



Appeal Decision

Site visit made on 4 January 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal Ref: APP/L3815/C/22/3311612

Land at Thornham Marina, Thornham Lane, Southbourne, West Sussex

- 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 Jonny Boys of Thornham Marina Ltd against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 11 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of two floating pod-style dwelling houses.
 - The requirements of the notice are: Disconnect and remove the said floating pod-style dwelling houses from the Land.
 - The period for compliance with the requirements is three 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.
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Summary of Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Preliminary Matters

2. The appellant queries whether the Council had pursued the correct authorisation to take enforcement action and with it the validity of the notice. However, there is a valid appeal before me to determine and it is not for me to review such decisions made by the Council in discharging its duties leading up to the issue of the notice.
3. The Council describe what they have enforced against as floating pod-style dwelling houses. The appellant describes them as boats. In an effort to adopt a neutral description for the purposes of my assessment, I shall refer to them as units throughout.

The ground (b) appeal

4. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the construction of two floating pod-style dwelling houses, has not occurred as a matter of fact.
5. The allegation is therefore that two buildings have been constructed, which is refuted by the appellant. My assessment is confined to whether the units are buildings for planning purposes. I am therefore not assessing whether the units are boats or whether they amount to a material change of use of land.

6. As means of overview, the units are each made from two rows of concrete blocks. There are five blocks in each row, which are filled with foam to provide buoyancy. These are held together by a metal framework above which also provides a level platform for wooden decking. In-turn, a pre-assembled pod is then attached to the framework/decking which provides accommodation in the form of a shower room, kitchenette and living/bedroom area.
7. There is an outboard motor to the rear, with steering and other controls situated at the front. There is evidence before me that the units have been certified as boats and have been used for navigation. Each unit weighs approximately 12 tonnes and has a footprint of 45 sqm. They are located and accessed via one of the pontoons at the marina. The evidence before me is that the units are then advertised as a form of tourist accommodation.
8. I therefore recognise that the units float and can be moved. However, this does not imply that they are not buildings. '*Not everything that floats is a boat*¹. It is therefore necessary to consider whether the units are a building for the purposes of the Act.
9. Section 55 of the Act includes in the definition of the word 'development' the carrying out of 'building, engineering, mining or other operations in, on, over or under land'. It should also be noted that for planning purposes water is considered to be 'land'. Section 55 (1A) states that for the purposes of the Act 'building operations' includes: a) demolition, b) rebuilding, c) structural alterations of or additions to buildings and d) other operations normally undertaken by a person carrying on business as a builder.
10. A building is defined by section 336(1) of the Act as including any structure or erection and any part of a building. With respect to the question of what is a 'building', the Courts in *Cardiff Rating Authority*² (endorsed by the Court of Appeal in *Skerritts*³), have identified three primary factors as being decisive of what a building is: (a) that it is of a size to be constructed on site, as opposed to being brought onto the site; (b) permanence; and (c) physical attachment. These are matters of fact and degree which involve planning judgement. No one factor is decisive.
11. In respect of size, the approximate dimensions of the units are not disputed by the appellants.
12. However, whilst there are many buildings that may be of an equivalent size, there are also many other objects that have the same or significantly larger dimensions. In the specific context of this appeal, I observed during my site visit a number of boats that were significantly larger than the units before me.
13. Moreover, in contrast to a building, the units were designed by a boat specialist, not a builder or architect, and comprise the common features of a boat such as a bow, stern, outboard motor and steering wheel with controls. The evidence is also that the units were completed in the boatyard beside the marina and then lifted into the water in the same way as a boat. Accordingly, this would not bring them within the definition of building operations as defined by the Act.

¹ *Sussex Investments Ltd v SSE & Spelthorne BC* [1997] EWCA Civ 3049

² *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385

³ *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

14. The evidence before me is that units were designed as boats and have been certified and used for navigation. Although the visual appearance and form of the units may then be considered uncharacteristic, I am not persuaded this is directly relevant to the factor of size.
15. In respect of size, on the balance of probabilities the evidence therefore does not weigh in favour of the units being buildings.
16. In respect of permanence, the units were first brought to their location/moorings in June 2019 and have been used for navigation under their own propulsion, irrespective of their weight, on a small number of occasions. Whilst I accept they could be returned to a different mooring, there is little evidence before me to demonstrate this has actually been the case. There is accordingly significance in the planning context in this respect.
17. It is then clear from *Cardiff Rating Authority* that a structure that moves can still be a building. Also, from *Skerritts*, buildings do not need to be on site 365 days every year to be held as permanent.
18. I note the units are advertised for use as a form of tourist accommodation. This demonstrates a likelihood of availability and with-it permanence to cater for this. Whilst I appreciate that boats in the marina may have the same or greater levels of accommodation, there is little evidence before me that these are used as a form of tourist accommodation from the marina. These boats therefore have a likelihood of being more transient and moored elsewhere on occasion.
19. In respect of permanence, on the balance of probabilities the evidence therefore weighs in favour of the units being buildings.
20. In respect of physical attachment, the units are not bolted to the pontoon, they are merely located by four very small pins and then attached by ropes. The units float according to the tides. They are then served by quick release couplings which were demonstrated during my site visit in respect of the water and electrical supply, as well as the discharge of waste. Whilst the method of coupling was slightly different to the boats at this marina, it was not materially so, given there are various way, for example, to discharge waste available to boat users in general.
21. As I have however already found, the units have been designed as boats and certified as such. They have also been used for navigation. Whilst they may then contain some of the accoutrements of a dwellinghouse and be insulated, the same can be said of many boats or structures.
22. In respect of physical attachment, on the balance of probabilities the evidence therefore does not weigh in favour of the units being buildings.
23. The Council has drawn my attention to other appeal decisions; however, the full details of those units are not before me. I also note these decisions related to proposed works and works undertaken to an existing boat which rendered it unnavigable. In any event, each decision is a matter of planning judgement based upon the specific available evidence.
24. I accept that the units are not advertised as mere boats. However, as a consequence of all the above, I do not find that this, nor the domestic appearance of the units and their use as a form of tourist accommodation, to be determinative for the purposes of my assessment.

25. I have therefore found that in respect of size and physical attachment the units are not buildings. However, in respect of permanence the evidence weighs in favour of them being buildings. On the balance of probabilities, taking all my findings into account, I therefore find that the units are not buildings. As a matter of fact and degree, the appellant has therefore discharged the necessary burden of proof to demonstrate that the alleged breach of planning control has not occurred as a matter of fact. Despite my findings, it however remains open to the Council to investigate whether the units amount to a material change of use of land. This is however a matter which is entirely for them in the first instance.

26. The appeal on ground (b) therefore succeeds for the above reasons.

Overall Conclusion

27. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances the remainder of the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Formal Decision

28. The appeal is allowed, and the enforcement notice is quashed.

Paul T Hocking

INSPECTOR