
Appeal Decision

Site visit made on 8 August 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 18 August 2017

Appeal Ref: APP/L5810/C/16/3163040

Land forming part of Taggs Island, Hampton Court Road, Hampton TW12 2HA

- 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 Taggs Island Limited against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The enforcement notice, numbered 16/0740/EN/UBW, was issued on 5 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land from public amenity land to public amenity land and its use for the mooring of river born craft.
 - The requirements of the notice are cease the use of the land for the mooring of river born craft.
 - The period for compliance with the requirements is within three months of the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. At the time of the site visit the craft moored at the appeal site had been removed. Nevertheless, the appellant indicated that the intention is to refurbish and repair the appeal site and return the river craft.

Main Issue

3. The appeal site is within Metropolitan Open Land (MOL) which benefits from a similar level of protection to Green Belt. Consequently the main issue in this appeal is whether the use of the appeal site for the mooring of river borne craft represents inappropriate development within MOL and, if so, whether the harm by virtue of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to justify the development on the basis of very special circumstances.

Reasons

4. Taggs Island is an island in the River Thames accessed via a narrow vehicular bridge from Hampton Court Road, the A308. The island is almost completely encircled by moored houseboats and further residential craft are located in a

central lagoon such that there is minimal public open space or open access to the river bank. An exception is the appeal site, a gap between houseboats of some 40m located on the southern bank opposite East Molesey Cricket Club.

5. There exists a legal agreement relating to the land, entered into when planning permission ref. 81/1205 was granted. The permission was for additional moorings, the construction of a new access bridge and other works on the island. That agreement set out that the land at the appeal site was to remain open to the public, that no structure was to be built upon it and no boat to be moored to that part of the island. That agreement, however, does not constitute a material planning consideration and has not been given weight in the determination of the appeal.

Inappropriate Development

6. Policy 7.17 of the London Plan (LP) sets out policy in respect of Metropolitan Open Land (MOL) including that it should be given the strongest protection and that inappropriate development should be refused except in very special circumstances, giving the same level of protection as in the Green Belt. The supporting text of the policy explains that appropriate development should be limited to small scale structures to support outdoor space uses and minimise any adverse impact on the openness of MOL. The appeal site is within the designated MOL.
7. Policy DM OS 2 of the London Borough of Richmond upon Thames Development Management Plan (DMP) builds on the London Plan Policy in respect of MOL, stating that appropriate uses include public and private open spaces and playing fields, open recreation and sport, biodiversity including rivers and bodies of water and open community uses including allotments and cemeteries. Policy DM OS 2 also recognises that there may be exceptional cases where appropriate development such as small scale structures is acceptable but only if it does not harm the character and openness of the MOL; and is linked to the functional use of the MOL or supports outdoor space uses; or is for essential utility infrastructure and facilities for which it needs to be demonstrated that no alternative locations are available and that they do not have any adverse impacts on the character and openness of the MOL.
8. DMP Policy DM OS 13 relates specifically to moorings and floating structures and explains that existing houseboats, moorings and other floating structures are an established part of the river scene and will be protected but that proposals for new houseboats including extensions to existing houseboats, moorings and other floating structures will only be permitted if they are appropriate developments compliant with Metropolitan Open Land policy. Policy DM OS 13 further explains that there may be exceptional cases where development is acceptable but only:
 - 1) if it does not harm the character, openness and views of the river, by virtue of its design and height;
 - 2) if the proposed use is river-dependent;
 - 3) if it is a replacement of existing facilities;
 - 4) if there is no interference with the recreational use of the river, riverside and navigation;
 - 5) if there is adequate provision of land based infrastructure and support facilities; and
 - 6) if the proposal is of wider benefits to the community.

9. The appellant argues that neither Policy DM OS 2 nor Policy DM OS 13 cite infill as an exception to inappropriate development and that, therefore, the policies are incompatible with the National Planning Policy Framework (the Framework) and are consequently out of date. Within the exceptions to inappropriate development listed in the Framework are limited infilling in villages and limited infilling or the partial or complete redevelopment of previously developed sites.
10. MOL is, by definition **open** land or water, and within the context of MOL limited infilling within villages or of previously developed land is not applicable. Failure to refer to 'infilling' therefore does not mean that the policies are inconsistent with the Framework or are out of date.
11. Taggs Island is densely developed with closely related moorings with minimal gaps between houseboats or public open space. The appeal site provides a rare opportunity for public access to the riverbank and for views across the river.
12. The mooring of a craft at the appeal site would result in a loss of at least part of the valuable gap in the otherwise substantially enclosed river bank of Taggs Island restricting public views into and out of the island, albeit that views into the island include the car parking area inland of the bankside vegetation and trees.
13. The mooring of a craft at the appeal site would be inappropriate development, which is also detrimental to the openness of MOL.

The Hampton Village Conservation Area

14. The appeal site lies within the Hampton Village Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
15. The appellant acknowledges that the Council would have little control over the appearance of houseboats moored at the appeal site and yet makes play of the limited impact of the houseboat which was moored at the appeal site at the time that the enforcement notice was issued.
16. Allowing a ground (a) appeal grants planning permission on the application deemed to have been made under s177 of the Act, namely planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control; in this case change of use of the land from public amenity land to public amenity land and its use for the mooring of river borne craft. Allowing the appeal would, therefore, allow mooring along the entire length of the appeal site and the scale and design of the houseboat moored at the time the enforcement notice was issued is of little relevance in the determination of the appeal.
17. Whilst the character and appearance of Taggs Island, as part of the Conservation Area, is dominated by the wide variety of houseboats moored around its perimeter and within the internal lagoon, the gap between moorings at the appeal site provides a valuable interruption to the otherwise dense development around the perimeter, adding positive interest and variety to the character and appearance of the Conservation Area. Any diminishing of the valuable gap would, therefore, fail to preserve or enhance its character or appearance, contrary to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Harm

18. The Council suggest that by tying ropes to trees protected by a tree preservation order, the mooring of the craft originally enforced against may have caused damage to those trees. However there is doubt as to whether the existing trees (Swamp Cypress) are in fact those protected by the TPO believed by the appellant to have been horse chestnuts lost following storms in the 1980s and 1990s. As the Council have been unable to locate details of the TPO the weight attributed to the potential for damage to the trees is limited and, in any event, any permanent mooring on the site could be to sunken mooring posts, potentially controlled by condition.

Other Considerations

19. The appellant suggests that the 'proposal' will enhance the landscape setting of the area. As the proposal is for a change of use with little control over the appearance of craft moored at the appeal site little weight can be afforded to this argument.
20. The area is currently in a poor state of repair with irregular steps down, loose and misplaced concrete slabs and a potentially hazardous eroded river bank. The change of use would necessitate substantial repairs and improvements which would be of considerable local benefit. However the proposed use is not the only way of rectifying the situation and the weight to be attached to such benefit is limited.
21. There is a current shortage of moorings for houseboats on the Thames and the owners of the craft previously moored at the appeal site have no suitable residential mooring accessible and available to them, their craft having been previously located at a mooring unbeknown to them not to be authorised. The owners appear to have been forced into a difficult position through no fault of their own and the 'freeing up' of an additional mooring on Taggs Island would allow them to moor their houseboat at an authorised mooring to their substantial benefit.

Other Matters

22. The appellant has drawn attention to two permissions granted previously at Taggs Island. However the appellant acknowledges that in the first case the policy background was different and in the second the principle of development is different to that of the current appeal. Each case must be considered on its individual merits and these previous planning permissions carry little weight in the determination of this appeal.

Overall Balance

23. The use of the appeal site for the mooring of river borne craft is inappropriate development in Metropolitan Open Land which is, by definition, harmful. To that harm must be added harm to the openness of Metropolitan Open Land and harm due to a failure to preserve or enhance the character or appearance of the Hampton Village Conservation Area. Inappropriate development in Metropolitan Open Land should only be permitted if the harm by virtue of inappropriateness and any other harm is clearly outweighed by other circumstances so as to justify the development on the basis of very special circumstances.

24. Some weight must be afforded to the potential improvements to the river bank and its access at the appeal site. However those improvements are not wholly dependent on permitting mooring at the appeal site and therefore the weight attached is limited.
25. The owners of the houseboat moored at the appeal site at the time the enforcement notice was issued are in very difficult circumstances with little prospect of being able to find an alternative residential mooring. The use of the appeal site would, therefore, be of substantial personal benefit which does add some weight in favour of the appeal. However the circumstances could be repeated and cannot be considered in themselves 'very special'. Even with the addition of all other benefits of the scheme, the totality of weight in favour of the appeal does not outweigh the substantial harm resulting from inappropriateness and other identified harm so as to justify the development on the basis of very special circumstances.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Andrew Hammond

Inspector