Planning Inspectorate

# Appeal Decision

Site visit made on 14 January 2025

**by N Kempton BAHons PGDip MA IHBC MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 February 2025**

**Appeal Ref: APP/A4520/W/24/3349402**
**Former Brigham and Cowan Dock 4 Entrance, Long Row, South Shields NE33 1JA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Mark Turnbull against South Tyneside Council.
- The application Ref is ST/0838/23/VC.
- The application sought planning permission for the installation of floating pontoon and wave break, with access ladder without complying with a condition attached to planning permission Ref ST/0353/20/FUL, dated 15th March 2021.
- The condition in dispute is No.6 which states that: The development hereby approved shall be used solely for the mooring of recreational leisure boats and for no other purpose.
- The reason given for the condition is: To prevent the development from being used for non-recreational leisure activities such as pleasure tour excursions and commercial fishing in the interests of safeguarding the residential amenities of the area from undue noise and general disturbance in accordance with South Tyneside Local Development Framework Policy DM1(B).

## Decision

1. The appeal is allowed and planning permission is granted for the installation of floating pontoon and wave break, with access ladder at Former Brigham and Cowan Dock 4 Entrance, Long Row, South Shields NE33 1JA in accordance with the application Ref ST/0838/23/VC, without compliance with condition No.6 previously imposed on planning permission Ref ST/0353/20/FUL dated 15th March 2021 and subject to the following conditions:

    1. The development shall be carried out in accordance with the approved plan(s) as detailed below:
    Drg. No. Q8315-001 received 24/11/2020 [approved under application ref. ST/0353/20/FUL].

    2. The development hereby permitted shall be carried out, so long as it remains in situ, in accordance with the biosecurity plan to deal with invasive non-native species and mussel cages details received 09/02/2024 [held under application ref. ST/0081/24/COND].

    3. The development hereby permitted shall be installed in accordance with the Construction Methodology document (received 24/11/2020), Drg. No. Q8315-001 (received 24/11/2020), standard pontoon fixing drawing (received 24/11/2020), wall column guide general arrangement drawing

(received 24/11/2020) and chemical anchor fixing detail / safety data sheet (received 17/12/2020) [held under ref. ST/0353/20/FUL].

4. The installation of the development hereby permitted shall not take place outside of the hours 8:00am to 6:00pm Monday to Friday, 9:00am to 1:00pm Saturdays; and no such work shall be carried out at any time on Sundays or Public Holidays.

5. The development hereby approved shall only be used for the mooring of recreational leisure boats and / or the mooring of no more than 2 safety boats and / or the mooring of no more than 2 boats engaged in educational use and no safety or educational boat moored on the pontoon/wavebreak approved under this permission shall be occupied by more than 10 persons.

## Applications for costs

2. An application for costs was made by Mr Mark Turnball against South Tyneside Council. This application is the subject of a separate decision.

## Preliminary Matters

3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) in December (2024). Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by this.

4. The original planning permission was commenced within the three year commencement time limit, in accordance with condition 1 of ST/0353/20/FUL. The principal of a floating pontoon and wave break with access ladder in the dock has previously been established and is therefore not for consideration as part of this appeal.

## Background and Main Issue

5. The former Brigham and Cowan Dock was split in two as part of the wider residential development of the surrounding area and the construction of the Long Row road. The road forms a dam between the non-tidal body of water to the east and the tidal river to the west. The dock is surrounded, and overlooked by, residential development to the north, east and south, whilst the western side of the dock provides open access to the River Tyne.

6. Planning permission was granted in March 2021 for the installation of a floating pontoon and wave break, with ladder access at the former Brigham and Cowan Dock entrance at Long Row, South Shields (ST/0353/20/FUL). That permission was subject to a number of conditions, of which No.6 is disputed.

7. The disputed condition sought to limit the development purely for the mooring of recreational leisure boats. The Council stated that, due to the proximity of existing residential flats and houses to the dock, the use of the floating pontoons for commercial fishing, pleasure tour excursions and commercial activities, condition No.6 is necessary to safeguard the living conditions of occupiers of nearby

residential properties from noise and disturbance associated with the wider use of the dock.

8. In November 2021, this disputed condition was the subject of an appeal in which the appellant sought to remove the condition (APP/A4520/W/21/3282918). The appeal was dismissed.

9. In determining the previous appeal (APP/A4520/W/21/3282918), the Inspector considered that the movement of people arriving for commercial activities, combined with limited parking and drop-off arrangements nearby, would be likely to cause heightened disruption and disturbance for local residents. As such, the Inspector in that appeal found that condition No.6 was both necessary and reasonable to safeguard residential amenity.

10. In January 2024, a further application (ST/0838/23/VC), pursuant to S73 of the Town and Country Planning Act 1990, was submitted to vary condition No.6 attached to the original planning permission (ST/0353/20/FUL). This appeal is against non-determination following South Tyneside Council's failure to determine that application.

11. It is the appellant's case that variation of the disputed condition, as proposed, would broaden the scope of use by allowing the mooring of safety vessels or vessels engaged in educational use, in addition to the mooring of recreational leisure boats already permitted.

12. The main issue is whether the disputed condition is necessary and reasonable in the interests of the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance.

## Reasons

13. The proposal would allow the mooring of recreational leisure boats and / or the mooring of no more than 2 safety boats and / or the mooring of no more than 2 boats engaged in educational use. The proposed variation would limit occupation of any safety or educational boat moored on the pontoon/wavebreak to a maximum number of not more than 10 persons.

14. The occurrences of the proposed moorings would be infrequent- in the region of once per month. As such, the quantum of vehicular trips to access the mooring would be low. The safety and educational boats would be small and outwardly indistinguishable from any other leisure craft.

15. The appeal site, once part of a dock in an industrial area, is now in a predominantly residential and relatively quiet setting. While nearby river traffic, including ferries, contributes transient noise, by contrast, the approved mooring facilities are a constant feature and a source of nautical sounds which are closer to residential properties, with the potential to disrupt the current peaceful environment.

16. The previous Inspector acknowledged, and I concur, that the background noise and sound sources are likely to be similar, regardless of whether the vessels using the moorings are recreational leisure boats, charter fishing vessels, or indeed, some other form of vessel, such as safety boats or educational boats as proposed in this case. Notwithstanding this, the previous Inspector found harm in the

potential comings and goings associated with the moorings, related to the capacity for commercially-based activities to attract groups of people, which would be likely to lead to an increased level of disruption and disturbance for local residents.

17. In the context of the appeal site and based on the evidence before me, I am satisfied that restrictions on the number of people occupying the safety boats and the educational boats, in accordance with the Marine Coding Authority, would address concerns relating to increased activity and additional parking congestion.

18. The boating activities, as set out in the amended condition, would likely be undertaken during the working day and would be conducted, controlled and supervised so as not to create unacceptable levels of noise and disruption to the residential amenities of dwellings in the vicinity.

19. The proposal would ensure that the use of the former dock for residential leisure craft mooring facilitated by the floating pontoons, wave break and ladder would have an acceptable impact on the residential amenity, by reason of limiting the number of moored vessels, which would have the potential to reduce the amount of recreational leisure boats that may be moored. Furthermore, the number of personnel occupying the safety and educational boats would be restricted, thereby limiting the potential number of vehicle movements and relieving pressure for the limited number of parking spaces available.

20. For the reasons set out above and notwithstanding the representations received, I am satisfied that the application of the disputed condition, as amended, would prevent the development from being used for non-recreational leisure activities such as pleasure tour excursions and commercial fishing, in the interests of safeguarding the residential amenities of the area from undue noise and general disturbance. The proposal would not give rise to material harm to the living conditions of occupiers of surrounding residential properties.

21. As such, the proposal is in accordance with South Tyneside Local Development Framework Policy DM1(B), which states, among other things, that in determining applications, the Council will ensure that the development is acceptable in relation to any impact on residential amenity.

**Other Matters**

22. Interested parties raise a range of issues including: risk of boat fires; anti-social behaviour; impact on highway safety; parking congestion; fumes; pollution; impact on privacy; lack of toilets; visual impacts on neighbouring residents. Whilst I have taken these matters into account, my decision on this appeal focusses on whether the condition in dispute, as amended, is reasonable and necessary to ensure that the development would safeguard the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance.

23. I acknowledge the Inspectors' decision on the previous appeal (APP/A4520/W/21/3282918). However, in that case the appellant sought to remove the disputed condition, which would have allowed a greater level of permissible activities.

**Conditions**

24. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed

on earlier permissions that continue to have effect. As the development granted by ST/0353/20/FUL commenced within the three year time limit specified in condition no. 1 of that permission, a time limit condition is not therefore necessary. I shall impose all other conditions imposed on the original planning permission that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

## Conclusion

25. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission with the disputed condition as amended, and restating those undisputed conditions that are still subsisting and capable of taking effect.

*N Kempton*

INSPECTOR