
Appeal Decision

Site visit made on 22 April 2014

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 28 May 2014

Appeal Ref: APP/T0355/A/14/2213668
Jennings Wharf, Windsor, Berkshire, SL4 1QT

- 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 Thames Executive Charter Co Ltd against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 13/03440, dated 26 November 2013, was refused by notice dated 30 January 2014.
 - The development proposed is the installation of a pontoon adjacent Jennings Wharf and insertion of sliding gates into the existing wall.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of a pontoon adjacent Jennings Wharf and insertion of sliding gates into the existing wall at Jennings Wharf, Windsor, Berkshire, SL4 1QT in accordance with the terms of the application, Ref 13/03440, dated 26 November 2013, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for costs was made by Thames Executive Charter Co Ltd against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate decision.

Preliminary Matter

3. The national Planning Practice Guidance (PPG) came into force on 6 March 2014. However, it has not had a bearing on the considerations in this appeal.

Main Issues

4. The main issues in this case are:
 - whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) *Section 9 Protecting Green Belt Land* and development plan policy
 - the effect of the proposal on the character and appearance of the Windsor Town Centre Conservation Area and the settings of the listed Sir Christopher Wren House Hotel and Windsor and Eton Bridge and the River Thames
 - the effect of the proposal on pedestrian safety
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- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

5. The proposal includes the installation of a pontoon within the River Thames, adjoining Jennings Wharf. This section of the river has an established use as moorings. It also falls within the Green Belt. The pontoon would be used as one of a number of stops on the appellant's proposed river bus service between Windsor and Maidenhead. The pontoon may also be used for private charter boat trips and by members of the public. It would be fixed to the river bed by two piles. The proposal also includes the formation of an opening in the existing river edge wall and the installation of sliding metal gates.
6. The Council's evidence indicates that the proposal would be inappropriate development because it would not be an outdoor recreation use. However, the reference to outdoor recreation in both part (A) of policy GB1 and Framework paragraph 89 is in connection with buildings. The Council has accepted that the proposal is an engineering operation. Therefore, it should be considered under part (C) of policy GB1 and Framework paragraph 90.
7. Whilst both main parties agree that the installation of the pontoon would be an engineering operation, an objector (French Brothers) disagrees on the basis that the pontoon could be installed without the supervision of an engineer. Whilst the objector (a long established passenger boat company) may be capable of installing a pontoon and fixing the associated piles to the river bed without specialist advice, in my view such a task would normally require engineering knowledge¹ and therefore amounts to an engineering operation.
8. Paragraph 90 of the Framework advises that engineering operations are not inappropriate development provided that they preserve openness and do not conflict with the purposes of including land within the Green Belt. Policy GB1 of the Royal Borough of Windsor and Maidenhead Local Plan (LP) also allows for engineering operations subject to the same considerations. Policy GB2 presumes against development which would have a greater impact on openness than any existing development at the site.
9. French Brothers have suggested that the change from the existing public moorings to private commercial use amounts to a change of use of the site. However, ownership and planning use are separate matters. Whilst the proposal would intensify activity at the site, it would be reasonable to expect an engineering operation to result in an associated alteration in the character of the area. As such, I am not persuaded that the proposal amounts to a material change of use which would take the development outside of the definition of an engineering operation as contemplated in paragraph 90 of the Framework.

¹ The test set out in *Ewen Developments v SSE 1980*

10. The proposed pontoon would measure 15m by 4m, be constructed using a series of floats and finished with timber bargeboards and decking. There would be no barrier around its edge and it would rise and fall with the water level. Apart from the fixed piles when the water level is low therefore, the proposal would not project significantly above the water level. This section of the river is fairly broad and is flanked by built development on both sides. There are also existing pontoons up and downstream of the appeal site and on the opposite side of the river. The immediate backdrop to the proposal is formed by the river edge wall, a footpath, mature trees and a taller boundary wall. In this context, therefore, I consider that the physical structure proposed would not have a material effect on the openness of the Green Belt.
11. The proposal would also increase the number of boats visiting the site. However, the appellant has explained that the boats would be stored and serviced elsewhere. Therefore, it can be expected that the boats would spend a relatively short period of time at the appeal site picking up and dropping off passengers. Moreover, the area is already used for public moorings. Consequently, I find that the increased activity associated with the proposal would not affect the openness of the Green Belt.
12. With regard to potential conflict with the five purposes of the Green Belt, it has been suggested that the proposal would result in encroachment into the countryside. Whilst the site is within the Green Belt and outside of the designated Windsor Town Centre area, it is essentially urban in character. Significant built development exists on both sides of the river. The river and adjoining spaces are well used for access and a variety of recreation and sports activities. The scale and nature of the appeal proposal would be consistent with this setting and, it would not, therefore, result in encroachment into the countryside.
13. For the reasons outlined below, I find that the proposal would preserve the historic setting and special character of the area. There is no substantive evidence to indicate that the proposal would conflict with the three other Green Belt purposes.
14. Overall therefore, I conclude that the proposal would not be inappropriate development for the purposes of paragraph 90 of the Framework and LP policy GB1. It would also comply with LP policy GB2 with regard to its effect on openness. In accordance with Framework paragraph 87 therefore, it is not necessary to demonstrate very special circumstances in order to justify the development.

Character and Appearance

15. The land adjoining the appeal site is within the Windsor Town Conservation Area. The nearby Windsor and Eton Bridge is Grade II listed and the Sir Christopher Wren House Hotel is Grade II* listed. The Conservation Area Appraisal places the site within the Riverside character area and identifies the river as the dominant landmark and the Bridge as a further landmark. It also notes the active recreational role of the riverside. The activity associated with the proposal, although it would be more intensive than the existing use of the site, would be consistent with this role. The periodic boat movements and the associated increases in pedestrian use of Jennings Wharf (up to 50 passengers

- embarking/disembarking) would be similar in scale and character to the activity which already takes place in the area.
16. The height and scale of the pontoon and piles would be modest in comparison with the adjoining river and the Jennings Wharf walls. The pontoon would be finished in timber and to a simple design. Therefore, whilst the proposal would be clearly visible in views to and from the Conservation Area and the listed Bridge and Hotel, it would be unobtrusive and consistent with the character and appearance of the area.
 17. The proposal would be located between an existing pontoon adjacent to the Hotel and one further west, close to the end of the promenade. However, they would be separated by significant lengths of uninterrupted river edge which would prevent the area from having a cluttered appearance.
 18. The land on the opposite side of the river is within the Eton Conservation Area and reference has also been made to the Grade I listed Windsor Castle. However, having regard to its height and scale, the proposal is a sufficient distance away and, in the case of the Castle, separated by significant built development, that it would not affect the settings of these heritage assets.
 19. Consequently I find that the proposal would preserve the character and appearance of Windsor Conservation Area and the settings of the Eton Conservation Area, the listed Windsor and Eton Bridge, the Sir Christopher Wren House Hotel and Windsor Castle. It would, therefore, accord with LP policy CA2 which requires proposals to preserve or enhance the character or appearance of such Areas and not lead to an undesirable intensification of activities. It would also accord with LP policy LB2 which requires proposals to not adversely affect the settings of listed buildings. It would also comply with paragraph 131 of the Framework insofar as it has similar aims.
 20. In reaching this conclusion I have had regard to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require special attention to be paid to the desirability of preserving or enhancing heritage assets. However, since I have not found harm, no further balancing exercise is necessary.
 21. For the reasons outlined above, the proposal would also accord with LP policy N2 which seeks to conserve and enhance the setting of the River Thames.

Pedestrian Safety

22. The Jennings Wharf footpath which would provide land access to the proposal is some 3m wide. It is segregated from vehicular traffic and, whilst it forms part of a wider network of footpaths, there is no substantive evidence to suggest that it is susceptible to particular safety problems. I recognise that the proposal would increase the number of people congregating on the footpath when boats are embarking and disembarking. However, there are no physical constraints either side of the proposed pontoon to prevent people from queuing and, if necessary purchasing tickets, in an orderly fashion. The use of sliding gates in the riverside wall would ensure that they would not obstruct the footpath.

23. It has been suggested that a condition could be used to secure the provision and implementation of a marshalling plan for pedestrians. I consider that an appropriately worded condition would meet the tests set out in the PPG. With such a plan in place, the increased activity generated by the proposal could be accommodated without reducing public safety. The proposal would, therefore, accord with paragraph 32 of the Framework which, among other things, requires the provision of safe and suitable site access.

Other Matters

24. Concerns have been expressed regarding the effect of the proposal on navigational safety on the river in view of the proximity of the site to the Windsor and Eton Bridge and to the Eton College boathouse and pontoons. However, navigational safety is the responsibility of the Environment Agency under separate legislation. The Environment Agency has not objected to the proposal, but has referred to the need for a licence under the Thames Conservancy Act 1932 which, if granted, would include conditions dealing with the operation of boats using the proposed pontoon.

25. It has been suggest that the loss of public moorings constitutes the loss of a community facility. However, the appellant would make the pontoon available for public use. The terms of this arrangement would also be a matter to be considered under the Thames Conservancy Act licence. Commercial competition with other boat operating companies is not a planning matter. It has also been suggested that the appellant has not demonstrated a need for, or the viability of, the development. However, I have not been made aware of any national or development plan policies which require these matters to be demonstrated for the proposed form of development.

26. French Brothers refer to the economic dimension of sustainability in the Framework. However, that seeks to support a responsive and competitive economy. In the absence of clear evidence that the failure of the appellant's river bus business would lead to significant adverse environmental or social impacts, I see nothing in the sustainability objectives of the Framework to suggest that the appeal should be dismissed.

27. French Brother question the Environment Agency's response on flooding matters and whether the proposal complies with LP policy F1 on flooding. However, it is evident from the Environment Agency's consultation response that it had considered the Flood Risk Assessment (FRA) submitted with the application and the objector has not provided substantive evidence to demonstrate that the FRA is unsatisfactory. A condition can be imposed to ensure compliance with the requirements of the FRA and to prevent use of the pontoon if Jennings Wharf is flooded.

28. Concern has also been expressed regarding the effect of the proposal on nature conservation. The pontoon would overshadow the river bed. However the area affected would be relatively small and there is nothing to suggest that this section of the river bed is subject to any biodiversity designation or is a priority habitat. The Environment Agency's consultation response does not object to the proposal on nature conservation grounds. I have had regard to the Environment Agency response to the 1999 proposal for a jetty nearby. Statutory consultees should provide consistent advice. However, in the

absence of firm evidence that the current proposal would lead to demonstrable harm, I am not persuaded that a 1999 response in respect of a different scheme provides a robust justification for dismissing this appeal.

29. Nor am I persuaded that a 15m long pontoon would cause significant harm to the movement of swans along this section of the river.
30. The appellant notes that LP policies GB1 and GB2 date from 2003 and, on the basis of paragraph 215 of the Framework, considers that very little weight should be afforded to them. However, paragraph 211 advises that development plan policies should not be considered out of date simply because they pre-date the Framework. There is nothing to suggest that the elements of LP policies GB1 and GB2 which are relevant to this appeal are in conflict with the Framework.

Conditions

31. The Council has suggested a list of five conditions. With amendments for clarity, I find that they meet the tests set out at paragraph 004 of the PPG. In addition, a condition specifying the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. A condition to ensure that the external materials used accord with the application plan is necessary to safeguard the character and appearance of the area. A condition requiring further details of the access gates is necessary for the same reason. That condition can also ensure that the gates are maintained as sliding gates in the interests of pedestrian safety.
32. I have set out above the need for conditions dealing with the implementation of the FRA and a pedestrian marshalling plan.

Conclusion

33. For the reasons outlined above, the appeal should be allowed.

Simon Warder

INSPECTOR

Schedule of conditions attached to:

Appeal Ref: APP/T0355/A/14/2213668

Jennings Wharf, Windsor, Berkshire, SL4 1QT

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 13/23/2 Rev C; ACR/UK/012 Rev ACR01 Pontoon Plan 15x4m; ACR/UK/012 Rev ACR01 Top View; ACR/UK/012 Rev ACR01 Pile Guide; 001 Rev1 Section Details.
- 3) The materials to be used on the external surfaces of the development shall be in accordance with those specified in the application.
- 4) No development shall take place until details of the access gates to the pontoon have been submitted to and approved in writing by the Local Planning Authority. The gates shall be installed in accordance with the

approved details and shall be maintained as sliding gates located on the river side of the wall.

- 5) The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment dated June 2013 by Walsingham Planning and the mitigation measures detailed therein. In addition, on occasions when Jennings Wharf is flooded, passengers will not be permitted to disembark there.
 - 6) No development shall take place until a pedestrian marshalling plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall detail how passengers will be marshalled to ensure that they do not obstruct non-river pedestrian use of the Jennings Wharf walkway. The development hereby permitted shall be operated in accordance with the approved plan.
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