



Appeal Decisions

Site visit made on 3 August 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal A Ref: APP/Z1775/X/22/3299090

The Boathouse, 4A Broad Street, Portsmouth PO1 2JE

- 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 George Pounds against the decision of Portsmouth City Council.
 - The application Ref 22/00228/CPL, dated 17 February 2022, was refused by notice dated 29 April 2022.
 - 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 are described as: Internal building works to existing ground floor undercroft.
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Appeal B Ref: APP/Z1775/W/22/3291932

The Boathouse, 4A Broad Street, Portsmouth PO1 2JE

- 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 George Pounds against the decision of Portsmouth City Council.
 - The application Ref 21/01095/HOU, dated 22 July 2021, was refused by notice dated 11 November 2021.
 - The development proposed is described as: External alterations (including installation of roller shutter to north-east elevation) and installation of 'Versadock' pontoon system with retractable gangway (to rest on existing slipway at low tide).
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Decisions

1. Appeal A and Appeal B are dismissed.

Preliminary Matters

2. The Planning Practice Guidance confirms that planning merits are not relevant at any stage in an LDC application or the appeal process for such an application. So I have not taken any planning merits into account for Appeal A.
3. In effect, the proposal in each appeal is the same, with the exception of the Versadock pontoon system and retractable gangway proposed in Appeal B.
4. At the time of my site visit, a piece of white tarpaulin had been hung across a substantial part of the otherwise open aperture on the northeast side of the boathouse. But I am not satisfied this constitutes part of the building and, in any event, it does not feature on any of the drawings upon which my decisions are based. So I have not taken it into account in either appeal.

Main Issues

5. The main issue in Appeal A is whether the Council's decision to refuse the LDC application was well-founded or not.
6. The main issue in Appeal B is the effect of the appeal development on the character and appearance of the area, including the Old Portsmouth Conservation Area and its setting.

Reasons

Appeal A

7. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations in question.
8. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the operations described in the application would be lawful if begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
9. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
10. The appeal building (No 4A) is a dwellinghouse with a surviving integral boathouse. The boathouse is open on to the water in Camber Quay at the rear. No 4A is set behind No 4, which fronts Broad Street. An open passageway runs down the side of No 4 to provide access to a small private courtyard between No 4 and 4A. Adjoining this courtyard is a void underneath the first floor of No 4A. Within this void is the pedestrian entrance to No 4A and its boathouse.
11. Adjacent to the passageway to No 4A is a public footpath called Feltham Row. In broad terms, Feltham Row runs along the side of No 4 and No 4A and then around the south side of Camber Quay to White Hart Road. As such, the appeal building appears prominent from Feltham Row and there are clear public views of the boat entrance to the boathouse from this footpath. The aforementioned courtyard and void of No 4A may also be seen from Broad Street and Feltham Row, over the brick boundary wall which runs between Feltham Row and No 4/No 4A.
12. The application form is clear that the proposal consists of building operations only, ie no change of use is proposed. The drawings provided indicate that, within the envelope of the boathouse, the existing slipway would be in-filled and the floor raised to facilitate its conversion to what is described as a 'studio'. The written submissions clarify this would be additional usable living accommodation.
13. Within the building threshold the slipway slope would be retained. A roller shutter door is proposed, facing northeast, positioned behind the existing beam above the open aperture of the boat entrance to the boat house. Behind this roller shutter door, a glazed balustrade with metal framing and glazed sliding doors are proposed.

14. Within the boathouse a WC and store would be formed. The open aperture of the void to the courtyard would be enclosed by proposed glazed entrance doors, accompanied by a further roller shutter.
15. The application has been made on the basis that the proposed works do not constitute development. The meaning of development is set out in section 55 of the 1990 Act as follows:

"(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A) For the purposes of this Act "building operations" includes—

(a) demolition of buildings;

(b) rebuilding;

(c) structural alterations of or additions to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) 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 5th December 1968 for the alteration of a building by providing additional space in it underground;"

16. Based on the information provided, it is the exception contained within section 55(2)(a)(i) of the 1990 Act that is relied on by the appellant as to why the proposal does not constitute development and would therefore be lawful.
17. The Council's assessment focuses on the changes proposed to the northeast side of the appeal building. But it is clear that its decision was not based only on those changes.
18. The proposed northeast facing arrangement of a roller shutter (open or closed), raised floor, balustrade and glazed doors would present entirely new external features to this elevation of the appeal building. Whilst they would be less conspicuous, the same would also be true of the proposed glazed doors and roller shutter on the southwest elevation of the appeal building. On both elevations, a substantial open aperture would, to some extent, become closed-off by new fenestration. So I am not satisfied that the works proposed affect **only** the interior of the building.
19. The appellant states that the proposed works are wholly internal to the building envelope and this same point is annotated on the drawings. But this is not the test of section 55(2)(a)(i), set out above.

20. In light of the way the appellant has argued his case, I have considered whether the proposed works may alternatively comply with the exception contained within section 55(2)(a)(ii) of the 1990 Act. But as a matter of my planning judgement, the changes on either elevation (northeast or southwest) would be easily discernible from normal vantage points and would be material to the appearance of the building as a whole. So section 55(2)(a)(ii) does not assist the appellant either.
21. The appellant accepts that permitted development rights for the appeal building have been removed and there is no evidence any grant of planning permission exists for the proposed works. So there is no other reason for me to consider that the proposed works would be lawful.

Appeal B

22. The appeal building is within the Old Portsmouth Conservation Area. So it constitutes part of a designated heritage asset and there is a statutory duty upon me under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
23. The appeal building is also locally listed. Based on the Council's Local List of Buildings, updated May 2021, this means that the building is of local interest in the city and positively contributes to the character and distinctiveness of the local historic environment. I have no reason to disagree with this assessment, notwithstanding the appellant's concern about the building's inclusion on this list, a matter which is not before me in this appeal.
24. Whilst now in residential use, the appeal building is a former boathouse. This historic function is obvious from the conspicuous combination of the building's open aperture on to Camber Quay and its surviving slipway for the berthing of boats. This arrangement, which the Council identifies as 'rare', is key to understanding and interpreting the historic use and, in my judgement, constitutes a fundamental part of the architectural and historic significance of this building in its maritime setting, as part of the conservation area.
25. The appeal scheme would result in the loss of this arrangement, by reason of the in-filling of the slipway and raising of the floor and the installation of the glazed sliding doors, balustrade and roller shutter. This would be harmful to the character and appearance of the area, including the Old Portsmouth Conservation Area, its setting and its significance. I give this issue considerable importance and weight in my decision.
26. The building's significance is not limited by any lack of specific attention in the Council's Guidelines for Conservation. The appellant states that the Council is free to erect a plaque on the quay wall railings explaining the building's significance. But no such proposal is before me as part of this appeal scheme and, in any event, I am not satisfied such a proposal would compensate for the loss of significance which would occur.
27. Harm to the character and appearance of the area, including the Old Portsmouth Conservation Area, would also arise from the installation of the Versadock pontoon system. This is a substantial, utilitarian product, that would contrast starkly with the historic character of the immediately adjacent appeal building, to which it would be attached.

28. I appreciate that other similar products may exist within Camber Quay. But there is no evidence that they lawfully exist and even if they do, I am not satisfied that they are positioned immediately adjacent to a prominent historic building, as is the case here. I appreciate that the Versadock could be omitted from the application. But this would make no difference to my overall conclusion on Appeal B and it makes no difference whether a marine licence has been granted for it or not.
29. My attention has been drawn to existing roller shutters installed on Broad Street, including at Nos 4 and 6. But from my observations at my site visit, these are garage doors and so I do not find them comparable to the appeal development before me, which would result in the loss of a conspicuous historic arrangement.
30. The appellant suggests that Historic England are not concerned about the effect of the appeal development on the significance of the conservation area. But there is no evidence Historic England were consulted by the local planning authority on this specific planning application or that they even needed to be, given that local conservation advice was clearly available to the Council. So I do not find this helps the appellant's case.
31. My attention has been drawn to other development approved in the area. But based on the information provided, I do not find the schemes cited comparable to the appeal development before me. It is said that the Council has willingly allowed other heritage assets to be lost or compromised by development of a far greater scale and significance. But I am not satisfied this is a good enough reason to allow the appeal development.
32. The appellant states that it is "unreasonable and inhumane for the Council to require an open maw to be perpetuated" and that it was only the preference of the owner in 1992 to retain the internal slipway that led to it being retained. But the appellant would have acquired the appeal building with the open maw.
33. Moreover, there is no evidence of any proposal for its removal at the relevant time for the Council to have expressed an opinion on it then, or for the Council to have felt the need to specify a conservation reason for it to be retained, when considering the previous planning applications referred to by the appellant.
34. Given the size and scale of the appeal development within the context of the conservation area as a whole, I consider it causes less than substantial harm to this designated heritage asset. Nevertheless, any harm to its significance should require clear and convincing justification and in accordance with paragraph 202 of the National Planning Policy Framework (the Framework), I must weigh the harm against the public benefits of the appeal development.
35. The appellant states that the works could improve the area's flood defences, as it is said the slipway is a conduit for water in the direction of Broad Street and water seeps beneath side doors from the boathouse into Feltham Row. But there is no evidence that the appeal scheme would result in any appreciable public benefit in this regard. Even if it did, I am not satisfied the appeal scheme is the only means by which such a benefit could be achieved, to justify the harm identified above.

36. I fully appreciate that the ground floor of the appeal building may be subject to flooding. But this is not surprising given its relationship to the quay and the evidence clearly indicates that the habitable rooms of the dwelling are at first floor level. So this does not justify the appeal development either.
37. The appellant states that the appeal development would improve the thermal efficiency of the building (and associated policies have been cited). I have no doubt this would be the case. But there are other means by which the relevant habitable accommodation may be insulated from the effect of the boathouse arrangement beneath it, without resulting in the harm identified above. Moreover, it is not credible to expect space occupied by a boathouse slipway, opening on to water and designed for water to enter, to be any warmer than the space outside it.
38. According to the appellant, the appeal scheme would improve the security of the building. I have no doubt it would prevent access to inside the building, particularly from Camber Quay, when compared to the current arrangement. But I am not satisfied the appeal development is the only means by which the appeal building may be made secure, to justify the harm identified above. In any event, in my view, the addition of the Versadock system could facilitate access to the northeast entrance to the building, significantly limiting any security benefit of the appeal scheme.
39. As I saw on my site visit, debris collects on the water outside the appeal building. The appellant considers that the Versadock would help with its removal as it would provide safer access than the existing slipway. But I am not satisfied this is a good enough reason to allow the appeal development in light of the harm identified above. In any event, debris may be removed by other means and there is no evidence that allowing the appeal development would mean that the removal of floating debris could be secured as a public benefit of the scheme.
40. Taking all of the above into account, I am not satisfied there are any public benefits of the appeal development of sufficient weight, individually or cumulatively, to justify a grant of planning permission, in light of the harm identified above.
41. I conclude the appeal development harms the character and appearance of the area, including the Old Portsmouth Conservation Area and its setting. This does not comply with Policy PCS23 of the Portsmouth Plan or the historic environment policies of the Framework.
42. In respect of other matters, I have taken into account that neighbours have written in support of the appeal development and that it would create a more comfortable and usable recreational space for the appellant. But these are not good enough reasons for me to allow the appeal, in light of the harm identified above.
43. I have taken into account the view that the proposal does not prevent the storage of boats in the form of a canoe or a kayak. But this is not a benefit of the scheme. Moreover, from the information provided, the appeal development would only facilitate the storage of very small vessels that could be easily carried. I am not satisfied this constitutes boat 'berthing' for the purposes of Condition 3 of planning permission A*14277/AC, granted on 17 June 1998, that my attention has been drawn to.

44. Submissions have been made in respect of the human rights of the appellant as incorporated by the Human Rights Act 1998. But the rights cited are qualified rights rather than absolute rights. Having regard to the legitimate and well-established planning policy aims to protect the character and appearance of the area, in this case, I consider that greater weight attaches to the public interest. Dismissal of Appeal B is therefore necessary and proportionate and would not result in a violation of the human rights of the appellant.

Conclusions

45. Appeal A: For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of: '*Internal building works to existing ground floor undercroft*', was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
46. Appeal B: For the reasons given above the appeal is dismissed.

L Perkins

INSPECTOR