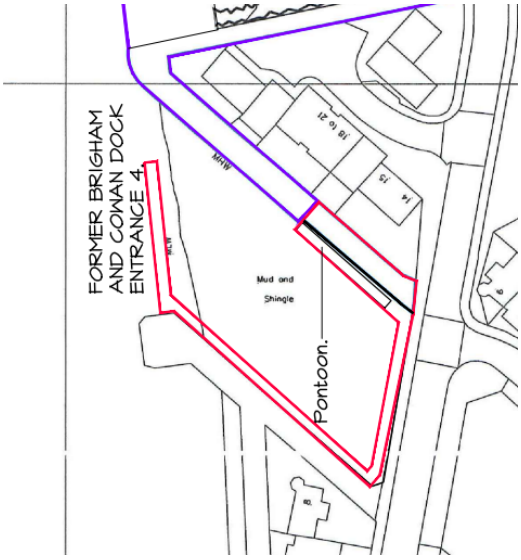
South Tyneside Council

Reference:	ST/0838/23/VC
Location:	Former Brigham and Cowan Dock 4 Entrance Long Row South Shields NE33 1JA
Ward:	Beacon and Bents
Application documents and plans can be found here	http://planning.southtyneside.info/MVM/Online/DMS/DocumentViewer.aspx?searchType=Planning%20Application&PK=854298



Description:	Installation of floating pontoon and wave break, with access ladder. (Application under section 73 of the Town and Country Planning Act 1990, requesting a variation to the wording of condition 6 of previously approved planning application ST/0353/20/FUL - to allow for the mooring of safety vessel(s) or those engaged in educational use, in addition to the mooring of recreational leisure boats already permitted).
Applicant:	Mr Mark Turnbull
Agent:	ELG Planning

Reason for bringing the application to Planning Committee:	Representation(s) have been received from ward members [including a request to speak] / MPs
Recommendation:	Grant Permission with Conditions
Case Officer:	Garry Simmonette
Case Officer Contact No.:	0191 4247426 or 07741126918

List of neighbour representation addresses:

Objection

Emma Lewell-Buck (C/O 19 Westoe Road, South Shields) x 2

Cllr D Francis - request application be referred to Committee **(Wishes to speak)** x2

46 Broad Landing, South Shields
49 Broad Landing, South Shields (x2)
1 Captains Wharf, South Shields
2 Captains Wharf, South Shields (x3)
17 Captains Wharf, South Shields (x2)
18 Captains Wharf, South Shields (x2)
19 Captains Wharf, South Shields (x3)
51 Captains Wharf, South Shields (x2)
17 Frost Mews, South Shields
3 Long Row, South Shields (x2)
4 Long Row, South Shields
8 Long Row, South Shields (x2)
20 Long Row, South Shields

All of the issues raised are summarised in the body of the report

Description of the Site

1. This application relates to a location at the mouth of the former Brigham and Cowan dock no. 4 entrance on the River Tyne and at Long Row, South Shields.

2. To the east, the former dock is now an enclosed area of water with The Fleet (public art) stainless steel ships situated within it. There are houses and apartments that surround this former enclosed dock. The road and footpaths of Long Row (going north/south) intersect between the enclosed former dock and its mouth.

3. To the north of the application site, there are residential apartments. To the south of the application site, there are residential houses, plus the spirit of South Tyneside statue (public art).

Description of the Proposal

4. This application seeks to vary a previous full planning permission (application reference ST/0353/20/FUL) for the installation of floating pontoon and wave break, with access ladder.

5. It has been made under section 73 of the Town and Country Planning Act 1990, which relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

6. In essence, the application is seeking another planning permission for the above-mentioned development that has previously been granted permission (for the installation of floating pontoon and wave break, with access ladder) but in doing so it is seeking a determination as to whether an alternatively worded use restriction condition 6 may be imposed.

7. Condition 6 of planning permission ST/0353/20/FUL currently states:

> *The development hereby approved shall be used solely for the mooring of recreational leisure boats and for no other purpose.*
>
> *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).*

8. The applicant is requesting through this section 73 application that the condition 6 use restriction wording be varied to read as follows:

> *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.*

9. The applicant has provided further detail regarding the safety and educational boats referenced above. These would be small leisure type craft that would not be outwardly distinguishable from any other leisure craft. The educational boats would use the site infrequently (typically once per month). It is envisaged that these would generally be engaged in activities away from the marina. These boating activities are likely to be undertaken during the working day and will be conducted and controlled and supervised manner so as not to create unacceptable levels of noise and disruption to residential amenities. The safety boats would be occupied by up to 6 individuals and the educational boats by up to 10 persons.

10. Plan 1 at the rear of this report shows the location of the application site in a wider context.

11. The relevant planning history is set out in the next section.

Relevant Planning History

12. The planning history of the site is as follows:

Reference	Description	Decision	Date
ST/0353/20/FUL	Installation of floating pontoon and wave break, with access ladder.	Granted, subject to planning conditions (by Planning Committee	15/03/2021
Appeal ST/0353/20/FUL	Appeal against imposition of condition 6 of ST/0353/20/FUL	Appeal dismissed	16/12/2021
ST/0081/24/COND	Discharge of condition 3 (biosecurity plan for invasive non-native species and mussel cages) of ST/0353/20/FUL	Approved	27/02/2024
ST/0059/24/FUL	The provision of gangway access	To be considered by 17/06/2024 Planning Committee	

13. Appendix 1 at the rear of this report includes the planning decision notice for ST/0353/20/FUL.

14. Appendix 2 at the rear of this report includes the Planning Inspectorate's appeal decision, in relation to the imposition of condition 6 to ST/0353/20/FUL.

15. The applicant has commenced the development granted by ST/0353/20/FUL (and did so within the three-year commencement time limit of its condition 1).

Summary of Consultation Responses

16. The following responses were received in response to the application consultation period which ended on 01/11/2023.

17. Port of Tyne

18. No objection. A river works licence will be required.

Case officer comment: A river licence is in place (as noted in the Port's response to ST/0059/24/FUL)

Summary of Representations

19. The application has been publicised by 39 no. letters by site notice. It was also publicised a second time by 45.no letters following receipt of a letter from the applicant dated 09/04/2024 which clarified the changes they were seeking to condition 6 of their previous permission.

20. 2no. representations received from Beacon and Bents ward councillor Francis. The issues raised are summarised as follows:

- Requested that the application be considered by planning committee, given the planning history and tensions around that; and that he may speak at committee.
- Whether the planning application would be affected to the Definitive Map Modification Order [DMMO] that needs to be separately considered by the council.

21. 2no. Representations received from the South Sheilds MP. The issues raised are summarised as follows:
    - The proposal appears to be an incremental step towards business use, with residents being in contact about it and whether it is being used or permitted to be for business use.
    - The dismissed appeal on condition 6 is relevant and the condition should not be changed given the Inspector's reasoning for their decision.
    - The change would give rise to additional disruption impacts to residential amenity of those nearby.
    - The change would give rise to additional parking impacts.

22. 23no. further representations have been received in objection to the proposal. The issues raised are summarised as follows:
    - The current use restriction should not be changed, as was supported by the appeal decision (for the reasons the Inspector set out)
    - There should be no 'business' use at all and this was not permitted by the condition or appeal decision on that condition.
    - Parking, parking congestion, impact on highway safety.
    - Visual impacts on housing / residents.
    - Out of character with the area / neighbourhood.
    - Noise, disturbance, anti-social behaviour, smells, fumes, pollution, overlooking, loss of privacy.
    - Risk of boat fires / health and safety issues / concerns or proposal not being suitable for larger commercial boats.
    - Ladder access only, not accessible.
    - No toilets for the proposal.
    - Climate change impacts on the proposal / river.
    - Impacts on the consideration of the DMMO, which is to be considered by the Council.
    - Land sale issues.
    - Impacts on property prices.

Relevant planning policy

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission must be determined in accordance with the adopted development plan, unless material considerations indicate otherwise.

24. The statutory development plan comprises the Council's adopted Local Development Framework (LDF) development plan documents. Those LDF documents of relevance to this application comprise of the Core Strategy 2007, Development Management Policies Development Plan Document (DPD) 2011 and the South Shields Town Centre & Waterfront Area Action Plan (AAP) 2008.

25. The following policies of the South Tyneside Local Development Framework Core Strategy are relevant to this planning application:

    - ST1 Spatial Strategy for South Tyneside

- A1 Improving Accessibility
- EA3 Biodiversity and Geodiversity
- EA5 Environmental Protection

26. The following further LDF policies are relevant to this planning application.

- SS3 Improving the Physical Accessibility of South Shields Town Centre and Waterfront (AAP)
- SS10 Recreational Opportunities in South Shields (AAP)
- SS13 Protecting the Natural Environment Assets of South Shields (AAP)
- SS14 Protecting South Shields from Coastal and River Flooding (AAP)
- DM1 Management of Development (DPD)
- DM7: Biodiversity and Geodiversity Sites (DPD)

27. The following supplementary planning documents are also of relevance:

- SPD6 Parking Standards

28. A Regulation 19 version of the South Tyneside Local Plan was recently subject to consultation from 15/01/2024 to 03/03/2024 and this marked the second of two statutory consultation periods in the plan-marking process. While the draft Local Plan is now at a more advanced stage of preparation, with the Regulation 19 consultation completed, the extent to which there are unresolved objections to particular policies is currently being assessed and therefore only very limited weight can be afforded to policies in the emerging local plan at the current time having regard to paragraph 48 of the NPPF. The following policies, while not appraised in detail in the assessment for the reasons outlined, are considered relevant:

- Policy SP1 Presumption in favour of Sustainable Development
- Policy SP2 Strategy for Sustainable Development to meet identified needs
- Policy SP3 Spatial Strategy for sustainable development
- Policy 2 Air Quality
- Policy 3 Pollution
- Policy 11 Protecting Water Quality
- Policy SP21 Natural Environment
- Policy 33 Biodiversity, Geodiversity and Ecological Networks
- Policy 34 Internationally, Nationally and Locally Important Sites
- Policy SP26: Delivering Sustainable Transport

29. National planning policy is also a material consideration in determining this planning application. Relevant national policy comprises the National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG), the National Design Guide and the National Model Design Code.

30. The North East Inshore and North East Offshore Marine Plan (June 2021) can also be a material consideration.

Assessment

31. In relation to applications made under section 73 of the Town and Country Planning Act 1990 [as amended], that section of the act states:

"… the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a)if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b)if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application. ….".

32. The key issues in the assessment of this s73 planning application are as follows:

    i. Whether planning permission could be granted subject to an alternatively worded use restriction, in the way the applicant is seeking?
    ii. If the answer to "i." is yes, what other planning conditions may need to be considered, having regard to any Council approval of details pursuant to those conditions that has taken place since the original approval was granted.

33. As such, the assessment is not a re-run of all planning issues that were considered at the time when ST/0353/20/FUL was determined by Planning Committee.

<u>Whether planning permission could be granted subject to an alternatively worded use restriction, in the way the applicant is seeking?</u>

34. The assessment of this s73 planning application is limited to the whether planning permission could be granted subject to different planning conditions relative to those that were imposed in relation to the grant of ST/0353/20/FUL.

35. By way of background, when ST/0353/20/FUL was submitted for the "Installation of floating pontoon and wave break, with access ladder" the applicant had included a statement which set out a variety of possible ways in which these would be used. They, in summary, included:

    - The mooring of small boats.
    - Use by the Sea Cadets, for activities and events.
    - Use by the North East Maritime Trust, to display vessels at events.
    - Use by South Quays Women's Rowing Club, for access and support.
    - Provision of a Royal Yachting Association training school / centre.
    - Riverside Project Group #Lovesouthtyneside, for headquarters and a muster point.

36. The imposition of planning condition 6 of ST/0353/20/FUL following Planning Committee's determination of that application on the 15/03/2021, however, limited the use of the development granted to use for recreational purposes only in the interests of residential amenity. That condition does permit a 'business use' to occur, for the purposes of providing the recreational mooring it allows.

37. In submitting this section 73 planning application, the applicant is not seeking to see if they could obtain permission for the range of uses and activities that they had sought. Instead, they are seeking a determination as to whether additional mooring would be permitted as per their suggested wording (as set out at para. 8) and repeated below:

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.

38. In relation to the planning permission already granted by ST/0353/20/FUL, the amount of mooring it could accommodate is effectively limited by the size of the floating pontoon/wavebreak granted, although there are no planning controls over the comings and goings of persons undertaking the mooring of recreational leisure boats.

39. If the mooring of no more than 2 safety boats and / or the mooring of no more than 2 boats engaged in educational use were granted this could, in effect, have the potential to reduce the amount of recreational leisure boats that may be moored.

40. While it could be the case that such additional mooring could increase the likelihood of comings and goings occurring, and associated activity, in the context of impacts upon residential amenity arising relative to the activities already permitted, it is not considered that this proposal to vary condition 6 to allow use of the pontoon by up to 2 safety boats and 2 educational boats in addition to leisure use would result in a materially significant increase in comings and goings to the extent that permission should be refused.

41. In reaching this view, the findings of the Inspector on the previous appeal are acknowledged but in that case the appeal proposal was seeking a far greater level of permissible activities relative to what this section 73 application is seeking to achieve.

<u>If the answer to “i." is yes, what other planning conditions may need to be considered, having regard those of the previous planning permission and any approval of details pursuant to those.</u>

42. The development granted by ST/0353/20/FUL commenced within the three-year time limit it specified (in its condition 1). A time limit condition would not therefore be needed if this s73 planning application were granted.

43. However, conditions relating to the previously approved plans, the previously approved biosecurity plan / mussel cage details, the construction methodology and working hours for the installation of the development should also be imposed, having regard to such conditions that were attached to ST/0353/20/FUL, and, the approval of details pursuant to its condition 3, held by details under application ref. ST/081/24/COND) in addition to the amended use restriction condition.

<u>Other matters</u>

44. The outcome of this section 73 planning application does not affect the ability of planning permission ST/0353/20/FUL to be carried out, subject to the conditions it includes.

45. The approved floating pontoon and wave break, with access ladder are located at/over the quay edge and over the water body of the River Tyne. They are not, therefore, located on land between the quay edge and the apartments to the north that forms a part of a Definitivate Map Modification Order [DMMO] application that is pending a

decision by the Council. The outcome of this s73 planning application is not considered to affect consideration of the DMMO application.

46. The applicant has a Marine Licence for the development from the Marine Management Organisation and a River Works Licence from The Port of Tyne.

47. With regards to the Marine Licence, consideration of that by the Marine Management Organisation would have included consideration of The North East Inshore and North East Offshore Marine Plan (June 2021). The proposal is therefore considered to accord with the marine plan.

48. With regards to habitats regulations assessment under the provisions of The Conservation of Habitats and Species Regulations 2017, application ST/0353/20/FUL was eliminated from requiring detailed consideration with regards to effects on the relevant coastal designations of the Durham Coast SAC and the Northumbria Coast SPA & Ramsar Site. It follows that this s73 planning application has also been eliminated and therefore these latest proposals are considered acceptable in respect of this matter.

49. With regards to Environmental Impact Assessment [EIA], under the Town & Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended), application ST/0353/20/FUL was subject to an EIA screening opining (as it met the thresholds for screening) that the development was not EIA development. This s73 planning application has been screened in the same way and likewise it has been concluded that this latest proposal is not EIA development.

Equality Act and Human Rights Act

50. In deciding whether to grant planning permission the Council must have due regard to the 3 equality aims contained in Section 149 of the Equality Act 2010 (the public sector equality duty). A preliminary assessment of the potential equality impacts of any grant of planning permission in this case has been undertaken. There are no apparent equality impacts of the proposed development which give rise to the need to undertake a more detailed equality impact assessment, particularly given the fact that this planning application has been submitted under Section 73 of the Planning Act 1990 and where application ST/0353/20/FUL had been subject to consideration of the equality duty prior to its determination.

51. The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Conclusion

52. This application has been made under Section 73 of the Town and Country Planning Act 1990. The planning assessment must be carried out as per the requirements of that Section and it is considered that on balance planning permission should be granted subject to the proposed amended use condition, notwithstanding the objections received, as such a change would not give rise to material harm to residential amenity.

53. Having regard to the above assessment, members are recommended to grant approval for this Section73 planning application subject to the list of conditions as set out below.

Recommendation

Grant Planning Permission subject to Conditions

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].

Any minor material changes to the approved plans will require a formal planning application under S73 of the Town and Country Planning Act 1990 to vary this condition and substitute alternative plans. In order to provide a procedure to seek approval of proposed minor material change which is not substantially different from that which has been approved.

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].

In the interests of protecting the marine environment, in accordance with South Tyneside Local Development Framework Policies DM7 and EA3.

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].

In the interests of protecting the marine environment, in accordance with South Tyneside Local Development Framework Policies DM7 and EA3.

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.

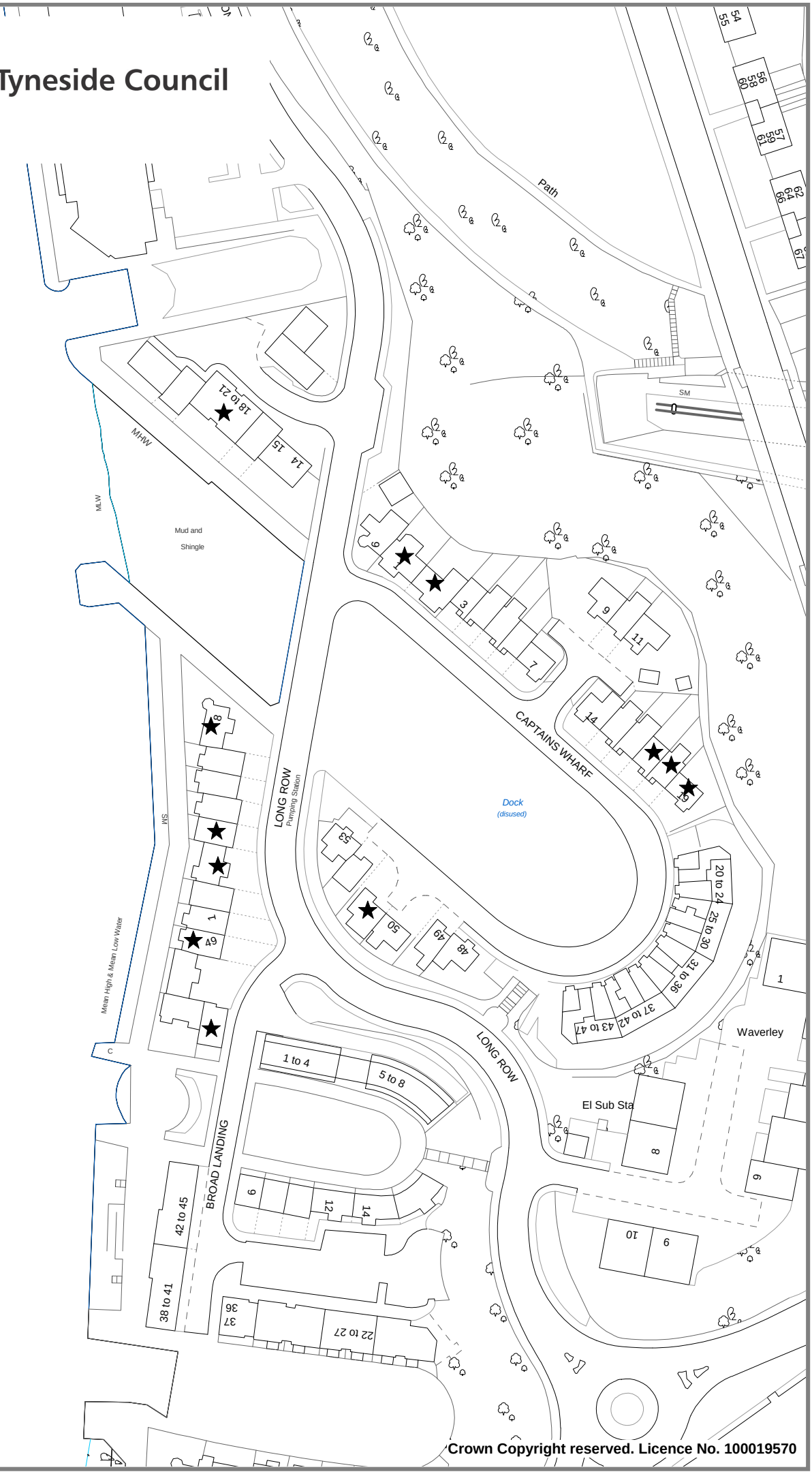
In the interests of protecting the amenity of the nearby residents, in accordance with South Tyneside Local Development Framework Policy DM1(B).

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.

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).

South Tyneside Council

Plan 1



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South Tyneside Council

Appendix 1

NOTICE OF GRANT OF PLANNING PERMISSION

Town and Country Planning Act 1990
Town and Country Planning (Development Management Procedure) (England) Order 2015

Contact Name and Address:
Artisan Architecture
FAO Mr David Parsons
South Shields Business Works
Henry Robson Way
Station Road
South Shields
NE33 1RF

Application No: ST/0353/20/FUL
Date of Issue: 15/03/2021

In pursuance of their powers under the above mentioned Acts, South Tyneside Council as Local Planning Authority hereby **GRANT** planning permission for the following:

Proposal: Installation of floating pontoon and wave break, with access ladder.
Location: Former Brigham and Cowan Dock 4 Entrance, Long Row, South Shields, NE33 1JA

SUBJECT TO THE FOLLOWING CONDITION(S) AND REASON(S):

1 The development to which this permission relates must be commenced not later than 3 years from the date of this permission.

As required by Section 91 of the Town and Country Planning Act 1990 and to ensure that the development is carried out within a reasonable time.

2 The development shall be carried out in accordance with the approved plan(s) as detailed below

Drg. No. Q8315-001 received 24/11/2020

Any minor material changes to the approved plans will require a formal planning application under S73 of the Town and Country Planning Act 1990 to vary this condition and substitute alternative plans. In order to provide a procedure to seek approval of proposed minor material change which is not substantially different from that which has been approved.

3 Before the development hereby permitted commences, details of an operation based biosecurity plan to deal with invasive non-native species; and the installation of mussel cages or suspended line (both as proposed in the submitted ecological impact assessment) shall be submitted to and approved in writing by the Local Planning Authority.

Development shall be carried out in accordance with the approved details, and which shall be retained and maintained; so long as the development hereby permitted remains in-situ.

In the interests of protecting the marine environment, in accordance with South Tyneside Local Development Framework Policies DM7 and EA3.

4 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).

In the interests of protecting the marine environment, in accordance with South Tyneside Local Development Framework Policies DM7 and EA3.

5 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.

In the interests of protecting the amenity of the nearby residents, in accordance with South Tyneside Local Development Framework Policy DM1(B).

6 The development hereby approved shall be used solely for the mooring of recreational leisure boats and for no other purpose.

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).

NOTES TO APPLICANT:

1 In dealing with this application the Council has implemented the requirements of the National Planning Policy Framework to seek to approve applications for sustainable development where possible.

2 The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority

3 UNIQUE NOTES TO APPLICANT

Port of Tyne - River Works Licence / Small Boats Licence

All work planned on the river requires a Port of Tyne, River Works Licence. This is so that all developments are assessed for their potential impact on safety of navigation and the environment. Contact Licences@portoftyne.co.uk for more information and an application form.

All small boats and craft permanently moored in the river must be licensed. Licences and ownership details are updated annually, and the licence must be clearly displayed on board the vessel - https://www.portoftyne.co.uk/marine-information/navigational-information/licencing

4 Marine Management Organisation - Marine Licensing

Any works taking place below the mean high water mark or in any tidal river to the extent of tidal influence may require a marine licence in accordance with the Marine and Coastal Access Act (MCAA) 2009.

Applicants should be directed to the MMO's online portal to register for an application for marine licence - https://www.gov.uk/guidance/make-a-marine-licence-application

5 Landowners consent

Your attention is drawn to the fact that the grant of planning permission must not be taken as giving the legal consent of any land owner (such as those stated in certificate B of the planning application form) for development to be carried out in, on, under or above the land of that owner.



Peter Mennell
Head of Regeneration and Housing

Your attention is drawn to the attached schedule of notes which form part of this notice

NOTES

1 This certificate is issued under the Town and Country Planning Acts, Regulations and Orders and does not constitute a permission, approval or consent by South Tyneside Council for any other purpose whatsoever. Applications must therefore be made to the appropriate Departments of the Council for any other permission, approval or consent (including Building Regulations approval or approval of South Tyneside Council as ground landlord where appropriate) which may be necessary in connection with the proposed development or anything incidental thereto, or the use to be made of the premises which form the subject of such development.

2 You may also require permissions, approvals or consents under other legislation, or from bodies other than South Tyneside Council. This could include works affecting a public sewer, gas main, or electricity line, works within the adopted highway, works affecting a public right of way, property covenants, legislation relating to disabled persons, land drainage consent, waste management consent, scheduled monument consent or works affecting protected habitats or species.

3. Any non-material change to the approved plan(s) that form part of this permission would require the submission of an application for a non-material change under section 96A of the Town and Country Planning Act 1990. Whether changes to a proposed development are considered non-material is a matter for Planning Authority discretion.

4 The approved development should be implemented in strict compliance with all of the planning conditions, and in particular any which require details to be approved prior to the commencement of the development. Failure to do so may result in any commencement of development being unauthorised, which could be liable to enforcement action.

5 If you wish to change, or not comply with, any of the planning conditions attached to the permission, then you will need to submit a new application for planning permission under section 73 of the Town and Country Planning Act 1990. This does not affect your statutory rights of appeal against any of the planning conditions. This includes if you wish to not comply with a condition attached to a permission which details the approved plan(s), so as to make a minor material change to the approved plan(s). A minor material change is defined as one whose scale and nature results in a development that is not substantially different from that which has been approved.

6 Your attention is drawn to your responsibilities under the Chronically Sick and Disabled Persons Act 1970 and the Disability Discrimination Act 1995 relating to disabled persons, to ensure that adequate attention has been paid to their needs. If the proposed development involves new or existing buildings to which the public are to be admitted, or offices, shops, railway premises, factories or educational buildings, provision should be made for the means of access, parking and sanitary conveniences to meet the needs of disabled people. In addition, appropriate signposting of the facilities should be provided. In carrying out these statutory obligations your attention is drawn to the "Code of Practice for Access for the Disabled to Buildings" (BS5810:1979). You are advised to seek professional advice to ensure that you meet your legal obligations under the Disability Discrimination Act 1995, especially with regard to Part III thereof.

APPEALS TO THE SECRETARY OF STATE

7 **Only the applicant possesses the right of appeal**

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice unless:

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice [reference no. if applicable], if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice; or

- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.

Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at https://acp.planninginspectorate.gov.uk

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

PURCHASE NOTICES

8 If permission to develop land is granted subject to conditions, whether by South Tyneside Council as local planning authority or by the Secretary of State for Communities and Local Government, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances the owner may serve a purchase notice on the Council, requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

The Planning Inspectorate

Appeal Decision

Site visit made on 23 November 2021

Appendix 2

by G Robbie BA(Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/A4520/W/21/3282918
Former Brigham & Cowan Dock Entrance 4, Long Row, South Shields NE33 1JA
E: 435921 N: 567561

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Mark Turnbull against the decision of South Tyneside Council.
- The application Ref ST/0353/20/FUL, dated 21 May 2020, was approved on 15 March 2021 and planning permission was granted subject to conditions.
- The development permitted is installation of floating pontoon and wave break, with access ladder.
- 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 dismissed.

Background and Main Issue

2. The former Brigham and Cowan dock was split in two as part of the wider residential redevelopment 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.

3. Planning permission was granted in March 2021 for the installation of a floating pontoon and wave break, with ladder access, at the former Brigham & Cowan dock entrance 4 at Long Row, South Shields. That permission was subject to a number of conditions, of which No. 6 is disputed and is the subject of this appeal.

4. The floating pontoon, wave break and access ladder would be located in the tidal area of the dock to the west of the Long Row dam. The floating pontoons would occupy part of the northern dock wall and the entire lengths of the eastern and southern dock walls. The wave break would form a partial barrier across the open mouth of the dock and provide a further length of floating pontoon. Mooring space for approximately 24 vessels would be provided

although the approved plan specified by condition 2 of the original permission indicates 20 vessels moored within the dock.

5. The disputed condition seeks to limit the development purely for the mooring of recreational leisure boats. 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 is necessary, the Council state, to safeguard the living conditions of occupiers of nearby residential properties from noise and disturbance associated with the wider use of the dock.

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

Reasons

7. Despite the appeal site's location in a former dock and in an area historically dominated by shipbuilding and heavy industry, the surrounding area is now predominantly residential in character. Long Row provides vehicle access to the residential area but is stopped up a short distance to the north of the appeal site, with through access restricted to pedestrians and cyclists.

8. The surrounding area is therefore somewhat off the beaten track and the residential setting is relatively peaceful. The appeal site is, however, located relatively close to the mouth of the river and the presence of river traffic is never far away; the site lies roughly midway between the Tyne Ferry terminals on the northern and southern banks of the river, whilst the cruise ferry terminal lies a short distance away on the opposite side of the river.

9. Whilst these factors will influence the local noise environment, they are likely to be largely transient features, even if the ferry service operates for a significant portion of the day from early morning to late evening. In contrast, the mooring facilities offered by the proposal would be a constant feature. Thus, the natural movement of the moorings on the water and nautical noises associated with boats would be longer lasting than sounds generated by passing boats and would introduce an additional noise source closer to the residential properties than is currently the case.

10. However, the disputed condition would be unlikely to address such constant background noise and sound sources. These noises and sounds are likely to be much the same, regardless of whether the vessels using the moorings are recreational leisure boats, charter fishing vessels or some other form of vessel.

11. Where the usage of the mooring may differ in these respects however, would be the comings and goings associated the moorings. In this respect, it was not unreasonable for the Council to seek to take the steps that they have in relation to the living conditions of residents who overlook the dock and their living conditions.

12. Although the level of use of the moorings will ultimately be dictated by its size, the appellant's list of connections, associated activities and possible uses is extensive, and all have the capacity to attract groups of people. In the context of a peaceful residential setting, the comings and goings associated with groups of people and those arriving for commercially-based activities combined with restricted parking and dropping off-arrangements close by, would be likely

to lead to an increased level of disruption and disturbance for local residents. The disputed condition is not therefore an unreasonable approach by the Council in seeking to balance the use of the moorings with consideration of the living conditions of nearby residents.

13. The appellant describes the disputed condition as being abnormal in relation to a marina use, but the appeal scheme merely seeks permission for mooring purposes with no provision for facilities or services more commonly provided by a marina. It is also stated that the condition's restrictive nature would restrict the viability of the operation, but no further evidence has been submitted regarding the effect of the condition on the viability of the moorings.

14. I have carefully considered the benefits that the proposed moorings would provide to the local and river activity-based communities. I have also noted that marina and mooring facilities on the southern side of the river are limited and that it would provide an alternative to accessing those at Royal Quays on the northern side of the Tyne. For recreational leisure craft users, the disputed condition would not negate those benefits and I have not been presented with sufficient compelling evidence to demonstrate that the operation of the moorings would be unviable as a consequence of the disputed condition. Nor am I persuaded, on the basis of the evidence before me, that conditions would be sufficient or provide adequate certainty as to the operation of the moorings going beyond recreational leisure craft.

15. Policy DM1(B) of the Council Development Management Policies seeks to ensure that all development is acceptable in relation to any impact on residential amenity. For the reasons I have set out above, I am satisfied that with the application of the disputed condition, the approved scheme would ensure that the use of the former dock for recreational leisure craft mooring facilitated by the floating pontoons, wave break and ladder would have an acceptable impact on the residential amenity and living conditions of occupiers of surrounding residential properties. The disputed condition is therefore necessary and reasonable, and otherwise satisfies the tests of conditions set out in the National Planning Policy Framework, in the interests of the living conditions and residential amenity of occupiers of nearby residential properties.

Other Matters

16. It has been suggested by the appellant that the matter of a condition to restrict the use of the mooring had not been discussed between the parties during the course of the application prior to the publication of the Planning Committee report. I have no other evidence before me to suggest whether or not that might have been the case, but that is a matter between the parties and not for me to consider as part of this appeal.

Conclusion

17. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR