AS

SUSAN ORGAN BA (Hons), Dip TP, M Sc, MRTPI.
CHARTERED TOWN PLANNER

Your ref: APP/11/00154
My ref: S/991

Alexander Sebbinger
Development Management
Havant Borough Council
Civic Offices,
Havant
PO9 2AX

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

61 SOUTH STREET
HAVANT
HANTS PO9 1BZ
TEL: 023 9248 2494
FAX: 023 9248 1152
s.organ@pwp-architects.com

8 July 2011

Dear Mr Sebbinger

**CERTIFICATE OF LAWFULNESS OF EXISTING USE –
MOORING OF HOUSEBOAT AT THE KENCH WITH ASSOCIATED USE OF COMMUNAL FACILITIES INCLUDING ACCESS ROADS, CAR PARK, BOAT TRAILER PARK, COMMUNAL SLIPWAY AND LEISURE MOORINGS.**

Thank you for introducing yourself as the new case officer for this application and its companion application for a certificate of lawfulness of proposed use. As you intend to deal with the existing use first I have reviewed my file and would like to expand on the reasoning behind my submissions as follows.

1. THE PLANNING UNIT

I have defined the planning unit as all the land owned by the Hayling Health Society (HHS) on behalf of its members, except the mud to the north of the spit outside the bay. I have excluded this because it is marked differently on the land registry plan (appendix 2). I am not certain of the reason for this but I do know that the applicant is equal owner, with all the other members/shareholders of the society, of the land outlined red on the application plan. The area around the individual chalets marks the extent of the chalet-owner's lease – not the freehold. Ownership is often used as an indicator in defining the planning unit.

Another ground for suggesting this planning unit is the appeal decision APP/E2001/C/10/2122441 which relates to land at the Driffield Navigation canal. It is included in Appendix 9 to application 11/00008 but I enclose it again to support the planning unit defined on the certificate of lawfulness of existing use.

Paragraphs 16-21 deal with the identification of the planning unit. Paragraph 19 narrows it down to the area "where moorings capable of enabling permanent residential use of boats exist". Paragraph 20 says the site also has highway access to enable the disposal of sewage and refuse off-site.

For the purpose of comparison I would equate "the whole of the Driffield Navigation", managed by the Driffield Navigation Trust, which is examined as a possible planning unit in paragraph 18, with the whole of Langstone Harbour that is managed by Langstone Harbour Board in this case. Similarly, "the only point where moorings capable of enabling permanent residential use of boats exist" referred to in paragraph 19 of the appeal decision letter, and settled upon as the correct planning unit, is comparable with The Kench. I am not certain that The Kench is the **only** area in

Langstone Harbour where this is possible, as there are marina facilities on the Portsmouth side. However, like a marina, it is a discrete location with shared facilities that make permanent residential use possible.

I have included the land as well as the area of mud where the houseboats are moored because it includes the access roads, parking areas, communal greens and slipway facilities that all the houseboat and chalet owners enjoy on equal terms as part of a communal curtilage. For the houseboat users it also includes the common sewer where the portaloos are emptied, the communal tap that can still be used, the electricity meters and the refuse collection points.

I enclose a printout of the 8 pages from DCP online that refer to houseboats. On page 5 I have highlighted two sections that appear under the headings 'Outbuildings' and 'Conditions' and which refer to the importance of these ancillary areas in coming to decisions on appeal.

2. SIZE OF BOAT ESTABLISHED

I have provided evidence that the size of houseboats moored in The Kench has varied over the years although it has generally reduced since the post-war period when ex-naval vessels were cheaply available and easily adapted.

The letter from Philip Grant, Hon chairman of the HHS dated 7 February 2011 confirms that there has never been a size limit "although the practicalities of space are obviously a consideration".

As the stationing of the houseboat on the mooring is a use of land, it seems to me that any boat that fits onto the mooring should comply with the established use in terms of length. This is borne out by the final question and answer on page 8 of the enclosed extract from DCP online where the advice given is "As to the question of replacement by a larger boat, it is unlikely that a material change of use will be considered to have occurred, especially if the area of water occupied is not significantly greater." In terms of the planning unit the area occupied is not significantly greater.

3. THE USE ESTABLISHED – AMENDMENT TO DESCRIPTION

It is my opinion that the stationing of a houseboat on this particular berth is part of the use of the planning unit as a holiday estate with a number of chalets, 8 houseboats and the associated use of curtilage facilities as set out in the application form. **This use includes the conversion of boats that have been brought to the site for the purpose of their conversion to houseboats from time to time.** This was not made explicit in the description on the application form although evidence has been produced to show that houseboats are changed approximately once every forty years and that in the majority of cases, a partly converted hull is brought to the site for completion. If you feel that this amendment to the description requires the application to be re-advertised I apologise for raising this late, but it is clearly an integral part of the use; as Shirley Shaw succinctly put it, the replacement of boats are punctuation marks in the planning history.

This is supported by evidence in Appendix 10 and 11 of the application, by the applicant's statutory declaration and by the letter from the chairman of HHS, Philip Grant, dated 7 February 2011 in which he confirms that all but one of the houseboats has been converted on site (last paragraph page 1). It is also clear from the history that boats have sometimes been moved from berth to berth. The use is not tied to any particular houseboats.

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

4. COUNSEL'S OPINION

I am grateful to Stephen Cantwell for allowing me to see G A Grant's opinion in the matter. It seems to me that the terms in which the Certificate of Lawfulness of Existing Use is framed are very important in setting the parameters within which the other questions are answered. The question of whether works of conversion of boats to houseboats is an integral part of the established use has not been addressed. Clearly the works are less significant if the planning unit is larger.

The other advice he gives is considered in a separate letter relating to application 11/00008 for the proposed use.

5. DOCUMENT FROM MARTIN WARD 16.06.2011

On page three at the end of his comments on the letter from Richard Butler, Mr Ward says that "the remaining eight houseboat owners preferred not to accept the offer to purchase a plot but to retain their houseboats on an annual rental basis from the Society". As the purpose of Mr Ward's letter was to clarify matters I am sure he did not intend this to be misleading, but I would like to emphasise that the chalet owners purchased a lease and the houseboat owners own their boats outright but pay a sum of money for the mooring rights.

6. CONCLUSION

This is the first time the Council has considered any of the many houseboat changes that have taken place and the decision in this case has implications for the other houseboat owners, particularly the other two on the spit whose boats rise and fall on the tide and are only fixed to the ground with ropes or chains.

I understand that the committee accepted the proposed design because, inter alia,

- The boat floats;
- The accommodation proposed does not exceed 750 sqft (a limit imposed on chalet size);
- There would be no change to the mooring – i.e. it fits within the existing retaining sinkers;
- It looks more like a boat than a house and is not of such a height or design as to set an unacceptable precedent or make it susceptible to high winds in this exposed location;
- There was no objection from the neighbours.

These seem to me to be sensible parameters within which to frame the certificate of lawfulness.

Please do not hesitate to contact me if you have any questions about the contents of this letter.

Yours sincerely

Sue Organ

SUSAN ORGAN

Encs.

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

Houseboats 24.8

This section concerns the planning control of houseboats. The mooring of boats for recreational purposes is discussed at (18.3).

Legal background 24.81

Definition of a "houseboat" 24.811

Whilst the term "houseboat" is subject to a variety of interpretations, a definition is set out in the British Waterways Act 1971, and was given consideration in (East Staffordshire 26/3/07 DCS No. 100-048-045). Here, an inspector decided that floating holiday chalets were not houseboats. However, he quashed an enforcement notice directed against them because, subject to relocation, they would have a minimal effect on the cultural and heritage qualities of the canal network, while preserving the character and appearance of the adjacent canal conservation area and the vitality and activities of the marina. The inspector observed that each of the three floating timber-clad structures provided two bedroom *time-share holiday* accommodation. He noted that the British Waterways Act 1971 defined "houseboat" as any "boat or barge or any vessel or structure" which was not "bona fide used for navigation". Although he found the use of the word "structure" unclear, he reasoned that there was a considerable difference between a boat or vessel designed for or converted into residential accommodation and a flat pontoon on which a timber holiday chalet had been erected. While such a structure might be construed as conforming to the definition he found it a tenuous connection. He accepted that the appeal structures were floating and capable of being towed around the marina, but commented that they were too large and too high to be used for navigation.

Reference may be made to *Sussex Investments Ltd v SOS and Another 18/12/97,* cited at (24.85), in which the definition of a houseboat was also considered.

Of further note is (Epping Forest D.C. 20/8/96 DCS No.041-379-910) where a requirement to cease a use for "residential boats" was amended to read "residential moorings" as it was argued that the term "residential boats" could exclude navigating boats.

Material change of use? 24.812

The courts have held that the term "land" as used in planning legislation extends to land covered by water *(Thames Heliport v Tower Hamlets L.B. 21/12/94).* Para 1.6 of PPG20 states that in coastal areas planning control extends as far as the low water mark. Therefore, any argument that the mooring of houseboats is not a use of "land" because they are floating structures is unlikely to succeed. However, the use of the side of a navigable waterway for the mooring of craft in the course of navigation (e.g. for working boats or boats being used for water holidays), is not likely to constitute a material change of use of the "land", rather being a use incidental to the primary use of a waterway for the purpose of navigation. This point was confirmed by the SOS in an appeal decision letter (Wansdyke D.C. 6/4/76 055-458-233).

However, when boats are moored on a more permanent basis, a material change to a primary use for residential occupation is likely to occur if such craft are used as dwellings or holiday homes. In (Oxfordshire CC 18/4/69 040-094-185), where enforcement action was taken against the mooring of houseboats, it was stated that "the continuous stationing of houseboats on the sites for the express purpose of permanent residential accommodation represented an entirely different use from that of mooring" and for this reason it was concluded that a material change of use had occurred. The point was also made that the mooring of the houseboats had the effect of preventing use of the sites for the purpose for which they could be used without the necessity of obtaining planning permission. Similar conclusions were reached in (Suffolk Coastal D.C. 25/2/93 DCS No.056-738-563) where houseboats were moored in a tidal estuary, floating at times but resting in the mud at others, and in (Caradon 26/11/97 DCS No. 044-809-446) where a houseboat was moored on a tidal river bank.

It is of note that in (South Bucks D.C. 9/10/90 DCS No.040-285-159) an inspector was unable to distinguish between cruising narrowboats which were moored along a canal and those which were used for more permanent residential occupation. He noted that residential narrowboats were moored for longer periods of time, but that they could, and presumably were, used for cruising at times. This inspector's assessment, however, was not made to support a legal point but to argue that there would be no harm to a green belt area whatever the mode of use of the narrowboats. In (Broads Authority 25/10/99 DCS No. 041-436-484) the inspector reached the conclusion that the permanent residential use of two moored motor cruisers was not a breach of planning control finding that there was no material difference between permanent and occasional residential occupation. The boats were no different from other boats in the berth and did not appear different in size and scale, he decided. He remarked that the only criterion by which the two vessels seemed to be differentiated from other boats kept at the moorings was that their owners had no other permanent address. He commented that the wholesale use of all the moorings for boats in permanent residential occupation could constitute a material change of use, but that was not the scale of operation against which the Broads Authority had taken enforcement action. In (Rushcliffe 20/7/98 DCS No. 037-926-444), on the other hand, an enforcement notice against the mooring of a houseboat on the River Soar was

upheld, the inspector noting that it was the appellant's only place of residence and that the boat was away from the mooring for only 40 days a year.

Clearly the point at which the mooring of occupied craft alongside an established waterway departs from a use that could be considered to be ancillary to that waterway, so as to cause a material change to residential use, is a matter of fact and degree depending on the circumstances of each case.

Definition of the relevant planning unit is key to consideration of this matter. In (Kennet 23/1/07 DCS No. 100-046-813) an inspector quashed an enforcement notice, agreeing with British Waterways that the entire length of the Kennet and Avon canal should be considered as a single planning unit in determining whether the siting of houseboats along its length constituted a material change in the use of the site. The council had issued the notice on the grounds that the mooring of residential barges and boats not in connection with the course of navigating the canal involved a material change of use. The enforcement notice was directed towards a 300m stretch of canal bank which accommodated 17 narrow boats. The inspector decided that the canal, which had been built as a single man-made structure under various acts of parliament, comprised a single planning unit. The bank was necessary in order to contain the canal whose primary purpose was to allow boats to pass along it. In his opinion the mooring of boats along its length was a normal activity inherently associated with the primary use involving the passage of boats. He held that the mooring of 17 canal boats on the bank was more akin to parking a car on the public highway outside a dwellinghouse. Consequently there had not been a breach of planning control.

However, in a subsequent case relating to the mooring of pleasure boats on the River Thames in central London the inspector held that the appropriate planning unit was the river bed below the mooring. He distinguished the Thames from the Kennet and Avon canal, remarking that at the downstream end of the river there is no real physical or functional differentiation from the estuary and the sea into which it flows. Furthermore, ownership of the banks of the Thames, unlike a canal, is fragmented and divorced from control of the waterway (Westminster 17/12/07 DCS No. 100-052-142).

Whether houseboat mooring operational development? 24.813

Houseboat mooring may incorporate works which could be classified as operational development. In (Islington L.B. 27/3/91 038-245-553) the construction of four brick mooring points relating to residential canal boats was felt to be operational development. Another case of interest is (Suffolk Coastal D.C. 25/2/93 DCS No.056-738-563) where houseboats were moored in a creek. It was found there had been a material change of use and that in addition boardwalks and railings which had been constructed amounted to operational development.

In (Adur 2/11/01 DCS No. 045-773-788) the council argued that the stationing of two boats, one of which was being converted to a houseboat, involved operational development by virtue of their permanence and physical attachment to the muddy foreshore. These considerations when coupled to their size, the council claimed, met the tests laid down in *Cardiff Rating Authority (1949)*. The inspector disagreed, noting that the boats were not permanently attached and the moorings were no greater than that associated with any boat tying up at a quay.

Control practice 24.83

Whereas PPG3 stated that planning authorities should bear in mind the special needs of houseboat dwellers no similar reference is made in PPS3 *Housing*. PPG13 *Transport* points to the potential of inland waterways for the movement of freight and both PPG17 *Sport and Recreation* and PPG20 *Coastal Planning* refer to the recreational use of waterways. Specific planning guidance on the residential use of waterways is, however, notably scarce.

The planning issues relating to proposals for houseboat mooring are very similar to those pertaining to conventional dwellings and cover such matters as character and appearance and the living conditions of occupiers and neighbours.

Rural areas 24.831

Uses for the stationing of house boats in rural areas are likely to transgress rural protection policies, particularly in river, estuary or canal side locations which may be sensitive to encroachment from new development. In green belt areas houseboats are usually found to harm openness.

The following cases demonstrate the issues likely to be raised.

- The S.O.S. called in a scheme promoted by British Waterways for the mooring of boats for residential occupation, along the Kennet and Avon canal outside Bath. British Waterways argued that the residential use of 290 m of the canal together with mooring support piers and timber decking would meet a strong demand for floating accommodation and was appropriate to a canal setting. An inspector, however, held that it was inappropriate development within the green belt and would permanently erode the openness of the area around the city. The site had an open and tranquil character which complemented the setting of the city's conservation area and an uninterrupted line of approximately 12 long boats together with domestic paraphernalia would be demonstrably harmful. In addition, the site lay within an area of nature conservation importance and it was particularly suitable for water voles

whose numbers had declined dramatically nationally. Further development would undermine the ability to provide a suitable habitat for their re-establishment. These considerations when coupled with the absence of mains drainage and electricity, which would provide poor and inconvenient living conditions, led the inspector to recommend that the application should be refused. The S.O.S. wholly accepted the inspector's conclusions and found that the demand from boaters in the area did not outweigh the identified harm. (Bath and North East Somerset 8/5/01 DCS No. 033-940-017).

- The retention of a houseboat mooring near to a SSSI and proposed RAMSAR sit was found to harm green belt policy but did not harm the local river landscape or nature conservation interests. (Rochford 13/5/98 DCS No. 029-733-894).
- The unauthorised residential mooring of a boat on a canal in the green belt was found to harm character and appearance in (South Staffordshire 27/2/98 DCS No. 27/2/98).
- In (Vale of White Horse 28/10/97 DCS No. 043-431-959) a proposal for the extension of a marina basin was found to harm the green belt and the tranquillity of the river scene. A residential mooring for security purposes was found to be unjustified as a director of the company lived in a houseboat nearby.
- In (Broads Authority 23/6/97 DCS No. 039-461-972) the use of a houseboat as an extension to a guest house was not found to harm the character and appearance of the area or highway safety. Concern about navigational safety was found to be a matter for other legislation.
- Enforcement action was taken against the mooring of houseboats on land in the Norfolk Broads. An inspector considered that the single most important issue was the effect that the developments had on local landscape and character. Local policy sought to restrict further moorings. The Broads Authority argued that the Broads area was equal in importance to a National Park or AONB. The design and size of the houseboats made them more intrusive in a flat landscape than ordinary boats. Being larger than other boats they tended to be used by larger parties of people, and hence the activities associated with them were more difficult to control than with smaller mobile boats. An inspector noted that a quiet backwater had become almost fully occupied with moored craft. This had brought with it all the outward signs of residential use more associated with an urban environment - lights, movement, washing and noise. There was an adverse effect on rural tranquillity which was essential to the character of the area (Broads Authority 13/3/92 DCS No.056-453-997).
- Enforcement action was taken against the mooring of a residential houseboat on the River Medway. The site was outside the confines of a village. An inspector noted that the houseboat had been in place for some time and had not given rise to concern. He also accepted the difficulty in finding a mooring on the Medway in any non-rural location, and noted the advice in PPG3. He felt that the houseboat did not look inappropriate in its riverside setting and such visual impact as it had could be mitigated by landscaping. These considerations outweighed any damage to rural protection policies. The appeal was allowed (Tonbridge & Mailing D.C. 30/6/93 033-671-983).
- Moorings for 40 residential narrowboats were proposed on a canal in a green belt area on the urban fringe of Slough. The SOS considered that such a development would normally be inappropriate in a green belt area, but noted that the proposal was next to an existing boat business which would be enabled to expand. Existing unauthorised developments would be replaced. He concluded that the proposals would make a significant contribution to the recreational use of the canal. It is of significance that the inspector in this case had noted that the boats were capable of being navigated and would have engines. He was unable to see much distinction between permanently moored narrowboats and those which would be cruising. He observed that narrowboats of traditional design were features entirely acceptable in a rural landscape. The appeal was allowed (South Bucks D.C. 9/10/90 DCS No.040-285-159).
- British Waterways applied for permission for 20 permanent residential moorings for narrowboats on the Oxford Canal. The site was in a proposed green belt and also lay within a conservation area. An inspector noted that the visual damage caused by the presence of the 20 craft would be limited, and that there would be no harm to the purposes of the green belt. The SOS agreed and noted that the development would help regularise the existing unauthorised moorings on a recognised site with a range of basic facilities. This would improve the appearance of this section of the canal. The appeal was allowed (Oxford City Council 11/10/94 DCS No.031-467-911).
- An enforcement notice directed against permanent residential moorings was rejected as harmful to a green belt area. A need for suitable sites was acknowledged but not considered sufficient to override policy. Loss of privacy of an adjoining house was also cited (Epping Forest D.C. 20/8/96 DCS No.041-379-910).

Urban areas 24.8

Houseboats may be acceptable in urban areas in limited circumstances, such as where mooring areas are indicated in local plans, but normally there is conflict between the use and the environmental/recreational potential of rivers or canals. An appeal case of interest is (Islington L.B. 27/3/91 DCS No.038-245-553). Here British Waterways wished to provide four residential moorings on the Regent's Canal. In addition, four mooring boxes were to be provided containing service supply

points. An inspector noted the quiet leafy character of the appeal site which he felt was a rare quality in inner London. The preservation of such an amenity for the public was a material consideration. He concluded that, as the moorings were on the opposite side of the canal from its towpath, and the houseboats themselves could be an attractive addition to the amenity of the locality if managed properly, there would be no harm to public amenity. Neither would residential amenity or ecological interests be unduly affected.

The impact of the proposal on neighbouring uses was considered in (Hackney 19/5/00 DCS No. 048-857-221). In this case, a change of use on the Wenlock Basin, part of the Grand Union Canal, was proposed for seven residential boats. The properties surrounding the basin fell within a defined employment area and were listed. Whilst there would be no loss of employment floorspace the boats would be prejudicial to the operation of the industrial and high tech office units. The development would also reduce canal side vegetation which would harm an important local nature reserve. Permission was withheld. In (Chichester 10/12/01 DCS No. 050-293-976) the change of use of a sailing school office to a residential houseboat was also found to harm the amenities of the area and the occupiers of neighbouring houseboats.

In (Greenwich 30/9/98 DCS No. 035-659-253) an inspector found that floating accommodation for workers on the Millennium Dome would provide unsatisfactory living conditions due to noise and disturbance from construction work, even if it were only for a temporary period. Residential use would also be likely to prejudice construction activity and existing commercial uses, it was found.

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED



Greenwich: floating accommodation for Millennium Dome workers sought

Nature conservation was a key consideration in (Kingston upon Thames 16/5/05 DCS No. 100-037-500). An inspector noted that the appeal would result in the permanent mooring of houseboats and floating pontoons alongside the brick banks of former filter beds. He opined that the extent of the development would lead to a definite impression of increased built development along the stretch of the river, which he found would be an unfortunate change from the current open and undeveloped character. The inspector remarked that bats had been identified as roosting in the filter bed sites, and the ivy and broom on their walls provided a nesting and feeding habitat for birds. The inspector was not convinced that the extension of permanent moorings upstream, which would bring continual human activity including increased light levels to the part of the river, would definitely have no harmful effect upon nature conservation interests that could be mitigated by the imposition of planning conditions. He agreed with English Nature that a full ecological assessment was needed prior to determination of the proposal. In the absence of such an assessment he concluded that there was the potential for harm to nature conservation.

Outbuildings 24.8

In certain circumstances it is not so much the impact of the houseboat that is at issue as associated development such as parking areas and domestic outbuildings, as (Adur 17/3/04 DCS No. 047-790-229) demonstrates. In this case an enforcement notice directed at a shed which had been erected on a sea wall adjacent to a houseboat was upheld by an inspector who agreed that it was too large and harmed the character of the area. The shed measured 3.4 metres by 3.1 metres and had a monopitched roof which at its highest point was 2.45 metres above the sea wall. In agreeing that other houseboats had sheds, the inspector accepted that to permit the appeal proposal would set an undesirable precedent which would lead to other owners seeking larger structures. This would be harmful to the river scene, undermining the currently distinctive and interesting character of the area. However, in a subsequent appeal on the same site (Adur 23/8/06 DCS No. 100-043-824) an inspector found that the need for storage outweighed the slight harm to the character and appearance of the area provided that the height of the roof was reduced.

Conditions 24.

Circular 11/95 states that conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. This principle applies equally to houseboats and conventional residential development. There may, however, be greater scope for the use of a trial run condition where the capital expenditure involved in the provision of moorings is limited.

The layout of the development was controlled by condition in (Southwark 28/7/06 DCS No. 100-043-717). In this case an inspector, in allowing three appeals associated with the use of part of a river for the mooring of barges, decided that only one of the proposed layouts was acceptable. The council had already granted permission for the site to be used for the mooring of barges and other marine vessels for a mixture of residential, live work and industrial uses together with ancillary storage and workshops. A condition had been imposed requiring details of the layout of the vessels and in discharge of this condition the appellants submitted three alternative schemes. In deciding the appeals the inspector agreed with the council that it was important to maintain an adequate exclusion zone around the barges in order to protect the amenity of residents living in flats nearby. In her opinion, it was important to maintain a distance of 25m between the barges and the windows of properties in order to maintain privacy and reduce over-looking. Only one of the layouts achieved this. She decided, however, to allow all the appeals and imposed a condition stating that the arrangement and layout of vessels including exclusion zones should only be carried out in accordance with the one layout plan which she had found to be acceptable.

The use of a parking area was subject to a condition in (Sandwell 28/10/04 DCS No. 032-704-833). Here, British Waterways secured permission for five residential moorings, the deputy prime minister concluding that they would not lead to undue disturbance to local residents. The corporation claimed that the residential narrowboats in the canal basin would rarely move once they had been installed. It operated a scheme which required occupants to comply with strict conditions supervised by a resident caretaker. Thus, activities associated with their use would not disturb residents living close to the canal. The deputy prime minister agreed, concluding that the proposed car parking arrangements were acceptable and there was no justification for increasing the parking provision over and above that proposed by the corporation. In allowing the appeal, conditions were imposed limiting the number of residential houseboats in the basin and requiring the submission of a scheme indicating how the boat owners would be encouraged to use the proposed parking area.

In (East Cambridgeshire DCS No. 038-282-257) a personal condition which had been imposed with regard to the personal safety of the occupiers of a houseboat was deleted, an inspector finding that it was neither reasonable or necessary to protect them from the risk of flooding. The Environment Agency objected to the application as the site was within a functional floodplain and alleged that the removal of the condition would increase the harm to life and property. The appellant, it claimed, had not undertaken a flood risk assessment in accordance with the advice in PPG 25 on development and flood risk. The inspector considered that the main concern of the council and the Environment Agency appeared to be that removal of the condition would result in permanent living accommodation in a hazardous flood risk area. He noted, however, that permission had been granted for the permanent mooring of a houseboat in that the council had granted a personal, not a temporary permission. The condition did not restrict the period of time the houseboat could be occupied, nor did it specifically require that only the appellant should occupy it. He considered that the removal of the condition would not significantly alter the potential risk to life during a flood event. The inspector acknowledged that the site was in a vulnerable location, and that the Environment Agency had referred to past flooding events. The appellant, however, emphasised that the houseboat floated and was not affected by being moored in a floodplain. The Environment Agency did not suggest that the mooring arrangements would be inadequate during a flood event, or that the houseboat might drift and block the river or become lodged against riparian structures. The inspector concluded that there was no compelling evidence to demonstrate the mooring of the houseboat might potentially cause an obstruction to flood waters, or

that it would increase the risk of flooding elsewhere.

Enforcement 24.

A houseboat, not being an operational development, is subject to the ten year rule rather than the four year rule. Thus if ten years continuous occupation can be shown a houseboat would be immune from enforcement and qualify for an LDC. Operational development such as permanent moorings or boardwalks may become immune from enforcement after four years, although note should be made of the cases cited at (4.5363) which suggest that such ancillary works may be removed as part of the requirements of an enforcement notice directed at the use of land.

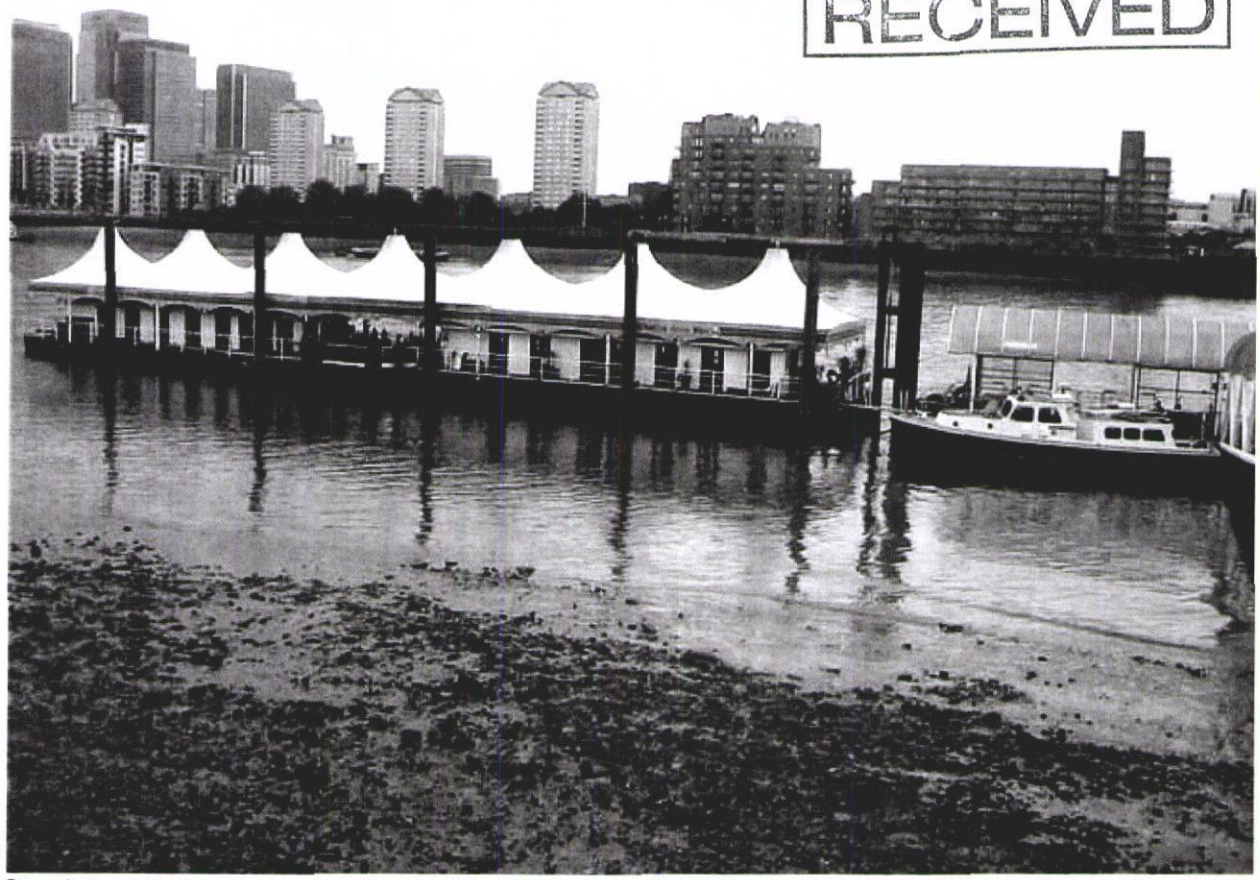
The duration of residential occupation was considered in (West Devon 25/10/01 DCS No. 047-582-487). In this case an enforcement notice alleged the making of a material change of use of land for the mooring of a houseboat on the River Tamar. In dismissing the appeal it was concluded that the appellant had purchased a houseboat which had no established full time residential use as the boat had been used for bird watching and enjoying the river during the period 1992-1997. Throughout this period there was no water, electricity or drainage connected. Even though the houseboat had not left the mooring for over ten years, it was not lived in on a permanent basis until 1997 when the appellants took up residence. The inspector concluded that the appellants had not proved, on the balance of probability, that the houseboat had been permanently sited on the foreshore for residential use for a period in excess of ten years prior to the issue of the enforcement notice and consequently the appeal failed.

In (Huntingdonshire 17/3/00 DCS No. 052-530-668) the introduction of a business use resulted in enforcement notices being upheld. Here, the permanent mooring and use for residential purposes of a houseboat was enforced in addition to the change of use of land to a joinery and boat building business. The notices were corrected to refer to a mixed use since the site comprised a single planning unit. The residential use of the houseboat occurred in the 1980s beyond the 10 year period. Any significant level of boat building did not occur until 1997 such that there was an increase in the nature and intensification of the use from a wood yard to boat building business. It was therefore not immune from enforcement action. Planning permission was refused on the basis that it conflicted with an area of best landscape.

A mixed use was also the subject of enforcement action in (Southwark 21/2/06 DCS No. 100-041-371). In dismissing an appeal against the enforcement notice, an inspector determined that the appellant required planning permission to live on a floating pier in a river. The pier had a superstructure built along its entire length. It was divided into a function room and separate domestic accommodation. The latter included a lounge, kitchen, bathroom and bedroom. The council had granted permission to allow the pier to be used for the mooring of private boats, for allowing ferry passengers to disembark, as an associated waiting room and as an inspection point for custom and excise safety boats. The appellant argued that this permission, by implication, recognised the need to provide caretaker and security facilities and this justified her living on the pier. In her opinion, the residential use did not involve a material change in the overall character of the pier for mooring and the movement of ferry passengers. The inspector disagreed. In his opinion the planning permission granted by the council did not permit any residential use of the land. The appellant had created a separate residential unit and permission for its retention was required.

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED



Southwark: permission required to live on a floating pier in a river

Another case of interest is (Spelthome B.C. 10/11/95 035-087-335) which concerned enforcement action which was taken against an alleged change of use from the mooring of nine residential houseboats to a mixed use for mooring of houseboats and floating platforms on one of which a prefabricated two storey wooden chalet type building had been constructed. Established use rights existed for nine houseboats and the point at issue was whether the new structure constituted a houseboat for the purposes of the EUC. After considerable discussion as to the definition of a houseboat it was concluded that there had been a material change of use even though the number of residential units had not increased. The same applied to two floating platforms without a dwelling which were present at two of the berths. This decision was supported in the High Court, but it was nevertheless remitted to the SOS on the basis that the fallback position of a larger and uglier vessel, within the terms of the EUC and the definition of a houseboat, had not been considered. The matter went to the Court of Appeal where it was decided that the inspector's overall approach had been correct and the structure was not a houseboat. The fallback position was not considered to be significant since the inspector had concluded that the boat was alien to the river and a serious visual intrusion. *Sussex Investments Ltd v SOS and Another 18/12/97.*

Consideration should be given to the possibility of interference with the human rights of houseboat occupiers where enforcement action is contemplated, as (Crewe and Nantwich 21/7/06 DCS No. 100-043-247) illustrates. Here, works of alteration to the Shropshire Union canal in Cheshire were rejected by an inspector who upheld an enforcement notice requiring them to be undone and requiring the appellant to remove two residential canal boats. The appellant had constructed a concrete retaining wall along the edge of the canal. He had attached two canal boats to the side and he claimed that he was a third generation boat person having lived almost all of his life on the canals. He stated that permanent moorings were required so that his children could obtain a settled education and allow his mother to visit from her cottage in Crewe. The inspector noted that prior to the works being undertaken the canal side had been grass and soil. Although it appeared that the bank was slowly being eroded this did no justify the construction of a permanent retaining wall. Moreover the works had allowed the appellant to moor two houseboats and this change of use if permitted to remain would inevitably add to the urbanisation of the canal and introduce domestic paraphernalia to the towpath. Although upholding the notice would interfere with the appellant's family and private life, the inspector decided that the need to protect the countryside was an overriding objection to the development. The development had been established unlawfully and consequently his personal circumstances carried less weight in determining

whether to uphold the notice, he ruled.

Whilst an unusual case, (Suffolk Coastal 31/3/05 DCS No. 100-036-740) is of interest due to the status of the site as Crown Land. In this case, the deputy prime minister agreed with one of his inspectors and upheld a special enforcement notice issued in respect of the mooring of a boat for residential purposes on Crown land in Suffolk, concluding that a breach of planning control had occurred and permission was required. A second notice issued under section 174 of the 1990 Act requiring removal of the boat was also upheld. The site had a complicated planning history. A wharf had been built in 1901 and was subsequently sold to a council who used it as a highways depot. An application was approved in 1978 for the use of the foreshore and mud flats as public open space in front of the wharf, a lease being granted from the Crown Estate Commissioners. The appellants claimed, however, that a lease had been granted allowing private use of a six metre strip adjacent to the wharf and accordingly this area could not fall within the definition of Crown land under section 293 of the 1990 Act. Consequently, it could not be subject to the provisions of the special enforcement notice. The inspector noted that there were only two grounds of appeal against a special enforcement notice issued under section 295 of the 1990 Act. Firstly, that the matters alleged to have occurred had not taken place and secondly, that they did not involve development. He decided that documents provided by the Land Registry indicated that part of the land which was subject to the notice, fell within the ownership of the Crown and there was no private right to use it for mooring a boat used for residential purposes. The latter required permission he determined and consequently the appeal against the special enforcement notice, should fail. In dealing with a second enforcement notice he decided that it was not immune from enforcement action and the houseboat harmed the Suffolk Coast AONB and undermined the tranquil nature of the river and countryside. In addition, he concluded that it could encourage other proposals which cumulatively would be very difficult to resist. The deputy prime minister agreed and dismissed both appeals.

In drafting an enforcement notice note should be made of the appeal case (South Derbyshire D.C. 28/2/91 DCS No.038-525-156) where the notice was quashed because the plan did not include any part of the canal itself. An inspector felt that this was a serious defect beyond correction. It was fundamental that the part of the canal where boats were moored should be included.

Q & A 24.8/

I have a mooring on the Thames. The boat has been at this mooring for over ten years and is in residential use. Will I now get planning permission?

A "houseboat" is treated in much the same way as a caravan in planning law. Therefore, if you can show with evidence that the houseboat has been continuously occupied for residential purposes at the mooring for more than ten years, there will be immunity from enforcement. This enables you to apply to the council for a Lawful Development Certificate, which may be more advantageous to you than planning permission as no conditions may be applied.

What is the situation regarding the need for planning permission for the replacement of houseboats. If a houseboat is replaced by a larger one, does this constitute development?

The position is similar to that of the siting of caravans, which because of their characteristics of mobility are considered to constitute a material change of use of land. The courts have held that "land" may include land covered by water. However, if a houseboat is moored or attached to the bank in such a way as to suggest permanency it may be that operational development will have taken place. As to the question of replacement by a larger boat, it is unlikely that a material change of use will be considered to have occurred, especially if the area of water occupied is not significantly greater. You may find it useful to refer to section (24.8) in *Development Control Practice* where there is specific commentary on the subject of houseboats.

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

Batch 4266

Appeal Decision

Inquiry opened on 7 September 2010
Site visit made on 9 September 2010

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date: 24 September 2010

Appeal Ref: APP/E2001/C/10/2122441
Land at the Driffield Navigation Canal and its East and West banks, North and South of Bethell's Bridge, Hempholme, Brandesburton.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Dennis Arthur Norris against an enforcement notice issued by East Riding of Yorkshire Council.
- The Council's reference is 10/00031/ENFORC.
- The notice was issued on 16 December 2009.
- The breach of planning control as alleged in the notice is without planning permission use of the land for the stationing of boats "Tanamara" and "Raleigh" used for human habitation purposes and not being in the course of navigation or mooring incidental to navigation.
- The requirements of the notice are to permanently cease the use of the land for the stationing of boats used for human habitation purposes and remove them from the land.
- The period for compliance with the requirements is one year from when the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed following correction and variation of the enforcement notice in the terms set out below in the Formal Decision.

Procedural matters

1. The Inquiry sat for 3 days from 7 September 2010. I visited the site unaccompanied on the evening of 6 September and I made an accompanied site visit on 9 September, before the close of the Inquiry.

2. Ground (c) was not originally pleaded but, when proofs of evidence were submitted, the appellant sought to add that ground and the Council did not object. The appellant had originally included ground (g), but this was withdrawn during the Inquiry.

The enforcement notice

3. The allegation in the notice refers to the use of the land for the stationing of two particular boats, "Tanamara" and "Raleigh", for the purposes of human habitation. I consider that it is the use of the land, rather than the specific identity of the boats that is relevant in planning terms. However, to correct the allegation to refer to boats generally would broaden its scope and could cause injustice. In particular, Mr and Mrs Taylor have been served with a separate notice alleging occupation of their boat "Mary Grace" for human habitation

purposes. They have appealed against that notice, which appeal will be determined separately through the written representations procedure, but they have not appealed against the notice that is the subject of this Inquiry. If the reference to "Tanamara" and "Raleigh" were deleted from the allegation and this notice were upheld, Mr and Mrs Taylor could be caught by it. As they have not pursued ground (a) in their appeal and their deemed application for planning permission has lapsed, the decision on their appeal would be rendered academic.

4. Section 176(1) of the 1990 Act provides that I may correct or vary the notice if this would not cause injustice to the appellant or the local planning authority. Whilst Mr and Mrs Taylor are neither, paragraph 2.11 of Circular 10/97 suggests that consideration should also be given to whether injustice would be caused to other "relevant occupiers", as defined in section 174(6). I am satisfied that Mr and Mrs Taylor are relevant occupiers and that deleting reference to specific boats would cause serious injustice to them. In the interests of natural justice, I will not therefore exercise the power to correct the notice by deleting the reference to specific boats.

5. However, whilst I consider that an allegation concerning boats generally would be more logical, the allegation as it stands is capable of being understood. It does identify a use of land and is not so ambiguous or uncertain that the notice is a nullity or invalid. Leaving the allegation specific to the two boats mentioned does however have implications for the extent of the requirements under section 5 of the notice, which refer to boats generally. If the allegation is specific to "Tanamara" and "Raleigh", the requirements should be equally specific. That variation can be made without injustice, especially given that the Council could serve new notices, if they deem it appropriate.

6. There was some debate during the Inquiry over whether the reference to "human habitation" in the allegation is sufficiently precise, given that short term occupation or holiday use could still constitute human habitation and the Council has no objection to such use. However, that expression is qualified by the use of the words "not being in the course of navigation or mooring incidental to navigation." I consider that this ensures reasonable precision, but that the matter can nevertheless be made clearer by inserting the word "permanent". Furthermore, the Council explained that the use of the phrase "human habitation" was inspired by another recent appeal decision concerning a mobile home and that phrase appears in the Caravan Sites Act 1968. To my mind, the expression permanent residential use is more straightforward and appropriate and neither party disagreed. I will vary the allegation accordingly, being satisfied that this will cause no injustice. This will also necessitate a further, consequential variation to the requirements in section 5.

7. The Council also accepted that the allegation should refer to a mixed use, as use for permanent residential purposes, is not the sole, or primary use of the land. Together the parties suggested that, in addition, the land was already used for navigation (albeit largely for leisure, rather than commercial purposes), as well as the mooring of boats in the course of or incidental to navigation.

8. The evidence also indicates, and the Council accepts, that there are boats which are left at the appeal site for long periods, when they are not cruising on

this canal and other waterways and there is no suggestion that such use is unlawful. Indeed, the evidence is that such mooring has taken place at least as long as the Bethell's Boat Club has been in existence, which is more than 30 years. Whilst many of those boats may be capable of permanent occupation, their owners do not actually live aboard them permanently, though they may spend some time on them, especially during the holiday periods and at weekends, including sleeping on them overnight. In short, this is the place where those boats are kept and this was described throughout the Inquiry as "home mooring". That term is used in another appeal decision Ref APP/E3905/C/06/2019638 (the Wilcot appeal) and appears to come from the British Waterways Act 1995. Being under the jurisdiction of the Driffield Navigation Trust, the canal of which the appeal site forms part, is not governed by that legislation, and the meaning of the term "home mooring" may not be immediately apparent. However, the Wilcot appeal decision indicates that it means *"a mooring or other place where the vessel can reasonably be kept and may lawfully be left."*

9. To my mind the mooring of boats in the course of or incidental to navigation is clearly ancillary to the primary navigation use, much as kerbside parking is ancillary or incidental to the use of a highway and such use does not need to be identified as an additional primary component of the mixed use. As stated by the Inspector in the Wilcot appeal decision: *"If boats are not to be in perpetual motion, some mooring is clearly an essential element".*

10. I note that the Inspector in the Wilcot appeal also concluded that on-line[1] "home mooring" of 17 boats on a section of the canal was ancillary to the primary use of the canal for navigation. His rationale was that boats, whether moving or moored, were intrinsic to the character of the canal. Furthermore, he said that *"home mooring is more akin to parking than a storage use, such that the constant mooring of a line of boats no more amounts to a change of use of the canal than cars parked on the public highway outside dwellings, which equally could be for an extended period, result in a material change of use of the road on which they are parked."*

11. I respectfully take a different view and consider that "home mooring" is not truly ancillary to navigation. I am reinforced in this view by another Inspector's decision Ref APP/X5990/C/07/2038830 & 2038821 (the Temple Pier appeal), referred to by the appellant, in which he made reference to *Crown Estate Commissioners v Fairlie Yacht Slip [1979] SC 156*. He said that, in that case it was held that "navigation" did not include *"the permanent or quasi-permanent mooring of a ship between voyages and that navigation began with preparations for a voyage and ended when the ship is left unmanned at the end of the voyage."* Furthermore, keeping a boat at a home mooring, as its main base when it is not cruising, is likely to attract activity such as trips by car to and from the site before and after cruising, or to carry out repairs, maintenance and routine checks on the boat, or simply to spend time on it. It is not therefore truly akin to parking a car outside a dwelling and may have an appreciable environmental impact over and above casual mooring in the course of navigation. In my opinion, given the scale on which it takes place across the appeal site, mooring in this category should therefore be specifically identified as a component of the mixed use.

[1] I.e. mooring along the course of the canal, as opposed to in an *off-line marina or basin.*

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

12. On the evidence and for the reasons given, it seems to me that the allegation should be corrected to refer to a mix of uses. These should include the pre-existing uses of navigation and the keeping of boats whilst not in use for either navigation or permanent residential use, as well as the use alleged, but corrected to read the stationing of boats "Tanamara" and "Raleigh" for permanent residential use and not being in the course of navigation or mooring incidental to navigation. Furthermore, it is only a material change of use which constitutes development under the 1990 Act and those words should be incorporated in the allegation. I am satisfied that these corrections would not cause any injustice.

Ground (e)

13. As set out in his Statement of Case, the main substance of the appellant's argument on this ground was that the planning unit is larger than the area edged in red on the enforcement notice plan. He contended that the notice probably should have identified the entire Driffield Navigation and should therefore have been served on all those parties with an interest in boats in residential use along the whole canal. During the course of the Inquiry, the appellant altered his view on the extent of the planning unit, which I discuss below in relation to ground (c). In any event, whilst it is essential to identify the planning unit in order to determine whether there has been a material change of use, a notice does not have to be directed at the whole unit, nor indeed does it need to identify it[2]. As drafted, the notice related to one section of the canal and section 172(2) of the 1990 Act only requires it to be served on owners or occupiers of the land to which it relates and those with an interest which is materially affected by the notice. Accordingly, the appellant's contention was flawed, whatever the correct extent of the planning unit.

14. With reference to the area actually edged in red on the notice plan, it is not clear from the appellant's case who was not served but should have been. Clearly the appellant was, as a copy of the notice was attached to the main door of his boat and he received it. The owners/occupiers of "Tanamara" were also served, a copy of the notice having been attached to the gate adjacent to their boat, but they have chosen to comply with it. Mr Taylor explained in cross examination that he became aware of the notice because copies were posted around the appeal site and indeed one was attached to a gate post near his boat "Mary Grace". He also indicated that Mrs Taylor probably assisted the appellant with the completion of his appeal form and of course Mr and Mrs Taylor submitted proofs of evidence and Mr Taylor gave oral evidence at the Inquiry. Those with interests in the canal land and its associated banks were identified in a Land Registry search and duly served. It appears that all known relevant persons were properly served and that, in any event, there is no indication of anyone having been substantially prejudiced by any alleged defect in the manner of service.

15. Whilst it was not formally withdrawn, ground (e) was not actively pursued by the appellant in closing submissions and, in all the circumstances that ground of appeal must fail.

[2] Hawkey and Others v Secretary of State for the Environment and Another [1971] 22 P. & C.R. 610 and Richmond Upon Thames London Borough Council v Secretary of State for the Environment et al [1987]JPL 396.

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

Ground (c)

16. To succeed on this ground, the appellant must show that the matter alleged does not constitute a material change of use, having regard to the appropriate planning unit. On the basis of the corrections considered above, the breach of planning control now alleged is without planning permission, the material change of use of the land to a mixed use for navigation, the keeping of boats whilst not in use either for navigation or permanent residential use and for the stationing of boats "Tanamara" and "Raleigh" for permanent residential use and not being in the course of navigation or mooring incidental to navigation.

17. In determining whether there has been a material change of use, the first step is to identify the appropriate planning unit. The judgement in *Burdle and Williams v Secretary of State for the Environment [1972] 3 All ER 240* indicates that the assessment of the planning unit is a matter of fact and degree. However, it should be generally assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit of occupation can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

18. The Driffield Navigation as a whole, from Aike Beck in the south to Driffield in the north, is managed by the Driffield Navigation Trust, though mooring rights remain with the various riparian owners along the banks. In the appellant's written evidence it was argued that, as the Driffield Navigation is a single waterway, created by man made improvements authorised by Acts of Parliament (in 1767 and 1801) to canalise the River Hull, the entire navigation should be taken to be the planning unit. To support that contention, reference was made to the Wilcot appeal decision, in which the Inspector found that the entire Kennet and Avon canal was the planning unit.

19. However, by the close of the Inquiry, it was common ground that the area to the north and south of Bethell's Bridge and edged red on the enforcement notice plan is the correct planning unit. This is because, whilst there are other locations along the canal, such as Wansford Bridge, Brigham Bridge, North Frodingham, Snakeholme Lock, Struncheon Lock, Baswick Landing and Wilfholme, where small numbers of boats can be moored, the appeal site is the only point where moorings capable of enabling permanent residential use of boats exist. The area enforced against corresponds with the extent of the moorings to the north and south of the bridge, which are some considerable distance from any other moorings.

20. The moorings themselves comprise in the main wooden mooring poles, many with decks or pontoons of varying sizes and they provide electricity and drinking water connections. The site also has highway access to enable the disposal of sewage and refuse off site. There are some 70 to 80 moorings in the appeal site area. I visited the site on the evening before the Inquiry opened and once during the Inquiry and, on both occasions, there were boats stationed at the majority of the moorings.

21. In my view, whilst the entire canal under the management of the Driffield Navigation Trust may be regarded as a single unit of occupation, the area identified in the enforcement notice and extending to approximately 0.6km in length can be readily identified as a physically distinct section of the canal

where, functionally, the stationing of boats in significant numbers, and potentially for long periods, is possible through the provision of mooring facilities and this routinely occurs. Accordingly, I consider that, as a matter of fact and degree, that area is the appropriate planning unit against which to consider the materiality of any change of use in this case.

22. It is important to note that the size of the planning unit may have a bearing on the materiality of any change. The commentary in the Encyclopedia of Planning Law and Practice states at P55.44 that the larger the unit *"the less likely is a change in the use of part of it liable to constitute a material change in the whole."* Furthermore, in the Temple Pier appeal decision, the Inspector made reference to *Sussex Investments Ltd v Secretary of State for the Environment [1998] PLCR 172 CA.* He said this upheld enforcement action against a change of use on the Thames at Spelthorne where there was no suggestion that the planning unit was a larger unit than the moorings and a change of use would have been de minimis in the context of the Thames as a whole.

23. Whether the matters alleged constitute a material change of use of the planning unit is also a question of fact and degree. There must be some significant difference in the character of the activities from what has gone on before. In *Thames Heliports Plc v London Borough of Tower Hamlets [1997] 74 P. & C.R. 164* it was held that one must ask: *"has anything changed on the land which is capable of being material from an environmental point of view?"* It was further held that one must look at the question of whether there has been a material change in use *"from the point of view of human beings likely to be affected by the change which has occurred."*

24. The Council accepts that the use enforced against does not have any adverse impact on the character or appearance of the area. Indeed, its evidence is that, where a boat is large enough and otherwise suitable for permanent residential use, it will be very difficult to detect whether it is being so used. Raleigh is large in comparison to most of the boats in the area, but it is nevertheless a barge and not unexpected on a canal and there are many other substantial boats within the site, which are likely to be capable of residential occupation for long periods. Furthermore, whilst permanent residential use could give rise to the provision of domestic paraphernalia on the canal bank, so could "home mooring" or holiday use.

25. The Council's objection to the use is based solely on sustainability considerations. As well as needing to access shops and other facilities, the Council contends that those residing permanently on their boats at the site will place demands on services such as welfare provision, education services, refuse collection, medical and emergency services. However, it was accepted in cross examination that refuse collection services are provided at the site regardless of the payment of Council Tax or permanent occupation and that holiday users may equally require emergency service provision. They may also need to visit doctors locally, though it is possible that they would choose to do so nearer home.

26. The Council accepted that people take longer and longer holidays and some owners might legitimately spend several months on their boats at the site, particularly in the summer, without the boats then becoming their permanent

residences. Mr Middleton had some difficulty in drawing the line beyond which permanent residential use would be established and merely said that it would be going too far to claim that you were on holiday for 364 days in the year. He placed great emphasis on whether an individual has another place to live. I am not convinced that this is relevant to establishing whether the use is materially different from the point of view of human beings likely to be affected by the change. It is undoubtedly difficult to identify the point at which the use of any particular boat becomes permanent residential use but, as discussed at paragraph 11 above, the "home mooring" element of the mixed use of the planning unit as a whole will attract vehicle movements to and from the site. Furthermore, mooring in the course of navigation will generate activity on and around the site. I heard no evidence to the effect that, in the context of the whole planning unit, the permanent residential use of 2 boats as alleged would materially add to that traffic and general activity, even though it might necessitate trips to and from work and so on.

27. Sustainability considerations identified by the Council relate to accessibility to services and the consequent need for travel by car and implications for climate change. Where a change of use is material, such considerations will undoubtedly be relevant in determining whether planning permission should be granted and they are the subject of government policy. In broad terms, I consider that such environmental considerations are also capable in principle of being relevant in determining whether a change of use is material in the first place, even though the effect on human beings may not be immediately perceptible. However, on the evidence, it seems that, in the context of up to 80 or so boats moored along a stretch of canal some 0.6km in length, many of which may be occupied for extended periods, the only change from an environmental point of view, resulting from the use of 2 boats as permanent residences would be some potential additional demand for welfare, education and perhaps non-emergency medical care.

28. If all the moorings, or a significant number of them, were used for the stationing of boats for permanent residential occupation then that may constitute a material change of use. If such circumstances arise, the Council may have to make a judgement in the future. However, as a matter of fact and degree, I conclude that the use of the land for the stationing of just 2 boats "Tanamara" and "Raleigh" for permanent residential use and not being in the course of navigation or mooring incidental to navigation does not amount to a material change of use, in the particular circumstances of this case.

29. In reaching this view, I have taken account of the fact that the Inspector in the Wilcot appeal drew a distinction between "home mooring" and use for residential purposes. However, that does not mean that, in the particular circumstances of this case, I am bound to conclude that any element of permanent residential use necessarily amounts to a material change of use of the whole planning unit, as a matter of fact and degree. Furthermore, I have come to a different view on the question of whether "home mooring" is ancillary to navigation and this has affected my judgement on the materiality of the alleged change. The residential use alleged is not use in the course of navigation, but neither, in my view, is "home mooring", which was already an element of the pre-existing mixed use.

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

Conclusion

30. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should succeed on ground (c) and the notice should be quashed, following necessary corrections and variations. Grounds (a), (d) and (f) need not therefore be considered.

Formal Decision

31. I direct that the enforcement notice be:

(a) corrected by the deletion in their entirety of the words in section 3 and the substitution of the words "Without planning permission, the material change of use of the land to a mixed use for navigation, the keeping of boats whilst not in use either for navigation or permanent residential use and for the stationing of boats "Tanamara" and "Raleigh" for permanent residential use and not being in the course of navigation or mooring incidental to navigation"; and

(b) varied in section 5 by the deletion of "used for human habitation purposes" and substitution of the words " "Tanamara" and "Raleigh" for permanent residential use and not being in the course of navigation or mooring incidental to navigation";

32. Subject to these corrections I allow the appeal, and direct that the enforcement notice be quashed.

J A Murray

INSPECTOR

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

HAVANT BOROUGH COUNCIL
11 JUL 2011
RECEIVED

APPEARANCES

FOR THE APPELLANT:

Ned Westaway of counsel	Instructed via the Bar Pro Bono Unit
He called	
Dr A J Fouracre	Bethell's Bridge Boat Club member
Dennis Arthur Norris	Appellant
Richard Borrows BSc Dip TP MRTPI	Planning Aid Volunteer
John William Jackson	Bethell's Bridge Boat Club member
Gordon Taylor	Bethell's Bridge Boat Club member
Captain Martin Cadman	Bethell's Bridge Boat Club member
Roger Gooch FICE	Driffield Navigation Trust Commissioner and Trustee (giving evidence as an individual and not on behalf of the Trust)

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson of counsel	Instructed by the Head of Legal and Democratic Services, East Riding of Yorkshire Council
He called	
Andrew Broughton BA	Housing Management Officer, East Riding of Yorkshire Council
Stephen John Watson	Enforcement Officer, East Riding of Yorkshire Council
Jonathan Middleton BA Dip TP	Development Control Team Leader, East Riding of Yorkshire Council

INTERESTED PERSONS:

Amanda Callaway	Bethell's Bridge Boat Club member

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Notice of Inquiry and list of persons served
2 Letter from Alan R M Kelly dated 5 September 2010 enclosing the text of the introduction to his website entitled 'Carr Landscapes of the River Hull'
3 Letter from the Government Office for Yorkshire and the Humber dated 17 September 2007 re the saved policies of the East Yorkshire Borough Wide Local Plan, adopted June 1997
4 Written opening statement on behalf of the appellant
5 Boat Safety Scheme Certificate for Raleigh dated 30 July 2008
6 Extract from 'Ramblings of a Boatman' by L Hill
7 Letter from J F Darlow dated 20 March 2010
8 Letter from Mike and Ben Southwell dated 23 August 2010
9 Letters to Mr Watson of the Council from M Southwell and Mr and Mrs Tullock dated 3 June 2008 and 26 May 2008 respectively, together with a copy of the Southwell's 'Rules and Regulations' relating to the Hunt Hill Moorings
10 Development Strategy chapter of the Joint Structure Plan for

Kingston upon Hull and the East Riding of Yorkshire (JSP), adopted June 2005
11 Housing Growth and Renewal chapter of the JSP
12 Sense of Place chapter of the JSP
13 Introduction section of the Holderness District Wide Local Plan (HDWLP), adopted April 1999
14 Environment chapter of the HDWLP
15 General Principles of development section of the HDWLP
16 Environment Chapter of the East Yorkshire Borough Wide Local Plan, adopted June 1997
17 Ordnance Survey extract
18 Photographs showing Raleigh and Tanamara and copies of the enforcement notice affixed to Raleigh and around the site
19 Copy enforcement notice issued 23 March 2005 concerning Rosewood
20 Map of the Driffield Navigation from Struncheon Hill Lock to *Riverhead Great Driffield*
21 Undated photograph entitled 'Houseboats, Wansford'
22 Act of 1801 for improving and extending the navigation of the River Hull
23 Letter from the Council to Mr and Mrs Taylor, dated 16 May 2008
24 Extract from the Council's enforcement guidelines
25 Plan showing parts of the site to which the Holderness District Wide Local Plan and the East Yorkshire Borough Wide Local Plan apply
26 Letter from the Driffield Navigation Trust, dated 8 September 2010
27 Transcript of The Queen on the application of Rydale District Council v (1) Secretary of State for Communities and Local Government and (2) Douglas Sleightholme [2010] EWHC 2140 (Admin)
28 E-mail exchange between the Council and the appellant's representatives concerning suggested conditions
29 Thames Heliports Plc v London Borough of Tower Hamlets 74 P. & C.R. 164
30 Closing statement on behalf of the Council
31 Mayes et al. v Secretary of State for Wales and Dinefwr Borough Council [1989] J.P.L. 848
32 Closing statement on behalf of the appellant