
Appeal Decision

Hearing Held on 1 December 2020 and 8 December 2020

Site visit made on 3 December 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2021

Appeal Ref: APP/T0355/C/19/3224014

The structure identified as 'Haulfryn 1' moored on Land at The Willows Riverside Park Club, Maidenhead Road, Windsor SL4 5TQ

- 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 Mr Bobby McGhee of Haulfryn Group Limited against an enforcement notice issued by the Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice, numbered 17/50006/ENF, was issued on 31 January 2019.
 - The breach of planning control alleged in the notice is failure to comply with condition No.1 of a planning permission Ref 91/01625/FULL granted on 21 January 1992.
 - The development to which the permission relates is the continued use of the riverbank for thirty three residential and leisure boat moorings. The condition in question is No.1 which states that 'This consent shall apply only to the mooring of traditional boats or houseboats being capable of navigation by an independent integral means of propulsion. The notice alleges that the condition has not been complied with.
 - The requirements of the notice are to comply with condition 1 of planning permission 91/01625/FULL by carrying out the following:
 - a) Remove the vessel known as 'Haulfryn 1' moored in the approximate position marked with a blue cross within the redline on the attached plan.
 - b) Disconnect all sewage, electrical and water pipes from the bankside.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:

- The substitution of the plan annexed to this decision for the plan ref 17/50006/ENF attached to the enforcement notice.
- The deletion of the text in Section 1 and its replacement with:

The structure identified as 'Haulfryn 1' identified with a blue X on the attached plan moored at The Willows Riverside Park Club, Maidenhead Road, Windsor, SL4 5TQ shown edged red on the attached plan ("the Land")

- The deletion of the text in Section 2 and its replacement with:

Planning permission was granted by the Council on 21 January 1992 for "Continued use of the riverbank for thirty three residential and leisure boat moorings."

Condition 1 of that planning permission states: "This consent shall apply only to the mooring of traditional boats or houseboats being capable of navigation by an independent integral means of propulsion."

It appears to the Council that condition 1 has not been complied with, in that Haulfryn 1 is neither a traditional boat or a houseboat being capable of navigation by an independent, integral means of propulsion, within the meaning of condition 1 of planning permission 91/01625/FULL.
 - The deletion of the number/word '4 and' from Section 3(I)
 - The deletion of 'GB2' and substitution of 'GB2(a)' in Section 3(II)
2. Subject to these corrections, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

3. An application for costs was made by Haulfryn Group Limited against the Council. This application is the subject of a separate Decision.

Procedural Matters

4. The appellants confirmed that Mr Bobby McGhee who is named as the appellant on the appeal form has left the company and that the appeal should proceed in the name of Haulfryn Group Limited only.

The Notice

5. The notice relates to the alleged breach of a planning condition attached to planning permission reference 91/01625/FULL (the 1992 consent). During the course of the hearing a corrected plan was submitted which shows the land to which the notice relates aligning with the site plan for the 1992 consent. The Council advised at the hearing that when the notice was served it was served on the parties which now fall within the red line site plan as corrected.
6. Although the site area will be enlarged, this does not result in the notice becoming more onerous for the appellants to comply with. Nor does it result in the introduction of new issues or, as far as the evidence before me demonstrates, new interests in the land.
7. The Council also submitted additional wording for Section 1 of the notice which sets out the land to which the notice relates, as follows (additional words shown underlined):

'The structure identified as 'Haulfryn 1' identified with a blue X on the attached plan moored at The Willows Riverside Park Club, Maidenhead Road, Windsor, SL4 5TQ shown edged red on the attached plan ("the Land").'

The appellants did not have any objections to this correction of the notice.

8. At the hearing the Council confirmed that in Section 3(I) of the notice the reference to 'within the last 4 and 10 years' should be corrected to read 'within the last 10 years' because the notice related to an alleged breach of condition. The Council also requested that the policy reference in Section 3(II) be corrected to omit 'GB2' and insert 'GB2(a)'.
9. I do not find that any injustice would arise were I to make the corrections to the notice as described above. Consequently, I am able to make those changes.
10. In response to a request from me in a Pre-hearing Note the Council indicated that it would be happy for me to correct Section 2 of the notice which contains the allegation. This would have resulted in the omission of the wording of Section 2 and replacement as follows:
 - Planning permission was granted by the Council on 21 January 1992 for "Continued use of the riverbank for thirty three residential and leisure boat moorings."
 - Condition 1 of that planning permission states: "This consent shall apply only to the mooring of traditional boats or houseboats being capable of navigation by an independent integral means of propulsion."
 - It appears to the Council that condition 1 has not been complied with, in that Haulfryn 1 is neither a traditional boat or a houseboat within the meaning of condition 1 of planning permission 91/01625/FULL.

Subsequently at the Hearing, the Council said that whilst it was happy for the change to be made, it was not necessary. However, I consider that it is for the following reasons.

11. The notice sets out that the breach of planning control lies within paragraph (b) of Section 171A(1) of the Town and Country Planning Act 1990 (the Act), which is failing to comply with any condition or limitation subject to which planning permission has been granted. It also sets out, in detail at Section 2, the condition which the Council says has been breached and the reason for that condition. However, the allegation at Section 2 of the notice does not set out why the Council consider the condition has not been complied with.
12. I accept the Council's arguments that taken in the round the notice makes it clear what the matters are and what steps need to be taken. However, I have a duty to get the notice in order. It is important to get the allegation right, subject to there being no injustice so that the breach is correct against which to assess the appeal on grounds (b), (c) and especially (a) as the terms of the deemed planning application (DPA) derive from the allegation. For this reason, I shall correct the notice to replace the wording of Section 2 with that set out in paragraph 10.
13. Furthermore, the Council made it clear at the hearing that the lack of reference to 'being capable of navigation by an independent integral means of propulsion' in its suggestion for the third bullet point, was not an acceptance that this part of condition 1 of the 1992 consent was achieved by Haulfryn 1. This omission was a mistake which can be rectified by altering the suggested amendment to the third bullet point to read:

- It appears to the Council that condition 1 has not been complied with, in that Haulfryn 1 is neither a traditional boat or a houseboat being capable of navigation by an independent, integral means of propulsion, within the meaning of condition 1 of planning permission 91/01625/FULL.
14. Given the contents of the wider notice, the correction of Section 2 does not alter the way in which the parties have argued their cases and it would not give rise to any injustice. Consequently, I shall make the necessary changes to Section 2 and proceed to determine the appeal on the basis of the notice as corrected.
15. The appellants initially appealed on grounds (a) and (c). However, in the light of the Council's arguments they added ground (b). The Council has had the opportunity to respond to the evidence submitted under ground (b), therefore neither party would be prejudiced by consideration of the appeal under grounds (a), (b) and (c).

Ground (b) and Ground (c)

16. An appeal under ground (b) is that the matters to which the notice relates have not occurred and an appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. These are both legal grounds of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.
17. To achieve success on ground (c) the appellants must show that either there has been no development, or that planning permission is not required for whatever reason, or that permission is granted. In this case, which relates to a breach of condition, the appellants are arguing that the condition in question has been complied with.
18. In order to comply with Condition No. 1 of planning permission reference Ref 91/01625/FULL (condition 1 of the 1992 consent) Haulfryn 1 has to be shown to be a traditional boat or houseboat being capable of navigation by an independent integral means of propulsion.
19. With regard to ground (b) the appellants are not disputing that Haulfryn 1 is moored at the location shown by a blue cross on the plan, which is clearly the case. But they say that because Haulfryn 1 accords with the requirements of condition 1 the breach of planning control identified by the Council has not occurred as a matter of fact. That being so I have dealt with grounds (b) and (c) together.
20. It was agreed by the Council that the reference to 'traditional' in condition 1 of the 1992 consent should be read in relation to 'boat' and not 'houseboat'. Thus, the question to be answered, in relation to compliance with that condition, is whether or not Haulfryn 1 is a houseboat capable of navigation by an independent integral means of propulsion.

Is Haulfryn 1 capable of navigation

21. Haulfryn 1 is capable of navigation and this has been demonstrated in two ways. Firstly, a video was played during the hearing which showed Haulfryn 1 moving away from the riverbank, up and down the river and turning around. Secondly, during the site visit Haulfryn 1 was manoeuvred on the river.

22. The site visit demonstration involved the ropes and services which connected Haulfryn 1 to the river bank being untied and decoupled. This process took some time to organise, but Condition 1 does not specify a timescale for this activity, and it was clear that Haulfryn 1 can be easily detached from the bankside. Haulfryn 1 was then manoeuvred up and down the river and back into its mooring.
23. The Council made no comments regarding the video evidence or the demonstration of the manoeuvrability of Haulfryn 1 during the site visit.
24. On the basis of the evidence before me, I conclude that Haulfryn 1 is capable of navigation.

Does Haulfryn 1 have an independent integral means of propulsion?

25. The appellants explained that the design of Haulfryn 1 incorporates an engine at the rear, bow thrusters and a steering and navigation column at the front. These features are clearly visible on the photographs submitted by the appellants of Haulfryn 1 at the place where it was constructed and also when it was delivered to the site. The appellants also confirmed that whilst the engine could be described as an outboard engine, the way in which Haulfryn 1 is constructed means that it can only be removed by the use of cranes and under the guidance of a specialist.
26. The Council accepts that Haulfryn 1 has 'independent propulsion'. There is no evidence before me to counter the appellants' description of the way in which the engine, bow thrusters and steering mechanism, which amount to the means of propulsion, have been integrated into the construction of Haulfryn 1. Furthermore, during the demonstration Haulfryn 1 was not towed or moved by any other means than those features which form an integral part of its design.
27. On the basis of the evidence before me, I conclude that Haulfryn 1 has an independent means of propulsion.

Is Haulfryn 1 a houseboat

28. The term houseboat is not defined in the Act, nor in the National Planning Policy Framework 2019 (the Framework). There is no definition of a houseboat in the Royal Borough of Windsor and Maidenhead Local Plan (Incorporating Alterations Adopted in June 2003) (the Local Plan).
29. The appellants have referred to a number of documents in which the meaning of 'houseboat' is set out including in the Housing and Planning Act 2016 where a houseboat is defined as 'a boat or other structure designed or adapted for use as a place to live'. Both parties refer to the case of *Sussex Investments Limited v Secretary of State for the Environment and Spelthorne Borough Council* [1998] P.L.C.R. 172 (the *Sussex Investments* judgement). This judgement essentially concludes that whether or not a craft is a houseboat is a question of fact and degree. It was on this basis that the discussion at the hearing moved forward.
30. In terms of its design, the appellants refer to a number of features of Haulfryn 1 which in their view render it a houseboat. For example, the way in which Haulfryn 1 was constructed is like a houseboat formed from a hull and accommodation welded to it to form one structure. Haulfryn 1 was brought to the river by road and craned into place, which the appellants say is normal

practice for a houseboat. There is no information before me to suggest that Haulfryn 1 was constructed in a different way to that described by the appellants or that it comprises two elements, like a pontoon with a dwelling on top. The Council officer questions the movement of houseboats by road, as opposed to from dry docks or wet yards along the river. However, there is no substantive evidence before me to suggest that the means of moving houseboats as described by the appellants is uncommon.

31. The appellants also argue that Haulfryn 1 has the appearance of a houseboat, including features associated with movement of it on the water. For example, Haulfryn 1 has stainless steel marine railings and fittings, some porthole windows and navigation lights which are also present on the traditional boats and houseboats elsewhere on this stretch of the river. Similarly, Haulfryn 1 is attached to the land by ropes and in common with neighbouring craft it floats on the water and has service connections to structures close to the riverside.
32. Whilst there are similarities between Haulfryn 1 and the boats and houseboats which are moored at The Moorings and in the wider area there are also significant differences. Haulfryn 1 is a fundamentally different shape than its neighbours, which gives it a boxy appearance in comparison to their sleek curves and undulating heights. The windows along the sides of Haulfryn 1 have a vertical emphasis in contrast to the small horizontal windows on the adjacent houseboats. The full height and width windows at the front, the extension of the flat roof beyond the front and back of the living accommodation and the high level outdoor seating area accessed by a ladder are not design features of the boats and houseboats in the area.
33. The appellants argue that the design of houseboats has varied over time and what was envisaged by Condition 1 in 1992 may have been very different. In particular they refer to an appeal decision relating to land at Coast Road, West Mersea, Colchester (Appeal Refs APP/A1530/C/18/3218452, 3218453 and 3218454) (the Saltwind Appeal). A photograph showing the houseboat which was the subject of the Saltwind Appeal has been provided by the appellants and they argue it would be 'absurd' to say that the casual observer recognising Saltwind as a houseboat would not then apply the same description to Haulfryn 1.
34. However, in terms of the Saltwind Appeal the Inspector observes that in that case Saltwind was similar in size to many of the other houseboats in the vicinity. She also notes that the base of Saltwind is shaped at each end which gives the impression of a craft, rather than a 'chalet' on a 'platform'. In contrast, while of a traditional form of construction, which it seems the Inspector considered Saltwind was not, Haulfryn 1 looks like a 'chalet' on a 'platform'.
35. Furthermore, in the case of Saltwind the Inspector says that the characteristic of most of the craft accepted to be houseboats in the part of the estuary in which it was moored, were boxy, flat roofed, timber clad structures containing living accommodation. These were described as additions to vessels and made it difficult to distinguish Saltwind from its neighbours. Conversely, the appearance of Haulfryn 1 does not reflect that of other houseboats in the vicinity and it is easily distinguishable from its neighbours.
36. Taking the Saltwind Appeal decision as a whole I do not find that it establishes that Haulfryn 1 should necessarily be considered to be a houseboat.

37. The Saltwind Appeal decision and the other appeal decisions provided by both main parties were not made on the same basis as this appeal because they did not amount to appeals against a breach of condition. Appeal Ref APP/X1735/C/13/2190213 (the Ferry Road appeal) related to the use of a mooring by a houseboat which was undergoing substantial external modifications. A key issue in the Ferry Road appeal was whether or not 'Ellen', the vessel in question, was a houseboat when she was brought to the mooring. The Inspector concluded that she was, but on the basis of the extent of conversion from a commercial vessel to a residential houseboat. In that case the appearance of Ellen was not of relevance.
38. Appeals Ref APP/E9505/C/10/2134003 and 2134010 (the Thorpe Island Appeals) are referred to by the appellants and Appeal Ref. APP/L5810/X/11/2151249 (the Riverine Appeal) is referred to by the Council. Both of these appeal decisions address the issue of whether or not the matter in question constitutes a building.
39. In the current case there is no suggestion that Haulfryn 1 is a building. However, the appellants consider that if it is established through application of the considerations under *Skerrits of Nottingham Limited v SSETR (No. 2) [2000] 2 PLR 102* (the Skerrits case) that Haulfryn 1 is not a building, this adds weight to their argument that Haulfryn 1 is a houseboat.
40. The Skerrits case establishes the requirement to consider three primary factors in asking the question whether operational development in the form of a building or structure has occurred; these are size, permanence and physical attachment.
41. In relation to size, Haulfryn 1 was not constructed on the site but was assembled elsewhere and brought to the site. The appellants state that the hull of Haulfryn 1 was made by Marine Fabrications Ltd and that it was taken to the Prestige Park and Leisure Homes factory (the factory) where the superstructure was constructed on the hull and the interior fit out completed. The appellants say that it is common practice for the hull and superstructure to be built simultaneously but in two different places. However, this is not the case with Haulfryn 1 as the photographs make it clear that the superstructure was constructed on the hull at the factory. Either way Haulfryn 1 was not constructed on the site, which points against it constituting a building or structure on the basis of its size.
42. The Council and local residents say that Haulfryn 1 has been moored at the same place for several months. In response the appellants say that the reason for the lack of movement is because of the uncertainty regarding the planning status. There is no information before me regarding how regularly adjacent houseboats have been moved and the appeal decisions referred to by the parties indicate that it is common for vessels to be moored for long periods. Consequently, on the question of permanence I do not find, based on the facts before me, that Haulfryn 1 constitutes a building or structure.
43. Finally, in terms of physical attachment Haulfryn 1 is attached to the riverbank by ropes and quick release services. It does not compare with, for instance, the Riverine appeal where the vessel was attached by metal brackets to fixed piles and had a permanent gangway.

44. Bringing together the tests set out in Skerrits I do not find that Haulfryn 1 constitutes operational development in the form of a building or structure. However, it does not automatically follow that it must be a houseboat which accords with condition 1 of the 1992 consent.
45. The appellants refer to standards which Haulfryn 1 has met and certificates which have been granted. Whilst these documents evidence that Haulfryn 1 is fit for purpose they do not demonstrate that it is a houseboat under the terms of the 1992 consent.
46. Condition 1 of the 1992 consent has been imposed in accordance with Section 72(1) of the Act for regulating the use of the land under the control of the applicant. It has been established by case law that regard should be had to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.
47. The reason for condition 1 is given as 'to accord with the terms of the application and to protect visual amenities of this riverside site which is located within the Metropolitan Green Belt'. There is limited information before me regarding the details of that application, but it is clear from the Notice of Decision that the Council was concerned about the impact of the appearance of vessels which are moored. That is to say the condition regulates the use of the land in terms of the effect of its use on its character and appearance.
48. The reason for condition 1 is a relevant consideration and means that the assessment of whether or not Haulfryn 1 is a houseboat needs to be carried out in the context of its surroundings. It is not a simple matter of looking at Haulfryn 1, in isolation, and drawing the conclusion that it is or is not a houseboat. In the context within which Haulfryn 1 is moored there are no other vessels which look like it. There was a similar craft on the adjacent mooring, which is shown on the appellants' photographs, but this has been removed. Nor is there any substantive evidence of widespread use of similar designs on inland waterways in general.
49. The appellants have drawn comparison with other cases which have concluded that a vessel is a houseboat but there is only a visual of Saltwind which does not compare in its context or appearance to Haulfryn 1. It has been established by case law that a houseboat does not need to be boat shaped to be described as such and Haulfryn 1 is not boat shaped.
50. Haulfryn 1 has some features which appear on boats and houseboats in the vicinity of the site. However, it also exhibits differences in terms of its shape, the style of its windows, the overhang of its roof and its high level terrace. In terms of its appearance it is more akin to the park homes on the site than to a boat. Consequently, both a casual observer and a person with some knowledge of houseboats would be likely to reach the conclusion that Haulfryn 1 looks like a house rather than a boat.
51. I have established that there is no definition of a houseboat in planning terms and that whether or not a craft is a houseboat is a question of fact and degree. The way in which Haulfryn 1 was constructed and brought to its mooring is consistent with that of a houseboat. It floats on the water, can be relatively easily disconnected from the land and is navigable. It also has design features

which are commonly found on navigable vessels. These conclusions point in favour of Haulfryn 1 being considered to be a houseboat.

52. However, the overall appearance of Haulfryn 1 as a consequence of its boxy shape, window design, roof and high level outdoor seating area is that of a house on a platform. In the context of condition 1, the reason for which is to protect the character and appearance of the site and surrounding area, Haulfryn 1 is significantly at odds with the other vessels on the moorings and along this part of the river.
53. The overall appearance of Haulfryn 1, in its particular site context, outweighs the points in favour of it being regarded as a houseboat. Consequently, as a matter of fact and degree Haulfryn 1 is not a houseboat in the terms and context of condition 1 of the 1992 consent.
54. Contrary to the view of the appellants, Haulfryn 1 is in breach of Condition No. 1 of the 1992 consent and the appeal on ground (c) fails. Furthermore, as it has been demonstrated that the breach of condition has occurred as a matter of fact, the appeal on ground (b) also fails.

Ground (a) and the Deemed Planning Application

55. I have concluded that the use of one of the moorings at Willows Riverside Park is a breach of condition 1 of the 1992 consent because Haulfryn 1 is not a houseboat. In the case of a breach of condition, an appeal under ground (a) is on the basis that the condition ought to be discharged. The DPA is for the development originally permitted without complying with the relevant condition. The original development in this case is 'the continued use of the riverbank for thirty-three residential and leisure boat moorings'.
56. There is a disagreement between the parties as to the scope of the DPA. The Council say that were the DPA to be granted it would remove the effect of Condition No. 1 from all 33 moorings permitted under the 1992 consent. On the other hand, the appellants argue that success on ground (a) and an approval of the DPA would affect the mooring of Haulfryn 1 only. The Council has submitted three appeal decisions which it considered in determining the scope of the DPA.
57. Under Section 177(1)(b) of the Act in determining the appeal I may discharge any condition or limitation subject to which planning permission was granted. In this case I could discharge condition 1 which would result in all of the moorings not being subject to any control; this is the Council's point. However, under sub section (1) of Section 177(4), where discharging a condition I can also substitute another condition for it, whether more or less onerous.
58. In the case of Haulfryn 1, the site plan, as amended, which accompanies the notice, includes all of the land to which the 1992 consent relates. However, taking the notice as a whole it is clear that the breach relates specifically to the mooring of Haulfryn 1 and the location of Haulfryn 1 is shown on the plan. To that extent the notice particularises the breach of condition caused by Haulfryn 1. If I substituted another condition, which was suitably worded, this could affect only the mooring used by Haulfryn 1.
59. During the hearing, notwithstanding and without prejudice to the Council's position regarding the DPA, the substitution of condition 1 of the 1992 consent

was discussed. This resulted in the following wording being brought forward for consideration:

This consent shall only apply to the mooring of traditional boats, or houseboats capable of navigation by an independent integral means of propulsion, except for the structure known as Haulfryn 1 as identified on drawing number 3435 (0806) and by its HIN Plate BE-0609B004E717.

60. This condition would meet all of the 'six tests' set out in Planning Practice Guidance and the Framework. In particular it is enforceable and precise because reference to the submitted plans and the HIN plate number, which is different for every vessel and displayed onboard, allow the use of the mooring by Haulfryn 1 only to be assured.
61. None of the appeal decisions referred to by the Council are comparable with the Haulfryn 1 appeal because they do not relate to a discreet element of the original development. Nor do they establish that the only option before me is to discharge condition 1 which would result in all of the moorings not being subject to any control.
62. The substitute condition, which I could impose, meets the six tests and would limit the consent to the use of the moorings as allowed by the 1992 consent plus Haulfryn 1 only. Consequently, the effect of the removal of Condition 1 of the 1992 consent from all of the moorings does not fall to be considered.

Main Issue

63. The main issue is whether or not condition No. 1 is necessary, having particular regard to the effect of the mooring of Haulfryn 1 on the Green Belt and the character and setting of the Thames.

Development in the Green Belt

64. The concept that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances has been enshrined in planning policy for many years and is required by the Framework.
65. In its reasons for issuing the notice the Council refer to the development which has occurred as the siting of a dwelling on a pontoon. In response to the Council's reasons for issuing the notice the appellants accept that a dwelling on a pontoon would be inappropriate development in the Green Belt.
66. However, the notice relates to a breach of condition not to any change of use or operational development. Even if Haulfryn 1 was considered to be a dwelling on a pontoon, that is not what the deemed planning application would relate to as I have clarified above.
67. Success on ground (a) and the DPA would simply allow Haulfryn 1 to remain moored at the site. The change in occupation of the mooring by Haulfryn 1 as opposed to a traditional boat or houseboat does not amount to development and the breach of condition 1 of the 1992 consent does not make it so. A change in the wording of the condition would not change the description of the development granted permission in 1992.
68. Although Haulfryn 1 is not development in its own right, if successful one of the outcomes of the appeal would be the grant of a new permission for the same

development granted permission originally, which related to the use of the riverbank for mooring i.e. a change of use. A material change in the use of land is not inappropriate development in the Green Belt provided that it preserves openness and does not conflict with the purposes of including land within it. There was no suggestion from any of the parties at the hearing that the moorings are inappropriate development while subject to the restrictions imposed by condition 1 of the 1992 consent.

69. However, with the substitute condition as suggested, the limitations on the use of the moorings would be different. Consequently, the test of whether the use of the moorings is or is not inappropriate development in the Green Belt, needs to be reconsidered in the light of this change and the new planning permission which would be granted.

The Emerging Local Plan

70. The Submission Version of the Royal Borough of Windsor and Maidenhead Borough Local Plan 2013 – 2033 (the emerging Local Plan) has been submitted and is subject to examination. The appellants consider that the emerging Local Plan carries limited weight but the Council say that in the absence of any substantive objections to the last round of consultation nor any policy modifications, Policies SP4 and SP5 of the emerging Local Plan, which are referred to in the notice should be afforded moderate weight. Given that the emerging plan has yet to have been found sound and that there is limited information before me regarding the details of the latest consultations and the outcomes of them in relation to the emerging local plan, I attach limited weight to Policies SP4 and SP5, as a material consideration.

The effect on the Green Belt - openness

71. Development in the Green Belt is restricted and controlled through Policy GB1 and Part (A) of Policy GB2 of the Local Plan. The key aspects of these policies are the effect on openness and the potential for conflict with the purposes of the Green Belt. Both policies are in accordance with the Framework.
72. The openness of the Green Belt has a spatial and visual aspect. In terms of its spatial aspect Haulfryn 1 is of a similar 'footprint' and in some cases significantly smaller footprint than the houseboats which are moored at the Willows. The 1992 consent allows a traditional boat or houseboat to be moored in the same position as Haulfryn 1 and it follows that in spatial terms Haulfryn 1 does not have a harmful effect on the Green Belt.
73. As I have described above Haulfryn 1 looks distinctly different to its neighbours on the river and is more compatible in visual terms to the park homes which occupy the landward side of the riverbank. As such it appears as an incongruous, alien feature on the water and presents a visual intrusion on the openness of the Green Belt, which would not arise were a traditional boat or houseboat to be moored in the same position.
74. The appellants argue that the permanence or otherwise of Haulfryn 1 is a relevant factor to be considered in terms of its impact on the Green Belt. It is clear that Haulfryn 1 could be moved to another mooring elsewhere and in that sense its presence and contribution to the visual aspect of the openness of the Green Belt could be described as transient. However, it was established at the hearing that Haulfryn 1 has been moored in the same place for several months

and that it is not uncommon for residential accommodation to be moored for long periods on the same part of the river. This diminishes the arguments related to permanence. Furthermore, the adverse visual impact of Haulfryn 1 is so at odds with its surroundings that even for a short period it would be harmful to the Green Belt.

75. I conclude that, whilst the mooring of Haulfryn 1 does not have an adverse effect on the spatial aspect of the Green Belt, it is harmful in terms of its visual impact. Therefore, the use of the mooring by Haulfryn 1 which would be permitted if a new planning permission were to be granted as set out above, would be inappropriate development in the Green Belt. Thus, the mooring of Haulfryn 1 is contrary to Policy GB1 and Part (A) of Policy GB2 of the Local Plan.

The effect on the character and setting of the Thames

76. During my site visit I was able to view Haulfryn 1 in its immediate context, including from the opposite side of the Thames, and to appreciate the character of this part of the river both up and down stream. This provided me with the opportunity to contrast the views of the site when the dense foliage on both sides of the river was in leaf as shown in the appellants' Landscape and Visual Impact Assessment (LVIA) and in the winter months. In particular I noted that in the winter Haulfryn 1 can be seen from the opposite side of the river by users of the Thames Path.
77. The LVIA demonstrates that as a consequence of the sinuous passage of the river, there are limited views of the site along its length. Furthermore, Haulfryn 1 is not located in the open countryside and the Willows Riverside Park provides a backdrop to the moorings despite the presence of car parking, trees and shrubs on the bankside. Nevertheless, there is a clear difference between the character of the vessels which are moored along the river and the park homes. The exception to this is Haulfryn 1.
78. The traditional boats and houseboats are a positive feature of the riverside. Their shapes and varying heights above the water level allow for glimpsed views between them of the river and the opposite bank from the path running parallel and close to the riverbank within the site. It is clear to me that this path is an important amenity for the residents of the Willows Riverside Park, some of whom have limited access to other natural environments. These craft are also an intrinsic part of the character of the river when viewed by canoeists and other river users, as was pointed out to me by interested parties during the hearing. I do not accept the appellants argument that those views would be compatible with views from the Thames Path as they are much more immediate and unobstructed.
79. The boxy shape of Haulfryn 1 is in sharp contrast to the varied shapes of the traditional boats and houseboats on the adjacent moorings. Whilst it is shorter in length than most of those vessels it presents a solid structure against the riverbank which obliterates views of the river from the footpath. Its boxlike structure would also disrupt the view of the bank by users of the river in a way which the other vessels do not, providing a solid edge where variety and curving shapes typify the relationship between the river and the bank.
80. The appellants refer to the incongruous appearance of the units on the Willows Riverside Park in comparison with the large, individual dwellings elsewhere

along the river. Whilst the high density form of housing on the Willows Riverside Park is different to that of individual homes in extensive grounds, the character of the land along the river is not defined by that form of development. Alongside, the detached dwellings, there are the boats in Windsor Marina close to the site and the racecourse and open land in the wider context. In this context the contrast between the park homes and the character of the wider area is not as damaging as the contribution made by Haulfryn 1.

81. If the residential accommodation element of Haulfryn 1 were to be located on the landward side of the riverbank it would not appear out of place in the wider context. It is its location on the river and its contribution to the riverscape which results in Haulfryn 1 having a harmful effect on the character and setting of the Thames.
82. The appellants argue that, its design, materials and the use of artificial foliage reduce the impact of Haulfryn 1 on its landscape setting. However, the boxy shape and the use of timber boarding contrasts unsuccessfully with the design and use of timber on the adjacent traditional boats and houseboats. Furthermore, the use of artificial foliage only serves to detract from the soft, natural appearance of the trees and other plants on the riverbank.
83. Drawing all these strands together, I conclude that Haulfryn 1 has a harmful effect on the character and setting of the Thames. The mooring of Haulfryn 1 is therefore contrary to Policy N2 of the Local Plan which seeks to conserve and enhance the setting of the Thames.

Other considerations

84. I have found that the relevant policies in the emerging plan have limited weight. Even so the tests established by Policy SP4 of the emerging Local Plan which relates to the River Thames Corridor and Policy SP5 which addresses development in the Green Belt are comparable with those in relation to Policies GB1 and N2 and Part (A) of Policy GB2. As such, on the basis of the evidence, Policies SP4 and SP5 do not weigh in favour of allowing the appeal.
85. The appellants refer to the fallback position provided by the 1992 consent, which is a relevant consideration. They refer to the contrast in size between some of the larger traditional boats or houseboats on the moorings and Haulfryn 1, making the point that vessels of a much larger size could replace Haulfryn 1. However, the examples which they cite, although large, have the typical appearance of other craft on the river. Furthermore, in terms of their level of permanence, which is not controlled under the terms of the 1992 consent, the craft which are cited would make an ongoing positive contribution to the character of the riverside.
86. The fallback position would have the effect of allowing a traditional boat or houseboat to moor at the site in lieu of Haulfryn 1. This would be beneficial in terms of the Green Belt and the character and setting of the Thames. Thus, the mooring of Haulfryn 1 does not amount to a benefit which would be achieved by avoiding the fallback in this case.
87. The appellants also argue that by virtue of its quality and its characteristics, Haulfryn 1 would make a positive contribution to the character of the area. It will be clear from the foregoing that whilst I do not disagree that the quality of

Haulfryn 1 is high in terms of its construction and fitting out, I do not share the appellants' view that it makes a positive contribution to its setting.

88. The Framework makes it clear that when considering any planning application, which in this case is the DPA, substantial weight should be given to any harm to the Green Belt. In this case I have found harm in terms of the visual aspect of the openness of the Green Belt. I find that the benefits which have been identified by the appellants do not clearly outweigh the harm to the Green Belt and in terms of the harm to the character and setting of the Thames. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Conclusion in respect of ground (a) and the DPA

89. For the reasons given above, I conclude that condition No. 1 is necessary having particular regard to the effect of the mooring of Haulfryn 1 on the Green Belt and the character and setting of the Thames, that the appeal on ground (a) should fail and that the deemed planning application should be refused.

Conclusion

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

Sarah Dyer

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr E Grant	Counsel, instructed by Jeremy Lambe of Lambe Planning
Mr J Lambe	Lambe Planning and Design
Mr J Heath	CP Heath Marine Consultants
Mr I Dudley	Lockhart Garratt (Environmental Consultancy)
Mr N Cobbold	Bell Cornwall (Chartered Town Planners)

FOR THE LOCAL PLANNING AUTHORITY

Mrs V Goldberg	Development Management Manager – Enforcement and Conservation
Mr A Hitchen	Senior Enforcement Officer

INTERESTED PERSONS:

Ms Tais Oliveira	Resident and speaking on behalf of the River Thames Society
Ms Joy Smith	Resident
Ms Fran Faulkner	River user
Mr D Elliott	Former berth-holder at the moorings

Documents submitted during the hearing:

1. Amended plan for notice under cover of email from Lambe Planning and Design dated 7 December 2020
2. Amended wording for section 1 of the notice embedded in email from the Council dated 4 December 2020
3. Note for discussion re proposed conditions and response from the Council
4. Appeal decisions relating to the following:
 - Appeal Refs APP/T0355/C/11/2151120 and 2151123
Land at Domik, The Friary, Old Windsor, Berkshire
 - Appeal Refs APP/N4205/C/12/2173954 and 2173955
Land at Stotts Park, James Street, Westhoughton, Bolton
 - Appeal Ref APP/W1525/C/12/2179829
Land at Churchgate House, Rectory Lane, Battlesbridge, Wickford, Essex