



Appeal Decision

Site visit made on 23 November 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/A4520/W/21/3282918

Former Brigham & Cowan Dock Entrance 4, Long Row, South Shields NE33 1JA

E: 435921 N: 567561

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Mark Turnbull against the decision of South Tyneside Council.
 - The application Ref ST/0353/20/FUL, dated 21 May 2020, was approved on 15 March 2021 and planning permission was granted subject to conditions.
 - The development permitted is installation of floating pontoon and wave break, with access ladder.
 - The condition in dispute is No. 6 which states that:
The development hereby approved shall be used solely for the mooring of recreational leisure boats and for no other purpose.
 - The reason given for the condition is:
To prevent the development from being used for non-recreational leisure activities such as pleasure tour excursions and commercial fishing in the interests of safeguarding the residential amenities of the area from undue noise and general disturbance in accordance with South Tyneside Local Development Framework Policy DM1(B).
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The former Brigham and Cowan dock was split in two as part of the wider residential redevelopment of the surrounding area and the construction of the Long Row road. The road forms a dam between the non-tidal body of water to the east and the tidal river to the west. The dock is surrounded, and overlooked by, residential development to the north, east and south, whilst the western side of the dock provides open access to the River Tyne.
3. Planning permission was granted in March 2021 for the installation of a floating pontoon and wave break, with ladder access, at the former Brigham & Cowan dock entrance 4 at Long Row, South Shields. That permission was subject to a number of conditions, of which No. 6 is disputed and is the subject of this appeal.
4. The floating pontoon, wave break and access ladder would be located in the tidal area of the dock to the west of the Long Row dam. The floating pontoons would occupy part of the northern dock wall and the entire lengths of the eastern and southern dock walls. The wave break would form a partial barrier across the open mouth of the dock and provide a further length of floating pontoon. Mooring space for approximately 24 vessels would be provided

although the approved plan specified by condition 2 of the original permission indicates 20 vessels moored within the dock.

5. The disputed condition seeks to limit the development purely for the mooring of recreational leisure boats. Due to the proximity of existing residential flats and houses to the dock, the use of the floating pontoons for commercial fishing, pleasure tour excursions and commercial activities is necessary, the Council state, to safeguard the living conditions of occupiers of nearby residential properties from noise and disturbance associated with the wider use of the dock.
6. The main issue is therefore whether the disputed condition is reasonable and necessary in the interests of the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

7. Despite the appeal site's location in a former dock and in an area historically dominated by shipbuilding and heavy industry, the surrounding area is now predominantly residential in character. Long Row provides vehicle access to the residential area but is stopped up a short distance to the north of the appeal site, with through access restricted to pedestrians and cyclists.
8. The surrounding area is therefore somewhat off the beaten track and the residential setting is relatively peaceful. The appeal site is, however, located relatively close to the mouth of the river and the presence of river traffic is never far away; the site lies roughly midway between the Tyne Ferry terminals on the northern and southern banks of the river, whilst the cruise ferry terminal lies a short distance away on the opposite side of the river.
9. Whilst these factors will influence the local noise environment, they are likely to be largely transient features, even if the ferry service operates for a significant portion of the day from early morning to late evening. In contrast, the mooring facilities offered by the proposal would be a constant feature. Thus, the natural movement of the moorings on the water and nautical noises associated with boats would be longer lasting than sounds generated by passing boats and would introduce an additional noise source closer to the residential properties than is currently the case.
10. However, the disputed condition would be unlikely to address such constant background noise and sound sources. These noises and sounds are likely to be much the same, regardless of whether the vessels using the moorings are recreational leisure boats, charter fishing vessels or some other form of vessel.
11. Where the usage of the mooring may differ in these respects however, would be the comings and goings associated the moorings. In this respect, it was not unreasonable for the Council to seek to take the steps that they have in relation to the living conditions of residents who overlook the dock and their living conditions.
12. Although the level of use of the moorings will ultimately be dictated by its size, the appellant's list of connections, associated activities and possible uses is extensive, and all have the capacity to attract groups of people. In the context of a peaceful residential setting, the comings and goings associated with groups of people and those arriving for commercially-based activities combined with restricted parking and dropping off-arrangements close by, would be likely

to lead to an increased level of disruption and disturbance for local residents. The disputed condition is not therefore an unreasonable approach by the Council in seeking to balance the use of the moorings with consideration of the living conditions of nearby residents.

13. The appellant describes the disputed condition as being abnormal in relation to a marina use, but the appeal scheme merely seeks permission for mooring purposes with no provision for facilities or services more commonly provided by a marina. It is also stated that the condition's restrictive nature would restrict the viability of the operation, but no further evidence has been submitted regarding the effect of the condition on the viability of the moorings.
14. I have carefully considered the benefits that the proposed moorings would provide to the local and river activity-based communities. I have also noted that marina and mooring facilities on the southern side of the river are limited and that it would provide an alternative to accessing those at Royal Quays on the northern side of the Tyne. For recreational leisure craft users, the disputed condition would not negate those benefits and I have not been presented with sufficient compelling evidence to demonstrate that the operation of the moorings would be unviable as a consequence of the disputed condition. Nor am I persuaded, on the basis of the evidence before me, that conditions would be sufficient or provide adequate certainty as to the operation of the moorings going beyond recreational leisure craft.
15. Policy DM1(B) of the Council Development Management Policies seeks to ensure that all development is acceptable in relation to any impact on residential amenity. For the reasons I have set out above, I am satisfied that with the application of the disputed condition, the approved scheme would ensure that the use of the former dock for recreational leisure craft mooring facilitated by the floating pontoons, wave break and ladder would have an acceptable impact on the residential amenity and living conditions of occupiers of surrounding residential properties. The disputed condition is therefore necessary and reasonable, and otherwise satisfies the tests of conditions set out in the National Planning Policy Framework, in the interests of the living conditions and residential amenity of occupiers of nearby residential properties.

Other Matters

16. It has been suggested by the appellant that the matter of a condition to restrict the use of the mooring had not been discussed between the parties during the course of the application prior to the publication of the Planning Committee report. I have no other evidence before me to suggest whether or not that might have been the case, but that is a matter between the parties and not for me to consider as part of this appeal.

Conclusion

17. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR