



Appeal Decision

Site visit made on 15 June 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

Appeal Ref: APP/U5360/W/22/3300493

Columbia/Brunswick Wharf, Laburnum Street, London E2 8BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Antepavilion Ltd against the Council of the London Borough of Hackney.
 - The application Ref 2022/0779, is dated 4 April 2022.
 - The development proposed is temporary display of five floating model sharks located in the site's mooring area alongside the north west canal wall of Columbia/Brunswick Wharf for a duration of 9 months.
-

Decision

1. The appeal is allowed and planning permission is granted for the temporary display of five floating model sharks located in the site's mooring area alongside the north west canal wall of Columbia/Brunswick Wharf for a duration of 9 months at Columbia/Brunswick Wharf, Laburnum Street, London E2 8BD in accordance with the terms of the application, Ref 2022/0779, dated 4 April 2022, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Drawing Number 2022-SHK-01; Drawing Number 2022-SHK-02; and Design and Access Statement.
 - 3) The development hereby permitted shall be removed in its entirety and the site restored to its original condition within 9 months of the date of its commencement.
 - 4) No noise shall emanate from the development hereby permitted outside the hours of 0800 to 2100 on any day.
 - 5) Prior to the installation of the works hereby permitted, full details of an Art Installation Management Plan shall be submitted to, and approved in writing by, the Local Planning Authority, and the works shall be carried out in accordance with the approved details. The Art Installation Management Plan shall include details of: The installation methodology; The proposed fixings to be used to attach the structures to the barge, and to attach the barge to the adjacent wharf; Maintenance of the structures while in situ; Any

proposed lighting, music or verbal commentary to accompany the art installation; and the removal methodology.

- 6) The art installation shall be removed outside the bird nesting season (February-September).

Procedural Matter

2. This is one of a number of appeals at the site that I am determining. Whilst in each there are themes that are common to more than one of these cases, they are determined individually on their own merits. I carried out the site visit for all of these cases on the same day.
3. The appeal is made against the Council's failure to determine the application within the statutory time frame. However, in its statement of case the Council states that it would have refused planning permission, had it determined the application within the statutory time frame, and set out the reasons that it would have given for refusal.
4. The parties were consulted on the changes made by Government to its National Planning Policy Framework on 19 December 2023. Neither party found the changes to be of any consequence to the appeal and made no further comment on the matter. I have taken the changes into account in my decision.

Main Issues

5. In the light of the reasons that the Council gave, the main issues are the effect of the development on the historic environment, in particular the character and appearance of the Regent's Canal Conservation Area ('RCCA'), and the setting of the Grade II listed Haggerston Bridge.

Reasons

6. The appeal site identified in red on the site location plan submitted with the application, is a complex of buildings that are bounded by Laburnum Street to the south, Haggerston Road to the west, Regent's Canal to the north and relatively recent residential development to the east. The sharks would be positioned in the canal basin in front of the buildings at the west end of the site, close to Haggerston Bridge.
7. The Regent's Canal cuts through North London, running from the Grand Union Canal at Paddington to the Thames at Limehouse. The length that runs through Hackney has been designated as the Regent's Canal Conservation Area ('RCCA'). The RCCA is a linear feature that closely follows the banks of the canal, widening in places to include buildings and other features along its length; it is a designated heritage asset of great significance. Brunswick and Columbia Wharves and the more recent residential development to their east are included in the RCCA.
8. Decision-makers have a statutory duty¹ to pay special attention to preserving or enhancing the character or appearance of conservation areas.
9. The Regent's Canal Conservation Area Appraisal, October 2007, describes the varied townscapes in sections of the RCCA along the length of the canal within Hackney Borough. The section from Queensbridge Road Bridge to Kingsland

¹ Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Road, in which the site lies, is described as being more mixed in character with surviving industrial wharves to both the south and north banks. These include Brunswick and Columbia Wharves. However, save for a photograph of Brunswick Wharf as it was then, there is no description of the site. Its list of 'Buildings of Townscape Merit' does not include the collection of buildings at the wharves.

10. In his decision into enforcement Inquiry appeals² at Brunswick and Columbia Wharves, the Inspector refers to a Conservation Area Review, published by the Council in 2017. Although I was not supplied with a copy of this, he quotes from it in his decision. Those quotes identify that the earliest buildings are at the east side of the site and that those at the western end of the site are "of little historical merit". It is a site that the Review describes as being "semi derelict" and identifies it as having potential for new uses and or redevelopment.
11. Although not grand, the buildings at the east end of the site reflect the late C19th/early C20th and are of architectural and historic interest. Those at its west end date from the 1950s to 1960s, and are unprepossessing and lack interest. However, although suffering from graffiti like others in the area, they were in use and I would not describe them as being semi derelict.
12. The canal in this area cuts through a densely developed part of the city. It provides an important and well-used recreational area that has a distinctive ambience, with many architectural features that provide echoes of its heyday, including its towpath, wharves, locks and bridges. It has great significance in both historic and architectural terms. I agree with the Inspector's view in the enforcement Inquiry decision that the earliest buildings on the site, at its eastern end, contribute to this significance. Conversely, I find that those at the western end contribute very little.
13. Haggerston Bridge is a Grade II listed structure, described in the statutory list as having a single span elliptical arch, that is built of brick with stone. Whilst small, it makes a significant contribution to the area both individually and cumulatively with the other features along the canal. It adds much to the local townscape. It is a designated heritage asset of much significance. I have a similar statutory duty³ to have special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess.
14. The glossary to the Framework defines the setting of a heritage asset as "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."
15. Haggerston Bridge forms something of a pinch point in the canal, which widens on its east and west sides. It is proposed to display the sharks very close to the eastern side of the bridge, in the wider 'basin' in front of the buildings at the western end of the wharves complex. Within the basin in front of the western range of buildings, I saw a barge with a large inflatable on it - an installation known as 'AirDraft', a fairly large flat pontoon and a single shark on a pontoon.

² PINS reference numbers APP/U5360/C/19/3242430 and APP/U5360/C/20/3260019

³ Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

16. The proposed sharks would lie within the setting of Haggerston Bridge. A mooring line would run from a barge that is moored here to a ring on the bank, close to the bridge. The five sharks, two Great Whites, a Miniature Megalodon, a Tiger Shark and a Megladon, would be set on pontoons of various sizes attached to this line. They would appear to be breaching from the canal. Taking into account the freeboard element of the pontoons, the sharks would project from the water by between 2.05m and 5.05m.
17. In the enforcement Inquiry appeals decision, the Inspector found that the planning unit for the development at Columbia and Brunswick Wharves included the area of the canal in which the sharks would be moored. Amongst the terms of his decision, on the second of the enforcement notice appeals, he granted planning permission for a mixed use of that site which included the display of art installations.
18. The Council sets out that, in its view, whilst the change of use was allowed it did not grant permission for individual displays which would be operational development. I am not charged with making a finding on that last point, which would be a matter for a certificate of lawfulness application. However, I have a planning proposal before me that I have to determine on its individual merits. Even were the Council's position to be correct, the fact that planning permission was granted for the display of art installations here is a strong material consideration.
19. Sharks had previously been displayed in this part of the canal. The Council took out an injunction against their display and on 18 September 2020 the High Court upheld this. Its decision required their removal and prevented the use of the water here for the display of sharks unless or until express planning permission was granted for it. The Appellant suggests that the Council's actions are an attack on the display of art. I do not find this to be the case; the Council has based its actions on planning reasons that raise pertinent questions about the sharks' effects on the designated historic environment. It does not take a view on the artistic merits of the sharks.
20. As the canal between Haggerston Bridge and the Queensbridge Road bridge is straight, the sharks would be seen from along this length of the canal. Beyond the Queensbridge Road bridge they would become less discernible, due to distance involved and the bridge itself. From the west, due to their position in the basin, they would not be seen until one was very close to, or even under, Haggerston Bridge.
21. The sharks would not interfere with direct views of Haggerston Bridge from the main public vantage point, the towpath on the north bank of the canal. From there, they would be seen against the utilitarian buildings at the western end of the site. The sharks would briefly interrupt public views to the bridge from any craft on the water that was close to the south bank, and would be within private views to the bridge from Columbia and Brunswick Wharves themselves.
22. I agree with the Council that the display of sharks would be alien to the area; it could be nothing else on an urban freshwater canal. However, this is part of the drama of the installation. It is intended to catch the eye, provoke thought and entertain. For those travelling from the west, the sharks would be largely unseen until the last minute and the sense of theatre would be especially great.

23. This Regency-era canal has been subject to considerable change over the years, including the erection of buildings of varying quality. The grant of planning permission for the use of the land and buildings at the Wharves following the enforcement Inquiry, including the use of the water for art installations, is simply another chapter in the history of this part of the canal. That decision had an effect on the character and appearance of both the site, the setting of Haggerston Bridge and, to a degree, the wider RCCA. When he allowed for the display of art installations here, the Inspector in the enforcement Inquiry placed no restriction on their size or form. However, it would have been apparent that they would likely be of a considerable size, given what had been displayed before at the site and that they would be largely viewed from the other side of the canal. Small installations would simply be lost in this setting.
24. Whilst set in close proximity to the bridge, the proposed sharks would not compete with it. People using the canal and towpath would still be able to readily see and appreciate the importance of the bridge and the contribution it makes to the locality. The display would not harm the setting of the listed Haggerston Bridge.
25. The RCCA covers a considerable area and the effect of the sharks on it would be localised to the area largely bounded by the Haggerston Bridge and Queensbridge Road bridge. Taken as a whole, there is great variety in the character and appearance of the RCCA. Here, there is a planning permission allowing for the display of art installations that affected the character of the area and, thus, the display of sharks would preserve that character. Furthermore, I find that their temporary display would preserve the character and appearance of the RCCA.
26. The Council sets out that, in its view, there would be harm to the historic environment, but this would be less than substantial. Had I found this to be the case, I would be of the view that the public benefit of the art display would outweigh this harm. The Council states that it does not know of a 'precedent' that found the display of art in the public domain to present such a benefit and the Appellant did not point me to one. However, there is little doubt in my mind that art in public places provides a stimulus, and its intrinsic nature is to elicit a response. This, to my mind, represents a great public benefit. The importance of the canal as an important public amenity space would not be undermined by the display of sharks and, for many of its users, there is little doubt in my mind that their experience would be enhanced by them. Others' experiences would be different, but that is the nature of all art, including that in the public domain.
27. The Council referred me to an appeal⁴ that was dismissed for the siting of shipping containers on the canal-side, which were painted with artwork. As I have said above, decisions have to be reached on the merits of each individual case. That case seems quite different from that which is before me, inasmuch as those containers appear to have been larger than the sharks proposed and there is, in the case before me, a planning permission that allows for the display of art installations in the canal.
28. Given the above reasons, the proposed development would preserve the character and appearance of the RCCA and preserve the setting of Haggerston

⁴ APP/U5360/C/17/3176592

Bridge, in accordance with the statutory tests and the Framework. These are reflected in the terms of Policy HC1 of The London Plan, March 2021 ('LP') and Policy LP3 of the Hackney Local Plan 2033 ('HLP'), adopted July 2020. The temporary installation would be of a design that would be appropriate to its setting. As such, it accords with the terms of LP Policies D3, D4 and SI 17, and HLP Policies LP1 and LP52. Amongst its terms, LP Policy SI 16 aims to protect and enhance waterway infrastructure and supports cultural facilities and events. Subject to conditions, there would be no ill-effects on waterway infrastructure and, although the policy specifically refers to water-related cultural activities, this does not militate against the proposed development. Therefore, the development accords with this policy.

Conditions

29. The Council has proposed a schedule of 5 conditions. The Appellant has not specifically commented on these.
30. The Council did not suggest the statutory time condition. The application form states that the development has not begun and the Council has not disputed this. Whilst there was a shark on the water when I visited, I am not sure that this was part of the proposed installation. Therefore, I attach the condition to my decision. The proposed condition ensuring the temporary nature of the permission is required.
31. A plans condition of the type proposed by the Council is required, though I add reference to the numbers of the approved drawings. I agree that an Installation Management Plan, of the type first suggested by the Canal and River Trust, is necessary. I am aware from the Injunction ruling that the original intention was for the song 'La Mer' to be played from the sharks and that each would give a 'lecture' "on important themes in contemporary architecture and urbanism." Given that there are residential properties quite close to the site, I agree that the time that these might be broadcast should be controlled.
32. Although I have been given few details regarding birds nesting on the pontoons, I could see how they might provide an attractive nesting site and understand the importance of not disturbing nesting birds during the nesting season, (described as February to September). Therefore, I attach proposed condition 5. It would be for the Appellant to ensure that the removal would take place within 9 months from the date of commencement outside the nesting season.

Conclusion

33. For the reasons given above, the appeal is allowed subject to conditions.

Roy Curnow

Inspector