

Appeal Decision

Site visit made on 1 August 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 30 August 2019

Appeal Ref: APP/Z3635/C/18/3212752

Land at The Orchard, Church Island, Staines-Upon-Thames TW18 4YE

- The appeal is made by Anthony Woodward under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 17/00262/ENF) issued by Spelthorne Borough Council on 21 August 2018.
 - The breach of planning control alleged in the notice is "Erection of a building on land".
 - The requirements of the notice are as follows: -
 - "1. Remove the entire building from the land.
 - 2. Remove all resultant debris from the land."
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g). Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting a breach of planning control.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the erection of a building on land at The Orchard, Church Island, Staines-Upon-Thames TW18 4YE, subject to the following conditions: -
 1. If within three months of the date of this decision the building on the land that is to be replaced by the building hereby approved has not been demolished and all the resultant debris removed from the land, the building hereby approved shall within six months thereafter be removed from the land until such time as the building to be replaced has been demolished and all the resultant debris has been removed from the land.
 2. The building hereby approved shall be used only for purposes that are incidental to the enjoyment of the use as such of the mooring at the land as a permanent residential mooring (including the use of the building for cooking and toilet facilities, storage space and temporary sleeping accommodation) and for no other purposes.
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Reasons for the decision

The appeal site and its surroundings

2. The appeal site is a plot of land on Church Island, which is an island in the River Thames that also contains houses, woodland and river moorings. The houses have ancillary outbuildings. A footbridge from the riverbank at Church Street leads to the island at a point near to the appeal site.
3. 'Daybreak', a converted sea-going barge registered as a National Historic Ship, has used the mooring at the appeal site since 1985. The Council granted a Certificate of Lawfulness relating to the use of the mooring as a permanent residential mooring on 19 August 2002. The appellant and his wife live on the barge, which is fully-equipped and has several berths.

The building

4. There has been a building on the land since at least 1985, providing amenities that include cooking and toilet facilities, storage space and temporary sleeping accommodation for use when the barge is away from its mooring, for example, when it is in dry dock or its return to the mooring is unavoidably delayed. The building which was there in 1985 became dilapidated and was replaced some twenty years ago by a building that provides the same facilities. This building will be replaced by the new building the subject of the enforcement notice, which will again provide the same facilities.

The appeal on ground (a) and the deemed planning application

5. The appeal site is in the Staines Conservation Area and in the Green Belt, and is at risk of being flooded by the river.
6. The Council state that the new building is not detrimental to the character and appearance of the Conservation Area and that it does not have any adverse impact on the Conservation Area. I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, in line with its published objectives, and I agree with the Council's conclusions. There are also no concerns about the effect of the building on the character and appearance of the appeal site itself or on neighbours' amenities.
7. The main issues in deciding whether to grant planning permission for the new building are whether it is (a) inappropriate development in the Green Belt or (b) inappropriate development in an area at risk of flooding. Planning policies and guidance relating to these issues are in the Spelthorne Borough Local Plan 2001 ("the Local Plan"), the Spelthorne Core Strategy and Policies Development Plan Document 2009 ("the CS&PDPD"), the Supplementary Planning Document 'Flooding', published by the Council in 2012 ("the SPD"), the National Planning Policy Framework 2019 ("the Framework") and the Government's current planning practice guidance ("the PPG").

The Green Belt

8. Policy GB1 of the Local Plan lists the uses that are "appropriate to the Green Belt". They include the replacement of existing dwellings, provided the new dwelling is not materially larger than the dwelling it replaces, but they do not

include the replacement of other buildings. Policy EN2 of the CS&PDPD contains similar provisions. These policies are now outdated, since paragraph 145 of the Framework allows for the replacement of buildings in general in the Green Belt, "provided the new building is in the same use and not materially larger than the one it replaces".

9. As stated in paragraph 4 above, the new building will be in the same use as the building it replaces. It is slightly larger than the one it will replace, since it has a floor area of 9.8m x 4.8m, compared to 8.2m x 3.5m, and a maximum height of 3m, compared to a maximum of 2.55m. I do not consider that this makes it "materially larger" within the meaning of the Framework, since the increases will not result in harm to the openness of the Green Belt or to the purposes of the Green Belt and will not harm neighbours' amenities or the character or appearance of the appeal site and its surroundings, including the Conservation Area.
10. I conclude on the Green Belt issue that the new building is not inappropriate development in the Green Belt.

Flood risk

11. The appellant's environmental consultants' flood risk assessment of October 2018 advises that the appeal site is at medium overall risk of flooding from the river. This assessment takes into account the long-term flood risk.
12. The proposals in this appeal do not fall into any category of development specifically identified in the planning policies and guidance relating to flood risk. In my opinion it is reasonable to regard them as minor development for the purposes of the Framework and the PPG, since they are comparable to householder development within the curtilage of a house that does not create a new dwelling. The SPD indicates that when Policy LO1 of the Local Plan is applied in relation to proposals for replacement buildings, the flood risk impact should at least be no worse.
13. The building to be replaced is a fixed structure and is known to have been flooded three times during its twenty-years' life, up to a maximum depth of about 1m. During these occasions, the barge continued to provide living accommodation at its moorings. The new building is designed to float in times of flood and to cope with the flooding of the appeal site up to a maximum depth of 2m, the building being attached to risers running on secure mooring posts and having extending service connections. If the barge was not at the mooring when there was a flood, a safe route off the island to higher ground would be available by crossing the footbridge and going up Church Street - about a two-minute walk.
14. The removal of the building to be replaced will increase flood-storage capacity in the area where it stands, but there may be little improvement on the whole in this respect, because the new building will still displace water when it floats and it will not be inundated unlike the building it replaces. I understand that in times of flood the flow of water across the appeal site is not great, because the site is on a backwater of the river and is protected by walls; because the new building will float it is likely to provide less resistance to any flows that do occur than the fixed building it replaces. Personal possessions will be much better

protected by being kept in a floating building rather than in one that may be inundated.

15. Taking all these factors into account, I do not consider that the new building is inappropriate development in an area at risk of flooding.

Overall conclusion on ground (a) and grant of planning permission

16. For the above reasons, I have come to the overall conclusion that there are insufficient reasons to withhold planning permission for the new building as a replacement building, subject to planning conditions without which permission could not be justified. These conditions are required in order to secure the removal of the building to be replaced within a reasonable period of time and to ensure that the new building can only be used for the purposes for which it has been provided. The conditions are set out in paragraph 1 above.
17. The appeal has therefore succeeded on ground (a).

The appeals on grounds (f) and (g)

18. In view of the success of the appeal on ground (a), the enforcement notice has been quashed. Grounds (f) and (g) no longer fall to be considered.

D.A.Hainsworth

INSPECTOR