

Application No: W 11 / 0968

Town/Parish Council: Sherbourne
Case Officer: Penny Butler

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**Puck`s Lair, 2 Sherbourne Court, Vicarage Lane, Sherbourne, Warwick,
CV35 8AW**

Construction of garden decking (retrospective application) FOR Dr M Attariani

This application is being presented to Committee due to an objection from the Parish Council having been received.

SUMMARY OF REPRESENTATIONS

Barford, Sherbourne and Wasperton Joint Parish Council: (Original comments): The JPC objects to permission being granted for the retention of this structure which, being in the flood plain, constitutes an obstacle to flood water when the water course is in spate.

(Further comments): The Barford, Sherbourne & Wasperton JPC recommended REFUSAL of this application, for river-edge, timber decking at 2 Sherbourne Court, Sherbourne, because of the risk of contributory worsening of the serious flooding that occurs in that part of Sherbourne, most recently experienced in 1998 and 2007, when the water level of the Sherbourne Brook rose by 2.5m and 2.0m respectively above normal levels.

It has been brought to the JPC's attention that The Environment Agency produced a report [Ref: UT/2011/109531/02-L01, dated 4.11.2011 at Annex A], in which it objected to this retrospective application because of the flood risk and concluded that the decking structure should be removed. The JPC wishes to support this objection and considers the report strengthens the concerns expressed by the JPC when it recommended refusal.

It must be pointed out however that modifications considered by the Environment Agency to relocate the decking further back from the water's edge will not reduce the danger of worsening the flood level when Sherbourne Brook is in spate. The lifted decking would be carried downstream to lodge against the Fulbrooke Lane Bridge, which is less than 500m downstream. This old stone arched bridge was built c.1799, it is only 4.0m wide at the base of the arch, with a freeboard above water level of only 1.8m, hence when the river is swollen floating debris collects against it, as witnessed with uprooted trees, old tree trunks, branches, railway sleepers, garden shed, dustbins, bee-hives and the like causing blockages flooding of some fourteen riverside properties and putting at severe risk ten others only a short distance away should the waters rise by only a further 150mm.

Thus the JPC considers that any proposed repositioning of the decking will not remove the danger of contributing to an increased risk of more severe flooding. Any proposal to secure the decking with concrete rafts and steel fixings would be

wholly unsympathetic to the natural riverside environment and out of character within this part of the Conservation Area, and should not be considered as an acceptable amendment to a retrospective planning application, on a site where Permitted Development Rights have been withdrawn.

Further, attention is drawn to the Appeal Decision [APP/T3725/C/07/2038800 at Annex B] , dated 13 Nov 07, in relation to WDC planning application W07/0026, concerning the erection of timber decking on riverside land, only some 100m upstream of the site under current consideration. Two main issues were identified:

1. The effect of the construction on the character and appearance of the area. The Inspector considered that *"the decking fails to preserve or enhance the character or appearance of the Conservation Area"*.
2. The impact on flooding along the Sherbourne Brook. The Inspector expressed serious concerns about the potential impact on flooding and reference was made to PPS25 which states that development within a Zone 3 flood zone should be limited to water compatible uses or essential infrastructure. *"The decking does not fall into either of these categories."* The Inspector decided that *"the decking has a detrimental impact in relation to potential flooding and is therefore contrary to the aims of Policy DP10 of the WDLP."* The appeal was dismissed and the WDC enforcement notice upheld.

Clearly this recent and relevant decision should be applied to the present case currently being considered.

Public response: 3 Sherbourne Court- Support proposal. It cannot be seen from their house or garden and they are next door neighbours.

1 Sherbourne Court- Support proposal. The decking is not visible to other houses in the courtyard and has no negative impact.

16 Vicarage Lane- Object. The application site is within Flood Risk Zone 3 so at medium to high risk of flooding. We are the next property downstream and naturally strongly object. When the decking breaks up under flood conditions it will cause a public disaster for local riparian owners along the Sherbourne Brook. The decking is lightweight and constructed of normal floor joists supported on concrete blocks by its weight alone. Sherbourne Brook is a well known spate stream and when it floods above the level of the decking, the decking will move and break up. At the change of stream direction, the timber (some of which is 4-5m long) will get wedged in the banks and between bank side trees forming an obstacle which will also cause other debris to collect behind, thus worsening the flood situation for surrounding properties. It would also impede the speedy removal of flood water from the Brook into the River Avon. We have lived here for 20 years and seen floods each year of different heights where the Brook has burst its banks, and the debris is astonishing.

In 1998 the Brook rose by 2.5m and amongst the debris was the side wall of a timber summer house which removed many tons of bank side soil, gravel and garden. In 2007 the Brook rose 2m and the application property was flooded. A timber bridge without planning permission broke free from a property a few doors upstream. Although it was constructed from railway sleepers it was carried

on the water into the house requiring extensive brick work rebuilding. The river would only have to rise by 1.2-1.5m to lift the decking.

We refer to W07/0026 where the Council refused retrospective consent for bank side decking and the applicant had to dismantle the works. This was 2-3m from the waters edge whereas the current proposal is at the waters edge. One refusal reason was that it would "impede flood water flow along the Sherbourne Brook which has been designated a main river" by the Environment Agency. The applicant's appeal was dismissed when the Inspector stated it would be "highly likely that the decking would trap material being carried down the brook when it is in spate. This would increase the risk of flooding upstream... I find that the decking has a detrimental impact in relation to potential flooding and therefore would be contrary to the aims of Policy DP10 of the Warwick District Local Plan."

Riparian owners are aware that a 9m strip of garden alongside the Brook is to be left clear of development for Environment Agency maintenance access for plant and machinery, which this proposal disregards. There is also an inspection manhole under the decking giving access to the public foul sewer which serves neighbouring properties and should be accessible.

The decking location has brought the applicants outdoor entertainment and activity to the stream edge. Due to noise, disturbance and human activity it is unlikely that birds previously seen at the site will re-appear. A street light which has been installed to illuminate the decking illuminates the stream and tree belt making it harmful to wildlife. This would affect the foraging of the scarce Noctule Bat which has roosts upstream, and is the second largest colony of Noctules in the UK of national importance. The Highways Agency had to move the A46 bypass to satisfy the legal protection afforded to this species. The street light and riser lighting in the step could be wired into the mains supply and are dangerous.

The submitted plans are misleading, the Design and Access Statement disregards the impact on their property as they are now overlooked and have lost privacy. This is because a 2m high laurel in their garden was removed by the applicant last year without their consent, so the applicant can now look upstream towards their property. This is an area of Special Landscape Character, Area of Restraint and Conservation Area where residents have a responsibility to one another to uphold and enhance the quality of the environment for each others mutual enjoyment.

Environment Agency: (Original comments): The River Sherbourne at this location is a designated main river of the Agency. We OBJECT to the Retrospective Planning application as submitted for the following reasons.

Our concerns regarding the application site are based on loss of access to the river, loss of habitat and increase in flood risk. In this instance:-

- We accept that access to the river is not significantly compromised by the garden decking as access is already severely restricted at this location due to the existing houses and associated development.
- There has been no specific loss of habitat: the area was originally grassed, as is the remainder of the garden. There is however, an existing gabion/stone wall which forms the bank to the river and on which the decking rests. Although there has not been any loss of habitat in the

grassed area, the river forms a 'green' wildlife corridor and will support a variety of species. This should be maintained.

- Flood risk is increased because the decking has been constructed above ground level. It is located within the floodplain of the river and will obstruct and reduce the available flood flow area with the resultant effect of raised flood levels.
- The decking has 'banister type' hand-rails that are in place alongside the river and at 90 degrees to it. This will trap flood debris at this location that will also contribute to raised flood levels.
- It was also noted during a site visit that the decking is not adequately anchored to the ground. There is therefore a potential for the structure to break up in a flood event and block the channel downstream which may magnify flood risk and cause damage.

We consider that the reduction in flood flow area, together with the potential obstruction and debris trap that has been created by the fencing and the fact that it is not adequately anchored to the ground represents an unacceptable increase in flood risk at this location. Although such issues may be considered to have a negligible effect for this one property, such developments can have a cumulative effect on flood risk in the surrounding area.

Because of this increase in flood risk we would recommend that the decking is either removed or lowered to a satisfactory level, moved back from the top of bank, the balustrade fencing removed and the decking anchorage to the ground made secure. In addition, the supporting riverside wall may require rebuilding/improving if it is not stable and the weight of the decking on it has contributed to bank instability.

(Revised comments): Retrospective Flood Risk Assessment (FRA)

We have the following comments to make on the retrospective FRA:-

- The FRA recognises that the site is located in Flood Zone 3, which is the high risk zone and is defined for mapping purposes by the Agency's Flood Zones.
Flood Zone 3a refers to land where the indicative annual probability of flooding is 1 in 100 years or less from river sources. Flood Zone 3b is the functional floodplain and refers to land where the indicative annual probability of flooding is 1 in 20 years or less from river sources.
The FRA fails to establish whether the development area lies within Flood Zone 3a or 3b. Due to the decking location immediately adjacent to the river and the flooding history of the site, it is likely that it may lie within Functional Flood Zone 3b. In line with Planning Policy Statement 25, Development and Flood Risk (PPS25), Table D1, raised ground levels in this zone is not appropriate development as they will result in a loss of floodplain, impede flood flows and increase flood risk elsewhere.
- The FRA states that the proposal is to re-surface a small grassed area with timber decking 'generally at or nominally above the original ground level'. The plans however show the decking to be up to 25 cm high and a site visit by our Development and Flood Risk Officer has confirmed that the area is raised sufficiently to obstruct flow and potentially trap debris. The FRA has not attempted to quantify the effects that the raised decking would have upon flood levels or flow although it does recognise that there could be a potential additional obstruction to flood flow and a debris problem.

- The FRA recognises that there are already a number of restrictions to flood flow along this section of the river corridor. We consider therefore, that in line with PPS25 Table D1, it would be conducive to reduce this number rather than add to it by constructing raised decking and additional fencing in this location, thereby increasing flood risk.
- We concur with the requirement identified in the FRA to adequately anchor the decking to the ground.
- The FRA recognises that the balustrade fencing is a potential debris trap and restriction to flow. We do not however accept that making it demountable is adequate mitigation for the structure. In reality, this is impractical and the situation cannot be monitored to ensure compliance in times of flood.
- We acknowledge that the decking is not considered to substantially hinder access to the river at this location as the nature of the surrounding housing and structures already limit such access. We would point out however that although the River Sherbourne is a designated main river of the Agency at this location, the owner of the property still has riparian responsibilities concerning the maintenance and or repairs required to the river bank (subject to Agency consent under the Land Drainage Bye Laws) especially in light of the existing access restrictions.
- The mitigation measures identified in the FRA place an emphasis on the decking having no measurable or significant effect upon flood flow or debris arrest. These points are not considered acceptable at this location for the following reasons.
 - The decking is noticeably raised above the garden level and is situated within the flood flow path of the River Sherbourne. This reduction in flow area will have a negative effect upon flood levels.
 - The balustrade fencing will trap flood debris which would also exacerbate flooding.
 - There is no guarantee that the fencing would be erected and dismantled on a regular basis especially when such a facility could be used on a daily basis.

Conclusion

Due to the increase in flood risk we would recommend that the decking structure is removed in its current form.

However, we would be able to remove our objection to decking in this location if the following points are addressed:

- The decking should be lowered to the original ground level and set back slightly from the top of bank of the river in order to avoid obstruction to flood flows, reduction in flood water storage and potentially undermining the stability of the river bank.
- The balustrade fencing should be removed to avoid obstruction to flood flow and debris collection during a flood event.
- The decking must be adequately anchored to the ground.
- It was noted during our site visit that the wall may be in need of repair and may not be a suitable foundation for the decking structure at top of bank. The wall may require rebuilding/improving if it is not stable and the river bank stability has been compromised by the existing works.

Advice to Applicant

Designation as "main river" gives the Environment Agency permissive powers to maintain the watercourse. However, responsibility for riverbank maintenance lies

with the riparian owner. (This is the person who owns the land running alongside the riverbank.) As the riparian owner, they will be responsible for all maintenance work to the riverbank.

Under the terms of the Water Resources Act 1991 and the Land Drainage Byelaws, the prior written consent of the Agency is required for any proposed works or structures in, under, over or within 8 metres of the top of the bank of the Sherbourne Brook, designated a 'Main River'.

Natural England: Applications does not fall within the scope of consultations that Natural England would routinely comment on. The LPA should assess and consider the impacts on protected species, local wildlife sites and biodiversity enhancements.

WCC Ecology: Were not consulted prior to work commencing, and would have carried out a site visit if they had been and potentially requested mitigation details if evidence of protected species was present. A buffer zone of at least 4m to the edge of the watercourse is also usually recommended. However, since the application is retrospective, any impacts on nature conservation have been made, and although we have ecological concerns over development on banks of watercourses, in this case, there is no ecological reason for refusing the application. Recommend a note advising on the need to minimise detrimental run-off into the watercourse.

RELEVANT POLICIES

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP3 - Natural and Historic Environment and Landscape (Warwick District Local Plan 1996 - 2011)
- Planning Policy Statement 25 : Development and Flood Risk
- DAP3 - Protecting Nature Conservation and Geology (Warwick District Local Plan 1996 - 2011)
- DAP8 - Protection of Conservation Areas (Warwick District Local Plan 1996 - 2011)

PLANNING HISTORY

The building was converted as part of the Sherbourne Court barn conversion scheme in the 1980s and was extended shortly afterwards. Permitted development rights were removed from the dwelling at the time of conversion, as is normal practice for barn conversions.

KEY ISSUES

The Site and its Location

The application site is sited on the western side of Vicarage Lane adjacent to Sherbourne Brook, which forms the rear garden boundary. The site is within the Sherbourne Conservation Area. The dwelling is a detached converted barn which is part of a complex accessed off a shared courtyard set off the road. Three further dwellings adjoin the application site, two of which adjoin the brook. The dwelling and garden lie within Flood Risk Zone 3.

Details of the Development

The proposal is partly retrospective, since an area of timber decking has been constructed on the site without planning permission. Consent is only required since permitted development rights were withdrawn when the dwelling was converted, in order to protect the character of the conversion scheme.

The decking that has been installed is slightly raised above ground level, and adjoins the raised edge of the bank to the Brook in a P shape. A timber handrail has been installed around two sides of the decking and a decorative metal lamp post has also been erected on the rear side of the decking. The decking is used as a sitting out area with table and chairs.

Since being originally submitted, the applicant has submitted a retrospective flood risk assessment at the request of the Environment Agency, and has then amended their proposals to address the issues raised by the Environment Agency. They have supplied an amended site plan showing the decking moved away from the edge of the brook bank, the level of the decking reduced so it does not protrude above existing ground level, and foundations to which the decking will be fixed. The handrail is also to be removed. Satisfactory structural calculations relating to the proposed method of fixing have been provided by a reputable civil engineer.

Assessment

The matters for consideration in this case are:

- Impact on visual amenity of the Conservation Area and setting of barn conversion
- Impact on residential amenity
- Impact on flood risk

Impact on Conservation Area and setting of barn conversion

The proposed decking is located in the rear garden of the application dwelling, whereby it is screened from public views by existing boundary walls. I therefore consider there would be very little impact upon the Conservation Area, but in any case the low level of the decking, which as amended will not project above ground level, is not considered to be visually harmful. It is a typical feature of many residential gardens, the timber construction is not considered inappropriate and the fact that the decking will not now project above ground level means that the visual impact will be slight. The Conservation Officer raises no objection to the proposals and I therefore consider that the proposal would preserve the setting of the Conservation Area. I do not consider that the decking would appear inappropriate within the setting of the barn conversion, as the building does not have the appearance of a typical barn conversion since it appears residential in character rather than agricultural. The Parish Council draws comparison with an application for decking further upstream which was dismissed at appeal in 2007. The Inspector considered that this decking failed to preserve or enhance the Conservation Area in accordance with the requirements of Local Plan Policy DAP8. This decking projected over the brook on a number of timber posts, and was also not within an existing residential garden and therefore appeared much more visually intrusive impact on its surroundings than the current proposal. I do not agree that the concrete raft and steel fixings to secure the decking will be visually detrimental to the Conservation Area since

the foundation will not be visible under the decking and the fixings will be recessed into its surface.

Impact on residential amenity

The decking is visible from one neighbouring garden, which is number 16 Vicarage Lane. The rear most part of their garden adjoins the brook and it is from the last few metres of their garden that it is possible to look up the brook towards the decking, due to the outward curve of the brook. The view of the decking from this neighbour's property is very limited, and it is not part of their general outlook. Whilst the decking will be visible to this neighbour, it this does not mean that they would suffer loss of light, serious noise nuisance, an unacceptable overbearing impact or loss of privacy, to the extent that planning permission could be refused. I do not consider that there are any grounds for refusal due to loss of amenity to this neighbour, and therefore consider that the proposal complies with policy DP2 of the Local Plan. The amended proposal moves the decking from the edge of the bank but the neighbour has requested that the decking be moved further back in order to move it out of their sight, but the applicant has declined this request.

Impact on flood risk

The application site lies within Flood Risk Zone 3 and also it is likely within Zone 3B which is the functional floodplain. Within Zone 3B, PPS25 states that raised ground levels are not appropriate development as they will result in a loss of floodplain, impede flood flows and increase flood risk elsewhere. For this reason the amended plans show the level of the decking being sunk into the existing ground level in order that there is no loss of floodplain storage, no impediment to flows and no increased flood risk elsewhere. The stability of the bank has been assessed as satisfactory by the applicants structural engineer, and the decking is also to be moved away from the bank to avoid further impact on its stability. The decking will be fixed down securely so that it remains in place in a flood event, whilst the removal of the handrail will also remove a feature which could trap debris and further increase flood risk. The applicant has complied with all the requirements of the Environment Agency, and on this basis there are no justifiable reasons for refusal on the grounds of flood risk. The Council would not be able to substantiate such a refusal at appeal without the support of the Environment Agency, and as such I recommend the application for approval, as it would comply with PPS25.

RECOMMENDATION

GRANT, subject to the conditions listed below.

CONDITIONS

- 1 The development hereby permitted must be begun not later than the expiration of three years from the date of this permission. **REASON :** To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be altered within three calendar months of the date of this decision in strict accordance with the details shown on the application form, amended site location plan submitted on 18 November 2011, approved drawing(s) (5599-01

submitted on 25 January 2012) and in accordance with the structural calculations submitted by Brazier Holt received on 25 January 2012, and specification contained therein, unless first agreed otherwise in writing by the District Planning Authority. **REASON** : For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.

- 3 Within one month of the date of this permission, the handrail to the decking hereby permitted shall be removed in its entirety for the lifetime of the development. No handrail or other means of enclosure or barrier may be attached to the decking hereby permitted at any time thereafter. **REASON**: In the interests of flood safety, in accordance with the requirements of PPS25.

INFORMATIVES

For the purposes of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority, the development would not cause unacceptable harm to the architectural and historic character of the Conservation Area within which the site is located. Furthermore, the proposal would not adversely affect the amenity of nearby residents or result in increased flood risk. The proposal is therefore considered to comply with the policies listed.
