

Appeal Decision

Site visit made on 2 September 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th September 2024

Appeal Ref: APP/D1780/W/24/3336680

**Mooring opposite 44 to 46 Whitworth Crescent, Southampton,
Hampshire SO18 1GA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mike Ingram against the decision of Southampton City Council.
 - The application Ref is 23/00219/FUL.
 - The development proposed is floating pontoons with associated piling and works to replace existing.
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Decision

1. The appeal is allowed and planning permission is granted for floating pontoons with associated piling and works to replace existing at the mooring opposite 44 to 46 Whitworth Crescent, Southampton, Hampshire SO18 1GA in accordance with the terms of the application, Ref 23/00219/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matter

2. The Council's decision notice cited Policy NE5 and assigned it to the amended Core Strategy March 2015 (CS). But the provided copy of this 'saved' policy is consistent in nomenclature (including electronic filename, text and layout) to policies in the decision notice ascribed to the amended Local Plan Review March 2015 (LPR). I have therefore referred to it as such.

Main Issue

3. The main issue in this appeal is the effect of the scale and nature of the proposal on the character and appearance of the riverbank in a Waterside Open Space adjoining Whitworth Crescent (the WOS).

Reasons

4. The site¹ is mainly within the water environment of the River Itchen, including part exposed mud foreshore depending on the state of the tide. It is used to berth a large boat (described as a small ferry) which has been in situ for a long time, moored in front of a wide, deep square concrete

¹ As defined by the red line in the appellant's plans

hardstanding² that juts out from the riverbank. The WOS otherwise includes a series of small, private open spaces fronting the river. Some of these have been developed with mainly small buildings such as summerhouses or sheds used in connection with and for repair of privately owned, mostly small, leisure or recreational boats moored at a number of pontoons along the riverbank either side of the site. This development is set below Whitworth Crescent and houses further back overlooking the river.

Scale of the proposal

5. After the ferry and four mooring piles were removed, the site would be occupied by the metal framed, timber decked floating pontoons in a y-shape with retaining piles, linked to the hardstanding by an access brow (small steel pedestrian bridge). The outermost pontoon legs would allow boats to moor either side in the water; the inner part would also let boats land or launch from lightweight moulded floating plastic berths (versadock). In the absence of evidence to the contrary, this entire structure could allow several small, leisure or recreational boats to be moored or berthed at the site.
6. However, the proposed materials and innate functional, utilitarian design of the pontoons and versadock constituent parts would be compatible with some similar pontoons or versadock in the WOS. The narrow relatively short access brow would be aligned sideways off a small nub at one end of the hardstanding, parallel with and tight to the outside face of it. The individually long but narrow floating pontoon sections would be set low to the water surface and the small amount of versadock at times partially submerged in use, next to the hardstanding on one side closest to the riverbank and on two other sides enclosed by pontoons.
7. Though widely spaced, the outer pontoon legs would be no further forward into the river than the bow of the ferry, nor would boats moored flush with their ends. Albeit just wider than the ferry's beam, these pontoons and boats moored along the outer edges would not encroach beyond a line drawn out from either side of the hardstanding. While the pontoons would project away from the hardstanding with a more pronounced step out compared to shorter pontoons to the south, including because of the gentle curve of the riverbank, the structure as a whole would be inset slightly to the north, further across the face of the hardstanding, giving a less abrupt transition. This short row of pontoons south of the site, up to a railway bridge, are also simpler, linear structures than the proposal. But these more low-key pontoons are mainly associated with a few houses in the riverbank that front directly onto water at high tide.
8. In the absence of evidence to the contrary, the row of pontoons north of the site, spread over a longer stretch of the riverbank, do not front dwellings in the WOS. These sit in front of the summerhouses and sheds or some open plots associated with private leisure or recreational use of this part of the riverbank. These mainly much longer and more substantial pontoons extend out directly from the edge of the narrower riverbank as it curves forward of the site to the north. As a result, most of these pontoons are similar in length, and some longer, than would be the pontoons and hardstanding combined in the proposal. Not all of these pontoons are linear, with some

² Also owned by the appellant

more complex L or T-shaped, including versadock in outer edges further into the river. The articulation in layout and juxtaposition of some of these pontoons, and the regimented alignment and close proximity of all of the pontoons along this stretch of the river, enclose the water surface into smaller discrete spaces in much the same way as would the proposal.

9. Albeit a snapshot, the pontoons to the south had few small leisure or recreational boats moored. Whereas most of the pontoons and some versadock to the north were individually and cumulatively used to moor or berth a large number of such boats. The proposal would be inherently suitable for similar use and capacity as at some of these pontoons.
10. The size of the ferry is out of scale with most of these other boats or even some buildings in the WOS. There is no evidence that the proposal is the only way to effect removal of the ferry, but with this unusual feature gone, and despite the hardstanding (and two portable buildings on it) there would be an appreciable local increase in spaciousness. This would be partly offset by a greater concentration of, albeit smaller, boats moored in the same place. However, they would collectively be significantly less prominent or jarring overall than the ferry, with a more cohesive and expected presence assimilated in the riverbank 'streetscene' as part of the WOS.
11. The Council's photographs of versadock that it considers objectionable and like the versadock in this appeal is not in the WOS or even in the City. The versadock shown is anyway more extensive in dimensions, area or berths so these examples are not directly comparable.
12. The pontoons and versadock (or even access brow) would not be unduly prominent features in short, elevated public views from the east side of the river in Whitworth Crescent, being mainly glimpsed over or through gaps between roadside boundary fences or gates or roofs of summerhouses and sheds. Nor overly conspicuous in longer panoramic public views from trains over the railway bridge, the vehicle and pedestrian bridge much further to the north of the site and a slither of public open space in Pettinger Gardens on the west bank of this relatively wide part of the river. The structure as a whole and moored or berthed boats would appear largely innocuous and indistinguishable in the WOS to passing waterborne users of the river.
13. Consequently, the proposal would not be incongruous or out of keeping with the prevailing size, scale, pattern or sequence of distinctive development and uses along this part of the riverbank in the WOS, nor in the immediate context of Whitworth Crescent and houses behind. There is no evidence that it would trigger an unacceptable material incremental intensification of pontoons or versadock and moored or berthed boats in the WOS. Nor a cumulative catastrophic collapse in the integrity of the prevailing open character and quiet enjoyment of the WOS.

Nature of the proposal

14. The Council is investigating the lawfulness of some development in the WOS. This includes the extent of pontoons or versadock, thus moored or berthed boats, and if in commercial or business use, not private use. The appellant considers a planning permission granted in 1998 has been implemented at

the site (or hardstanding)³ including, according to the provided decision notice, 'a replacement building to provide boatyard facilities'. The appellant suggests that condition No.5 therein prevented this development being used as a commercial enterprise, so would be compatible with the proposal. There are no other details of that development before me, such as the design and size of the replacement building or about what it replaced. I cannot therefore ascertain why the Council believes it shows its 'consistent approach to small-scale private development' or the relevance of it compared to the proposal in this appeal which the Council says would otherwise 'ruin' this consistency.

15. I note that this condition has a more nuanced meaning read as a whole, rather than the extract the Council referred to in its appeal statement or as has been suggested by the appellant. I also note that this permission was granted before the current development plan was adopted. However, whether this permission or condition is extant is a matter subject to a pending decision by the Council on a lawful development certificate application⁴. The alleged lawfulness of any of the development outlined above is not within the scope of my decision. I have determined the appeal on the individual planning merits of the proposal, the evidence before me and circumstances as they exist now.
16. The application form described the site as an 'existing small boatyard' with no employees and stated the proposal is not for an industrial or commercial activity, nor are any employees intended. No company name was included in the application form. The appellant has since elaborated that the pontoons and versadock are required to moor leisure craft for private purposes and reiterated not for commercial or industrial use. The circumstances of the appellant beyond that he owns the site and hardstanding have not been explained, but I have no reason to doubt his sincere intentions in these regards, as set out by his professional advisors.
17. In essence, the Council's anticipation appears to be that 'a typical domestic mooring situation' requires 'households to moor one or two boats' and that the site can only be used for a 'domestic-scale mooring'. However, there is no evidence that these terms are directly embedded in any relevant development plan policy or explanatory text. Such use could be compatible with most of the pontoons at the dwellings or plots south of the site. But the WOS is not entirely, or even mostly, comprised of such pontoons, dwellings or plots. Moreover, the Council has not elaborated with any conviction precisely what it means by 'private use' and 'commercial activity' or given a compelling explanation of a distinction between the two.
18. However, without prejudice to its position, the Council suggested its condition No.2. It would restrict use of the pontoons by excluding any commercial or business use and be for the use of the owner of the application site only, evidently as a means to safeguard the integrity of relevant development plan policies. The appellant is the current owner but the condition would run with the site, so apply to successors in title. The appellant did not object to this condition.

³ Ref 980898/11853/E

⁴ Ref 24/00271/ELDC

19. In these circumstances, albeit with potential capacity for numerous small leisure or recreational boats, subject to this condition there is no apparent reason why the proposal would not be for private use. If the appeal was allowed and planning permission granted on this basis, the Council could exercise its planning powers to investigate any future alleged breach of this condition and, if expedient, take remedial enforcement action.

Main issue findings

20. Taking all the above into account, I find that with the Council's suggested condition No.2 (restriction of use), the scale and nature of the proposal would not harm the character or appearance of the riverbank in the Waterside Open Space adjoining Whitworth Crescent. Accordingly, it complies with LPR Policy CLT12 which sets objectives for the WOS, including to protect its attractive waterside character by only allowing private shore-based facilities and pontoons and resisting facilities to serve mooring outside of the site or commercial or industrial type activities such as boat repairs, maintenance, sales or associated marine activities⁵. It also complies with the relevant part of LPR Policy NE5 which more generally seeks to avoid damage to the open character of the riverside and enjoyment of the river for water-based recreation or leisure purposes⁶.
21. There is also no conflict with LPR Policies SDP1, SDP7 or SDP9 or CS Policy CS13 because in scale, appearance and visual impact the proposal would respect, and be compatible with, existing development, natural features and spaces that contribute to the quality of the local environment – in this case, the waterside 'skyline' – and would not unacceptably affect the amenity of this part of the City or those who live in or visit it.
22. The Council also cited conflict with CS Policy CS12. The site is already linked to this waterfront by virtue of private leisure or recreational activity in it. There is no apparent justification that it is appropriate in this case to provide additional connection to this waterfront on a piecemeal basis, through or via this particular site (or hardstanding) for access and use by the wider general public. Nor is there any evidence that the site is in, or visible from, a defined or designated 'key view' of the water or maritime activity.
23. It is not likely that another site or proposal in the WOS, or elsewhere along the River Itchen, would have the same specific circumstances as in this case. Accordingly, there is little realistic prospect of an undesirable precedent or a proliferation of unjustified development if planning permission was granted.

Other Matters

National Planning Policy Framework (NPPF)

24. The NPPF seeks to maintain the prevailing character of an area and its setting, including natural environment and valued landscape (riverbank in this case). Also, to secure well-designed, attractive places with development that functions well and adds to the overall quality of an area, including the surrounding built environment and, in this case, riverside setting. It also aims to protect habitats sites, minimise impact on ecology and provide net

⁵ Supported by explanatory text in LPR paragraph 5.44

⁶ Supported by explanatory text in LPR paragraphs 3.15 and 3.16

gains for biodiversity. In this appeal, the Council's relevant development plan policies are still broadly consistent with these objectives.

Solent and Dorset Coast Special Protection Area (the SPA)

25. The site is in the SPA. This European Site is protected due to breeding, foraging or over-wintering bird species important for nature conservation (Common Tern, Little Tern and Sandwich Tern). Conservation objectives for this qualifying feature include to maintain the extent and function of intertidal mudflat habitat in the SPA to support these species populations⁷. The proposal is not directly connected with or necessary for nature conservation in the SPA.
26. In the absence of objective evidence to the contrary, such as a comparison schedule of areas, the proposal would involve a small net diminution of intertidal habitat in the site and either side of it in the SPA – under the pontoons, versadock or new boats in a different place to the footprint of the ferry once removed and underlying habitat restored. There would also be visual or aural effects of construction works, especially if over summer months, such as piling and a risk that pollution from machinery, equipment or materials may enter the water and affect this habitat. In addition, external light spill and effect on bird sight or flight lines, including during an operational phase. Alone or in combination with other development there is therefore potential for the proposal to cause damage or disturbance likely to have a significant effect on the integrity of the SPA.
27. The Council consulted Natural England (NE) prior to its decision. NE advised that in the event permission was to be granted, a Construction Environment Management Plan (CEMP) should be submitted to and approved by the Council prior to the start of construction works, which could be secured by a condition⁸. NE set out the mitigation measures that the CEMP should include. The Council's Ecologist and also Natural Environment Manager did not object to the proposal and referred to some other mitigation measures. The Council's Planning officer did not object to these provisions.
28. The appellant did not object to the NE advice or to the Council's suggested condition No.4 (external lighting scheme), No.5 (ecological mitigation statement), No.6 (piling) or No.7 (construction management plan). None of these conditions explicitly refer to hours of working or to programming the works to a specific period of the tide or year and anticipated duration; nor does condition No.7 entirely reflect NE's advice for a CEMP but these matters could be incorporated into a single condition, including condition No.6.
29. There is therefore no apparent reason to doubt that these measures are not certain or could not be secured. Approval of satisfactory details by the Council would control potential negative impacts and secure suitable mitigation to reduce the effect of the proposal to a *de minimis* level. In these circumstances, as the competent authority in this appeal and after appropriate assessment⁹, I am satisfied that the proposal would not undermine or harm the qualifying feature or conservation objectives in this

⁷ 'Environmental information to inform any required Habitats Regulations Assessment by the Competent Authority' Ref 10978 Rpt 2a, Feb 2023 – prepared by Dr P Tosswell, Lymington Technical Services Ltd

⁸ Natural England letter dated 17 March 2023

⁹ The Conservation of Habitats and Species Regulations 2017 (as amended)

case, so not adversely affect the integrity of this part of the SPA or the SPA overall including long term.

30. The Council also referred to migrating Atlantic Salmon. There is no evidence that this species is a qualifying feature of the SPA. The proposed conditions outlined above would nevertheless also allow the Council to approve details to safeguarded this species. Consequently, subject to such conditions the proposal is not contrary to LPR Policy NE5 which includes that development should not disturb intertidal mudflat habitat along the River Itchen, which amongst other things provides an important source of food for wading birds, especially during the winter, and wildfowl.

Other interested party comments

31. Allegations about alleged use of the ferry would be remedied by its removal. Any polluting discharge into the river would be a matter for the relevant regulatory authority and there is no evidence the proposal would interfere with main river navigation. Obtaining necessary licences or permits would be a separate matter for the appellant with the appropriate regulatory authorities. Any 'drift' of boats using the proposed pontoons or versadock into or towards other pontoons, or damage, would be a private matter between the respective parties. Any proposals for additional development on the hardstanding should be the subject of a separate planning application to be considered on its individual planning merits.

Conditions

32. The Council also suggested some other conditions if the appeal was allowed. In that eventuality, I have considered modified wording for all the suggested conditions in the interests of clarity or precision and had regard to the relevant tests for conditions, including to keep conditions to the minimum necessary. In addition to the standard three year time limit condition to begin development, a condition to specify the approved plans would give some certainty about the development that would take place. The Council is also concerned to prevent the establishment of residences at the site which might otherwise result in amenity, environmental or highway safety impacts, so a condition to achieve this would be justified.

Conclusion

33. Subject to conditions, the proposal complies with the most relevant policies of the development plan. There are no other material considerations, including provisions of the NPPF, to indicate that the decision should not be made other than in accordance with the development plan taken as a whole¹⁰. Consequently, for the reasons given above the proposal is acceptable so the appeal succeeds.

Robin Buchanan

INSPECTOR

¹⁰ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended)

Schedule of Conditions (7)

- 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:
 - Streetwise Map site location plan
 - Dwg No. 10978/1 proposed pontoon works (location plan, works details and typical elevation)
- 3) Prior to commencement of the development hereby permitted, including any demolition work or site clearance, a programme of habitat and species mitigation and enhancement measures shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved programme and these measures shall be retained thereafter.
- 4) Prior to commencement of the development hereby permitted, including any demolition work or site clearance, a Construction Environmental Management Plan (CEMP) shall have been submitted to and approved in writing by the local planning authority. The CEMP shall include the following details:
 - (a) A schedule of cranes and other tall construction equipment, including details of obstacle lighting;
 - (b) Parking of vehicles for site personnel, operatives and visitors;
 - (c) Loading, unloading and storage of plant and materials, including cement mixing and washings, used in constructing the development and means of other storage and disposal of waste on or from the site;
 - (d) Measures to be used for the suppression of dust and dirt throughout the course of construction, including construction vehicle wheel cleaning;
 - (e) Temporary lighting;
 - (f) How noise emanating from the site during construction will be mitigated;
 - (g) Treatment of all relevant pedestrian routes and highways within and around the site throughout the course of construction and their reinstatement where necessary;
 - (h) Method for pollution control to ensure that no pollution (such as debris from dust or surface run-off) is able to enter the water;
 - (i) How sediment, concrete or other debris that may be accidentally released during construction will be captured to prevent entering the water;

- (j) Means to inform personnel involved in the piling works (and the development overall) about the significance of the designated marine habitat that forms and surrounds the site;
- (k) Routes and moorings used for the transport and installation of the piles, including to minimize risks of damage or disturbance to known seagrass areas;
- (l) Piling/foundation design and method, including associated decommissioning and how to be undertaken with due consideration of the risks of sediment mobilisation in the vicinity of high priority habitats and necessary safeguards;
- (m) Seabed clearance within the piling zone, and how to be undertaken carefully in order to leave adjacent areas undisturbed and anthropic debris to be removed from the site in line with overall mitigation measures for the pontoon, including release of obscured seabed and large aggregate replaced or moved to nearby areas of similar bed cover; and
- (n) A schedule of days and hours of working and programming of works, such as piling, to a specific period of the tide and for the overall development to be carried out at a prescribed time of the year with anticipated duration.

The development shall be carried out in accordance with the approved CEMP.

- 5) Prior to the development hereby permitted first coming into use, external lighting shall be implemented in accordance with a scheme which shall have been submitted to and approved in writing by the local planning authority. The external lighting shall thereafter be retained as approved.
- 6) The pontoons (including versadock) hereby permitted shall not at any time be used for any commercial or business use and for the use of the owner of the site only.
- 7) No craft or vessel moored within the site shall at any time be used as a sole or principal residence or otherwise used as a houseboat.