



Appeal Decisions

Site visit made on 4 February 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th February 2025

Appeal A Ref: APP/V1260/C/24/3348326

Appeal B Ref: APP/V1260/C/24/3348327

The land and premises at Parkstone Bay Marina, Turks Lane, Poole BH14 8EW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeals are made by Frederick C Mitchell and Sons Ltd against an enforcement notice issued by Bournemouth, Christchurch, and Poole Council.
- The notices were issued on 14 June 2024.
- The breach of planning control as alleged in the notice in Appeal A is: Without planning permission, the unauthorised erection of a canopy extension with retractable roof and full-length windows for use as additional seating in connection with the existing South Deep Café building marked in the approximate position by an 'X' on the attached plan.
- The breach of planning control as alleged in the notice in Appeal B is: Without planning permission, the unauthorised erection of a building known as "The Sipping Container" in the approximate position by an 'X' on the attached plan.
- The requirements of the notice in Appeal A are: a) Cease the use of the canopy extension in connection with the adjacent building. b) Dismantle and remove the canopy extension, as marked by an 'X' on the attached plan, in its entirety. c) Remove all resultant materials from the land affected following compliance with a) and b) above.
- The requirements of the notice in Appeal B are: a) Cease the use of the building known as "The Sipping Container" as a servery. b) Demolish/remove the building from the land. c) Following compliance with a) and b) above remove all the resulting materials from the land affected.
- The period for compliance with the requirements of each notice is 6 months after they take effect.
- Each appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals are allowed, the enforcement notices are quashed, and planning permission is granted in the terms set out below in the Formal Decisions.

Main Issue

1. The main issue in both appeals is whether flood risk associated with the developments can be satisfactorily mitigated.

Reasons

2. The developments are associated with an existing use of the site as a café/bar/restaurant, which is set amongst marina related businesses skirting Parkstone Bay. The site is located within flood zone 3a, where there is a high probability of flooding. The developments fall within the 'less vulnerable' classification set out in the Planning Practice Guidance, which is acceptable within flood zone 3a. They are constructed of flood resilient materials and comprise small areas providing limited services to the pre-existing business operation. It is not disputed that they could be quickly brought back into use without significant refurbishment following an event of flooding.

3. The Flood Risk Assessment¹ (FRA) explains there are no alternative preferred areas for the developments to be located within the site and proposes measures to safely manage residual flood risk. It also shows that as there has been no increase in impermeable surfacing, and as all runoff from the developments flows directly into Parkstone Bay, there would be no benefit in the provision of a sustainable drainage system as an alternative to relying on the existing drainage regime.
4. Having considered the FRA, the Council has confirmed that the developments are capable of complying with the Environment Agency's standing advice², subject to conditions. Specifically, the Council has suggested that planning conditions attached to planning permissions could require the approval of a flood warning and evacuation plan and investigations as to whether any measures are needed to prevent flotation of 'The Sipping Container'.
5. A flood warning and evacuation plan could address the residual flood risks, as discussed in the FRA. Conditions requiring the submission and approval of such details, and adherence to any approved details would be reasonable and necessary to make the developments acceptable, with regard to paragraphs 57 and 181 of the National Planning Policy Framework (the Framework). To be enforceable, as the developments have already been carried out, these conditions need to be attached to each planning permission and need to require the demolition and removal of the developments if flood warning and evacuation plans are not submitted, approved and implemented within specific timescales.
6. The Sipping Container comprises 2 former shipping containers arranged in an 'L' shape, fitted together as one substantial building with mono-pitch roofs and timber fascia. One of those former containers has had both short ends removed and at least one long side removed. As such, it does not form an enclosed space. The other former container has had one short end removed and replaced with a timber wall and door, and it has wide roller-shutter serving hatches on two long sides.
7. The former containers have been heavily altered to such an extent that it appears extremely unlikely that either of them would be at any reasonable risk of flotation, even in the event of 0.7m depth of tidal flooding. Conditions requiring the submission and approval of calculations/surveys to ascertain whether flotation could be an issue for The Sipping Container, and to specify a method of securing it to the ground would therefore be unreasonable and unnecessary.
8. I have been referred to Policy PP38 of the Poole Local Plan (2018), but this deals specifically with proposals which result in a net gain in residential units, development expected to provide strategic flood defences, and major development where sustainable drainage systems will be required. The developments do not therefore conflict with Policy PP38.
9. Overall, the developments accord with the development plan and the Framework, subject to the approval and implementation of flood warning and evacuation plans.

Conclusion

10. For the above reasons, I conclude that the appeals succeed on ground (a). I shall grant planning permission for the developments described in the notices and the appeals on ground (g) do not fall to be considered.

¹ By Godsell Arnold Partnership Ltd, dated 17 October 2024, ref: 24506-GAP-XX-XX-RP-C-0001, Revision A.

² The Council's Appendix A to its letter dated 10 January 2025, Local Flood Risk Standing Advice (January 2021)

Formal Decisions

Appeal A

11. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the erection of a canopy extension with retractable roof and full-length windows for use as additional seating in connection with the existing South Deep Café building marked in the approximate position by an 'X' on the plan attached to the notice at Parkstone Bay Marina, Turks Lane, Poole BH14 8EW as shown on the plan attached to the notice and subject to the following condition:

The canopy extension hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 1 month of the date of this decision a flood warning and evacuation plan shall have been submitted for the written approval of the local planning authority and the plan shall include a timetable for its implementation.
- ii) If within 3 months of the date of this decision the local planning authority refuse to approve the plan or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted plan shall have been approved by the Secretary of State.
- iv) The approved flood warning and evacuation plan shall have been fully implemented in accordance with the approved timetable.
- v) Upon implementation of the approved flood warning and evacuation plan specified in this condition, that plan shall thereafter remain in place and adhered to.
- vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B

12. Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the erection of a building known as 'The Sipping Container' in the approximate position by an 'X' on the plan attached to the notice at Parkstone Bay Marina, Turks Lane, Poole BH14 8EW as shown on the plan attached to the notice and subject to the following condition:

The building hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 1 month of the date of this decision a flood warning and evacuation plan shall have been submitted for the written approval of the local planning authority and the plan shall include a timetable for its implementation.
- ii) If within 3 months of the date of this decision the local planning authority refuse to approve the plan or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted plan shall have been approved by the Secretary of State.
- iv) The approved flood warning and evacuation plan shall have been fully implemented in accordance with the approved timetable.
- v) Upon implementation of the approved flood warning and evacuation plan specified in this condition, that plan shall thereafter remain in place and adhered to.
- vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

L Douglas

INSPECTOR