitute one planning unit in a mixed use, or separate planning units each with an individual primary use (according to the *Burdle* principle.)⁷
25. On the evidence before me, including the specific terms of the 2011 permission and the commercial nature of the building, I conclude on the balance of probability that it does not benefit from the permitted development rights available under Class A, Part 1 of the GPDO.
26. The appellant argues, in the alternative, that if the building is not part of the dwellinghouse then the works would still meet the limitations and conditions of Class H, Part 7 of the GPDO (which deals with the erection, extension or alteration of an industrial building or warehouse). As noted earlier, the Council considers the works are caught by condition 1 of the 2011 permission. However, it seems to me that the opinion of Counsel cannot be lightly dismissed. I also note the reason for the condition is '*In the interests of the residential amenities of the occupants of the adjacent dwellings*', which suggests that its main purpose is to exercise control over works affecting residents' living conditions.⁸
27. The Council argues that even if condition 1 does not bite, the works fail to comply with criterion (e) of paragraph H.1. – namely, the proposal is not permitted by Class H if '*any part of the development would be within 5 metres of any boundary of the curtilage of the premises*'. The appellant's representative is given to understand that property ownership can extend to the mid-point of a canal and infers this point will be checked. However, as matters currently stand, there is no firm evidence to contradict the Council's argument.
28. Furthermore, even if it could be shown that criterion (e) of paragraph H.1 was met, condition H.2.(e) also appears to be relevant to the proposal. This condition requires that, in the case of Article 2(3) land⁹, any alteration is constructed using materials which have a similar external appearance to those used for the building. In this instance, I consider the materials would not be similar and therefore the works would not comply with the condition. Any breach of the condition means the works could be vulnerable to enforcement action.
29. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged in this particular instance. In the circumstances, I conclude the Council's refusal to grant a certificate of lawful development was well-founded. The appeal therefore fails.
30. I have taken into account all the other matters raised in the representations, including the references to the original design of the boathouse that was permitted, but I find they do not alter or outweigh the main considerations that have led to my decision.

Nigel Burrows

INSPECTOR

⁷ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

⁸ Which does not appear to be the case here

⁹ Which includes conservation areas