

result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

Comment	Officer Comment
Application Form Section 5 - the applicant is a lessee. Application Form Section 8 - operational development would seem to be required as the beach slopes and there is nothing in the application about levelling. Details of how this is achieved would help to determine whether any statutory approval is required. The existing houseboat does not use the mooring points shown as it sits on brick pillars and has done so for many many years.	The status of the applicants is not germane to whether the proposal is lawful or not. With regards to potential operational development, see paragraph 7.20 below.

7 Legal Considerations

7.1 The application is a Section 192 application for a Lawful Development Certificate which seeks to determine whether the proposed replacement of a houseboat for residential purposes is lawful.

7.2 The PPG advises that the applicant is responsible for providing sufficient information to support an application and the PPG states:

"In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

7.3 The determination of this application therefore turns on the facts of the case and interpretation of the relevant planning law legislation and case law. The Certificate is sought under Section 192 of the Town and Country Planning Act 1990 and the relevant tests are whether the replacement houseboat and any associated development would constitute operational development and whether there is a material change to the use of the site.

Evidence on Use of Houseboat

7.4 The Applicant seeks to establish the replacement of an existing houseboat Tina, which was originally stated it had been used residentially in excess of 10 years. Other information to support this claim was submitted which is as follows.

7.5 The Langstone Harbour Board state in their letter of 6 June 2020 that Plot 6 has been in continuous use as a residential houseboat berth for "Tina" for over 10 years.

7.6 The Chairman of the Hayling Health Society Ltd., in his letter of 18 June 2020 states:

"I own, and have used regularly for more than a decade, the property at 14 The Kench which overlooks the inlet which includes the houseboat berth being purchased by Laura Elliott and family.

I have also been a committee member of the landlord, the Hayling Health Society Limited, for the last nine years and so am closely involved with developments on our site. I am currently its Chairman.

At their request, I am happy to confirm that no new anchor points have been created in the last ten years."

"The scaled hand drawn survey I've sent to you responding to your question 1 from an earlier email, show dimensions and locations of the existing anchor points, the size and placement of our houseboat and size and location of Tina. I believe what you are asking for is there."

7.7 Mark Pullen, the Honorary Secretary of the Hayling Health Society Ltd., sets out in his letter of 18/6/20 the occupation and history of the berth since 1952 and that a replacement houseboat of up to 18.3m by 6.1m in size may be sited on the mooring space. In summary Mr Pullen states:

"... I am happy to attest both from my personal knowledge and my interrogation of the Society's records that the residential berth at plot 6 the Kench has been occupied with the same houseboat for a continuous period of more than 10 years and used for residential purposes only."

7.8 In a subsequent email from the Hayling Health Society Ltd., the following was stated:

*"It is a condition of the lease that the houseboat is not used for **full-time** occupation but equally it is required to only be used for the domestic use of the owner, family and guests and not for commercial purposes.*

I can confirm that the owner of Tina, the houseboat currently on the berth, never used it as his primary residence but as an occasional residence during the 30 or so years of his ownership."

7.9 The Council's aerial photographs would appear to support the siting of the existing houseboat on the mooring in excess of 10 years.

7.10 Following a review of the Council's records, sales particulars for the application's berth from Millers Property Properly were noted. This refers to "... leasehold berth for a new vessel of up to 60 feet [ie 18.20m for a new vessel of up to 60 feet length overall...". The particulars go on to state:

"The berth dries out at low tide and any vessel would have to comply with the berth

dimensions (60 feet length overall x 20 feet width overall x 12 feet high overall) and be Local Authority and Society approved and may be occupied for leisure use only and not permanent occupation and not for business use or for more than six weeks annual lettings. "

- 7.11 As this sales information only refers to the occupation of the berth for leisure use only, not residential occupation, this was queried with the applicant and the Hayling Health Society Ltd., who lease the berth.

In response to this the applicant advised that in their lease agreement with the Hayling Health Society Limited it states:

" 7 Permitted Use: For the mooring of a Houseboat owned by the Tenant for the private domestic use of the Tenant family and guests but not for permanent residential use."

The applicant has also advised that:

"We absolutely agree with the revised description "replacement houseboat is for leisure holiday purposes only and not for permanent residential use".

The Hayling Health Society Limited was also contacted over the use of the houseboat, who advised :

*"It is a condition of the lease that the houseboat is not used for **full-time** occupation but equally it is required to only be used for the domestic use of the owner, family and guests and not for commercial purposes.*

I can confirm that the owner of Tina, the houseboat currently on the berth, never used it as his primary residence but as an occasional residence during the 30 or so years of his ownership."

- 7.12 On the evidence before the Local Planning Authority (LPA), on the balance of probability, a houseboat has been on the berth in excess of 10 years. Further, based on the evidence before the LPA the larger replacement houseboat, the subject of the application, can be accommodated on the berth, with the use remaining lawful. As to the use of the houseboat, following clarification from the applicant and the Hayling Health Society Limited and an assessment of the application's evidence , the houseboat has not been used as primarily residential accommodation, which is restricted by the lease of the berth for private domestic use for the Tenant family and guests, but not for permanent residential use. Therefore, if a Certificate is granted it is recommended that the description should read.

" use of the berth for one houseboat only for private domestic use only, but not for permanent residential use".

- 7.13 Under Section 191 (4) of the Town & Country Planning Act 1990 it is open to the Local Planning Authority, when satisfied of the lawfulness of the use at the time of the application, to modify or substitute the description when issuing a Certificate to that effect. Notwithstanding, the applicant has agreed to this amended description.

Size of Berth

- 7.14 The Applicant has advised that the size of Plot 6, is approximately 20.7m by 6.7m. The footprint of the replacement houseboat would be approximately 5.5m x 18.3m,

which would be larger than Tina, which is approximately 5m x 9.1m.

7.15 The applicant advises that "...the plot size, evidenced by its anchor points, which are located beyond the plot's dimensions, help demonstrate that the mooring at plot 6 can accommodate our larger replacement residential houseboat as those same anchor points have done in the years' past when larger houseboats were moored prior to Tina. In addition, our houseboat's size meets the guidelines of the Hayling Health Society [HHS], and it is within the size allowed by Natural England in an agreement they made with HHS."

7.16 In support of the applicant's claim, an enforcement appeal decision dated 2 September 2013 is included with the application, which was in respect of 'Land east of 13 The Kench, Ferry Road, Hayling Island, PO11 0DF'. The enforcement notice alleged: *'Without the benefit of planning permission, making a material change of use of a houseboat mooring for the siting of a vessel whilst undertaking substantial external modifications to the vessel.'* The Inspector's conclusions, on the specific of that appeal were:

"In summary, for the reasons set out above, I have found that the 'Ellen' was a houseboat when she was brought to the mooring and that there has been no change of use brought about through the process of siting her at The Kench, replacing the previous vessel. Planning permission is not needed for the works that have been carried out to her as she is a chattel to which planning controls over such alterations do not apply. The enforcement notice will be varied to reflect these conclusions."

7.17 As to the specific findings of this appeal the Inspector found:

"29. The findings of another appeal [Ref: APP/Y3805/C/04/1146607] support the contention that the stationing of a replacement vessel on a lawful houseboat mooring did not amount to operational development within the terms of s.55 of the Town and Country Planning Act 1990 (as amended). This view was upheld by the Secretary of State, who confirmed that, because towing the vessel to the site, positioning it and mooring it to the bank on a lawful houseboat mooring had not brought about any material physical change to the land, no breach of planning control had taken place. In that case, the replacement vessel, the 'Fische', was considerably larger than the houseboat it replaced. Although this is not a legal authority, it gives guidance on how a similar situation to the replacement of the 'Viking' by the larger 'Ellen' has previously been considered.

30. In the case of the 'Ellen' there has been no significant physical change to the land that comprises the mooring. It seems that a revetment at the seaward end of the 'Viking', which was intended to help the vessel stand upright when the tide was out, was removed before 'Ellen' was moved into position. However, photographs show that this revetment consisted of a relatively small, pile of stones stacked in the mud and I do not consider that relocating them onto a nearby groin using a digger (which interested parties claim has occurred) amounts to an engineering operation for which planning permission would be required. The 'Ellen' lies within the boundaries of the authorised mooring and does not move out of this area with the tide; consequently, she is not too large to be safely berthed on the site, which has not otherwise had to be altered or expanded to accommodate her."

7.18 Therefore, a replacement houseboat on a lawful houseboat mooring is not subject to planning control, as it is a chattel and would not amount to a material change of use of the land. The questions before the Local Planning Authority (LPA) are: is the mooring to accommodate this larger houseboat lawful; and are any associated works to

support the houseboat in an upright level position subject to planning control?

- 7.19 The applicant has produced a drawing showing the Plot as 21.93m x 6.7m, with the replacement houseboat located within this plot. The size of the replacement houseboat would be 18.28m by 5.48m, which would sit within the plot. As to the anchor points the applicant has confirmed these would remain as existing. Therefore, the replacement houseboat would sit within the lawful mooring, as found in the appeal decision, this includes the mooring points. Photographs and plans have been provided that show the location of the mooring points, which are some distance away from the siting of the current houseboat. This evidence demonstrates on the balance of probability that the mooring berth is lawful.

Operational Development

- 7.20 As to Operational Development under Section 55 (1) of the Town and Country Planning Act 1990 the applicant has advised:

"The houseboat will have 4 spud legs attached to the hull, and will not be fixed into the sea bed. The legs will connect to square steel pads 800 mm x 800 mm, which is a total square foot print of 2.5 square metres. The pads rest on the seabed. The two legs to the south (towards the embankment), will be under a foot in height, the 2 legs to the north will be under 30 inches. All legs will be adjustable to allow for the uneven sea bed."

Therefore, as the 4 spud legs will not be fixed to the sea bed, there would be no operational development associated with the replacement houseboat, and this fixture to hold the houseboat upright would not be subject to planning control.

8 Conclusion

- 8.1 The Local Planning Authority has no evidence, following submission of the revised information to dispute, or otherwise undermine the applicant's evidence. The replacement houseboat the subject of this application, together with the 4 spud legs is not subject to planning control. Therefore, a Lawful Development Certificate can be issued. The Council's Solicitor concurs with the conclusion.

9 RECOMMENDATION:

That the Head of Planning be authorised to determine Application APP/20/00486 as follows:

Havant Borough Council, as Local Planning Authority, certifies that on 22 June 2020 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and as shown edged in red on the submitted location plan would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

On the basis of the evidence submitted by the applicant and supporting statements, it has been demonstrated on the balance of probability that a houseboat mooring with dimensions accommodating a houseboat of up to 18.3m

by 6.1m in size has been in existence at the application site for a continuous period of in excess of 10 years; and that that mooring has been available for the use of a houseboat for private domestic use only, but not for permanent residential use.

The mooring of a replacement houseboat with dimensions of 18.28m by 5.48m on that mooring also for private domestic use only, but not for permanent residential use, would not constitute a material change of use; nor would it involve operational development. Therefore, planning permission will not be necessary and a Certificate of Proposed Lawful Use can be granted.

FIRST SCHEDULE:

This certificate relates to the following development:

Application for certificate of lawfulness relating to use of the berth for one houseboat only for private domestic use only, but not for permanent residential use, as described in the written particulars, plans and other documents submitted with your application received on 22 June 2020.

SECOND SCHEDULE:

This certificate relates to land at Houseboat Tina, Ferry Road, Hayling Island as shown edged red on the submitted Location Plan received 22 June 2020.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation

is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.

- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.