



Appeal Decision

Site visit made on 28 June 2022

by Christina Downes BSc DipTP MRTPI

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

Decision date: 18th July 2022

Appeal Ref: APP/L3815/W/21/3289832

Chichester Marina, Birdham, West Sussex PO20 7EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Premier Marinas Ltd against the decision of Chichester District Council.
 - The application Ref BI/21/00833/FUL, dated 16 March 2021, was refused by notice dated 29 June 2021.
 - The application sought planning permission for demolition of three workshops/sheds for the comprehensive redevelopment of the south-west area of the marina comprising four purpose built buildings including marine related workshops, offices, storage, reprovision and extension of the retail (chandlery) and a cafe/restaurant together with an additional 23 car parking spaces, boat parking and storage and appropriate landscaping without complying with a condition attached to planning permission Ref BI/12/00475/FUL, dated 28 June 2012.
 - The condition in dispute is No 3, which states that:
 - *a) Buildings A, B, and C shall be used for marine related uses only (with ancillary sales). These uses can include boat brokerage or B1, B2, B8; and for no other purpose (including any other purpose in Class B1, B2, B8 or A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Order 2005 or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order).*
 - *b) Building D shall be used for
 - i) B1, B2, B8, marine related uses only (with ancillary sales) and/or
 - ii) a chandlery (to a maximum of 468 sqm) and/or
 - iii) a mixed use cafe/restaurant within use class A3/A4 (to a maximum of 244sqm) and for no other purpose (including any other purpose in Class B1, B2, B8 or A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Order 2005 or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order) and notwithstanding any change permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended).*
- The reason given for the condition is:
 - *To accord with the terms of the application and to retain the provision of accommodation for marine related uses in compliance with policy C7 of the Chichester District Local Plan First Review 1999.*

Decision

1. For the reasons given below, the appeal is dismissed.

Reasons

2. Chichester Marina is on the eastern side of the Chichester Harbour Area of Outstanding Natural Beauty (the AONB). The 4 buildings in question are in the south-western corner of the marina site and were completed in 2014. Each is subdivided into individual units of varying size and there is a café at the northern end of Building D. The effect of the planning condition is that the units are required to be used for marine related purposes with the added option of a chandlery and café/ restaurant in Building D.
3. The Appellant seeks greater flexibility to allow the units to be used for non-marine related purposes. It indicates that its other marina enterprises do not have similar restrictions and that in a competitive environment a greater diversity of offer is necessary. It considers that marine-related enterprises no longer necessarily require a waterside location and that in the absence of demand, much of the floorspace is, or will become, vacant. As I understand it, the Appellant wishes to continue to offer such services but also to diversify for the benefit of existing customers, berth holders and the wider community.
4. The condition was originally imposed to safeguard waterside sites for boating related facilities in accordance with Policy C7 in the *Chichester District Local Plan First Review 1999*. This was one of a raft of policies relating to the AONB but is no longer extant following adoption of the *Chichester Local Plan: Key Policies 2014-2029* (the LP). The adopted plan includes policy 43, which relates to the AONB. This is not specifically referred to in the Council's reason for refusal, but it is relevant because, amongst other things, it seeks to ensure that development accords with the policy aims of the *Chichester Harbour Management Plan* (the MP). The *Birdham Neighbourhood Plan* (the NP) seeks to discourage proposals that would adversely affect the businesses related to the marine heritage of Chichester Marina.
5. The MP is a non-statutory document and is referred to in the Council's decision. Policy 13 of that document seeks to ensure that Chichester Harbour continues to be a place where marine businesses prosper. It identifies their importance to the local economy and the historic environment of the harbour, which is one of the special qualities of the AONB. The concern is that the prosperity of such businesses is cyclical and that once they cease to operate, they may never return. Similar points are made in the *Chichester Harbour Area of Outstanding Natural Beauty Supplementary Planning Document* (the SPD). This explains why marine-based enterprises are particularly important to Chichester Harbour and its AONB and provides the justification for their retention if at all possible in this particular case.
6. The Appellant points to changes in the level of demand and the way that marine enterprises have adapted to become more footloose, no longer necessarily needing a waterside location from which to operate. No doubt that will be the case with some marine businesses, but no evidence has been provided to be satisfied that there is a general long-term trend to move away from a location that has traditionally provided a home to such uses. The Appellant has also raised the effects of COVID-19 as a reason that some marine businesses have been unable to continue operating. Whilst the pandemic undoubtedly has had an adverse effect, this relates to a wide range of sectors and not specifically marina-related enterprises. It is also relatively recent, and the longer-term effects are still not clear.

7. In order to consider how the units in question are faring it is relevant to look at levels of vacancy and the marketing that has been undertaken to secure marine-based tenants. The Council's decision refers to Appendix E in the LP, which relates to marketing requirements in connection with various policies. These do not include policy 43 and I am not convinced that the provisions of Appendix E are particularly pertinent in the present case. Of more relevance is the MP and the marketing expectations in the planning principle PP02.
8. At the time of my site visit, 4 units were vacant. The Council accepts that a satisfactory period of marketing has been undertaken for 2 of them, unit D7 and unit A2. The former has been empty since February 2019 and is over twice the size of the other units, being about 600 m² including the mezzanine. Unit A2 was vacated in April 2020, which was just after the first COVID-19 lockdown. It is understood that a tenant has now been found, albeit that this operator is concerned about whether its business would fully accord with the terms of the planning condition. It is not clear at the moment whether this occupation will take place. Unit C5 has been vacant since January 2021. It is appreciated that the Council's Economic Development Officer supports the establishment of a gin distillery here, but it does not appear that there has been any attempt to attract a marine-based occupier. The other vacancy is unit D5, which has only been empty since March 2022. I observed a letting board outside, but insufficient time has elapsed to conclude that a suitable tenant could not be secured.
9. The Appellant refers to the tenant of unit C3a who has triggered a break clause and 4 others where the leases expired in April 2022. However, none of these units were vacant at the time of my visit and there is no information that the leases have not been renewed or that marketing is being undertaken. In these circumstances it seems to me that apart from unit D7 and possibly unit A2, there is insufficient evidence to justify the Appellant's assertion about long term vacancy indicating a lack of demand. I can appreciate that such vacancy is not beneficial to the vitality and viability of the marina enterprise as a whole or this group of business uses in particular. In such circumstances there could therefore be justification for adopting a more flexible approach for unit D7 and possibly unit A2 in accordance with PP02 in the MP. This suggests that a mix of marine related business use and other appropriate commercial or employment uses should be explored. The Appellant in its representations advocates such a mix and indicates that there are many tenants to whom it would be of interest. Unit A2 was specifically mentioned in this respect.
10. The proposal as it stands would allow any of the units to be operated as B2, B8 and E class¹ uses without any marketing at all. I acknowledge that the likelihood is that the present operator would wish to retain some marine-based uses to support the main operation of the site as a marina. However, the extent of change would be vested in the business decisions of the Appellant rather than the public interest. The MP and SPD indicate that once a change has occurred, a marine-based use is unlikely to be re-established. In any event, the business model may change over time and a greater diversity of offer may be sought to attract a wider customer base. Furthermore, planning permissions run with the land, and it is not unreasonable to surmise that the Appellant may not be the owner in perpetuity. The proposed condition would

¹ These classes of use reflect changes to the Use Classes Order when it was amended in 2020.

allow a wide range of uses that have no connection to Chichester Harbour, the waterside or the AONB.

11. For all of the above reasons, I conclude that the condition is reasonable and necessary and that its variation as proposed would be detrimental to the local economy and fail to conserve the character of the Chichester Harbour AONB. This would be contrary to policy 43 in the LP and policy 23 in the NP, which seem to me to be the most important policies in this case. The proposal would also fail to accord with the policy and principles in the MP and the SPD, which are material considerations to which I give significant weight in this case.
12. I have had regard to the fact that the Appellant is clearly an experienced and successful operator of marinas and boatyards who is concerned about the long-term future and viability of Chichester Marina. I am also aware that other of its operations do not have similar restrictions in place and that the level of vacancy there is relatively low in terms of floorspace. However, Chichester Harbour is a unique estuarine AONB environment. It therefore justifies a rather different degree of planning protection to the Appellant's other marina sites such as Port Solent. It should also be pointed out that unit D7 is a much larger unit and therefore accounts for a relatively large proportion of the overall vacant floorspace. The Appellant implies that unless the condition is varied as proposed there could be a significant economic impact on its business. However, there is no specific evidence to be satisfied that its viability is under threat or that the vitality of the marina overall would be significantly impacted.
13. It is acknowledged that no external changes would necessarily be required to the buildings. However, the importance of the marine-based enterprises relates to the character of the AONB. There is no allegation that the natural beauty of the landscape would be harmed by the appeal proposal.
14. The Appellant has referred to a number of other development plan policies that would not be offended, including policies 26 and 46 in the LP. Reference is also made to paragraph 81 of the National Planning Policy Framework, which supports economic growth and local business opportunities. As already commented, there is little to indicate that the proposed variation to the planning condition is required to meet these objectives. A number of different legal judgements has been raised but, for the reasons I have given neither these nor the other material considerations cited by the Appellant indicates that the decision should be made otherwise than in accordance with the development plan.
15. I have considered all other matters raised in the written representations but found nothing to change my conclusion that the appeal should not succeed.

Christina Downes

INSPECTOR