



Appeal Decision

Hearing held on 6 June 2023

Site visit made on 6 June 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal Ref: APP/R5510/W/23/3316428

Land (canal) adjacent to The Old Orchard, Grand Union Canal, Park Lane , Harefield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Lewin against the decision of London Borough of Hillingdon.
 - The application Ref 71797/APP/2020/3037, dated 24 September 2020, was refused by notice dated 9 January 2023.
 - The application sought planning permission for change of use to 2 no residential moorings without complying with a condition attached to planning permission Ref 71797/APP/2016/1419, dated 28 September 2018.
 - The condition in dispute is No 1 which states that the moorings hereby permitted shall be carried on only by the following: Mr Paul Vincent Lewin and Mr Jeremy Hibbett, and each occupier's mooring shall be for a limited period, being either the period of 2 years from the date of this decision, or the period during which the mooring is occupied by the respective occupier, whichever is the shorter period.
 - The reason given for the condition is: to enable occupiers to find accommodation taking into account the personal circumstances.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use to 2 no residential moorings at Land (canal) adjacent to The Old Orchard, Grand Union Canal, Park Lane, Harefield in accordance with the application Ref 71797/APP/2020/3037 dated 24 September 2020 without compliance with condition number 1 previously imposed on planning permission Ref 71797/APP/2016/1419 dated 28th September 2018 and subject to the following conditions:
 - 1) The moorings hereby permitted shall be carried on only by the following: Mr Paul Vincent Lewin and Mr Jeremy Hibbett.
 - 2) When occupation ceases for each mooring in accordance with Condition 1), the respective boat, buildings, structures, materials and equipment, or works undertaken in connection with that mooring, within the red-edge of the approved site location plan drawing number PL16-SLP, shall be removed from the site.
 - 3) The development hereby permitted on a temporary basis relates solely to the two residential moorings shown as x₂ and x₃ on the approved site location plan drawing number PL16-SLP.

Application for costs

2. An application for costs was made by Mr Paul Lewin against London Borough of Hillingdon. This is the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether the proposal falls within the scope of Section 73 of the Town and Country Planning Act 1990;
 - the effect of the proposal on the character and appearance of the area; and
 - whether there are any other considerations that might indicate that the appeal should be allowed.

Reasons

Section 73

4. Planning permission for the change of use of 2 residential moorings was granted in 2018 subject to conditions including a condition (Condition 1) restricting the period of the permission to 2 years. The condition states:

'The moorings hereby permitted shall be carried on only by the following: Mr Paul Vincent Lewin and Mr Jeremy Hibbett, and each occupier's mooring shall be for a limited period, being either the period of 2 years from the date of this decision, or the period during which the mooring is occupied by the respective occupier, whichever is the shorter period.'
5. The Appellant seeks the alteration of the condition to remove the part limiting the length of the permission. This would allow the change of use of the moorings on a permanent basis while continuing the personal aspect of the permission.
6. The Appellant confirmed during the hearing that the original application was made on the basis that the change of use of the moorings would be permanent. Moreover, the Council confirmed that they determined the original planning application on this basis.
7. In addition, the previous Inspector concluded that other considerations do not outweigh the conflict with the development plan in respect of a permanent planning permission. A temporary planning permission was then granted given the occupiers' personal circumstances. This was done via the attachment of Condition 1 to the permission.
8. The parties also agree that the proposal to amend Condition 1 would not alter the description of development or the operative part of the permission.
9. The Planning Practice Guidance states that one of the uses of a section 73 application is to seek a minor material amendment. It goes on to say that there is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
10. The Council considers that the nature of the development includes its temporariness, and that the alteration of the condition would result in a

fundamental and substantial change. However, as the description of development would not be altered, and given that the original application was submitted and determined on the basis that the change of use of the moorings would be permanent, the nature of the development does not include its temporariness.

11. Consequently, the proposal falls within the scope of Section 73 of the Town and Country Planning Act 1990.

Character and appearance

12. The moorings comprise two boats on a canal. The area surrounding the moorings is semi-rural in nature and characterised by rolling hillside, grassland, small woods and the canal. As such, it has an attractive semi-rural character.
13. At the time of my site visit, the majority of boats moored along this stretch of canal, apart from those at the appeal moorings, had the appearance of boats used for leisure purposes that would moor for short periods of time. The transient nature of activity on this part of the canal contributes to the pleasant leisurely character of the area.
14. The boats moored at the site have domestic paraphernalia on board such as storage items, flues, aerial and solar panels which are indicative of permanent residential use and therefore result in the boats having a residential character. The boats also have varied external treatments and fenestration that result in a different character to the leisure boats along the canal.
15. Another indicator that the moorings are being used for residential use on a permanent basis is the domestic paraphernalia on the land beside the canal which includes fences, patio furniture and planted garden areas. However, as confirmed during the hearing, the moorings do not have any residential curtilage and these areas lie outside the red line in any event.
16. I am mindful that the boats themselves do not require planning permission, and I acknowledge that the use of the moorings would not require planning permission should boats moor at the site for short periods. I note the previous Inspector's findings with respect to the character and appearance of the boats and the adjacent land. However, I have necessarily assessed the effect that the permanent stationing of two boats in principle would have on the character and appearance of the area.
17. The permanent presence of two boats in this location would diminish the rural leisurely character that results from the transient nature of activity on this part of the canal. This effect would be seen from along the public footpath on the opposite side of the canal as well as from the public footpath that passes through the adjacent field.
18. Consequently, the proposal would harm the character and appearance of the area. Therefore, it would conflict with Policy DMHB 20 of the Local Plan Part 2 Development Management Policies Adopted Version 16 January 2020 (DMP) which resists moorings where they would be incongruous and out of keeping. It would also conflict with the aims of Policy EM3 of the Local Plan: Part 1 Strategic Policies (Adopted November 2012) which seeks, among other things, to enhance local character and visual amenity of rivers and canals. It would also conflict with the aims of Policies SI14 and 16 of The London Plan The Spatial Development Strategy for Greater London March 2021 which together

seek to consider the local character of the river/waterway and new moorings that respect the character of the waterways.

19. Given the limited number of moorings and that the harm to the character and appearance would be primarily in short range views, the harm would be limited.

Other considerations and planning balance

20. The Appellant occupies one of the moorings while a second person occupies the other. The Appellant suffers from Post Traumatic Stress Disorder, is disabled and receives financial assistance from the government. The second occupier suffers from mental health issues and relies on help from the first occupier. In addition, the Appellant has local social connections, access to a nearby local surgery and is involved with a local veteran's group.
21. The dismissal of this appeal would result in both occupiers having to find accommodation elsewhere. Given the physical disabilities, finding accommodation in dense urban environments may not be suitable. There is no medical evidence that suggests that an urban location would harm the mental health of the occupiers. However, during the hearing the Appellant explained that the relative isolation of the rural location assists with his mental health as he struggles to navigate social interactions. He explained that the same applied to the second occupier. No land-based accommodation has been put forward as an alternative by either party.
22. The Appellant also confirmed that he has lived in boats on canals for some 28 years and in this particular location for roughly the last 9 years. As such, land-based accommodation such as a bungalow would be a considerable change that would be likely to cause stress and an adverse effect on the Appellant's mental health.
23. In terms of suitable alternative accommodation, I have no written evidence before me of attempts to find alternative accommodation, either on land or alternative moorings. The Appellant explained during the hearing that alternative residential moorings for permanent use would be likely to be unaffordable and in urban environments which would have an adverse effect on his mental health.
24. The Council are able to demonstrate some 7.2 years supply of housing. However, the number of moorings within the supply is unknown. The Council stated during the hearing that there is an allocation in the district for permanent residential moorings, but the number of moorings within the allocation is also unknown. In any event, the allocation lies within an urban area which would be likely to have an adverse effect on the occupiers' mental health.
25. Section 124 of the Housing and Planning Act 2016 places a need on local housing authorities to consider the needs of people residing or resorting in their district with respect to houseboat moorings.
26. No assessment of the need for residential moorings was carried out by the Council, and the number of moorings allocated for residential use is unknown. The Council stated that DMP Policy DMHB 20 addresses the need for moorings. The supporting text to the Policy states that there are a range of moorings available for boaters on the Grand Union Canal, including residential moorings.

Notwithstanding this, as an assessment of need has not been carried out, and the number of allocated residential moorings is unknown, I consider that the Council has not met their duty in this respect.

27. As such, there is no evidence of alternative suitable and affordable accommodation. I attach significant weight to this material consideration.
28. I have had due regard to Article 8 of the Convention as set out in Schedule 1 of the Human Rights Act 1998 (Article 8) which provides that everyone has the right to respect for their private and family life, their home and their correspondence. Since the Appellant's relocation would be likely to lead to the need to move to an unsuitable site and given the likely negative effects on his health, the dismissal of this appeal would amount to a grave interference with his Article 8 rights and I attach significant weight to this point.
29. I have also had due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010. Since the appeal is made for the use of occupants who have particular health conditions, it is for people who share a protected characteristic for the purposes of the PSED.
30. It does not necessarily follow from the PSED that the appeal should succeed. However, in my view, the significant weight attached to the other material considerations set out above would outweigh the development plan conflict given the limited harm that would arise.
31. Consequently, the material considerations in this particular case indicate that the appeal should be allowed.

Conditions

32. Given that the material consideration of the personal circumstances of the occupiers has resulted in the appeal being allowed, a personal condition is necessary. A condition requiring removal of the boats and associated structures after occupation ceases is necessary to safeguard the character and appearance of the area. A condition specifying the site plan is necessary in the interests of certainty.

Conclusion

33. For the reasons given above the appeal should be allowed.

R Sabu

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston	Ruston Planning Ltd, Agent
Mr Paul Lewin	Appellant
Miss Okine	Friend of Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Katie Crosbie	Team Leader
Christos Chrysanthou	Planning Officer
Antonia Whatmore	Principle Urban Designer

DOCUMENTS

Aerial image of site