
Appeal Decisions

Site visit made on 26 May 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Appeal A Ref: APP/C2708/X/19/3242132

Leeds Liverpool Canal adjacent to The Rendezvous Hotel, Keighley Road, Skipton BD23 2TA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Malcolm Weaving against the decision of Craven District Council.
 - The application Ref 2019/20992/CPL, dated 25 September 2019, was refused by notice dated 19 November 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is described as a 60ft restaurant and function boat. The boat will be used for private, tourist and commercial events to be carried out whilst cruising on the canal.
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Appeal B Ref: APP/C2708/W/19/3243464

The Rendezvous Hotel, Keighley Road, Skipton BD23 2TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Malcolm Weaving against the decision of Craven District Council.
 - The application Ref 2019/20603/FUL, dated 7 June 2019, was refused by notice dated 28 August 2019.
 - The development proposed is described as a 60ft restaurant trip boat for tourist group dining, commercial company activities, local and tourist dining, exhibitions, product launching, private anniversaries, etc. All carried out whilst cruising not whilst moored.
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Summary Decisions: Appeal A is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision. Appeal B is dismissed.

Applications for costs

1. An application for costs was made by Mr Malcom Weaving against Craven District Council. Applications for costs was also made by Craven District Council against Mr Malcom Weaving. These applications are the subject of separate Decisions.

Preliminary and procedural matters

2. The use to which these appeals relate may be described in summary as use of a 60ft (approximately 18.5 metres) boat for private, tourist and commercial events to be carried out *whilst cruising on the canal* (emphasis added). The

- boat, named the "Graceful Swan", would travel between Skipton and Kildwick, a distance of approximately 4 or 5 miles. A number of points follow from this.
3. Firstly, the address to which the certificate of lawful use or development (LDC) sought relates is stated as the Leeds Liverpool Canal adjacent to The Rendezvous Hotel. It is evident from the documentation submitted with the appeal that the boat trips would start and finish at The Rendezvous Hotel, but it is equally clear that the use proposed would take place away from there: for much of the time, at a not inconsiderable distance. It therefore seems to me that the address to which the application relates may be more accurately described as the Leeds Liverpool Canal between Skipton and Kildwick.
 4. This then leads to the second point: the location plans on which the LDC application was determined. There are two site plans listed on the Council's decision notice for the application for certificate of lawful use or development (Council Ref: 2019/20992/CPL): drawing No AM1, a Site Plan which is undated but was received by the Council 25 September 2019; and drawing No AM7, dated 3 October 2019 and received by the Council on 4 October 2019.
 5. The site plan attached to the Decision Notice itself is neither numbered nor dated, but appears to be Site Plan AM1 or a version of it. The boat-shaped area edged red on that plan includes part of the grounds to The Rendezvous Hotel and part of the canal towpath. No part of that red-edged area lies within the Leeds Liverpool Canal.
 6. Drawing AM7 does include part of the canal within the red-edged area, together with a small section of the towpath directly opposite The Rendezvous Hotel. The size of the red-edged area corresponds roughly to the size of the "Graceful Swan", and corresponds to the position in which the boat was moored at the time of the site visit.
 7. Therefore, neither of the two site plans on which the LDC application was determined includes the stretch of the canal on which the application expressly states the use would be carried out: specifically, the stretch between Skipton and Kildwick. The drawings only include that section of the canal on which the boat would be moored, and/or part of the towpath itself. As such, the plans specifying the land are not consistent with the proposed use which solely relates to when the boat is cruising away from The Rendezvous Hotel. Any LDC that may be granted would only relate to the area edged in red on the site plans submitted with the application. The corollary is that, in the event that the appeal was allowed on that basis of these site plans, the decision would have no effect and the lawfulness of the proposed use would not be conclusively presumed.
 8. Article 39 of The Town and Country Planning (Development Management Procedure)(England) Order 2015 (the Order) requires that an application for a certificate made under section 192 of the 1990 Act must be accompanied by a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North. To be valid, it is necessary that the LDC application is accompanied by a plan that accords with, or is at least substantially in the form prescribed by, Article 39 of the Order.
 9. Setting aside for now the question as to whether the water in the canal on which the boat would travel constitutes 'land' for the purposes of the 1990 Act, the obvious difficulty that arises is the extent of the 'land' to which the

application relates. In that respect, I am mindful that the boat could potentially travel anywhere on the wider canal network subject to the physical dimensions of the vessel. Devising a plan identifying the full extent of the canal network would not be a practical proposition.

10. It is, however, clear from the documents submitted that the appellant's intentions are to operate the boat on a defined stretch of the Leeds Liverpool Canal between Skipton and Kildwick. I also note that a route map for that stretch of the canal was submitted with the planning application (Ref: 2019/20603/FUL). Whilst not to an identified scale and not edged in red, it seems to me that this route map identifies the 'land' to which the application relates and represents a practical solution that is substantially in the form prescribed by the Order, at least to the fullest extent possible in the particular circumstances of this case. I therefore propose to adopt the route map submitted with the planning application as the plan to which the LDC application relates.
11. The proposal set out in the LDC application is briefly stated. No details are provided in terms of the passenger capacity of the boat; the use of amplified music; internal and external illumination; or the hours within which the boat would operate. I have therefore proceeded on the basis of the 'worst-case' scenario in relation to these factors: in other words, that the use proposed is not subject to limitations other than that it relates only to the boat named "Graceful Swan".
12. The LDC application is, however, very precise in stating that it relates only to when the boat is cruising on the canal. To my reading, this excludes the time when the boat is stationary at its mooring at The Rendezvous Hotel and passengers are embarking/disembarking onto and from the boat. Clearly, the use for which the LDC is sought cannot take place until and unless passengers are on the boat: that is very much an integral part of the proposed use. I have given very careful consideration as to whether I can determine the appeal in the absence of this essential part of the activity in the description of the proposal.
13. In relation to an application made under s192 of the 1990 Act, neither the Local Planning Authority nor the Secretary of State on appeal has the power to modify the terms of the application. In the absence of any amendments agreed between the appellant and the Council, I must therefore determine the LDC application as originally made. The corollary is that my findings in relation to this appeal under section 195 of the 1990 Act do not extend to that period of time when the boat is stationary and passengers are embarking/disembarking onto and from the boat.
14. Some of the problems outlined above in relation to the LDC application are also present in relation to the planning application subject to Appeal B (Council Ref: 2019/20603/FUL). The address to which the application relates is stated on the application form as being The Rendezvous Hotel, and makes no mention of the route for the proposed boat trip or, for that matter, of the canal at all. Although prefixed by "Tow Path to Rear Of" on the Council's Formal Decision Notice, the address to which the application relates is still not consistent with the proposed use of a boat on the canal. It therefore again seems to me that the address to which the application relates may be more accurately described as the Leeds Liverpool Canal between Skipton and Kildwick.

15. In terms of the drawings upon which the application was determined, there are three plans listed on the Council's formal decision notice. These are listed as Location Plan 001, dated 10 June 2019; a Site Plan dated 20 June 2019 and received by the Council on 24 June 2019; and a Route Map referred to above, also dated 24 June 2019.
16. Location Plan 001 shows the boat moored opposite The Rendezvous Hotel, again corresponding approximately to the position in which the boat was moored at the time of the site visit. There is, however, no red-edged area shown on that plan. The Site Plan dated 20 June 2019 appears to be Site Plan AM1 later submitted with the LDC application and, like it, depicts a boat-shaped area edged red that includes part of the grounds to The Rendezvous Hotel and part of the canal towpath. No part of that red-edged area lies within the Leeds Liverpool Canal. Whilst not to an identified scale and not edged in red, it seems to me that the route map identifies the 'land' to which the application relates and again represents a practical solution to what is, I recognise, a problem arising from the nature of the application.
17. In completing the application form, the applicant signed the Certificate of Ownership required under Article 14 of the Order and served notice on the Canal & River Trust as the sole owner of the land to which the application relates. I recognise that this relates only to the area edged in red on the Site Plan dated 20 June 2019, and not to the whole route to be covered by the proposed boat trip. Nevertheless, I understand that the Canal & River Trust own all of the canal and towpath between Skipton and Kildwick.
18. In a letter dated 17 July 2019, the Canal & River Trust did respond to a consultation on the planning application from the Council under the Order (rather than in response to the notice served upon them by the applicant). In that response, the Canal & River Trust made no comment on the proposal. It is clear from the letter that the Canal & River Trust were responding to the proposal for a restaurant boat trip and, it is reasonable to conclude, were aware that the proposed route extended between Skipton and Kildwick. I therefore take the consultation response as an indication that the Canal & River Trust do not perceive any conflict with their responsibilities arising from the proposal.
19. I recognise that the very nature of the proposal subject to the planning application presents a number of challenges in according with the procedural requirements of the Order. These challenges manifest themselves in the problems that I have set out above. I am mindful that these problems could, on a strict interpretation, be perceived as meaning that the application as submitted did not accord with the procedural requirements of the Order and is therefore invalid. However, in practice, I am satisfied that no party has been prejudiced. Consequently, I adopt the pragmatic approach and take the view that it would be in the wider public interest to determine the application as submitted.
20. The application subject to Appeal B was determined in August 2019, and therefore at a time when the Craven District (outside Yorkshire Dales National Park) Local Plan (July 1999) was extant. The Council's decision notice for that application cites Policy SCR11 in that plan, that being the only policy in a development plan relied on by the Council. In November 2019, the Council adopted the Craven Local Plan (2012 to 2032). The adoption statement for the

latter confirms that the new Local Plan replaces the previous plan adopted in July 1999. I have therefore considered Appeal B solely on the basis of the new Local Plan. The appeal was submitted post the adoption of the new Local Plan, and I am satisfied that the appellant has not been prejudiced by so doing.

Appeal A – the LDC application

21. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would be lawful on the date on which the application was made.
22. The issue in this case is whether the appellant's proposed use constitutes development for the purposes of Section 55(1) of the 1990 Act. Development is defined in that section of the 1990 Act as meaning:
...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.
23. The appellant's proposal is confined to use of the boat for private, tourist and commercial events to be carried out whilst cruising on the canal. It follows that no operational development is involved. The question as to whether the proposed use constitutes development for the purposes of Section 55(1) of the 1990 Act therefore turns on whether the use constitutes the making of a material change in the use of the land.
24. In *Thames Heliports Plc v London Borough of Tower Hamlets*¹, the Court of Appeal held that helicopters landing on or taking off from a vessel floating but not moored on the tidal River Thames *could* constitute a change of use for the purposes of section 55 of the 1990 Act (emphasis in the original judgment). However, the Court of Appeal declined to make a declaration as to whether that use involved a material change of use, indicating that to do so would require a value judgment entrusted to the planning authorities and not for the court.
25. Underlying the Court of Appeal judgement in *Thames Heliports* is the principle that a proposal can only constitute development if it involves a material change in the use of land. The Court of Appeal therefore directed itself first to identifying the 'land' in relation to which the proposal applied before it would take place. This was held to be the bed and banks of the river.
26. There are some differences between the proposal before the Court of Appeal in *Thames Heliports* and the appellant's proposal in this case. One of those differences is that the boat in this case would operate on a canal and not a tidal river. Another difference is that the vessel in *Thames Heliports* was to be held

¹ *Thames Heliports Plc v London Borough of Tower Hamlets* [1997] 74 P.& C.R. 164

stationary in the flow of water over one position on the bed of the river for a period of time before moving on to a new location, with passengers transferred to and from the stationary vessel from the bank of the river. By contrast, with the appellant's proposal, as narrowly defined in the description on the application form, the boat would be in constant motion. The case in *Thames Heliport* may be distinguished from the appellant's proposal in these respects.

27. However, in my view it is the similarities between this case and *Thames Heliports* that are important. In particular, both the Leeds Liverpool Canal and the tidal River Thames comprise a body of water contained by a bed and banks. It therefore seems to me that the finding in *Thames Heliports* that the 'land' for the purposes of section 55 of the 1990 Act comprises the bed and bank of the river applies equally to a canal.
28. Having identified the 'land' in question, the Court of Appeal in *Thames Heliports* then found that the use of that land was for bearing the weight of water in which boats navigate distinguishing, on the facts of that case, between ships that do attract helicopter traffic and ships that do not attract helicopter traffic. Again, it seems to me that in principle the finding in *Thames Heliports* that the use of the land was for bearing the weight of water in which boats navigate applies equally to a canal.
29. On the evidence before me, including observations at my site visit, the primary use of the 'land' comprised by the bed and banks of the Leeds Liverpool Canal is for bearing the weight of the water and the boats that navigate on the water contained by the bed and the banks. In the past, it is likely that the majority of boats navigating the canal would have been for commercial purposes. In more recent times, it is more likely that the boats have been navigating mostly for leisure purposes. Furthermore, it is likely that there has been a significant variety in the size and type of boat navigating along the canal, albeit limited in some respects by the narrow confines of the canal itself.
30. In my view, the appellant's proposed use of an 18.5 metres long boat for private, tourist and commercial events whilst cruising on the canal is no different to the use of the 'land' by other boats. Distilled down to its basics, the appellant's proposal still represents the use of the 'land' by a boat for navigating on water, the weight of which is borne by the beds and banks of the canal. To my mind, that is the very purpose for which most canals were originally constructed.
31. The Council points to the fact that passengers would be partaking in a dining experience whilst on the boat and considers that doing so results in an activity that would not be an ordinarily incidental activity associated with users of the canal. The Council also considers that the proposed use is capable of having a considerable impact over a wider area than just the immediately surrounding The Rendezvous Hotel. For these reasons, the Council considers that the appellant's proposed use constitutes the making of a material change of use for the purposes of Section 55(1) of the 1990 Act.
32. In considering whether a use constitutes the making of a material change of use for the purposes of section 55(1) of the 1990 Act, it is first necessary to identify the relevant planning unit. The appellant proposes to operate the boat for the stated use on a defined stretch of the Leeds Liverpool Canal between Skipton and Kildwick. The canal and towpath are owned and managed by the Canal & River Trust. Consequently, whilst not owned by the appellant, the

whole stretch of the canal between Skipton and Kildwick is one unit of occupation. Moreover, in my view, the primary use of the whole length of that stretch of canal is the same; specifically navigation by boats on water, the weight of which is borne by the beds and banks of the canal. There is no physical or functional separation of uses. It is therefore in my view appropriate to take the whole length of the canal between Skipton and Kildwick as the relevant planning unit in this case.

33. The fact that passengers would be dining whilst on the boat does not negate the fact the boat would still be being used as a boat for navigating on water, the weight of which is borne by the beds and banks of the canal. In essence, the dining experience would be a leisure activity ancillary or incidental to the primary use of the boat for navigating on a canal. In that sense, it would be no different from where the owner of a privately-owned boat takes a meal when the boat was in motion. The taking of a meal would not change the use being made of that boat: it would still be a boat used for leisure purposes whilst navigating on a canal.
34. I am also mindful that the appellant's proposed use of the boat is not just for dining experiences. Other activities are also proposed, including commercial company activities, exhibitions, product launching and private anniversaries. In my view, all of these activities would be ancillary to the primary use of the land for bearing the weight of the water and the boats that navigate on the water contained by the beds and banks of the canal.
35. As a matter of principle, I accept that the appellant's proposed use could potentially have localised impacts in terms of noise disturbance and light pollution. However, any such impacts must be considered in relation to the planning unit as a whole. As indicated above, I consider that the planning unit in this case should be taken as the distance of approximately 4 or 5 miles between Skipton and Kildwick. The appellant's proposed use relates specifically to when the boat is cruising on the canal. Apart perhaps from when turning at the farthest limits of the trip, the boat would be in constant motion for the entire duration of that journey.
36. The courts have held that, for the making of a material change of use to have occurred, there needs to be some significant difference in the character of the activities from what has gone on previously. In this case, the primary use of the land is by boats navigating on the canal. The character of that use, in my view, comprises slowly moving boat traffic navigating through a mostly tranquil rural setting. There would be some noise impacts associated with that primary use: boat engine noise; spoken conversations of those onboard the boats and possibly amplified radio/music playing. There would also be an element of light pollution should the boat be operated during the hours of darkness.
37. I am mindful that the boat is a larger vessel than some others navigating on this stretch of the canal. The "Graceful Swan" is powered by an electric motor and might therefore be expected to emit lower noise emissions than some other powered boats. I recognise that the "Graceful Swan" would be capable of carrying a larger number of people than some other boats navigating on this stretch of the canal, albeit the level of soundproofing is likely to mean that noise levels overall would not be higher than that generated by other boat traffic. As such, the character of the use would be essentially the same: a slow-moving canal boat navigating through a mostly tranquil rural setting.

38. Furthermore, even if at any given point in time any noise disturbance did arise, that noise event would be both localised and transient. For example, any noise disturbance that arose when the boat was at the Skipton end of the journey would have no impact at the Kildwick end. Moreover, any impact in Skipton would fade as the boat continued on its journey. Similarly, any light pollution.
39. I recognise that much of the proposed route would be through tranquil rural settings, where such impacts could potentially have an effect on the immediate surroundings at that particular point in the journey. However, taking the planning unit as a whole, I am not persuaded that any of the activities proposed by the appellant (including for group dining) would result in a significant difference in the character of the use taking place on the canal. I therefore consider that the appellant's proposal would not result in a material change in use of the planning unit as a whole.
40. It follows from the above that appellant's proposed use does not constitute development for the purposes of Section 55(1) of the 1990 Act. I therefore conclude that, on the balance of probability, the development proposed would be lawful on the date on which the application was made.

Appeal A - Conclusion

41. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a 60ft restaurant and function boat used for private, tourist and commercial events to be carried out whilst cruising on the canal was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B – the planning application

42. I have found in relation to Appeal A that, on the balance of probability, the proposed use of the 18.5m restaurant and function boat used for private, tourist and commercial events to be carried out whilst cruising on the canal would not constitute development for the purposes of section 55 of the 1990 Act. Section 57 of the 1990 Act states that planning permission is required for the carrying out of any development of land. The corollary of my finding is that planning permission would not be required for the use specified in the LDC attached to this Decision if instituted or begun at the time of the application.
43. However, section 192(4) of the 1990 Act states that the lawfulness of any use or operations for which a certificate is in force shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness. If there has been or is a material change in any of those matters before the use commenced, the appellant would then not be able to rely upon that LDC. Moreover, in submitting the planning application, the underlying assumption is that the proposed development requires planning permission. For these reasons, it remains incumbent upon me to determine the section 78 appeal, notwithstanding that I found that the use would not require planning permission if instituted or begun at the time of the application.
44. In so doing, there is one aspect of the proposed use that I must approach differently in relation to this section 78 appeal. That is the matter of passengers embarking/disembarking onto and from the boat. The very precise

terms of the LDC and the limitations imposed under section 192 of the 1990 meant that I had to exclude that issue from my consideration of Appeal A.

45. There is no such limitation under section 78 of the 1990 Act. In my view, the embarkation/disembarkation of passengers onto and from the boat is an integral part of the overall use: that use could not and would not take place if passengers did not get onto and off the boat. The issues surrounding the embarkation/disembarkation of passengers are therefore inextricably intertwined with the proposed use and as such are material considerations that I must take into account.
46. This is reinforced by the appellant's request that I consider the operational development to facilitate the loading and unloading of passengers and goods, as well as the servicing of the boat. This operational development is illustrated on the submitted plans, but is not referred to in the description of development applied for on the planning application form.
47. The description on the planning applications form is very clear in stating the use would be carried out whilst the boat was cruising and not whilst moored. I recognise that the laying of pipes, etc across the towpath is raised in a number of representations, but the inclusion of the operational development in the formal description of development would fundamentally change the nature of the proposal. The Council determined the application on the basis of the use proposed rather than the associated operational development. I therefore consider that including the operational development in the appeal proposal would introduce matters not considered by the Council in its determination of the application, such that the Council would be prejudiced should they be introduced now. I will therefore determine this appeal on the basis of the description of development set out on the application form.

Main Issues

48. There are two main issues arising from the Council's formal Decision Notice, namely the effect of the proposed use on:
 - the living conditions of the occupiers of residential properties adjoining the Leeds Liverpool Canal, specifically in relation to noise disturbance, and
 - the amenity value of the Leeds Liverpool Canal.

Living conditions

49. In a covering letter dated 21 June 2019 submitted with the application, the appellant explains that the boat has a maximum passenger carrying capacity of 60 persons plus 5 crew members. The boat is powered by an electric motor and is soundproofed, with the windows and hatches being fitted with double glazing. The boat is air conditioned with no opening windows, but with a smoking deck. The boat would operate between 08:00 and 02:00 the following morning, including weekends and Bank Holidays, starting from and returning to the mooring outside The Rendezvous Hotel. The maximum endurance is stated as being some six hours per battery charge, but no indication is given as to how frequently the boat would operate. No music would be played when the boat was at its mooring, only when cruising on the canal. Control of the sound equipment is vested solely in the licenced helmsman.

50. Given that the boat is powered by an electric motor and is soundproofed, I am satisfied that it would not cause an unacceptable level of noise disturbance to the occupiers of residential properties adjoining the canal when the boat is cruising along it. Furthermore, any noise disturbance that might arise would be transient in nature and, given a maximum duration of some six hours, for most properties any noise events would be limited to no more than six events in any one day (three in each direction).
51. However, my concerns relate to the embarkation/disembarkation of passengers when the boat is stationary at its mooring. Regardless of how well the boat is soundproofed when in motion, passengers boarding the boat and getting off the boat must do so from the towpath and out in the open. Although it is explained that passengers would muster in the hotel before boarding the boat, no details are provided as to how those operations would be managed, in terms of how long the boarding process might last or how passengers would disperse after the boat trip. The application form indicates that car parking for passengers would be in the hotel car park, such that noise disturbance from passengers' vehicles arriving and departing in those vehicles must also be taken into account.
52. The Rendezvous Hotel is adjoined to the south by the Craven Care Home, with some residential properties diagonally opposite on the east side of the canal. The operators of the Craven Care Home have objected to the proposal, pointing out that the care home specialises in end of life, palliative and dementia care, and that the latter in particular requires a calming atmosphere to support nursing needs. The operators of the care home are concerned that the residents, many of whom are elderly or vulnerable people, would become agitated and distressed by the noise of the passing boat.
53. For the reasons stated above, I am satisfied that the actual passing of the boat in front of the care home would not cause the residents undue distress or agitation. The activity and noise caused by the passengers preparing to board the boat and disembarking on the end of trip could, on the other hand, cause a significant level of noise disturbance. This would unacceptably detract from the living conditions of the residents in the care home, and in some cases at a time in their lives when they are less able to tolerate change and/or disturbance. The level of noise generated is likely give rise to undue levels of distress or agitation, with the consequences for their nursing needs described by the operators of the care home.
54. The residential properties on the east side of the canal are some distance from where the boat is showed to be moored and where passengers would embark/disembark. However, these properties are close to the swing bridge and to the access point onto the towpath there. In the absence of any information as to how the disembarkation of passengers would be managed, I cannot discount the possibility that passengers would access the car park directly from the towpath. In that event, particularly given that this could occur in the early hours of the morning, this could have a significant and adverse effect on the living conditions enjoyed by the occupiers of those properties.
55. Some of the rooms in The Rendezvous Hotel face onto the mooring, and the appellant points out that he would not wish to cause any inconvenience to guests staying in those rooms. I have difficulty reconciling that statement with

the requested daily finish time of 02:00. I note that the Council's Senior Environmental Health Officer is concerned about the proposed operating hours and does not support the proposal for that reason, amongst others. The finish time of 02:00 is also raised as a concern by some who otherwise support the proposal, as well as by others who object to the proposal specifically on the grounds of noise disturbance. In any event, the harm that I identified above could occur beyond the immediate vicinity of The Rendezvous Hotel and outside the control of the appellant.

56. I conclude that proposed development would unacceptably harm the living conditions of the occupiers of some of the residential properties adjoining the Leeds Liverpool Canal, specifically in relation to noise disturbance. On my reading, none of the policies in the Craven Local Plan (2012 to 2032) to which I have been referred relate directly to the effect of development on living conditions within residential properties (as distinct the amenity of the Leeds Liverpool Canal, to which Policy ENV11 specifically relates). The development would, however, fail to accord with paragraph 127(f) of the National Planning Policy Framework, which seeks to create places with a high standard of amenity for existing and future users.

Amenity value of the Leeds Liverpool Canal

57. The Council's concerns in this respect are solely that the noise generated by the boat would have an adverse impact on the amenity of the canal. The boat is powered by an electric motor and all the windows/hatches would be closed when the boat was cruising on the canal. Consequently, whilst the proposed route would take the boat through some tranquil rural settings, I am satisfied that the level of noise generated would not harm those settings to any significant degree. Indeed, by comparison, it is in my opinion likely that other boats powered by conventional petrol or diesel engines would have a greater noise impact overall than the boat that is proposed to be used.
58. I conclude that the proposed development would not unacceptably detract from the amenity value of the Leeds Liverpool Canal. I therefore conclude that the proposed development would not conflict with Policy ENV11 of the Craven Local Plan (2012 to 2032) which, amongst other things, indicates that development that would have an adverse impact on the amenity of the canal by virtue of noise impact will not be permitted.

Other considerations

59. The appellant points out that there is a precedent for the proposed use in terms of the other boats, namely "Cobbydale" and "Dalesman", that operate a similar activity on this stretch of the Leeds Liverpool Canal. I understand that the "Graceful Swan" would operate a similar service to those boats, and over similar operating hours. There is, however, a significant and inescapable difference: the location from which the "Graceful Swan" would depart and return to. My conclusions in relation to noise disturbance derive specifically from the impact on adjoining residential properties resulting from the activity associated with passengers embarking and disembarking from that location. A significant part of my conclusion in that respect derives from the particular circumstances of the residents of the Craven Care Home. Notwithstanding the general similarity between the boat trips undertaken by "Cobbydale" and "Dalesman", the proposed use of the "Graceful Swan" may be distinguished from the former for that reason.

60. A number of representations supporting the proposal have been received. The proposal is perceived by these supporters as being an asset to tourism in Skipton and as a benefit to the local economy generally. The supporters also cite the pleasure to be gained from observing the variety boats using the canal as well as travelling on them, and consider that the activities offered by the "Graceful Swan" would add to that experience. These supporters also cite the eco-friendly credentials of this boat as a positive factor. The letters of support weigh in favour of the proposal albeit, because the benefit to the local economy is not quantified in any way, I am only able to attach limited weight to that benefit.
61. I have considered whether the imposition of suitably worded conditions could overcome the harm that I have identified above. I acknowledge that conditions relating to the operation of the boat could potentially overcome some of the issues relating to noise disturbance, and indeed would be necessary to do so. However, my main concerns relate not to when the boat is in motion but to when passengers are embarking and disembarking. The noise generated at that time would occur in the open and potentially on land outside the control of the appellant. On the information available to me, I am not convinced that these impacts could be addressed through the imposition of planning conditions. For these reasons, I consider that in this case the imposition of conditions could not overcome the planning harm.

Appeal B - Conclusion

62. I acknowledge that the proposed use would promote tourism in Skipton and would have an economic benefit, both to The Rendezvous Hotel and the wider local economy. I also acknowledge that there is some local support for the proposal. Nevertheless, the proposed use would in my view unacceptably harm the living conditions of the occupiers of some of the residential properties adjoining the Leeds Liverpool Canal. In weighing the balance, I consider that the harm resulting from the proposed use outweighs the benefits.
63. Accordingly, I conclude that planning permission ought not to be granted.

Formal Decisions

Appeal A Ref: APP/C2708/X/19/3242132

64. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Appeal B Ref: APP/C2708/W/19/3243464

65. The appeal is dismissed.

Paul Freer
INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 September 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown on the plan attached to this certificate, would be lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use does not constitute the making of a material change in use of the land and therefore does not constitute development for the purposes of Section 55(1) of the Town and Country Planning Act 1990.

Signed

Paul Freer

Inspector

Date: 14 July 2020

Reference: APP/C2708/X/19/3242132

First Schedule

The use of a 18.5m restaurant and function boat for private, tourist and commercial events to be carried out whilst cruising on the canal. The use found to be lawful specifically excludes the mooring of the boat, as well as the embarking and disembarking of passengers from the boat.

Second Schedule

Land at the Leeds Liverpool Canal between Skipton and Kildwick.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 14 July 2020

by **Paul Freer BA (Hons) LLM PhD MRTPI**

Land at: Leeds Liverpool Canal between Skipton and Kildwick

Reference: APP/C2708/X/19/3242132

Scale: Not to scale

