



Appeal Decisions

Inquiry Held on 26 – 27 November 2019

Site visit made on 28 November 2019

by Katie Peerless Dip Arch RIBA

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

Decision date: 17 January 2020

3 Appeals at Land at Coast Road, West Mersea, Colchester, Essex

Appeal A: APP/A1530/C/18/3218452

Appeal B: APP/A1530/C/18/3218453

Appeal C: APP/A1530/C/18/3218454

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (TCPA).
 - The appeals are made by Mr Barry Jones, (Appeal A) Mrs Jackie Jones (Appeal B) and WM Wyatt Limited (Appeal C) against an enforcement notice issued by Colchester Borough Council.
 - The enforcement notice, numbered ENF 4404, was issued on 27 December 2018.
 - The breach of planning control as alleged in the notice is: i) the siting of a concrete foundation; ii) the building of a chalet type structure/building on top of the concrete foundation; iii) the construction of a walkway/jetty as an extension to an existing (lawful) walkway/jetty; and iv) use of the development for residential purposes.
 - The requirements of the notice are: i) Remove the concrete foundation; ii) Remove the chalet type structure/building in its entirety; iii) Remove the walkway/jetty extension in its entirety; and iv) Cease the use for residential purposes.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected: by the deletion of items (i) and (ii) of the allegations and the substitution of the words: '*the siting of the houseboat unit known as Saltwind*'. Subject to this correction the appeals are allowed and the enforcement notice is quashed.

Application for costs

2. At the Inquiry applications for costs was made by the Appellants against Colchester Borough Council. These applications will be the subject of separate Decisions.

Procedural matters

3. In a Statement of Common Ground submitted at the start of the Inquiry, the parties agreed that a residential use of a houseboat on the 'mud berth' on which the development enforced against is located would be authorised.
4. The Appellants also withdrew part of their appeal on ground (d), that the development is immune from enforcement action through the passage of time, and confirmed that they are now only pursuing this ground in respect of the alterations that have been carried out to the jetty.

5. At the Inquiry, the Council confirmed that it was not pursuing the reasons given for issuing the notice in respect of the suitability of the site for residential development, flood risk and parking provision.

Main Issues

6. I therefore consider the main issues in this case are:

on ground (b): whether the alleged breach of control has taken place as a matter of fact and, if so,

on ground (c): whether planning permission is required to authorise the development because 'Saltwind' is not a houseboat and if it is:

on ground (d): whether the development carried out to the jetty is immune from enforcement action through the passage of time.

If these grounds of appeal fail:

On ground (a): the effect of the development on (i) the ecology of the SSSI, the SPA and the Ramsar site (ii) the character and appearance of the West Mersea Conservation Area.

The site and surroundings

7. The appeal site is a 'mud berth' in the Blackwater Estuary, accessed by a timber jetty from Coast Road, in West Mersea. The wider surroundings include the West Mersea Conservation Area (CA) in which the appeal site is located. The CA was designated for the historic interest of the moorings amongst the saltmarsh creeks and their use by houseboats.
8. The mud berth is one of many in this part of the estuary and there are numerous houseboats and other vessels, in varying states of repair, surrounding the appeal site. On shore, there is residential development on the north side of Coast Road, outside the CA, and a boatyard and associated maritime operations on the south.
9. The berth is occupied by 'Saltwind', a residential unit claimed by the Appellants to be a 'houseboat' and by the Council to be a 'structure'. Saltwind has a timber framed superstructure that has been constructed on and within a hollow concrete base and is now the residence of two of the Appellants, Mr and Mrs Jones. It is located at the end of the jetty and is tethered by ropes and anchor chains and is connected to electricity and water services.

Reasons

Grounds (b) and (c)

10. On ground (b), the Appellants' case is that the wording of the enforcement notice does not accurately describe Saltwind which, as noted above, they consider to be a 'houseboat'. They say that the base is, in fact, not a 'concrete foundation' but a hull of a boat and that the addition to it, which forms the living accommodation, is not a 'chalet type structure/building' but part of the houseboat.
11. It seems to me that there is no confusion about what is being enforced against or any doubt that, however Saltwind is described, it has, as a matter of fact, been placed in the mud berth as alleged. However, I have the power to correct the notice, if found to be inaccurate, provided there would be no prejudice to either party.

12. It is, of course, crucial to the Appellants' case that Saltwind is considered to be other than as described in the allegations of the notice but this is more properly considered under the appeal on ground (c). If it then appears that the description is inaccurate and is not the development alleged to have taken place, the wording can be amended, without prejudice to either party, even if the notice were subsequently to be quashed.
13. Ground (c) is pleaded as the Appellants consider that, as Saltwind is a houseboat, planning permission is not therefore needed to moor it at the appeal site. The Council on the other hand take the view that Saltwind began life as a floating concrete platform that was brought round to the appeal site where the superstructure was added to create a residential unit. They submit that this was a building operation that amounts to operational development that requires a grant of planning permission to authorise it.
14. To support their case, the Appellants say that Saltwind floats and is therefore a boat. They submit that this applies both to the 'hull' which was floated onto the mooring and also to the living accommodation placed on it, the addition of which, they say, was the activity that completed the conversion to a houseboat.
15. They also say that Saltwind is a replacement for another houseboat, the 'Faye', which was previously in the berth. Mr Jones told the Inquiry that he removed a large part of the remains of the Faye to clear the space but that some remnants of the hull can still be seen below Saltwind. I saw at the site visit that this was, indeed, the case. As agreed in the SoCG, if Saltwind is a houseboat and is a replacement for another authorised boat, planning permission to moor it on the appeal site would not be required.
16. Although the Council now accepts that the unit may float, but only at very high tides, it submits that this is not the determinative issue and that there are many structures that float but are nonetheless considered to be development covered by s55(1) of the TCPA. S55 defines '*development*' (which requires planning permission) as, amongst other things, the carrying out of '*other operations in, on over or under land*'.
17. The Council refers to a court judgement¹ and a number of appeal decisions that confirm that it is possible to have a building that floats and submits that, because the '*concrete foundation*' has no features that would normally be found on a boat, it should be considered as a building. They note that it was constructed off site and brought onto the berth where building operations then created the living accommodation to which, they submit, the concrete structure forms the '*foundation*'.
18. The Council refers to the case of *Skerrits of Nottingham Limited v SSETR (No2) [2000]* which is often used as a guide on how to determine whether operational development in the form of a building or structure has occurred. The Appellants consider that this case supports their contention that Saltwind is not a structure or a building, referring to the three determining factors that are cited within the case as being relevant to such a determination. These are size, permanence and affixation to the ground. The Council take the opposite view and considers that the case supports their analysis of the situation and that Saltwind is a structure that amounts to operational development.

¹ *Sussex Investments Limited v Secretary of State for the Environment and Another [1997]*

19. At the site inspection, I saw that Saltwind is of a size that is comparable to many buildings, such as 'park homes' or chalets but also to a number of the established houseboats that I saw close to the appeal site. Therefore, I consider that size, in this instance, is not determinative one way or the other.
20. With reference to permanence, Mr and Mrs Jones are renting the mud berth from the company run by Mr Cutts, the other appellant and landowner, and are reliant on the contract continuing to allow Saltwind to remain there. Nevertheless, it was clear from evidence given at the Inquiry that there are no current plans to move from the berth as Mr and Mrs Jones have now sold the bungalow they previously owned, leaving Saltwind as their only residence. It seems clear that Saltwind is intended to remain permanently in the berth for the foreseeable future, but this could also be said of most houseboats and does not, in my view, indicate that Saltwind could not fit the description.
21. However, although Saltwind was assembled in its current location, I am not persuaded that it could not be moved to another location without being dismantled. Although the Council was initially sceptical about the ability of Saltwind to float, I consider that the video evidence submitted by the Appellants, and the 'heave' in the mud around its base that I witnessed at the site visit, confirms that it does. There is no doubt that it rests on the mud for much of the time, but that will be the case with all the houseboats of this size that are moored in the estuary. Saltwind is not able to move under its own power, but with suitable towing craft, I see no reason why it could not be floated off this berth in suitable tidal and weather conditions and taken elsewhere.
22. There are many examples around the country of floating homes with a similar construction to this one and it seems to me highly unlikely that, should their current moorings become unavailable, they would all necessarily need to be dismantled. In any event, the timber-framed superstructure of Saltwind is attached to, and now integrated with, the concrete base and the whole is therefore a complete unit. It does not, in my opinion, equate to a pre-fabricated unit or 'chalet' being placed directly onto the deck of a floating platform. Once again, permanence does not appear to me to be a determining factor that weighs in favour one way or another in this case.
23. In respect of the affixation to the land, as previously noted, Saltwind is connected to services and is tethered by ropes and chains when afloat and rests under its own weight on the mudflats other than at the highest of tides. Again, as noted above, this is the situation with all the other houseboats in the vicinity. Therefore, it seems to me that the *Skerrits* tests are not able to provide any conclusive indication as to whether Saltwind is a structure that needs planning permission or a houseboat that does not.
24. The Council has also referred to the case of *Sussex Investments Limited v Secretary of State for the Environment and Another [1997]* in support of its case. Here it was found by the Court of Appeal that the Secretary of State was entitled to conclude that, as a matter of fact and degree, the 'craft' at issue in that case was not a houseboat. However, the lead judge (with whom the others agreed) appeared to criticise the overly analytical approach of the previous court ruling and the finding of the first judge that a houseboat had to be 'boat shaped'.

25. He nevertheless considered that *'a craft which consists of a low rectangular floating platform with a 2 storey pre-fabricated building erected on it differs from what [he] would venture to call a typical houseboat in much more than the shape of its hull. It may diverge so far from the typical as no longer to merit the description "houseboat" as that expression would normally be used. It is a jury question.'*
26. I accept that, until the works to Saltwind were complete, it could not meet the description of a houseboat. The concrete base on which it has been constructed could not be described as a boat in its own right before the living accommodation was incorporated into it, for the reasons set out in the parallel Decisions² that are related to this case. It was only when the structure as a whole was finished that it could be considered as such.
27. However, I now turn to consideration of whether Saltwind, as a complete construction, diverges *'so far from the typical'* to the extent that it does not *'merit description'* as a houseboat. The Court of Appeal in the *Sussex Investments* case established that there was no need to provide a precise definition of 'houseboat' in that case and I see no reason why that finding should not apply here.
28. Therefore, I am not placing any great reliance on the fact that Saltwind was not previously a working boat and has not been 'converted' from such a vessel to become a houseboat, which have been suggested as being determinative factors. There is no definitive description of a houseboat in the planning policy for the Borough and, in line with *Sussex Investments*, I have considered this case on its own facts.
29. At the site inspection, I saw that Saltwind is, as previously noted, similar in size to many of the other houseboats in the vicinity. Although most of these could be described as having a more traditional form of construction, in particular being based on hulls which tapered to a prow and stern, this is not immediately obvious unless one knows that Saltwind has a different base. Although it has 2 stories it is not noticeably higher than the adjacent houseboats and its base is shaped at each end which does give an impression of a craft, rather than a 'chalet' on a 'platform'.
30. The most obvious characteristic of most of the craft accepted to be houseboats in this part of the estuary is the boxy, flat roofed, timber clad structure that contains the living accommodation. These are additions to the original vessels and, in that respect, it is difficult to distinguish Saltwind from its neighbours. It seems to me that Saltwind would appear to the casual observer to be a houseboat that did not appear out of place or alien in this environment.
31. Consequently, I consider that Saltwind is a houseboat, the description of the development in the enforcement notice is incorrect and that no planning permission is required to keep it in the mud berth in which it is now located. The appeals on grounds (b) and (c) therefore succeed to this extent.
32. Turning to the works that have been carried out to the timber walkway that gives access to Saltwind from the shore, the Appellants' evidence on this matter, given under oath by Mr Jones, is that he carried out repairs and modifications to it.

² Refs: APP/A1530/C/17/3192101 & APP/A1530/C/17/3192307

33. These reduced it in width and a dilapidated timber shed, originally constructed by a previous boat-owner, was taken down. There used to be a boat known as 'Puffin' on the other side of the jetty to where Saltwind is now stationed and the original structure served both this and the 'Faye'. The jetty can clearly be seen to be wider than it is now on an aerial photograph dated 31.12.2012.
34. It seems to me that, even if the jetty is slightly longer than previously and on a slightly different line, it has been narrowed and I have no doubt that the overall size is smaller than previously. Any works that have been carried out to it should therefore be considered *de minimis* in planning terms and considered as '*maintenance, improvement or other alteration*' which '*do not materially affect the external appearance*' of the jetty as set out in s55(2) of the TCPA. Once again, the appeal on ground (c) succeeds in respect of the jetty.

Conclusions

35. I have found that Saltwind is a houseboat than can lawfully be moored on the mud berth at the appeal site. Following this finding, I conclude that the appeal should succeed on ground (b) and I will amend the allegations in the enforcement notice to refer to the '*houseboat unit known as Saltwind*'. This is to ensure clarity about what is covered by the notice and that it applies to this particular development.
36. Subsequently, I also conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANTS:

Stephen Hopkins	Solicitor, Holmes and Hill LLP
He called	
Mr Simon Cutts	WM Wyatt Limited, joint Appellant
Mr Barry Jones	Joint Appellant
Dr Jon Huckle BSc (Hons) MSc DPhil CIEEM	Huckle Ecology
Mr Anthony Collins MRTPI MRICS MCIT MILT MEWI	Collins and Coward Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Marsden	Of Counsel
He called	
Mrs Janice Lewis	Enforcement officer Colchester Borough Council
Mrs Fiona Bradley BRP MRTPI	For Colchester Borough Council
Simon Cairns BSc (Hons) Dip TP Dip Bldg Cons (RICS) MRTPI IHBC	Colchester Borough Council
Neil Harvey BSc CIEEM	For Colchester Borough Council

INTERESTED PERSONS:

Robert Pomery BA (Hons) Dip TP MRTPI	Pomery Planning Consultants, for local residents
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DOCUMENTS

- 1 Statement of Common Ground
- 2 Notes and photographs of jetty
- 3 Mr Gosling's letter and measurements
- 4 Notes of Mr Pomery's statement
- 5 Tide Tables
- 6 Original list of conditions (later withdrawn)
- 7 Bundle of Authorities submitted by the Council
- 8 Notes of Mr Marsden's closing statement
- 9 Notes of Mr Hopkins' closing statement
- 10 Appellants' costs application
- 11 Plans showing approved jetty details 2006

PHOTOGRAPHS

Photo set A	Stills from videos showing Saltwind floating
B	'Streetview' of Saltwind dated October 2014