



Appeal Decision

Site visit made on 9 July 2024

by **Simon Hand MA**

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal Ref: APP/Z3635/C/23/3314071

The Boatyard, Clarks Wharf, Thames Street, Sunbury On Thames, Middlesex, TW16 5QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Andrew Sheppard against an enforcement notice issued by Spelthorne Borough Council.
 - The notice was issued on 6 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from "Sui Generis" use as a boatyard, to part boatyard and part residential.
 - The requirements of the notice are to: permanently cease the unlawful use of the mooring for residential purposes.
 - The period for compliance with the requirement is: 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (e) 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. 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.

Preliminary Matters

2. During the course of the appeal ground (e) was withdrawn.

Main Issues

3. The main issue in this case is the use of a large motor yacht "Slipstream" for residential purposes. This yacht is moored on the Thames at the end of the appellant's boatyard. There is no dispute the appellant lives on 'Slipstream', however, I noted on my site visit that the workshop on the site is also set up for residential use, with a bedroom, bathroom, and kitchen/diner/lounge that doubles up as a workroom, but contains all the necessary elements for day to day living. Given the predominance of residential uses surrounding the site this does not seem particularly out of place, but the use of the workshop is not before me. Although the allegation is the material change of use of the *land*, the requirements are to cease the use of the *mooring* for residential purposes and all the evidence revolves around the use of 'Slipstream' and it is on this basis I shall deal with the appeal.

The Appeal on Ground (d)

4. This ground is that the matters have become immune from enforcement action. In this case the act for which immunity is sought is living on the boat. Although the immunity periods in s173 have recently been changed that does not affect this appeal because of the transitional arrangements. But more pertinently because 10 years is the correct period in this appeal. The old 4-year period only ever applied to the carrying out of various building operations or the change of use of a building to a single dwelling. All other breaches have always been 10 years. A boat that is moored on the river is not a building and by living in it, it is not turned into a dwellinghouse. Rather like a caravan which is being used residentially it remains a boat that is being used residentially which is a material change of use.
5. No evidence has been put forward to suggest the residential use has gone on for more than 10 years so the appeal on ground (d) fails.

The Appeal on Ground (a)

6. The site is unusual. It was originally much larger and comprised a boatyard with a live/work unit. The appellant's parents lived in the live/work unit along with the appellant. However the site was sub-divided and the live-work unit sold off separately and the parents moved to the Isle of Wight. A narrow plot is left which reaches down to the river's edge. It contains a large workshop, raised on a platform to avoid flooding, a large boat hauled up onto the land awaiting restoration and small boat undergoing restoration along with a crane for lifting boats on and off the river. However, this is all set in what appears to be a garden, the boatyard element is very small. What is not small is 'Slipstream', which occupies the full width of the frontage of the plot.
7. Access is from a cul-de-sac off the main road, and it would appear all the other buildings on the cul-de-sac are houses. Certainly to both sides of the appeal site are houses with small gardens and balconies very close to and overlooking the river. The whole area is very tightly developed in an area where I should imagine a river frontage is at a premium.
8. The Council have raised a number of issues and local plan policies but in my view the key issue relates to EN1 and the impact on neighbours' amenities. I shall deal briefly with the other issues first.
9. The background to my assessment of the impact of the residential use of the boat is that it is in an existing residential area and the boat remains unchanged whether it is lived in or not. Consequently, I cannot see how there is an impact on the conservation area as there are no physical changes to the site. The only extra impact from living there would be bins or residential paraphernalia on the yard itself, but as this is very private behind high fences (similar to the neighbours) there is no need for it to spill over to affect the conservation area and no evidence that it does so.
10. There is no bio-diversity report, but there is no evidence there would be any bio-diversity issues. The boat remains the same and it has not been explained how living on it affects bio-diversity. The setting of the river is unchanged as the boat remains the same whether lived on or not. The Council say the residential use fundamentally changes the character of this part of the river, but do not explain how. The character of the river is mostly residential already

and I am unsure how the boat can be “a cumulatively cramped form of development”. Flood risk seems an odd issue for a boat. I may not be an expert on flooding but it seems to me as long as the boat isn’t swept away, then it would not otherwise be affected.

11. I am not sure whether the boat lies within the green belt or just the part of the site that is on the land. However, either way, a material change of use that preserves openness and does not conflict with the purposes of including land in the green belt is not inappropriate development. This is such a material change of use as there is no impact on openness. Indeed the whole area is very densely developed so there is little openness to affect.
12. However, ‘Slipstream’ is a large boat that almost overhangs the edges of the mooring. There are clear views from the stern and the prow into the neighbouring properties, their rear areas and balconies. If the boat wasn’t lived on this would not be a problem as the occasional moment of overlooking from a leisure use could be tolerated, but with the residential use this would be permanent. Looked at another way if the appellant wanted to build out over the river to the same depth as ‘Slipstream’ to provide a viewing platform there would be serious concerns of overlooking and privacy. The boat is effectively such a viewing platform and its residential use is harmful to the amenities of neighbours and so is contrary to policy EN1 which requires new development to “*b) achieve a satisfactory relationship to adjoining properties avoiding significant harmful impact in terms of loss of privacy, daylight or sunlight, or overbearing effect due to bulk and proximity or outlook*”.
13. The appellant argues that if he has to move, the narrow boat hire company business he runs from the site would have to close down. However, no evidence of the company has been provided and there is nowhere for a narrow boat to go on the site so I am unclear what the relationship between the site and the company is. This potential loss does not outweigh the harm I have identified and the appeal on ground (a) fails.

Conclusion

14. I shall dismiss the appeal and uphold the notice.

Simon Hand

INSPECTOR