



Appeal Decision

Site visit made on 9 October 2025

by **Grahame J Kean BA (Hons) Solicitor, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 January 2026

Appeal Ref: APP/D0840/C/23/3319172

Land known as Dugdales Quay, Penpol Creek, Cornwall , TR3 6NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr D Richards against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 22 February 2023.
 - The breach of planning control as alleged in the notice is: without planning permission undertaking an engineering operation to install spud legs.
 - The requirements of the notice are:
 - (1) Remove the spud legs shown in the approximate position marked with two blue 'X's' on attached plan.
 - (2) Remove all materials arising from compliance with (1) above from the land and restore the land to its former condition and use before the breach took place.
 - The period for compliance with the requirements is 3 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
-

Decision

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

Background and preliminary matters

2. The enforcement notice refers to the installation of "spud legs" which here means spud legs, attached to a barge to provide a mooring. Barges or platforms may be stabilised by these shafts, deposited some way into the sea or riverbed, or resting on their own weight. Barges with this method of mooring are often called spud barges.
3. The target of the notice appears to be the two spuds, one at either end of a barge moored in the position marked (approximately) on the plan attached to the notice, in Penpol Creek. The creek is a tidal waterway and tributary of River Fowey, accessible for boats on incoming tides. It is on the north shore of the larger Restronguet Creek.
4. There is a society named the Restronguet Creek Society formed in 1972 whose aims include the preservation of the Creek's essential character and its amenities, for present and future generations. The Society has upward of 300 members. One of the matters that the society concerns itself with is the construction of undesirable shore-side developments¹, understandably so, since the area has a unique character and heritage, but which of course also includes its historical aspects².
5. However, such matters are not relevant to an appeal on ground (c).

¹ Representation of Restronguet Creek Society 19.5.2023.

² For example an interested person commented that "*the barge, which is the subject of this planning, has been a delightful addition to the landscape. The history of the quay is of industry and trading. The quay would have seen shipping and barges transporting goods. To see a barge moored not far from the quay is wonderfully reminiscent of those days.*"

6. The barge is moored above the mean low water mark, ie on the foreshore where the land is alternately covered and left dry by the ebb and flow of the tide. It is undisputed that the appellant owns the foreshore on which the barge is moored. The courts have held that "land" may include land covered by water. The appellant purchased 3 Dugdale's Quay in 2017 together with, which is undisputed, a large area of foreshore on which there were two moorings. The vendor had provided a statutory declaration that boats were kept there over the last 40 years. The appellant is thus the registered owner of this section of the foreshore. This may be unusual (since in tidal waters the Crown is presumed to own the "alveus" (riverbed) of tidal rivers) but is correct having regard to the title deeds which are sufficient to rebut the presumption.

7. Ownership by the Crown or privately is subservient to public rights of navigation. At common law, an owner of a tidal riverbed has the proprietary right to moor a boat permanently there but subject to restrictions that may involve the need for planning permission, a marine licence, and/or regulation by the harbour authority. Restronguet Creek is understood to be an abandoned harbour authority³.

8. Establishing a permanent mooring may require planning permission as a material change of use and/or an operational development. Operational development might arise by for example installing permanent structures such as pontoons or sinking fixed mooring piles into the riverbed. Generally, if a boat is so permanently attached to the bed that it loses its mobility, it may be counted as operational development.

9. It has been established⁴, that the use of a vessel on water can amount to a material change of use of land. However, the use of this part of the foreshore for mooring boats, which would appear to include all kinds of boats including the barge, was certified as lawful by a lawful development certificate (LDC) dated 4 April 2019.

Marine planning and terrestrial planning enforcement

10. By s58(1) Marine and Coastal Access Act 2009 a public authority "*must take any authorisation or enforcement decision in accordance with the appropriate marine policy documents, unless relevant considerations indicate otherwise*". If a public authority takes an authorisation or enforcement decision otherwise than in accordance with the appropriate marine policy documents, s58(2) requires the public authority to state its reasons.

11. An "authorisation or enforcement decision" is defined in s58(4). In broad terms, and as stated by the relevant marine plan for the area⁵ an authorisation or enforcement decision is the determination of any application for authorisation to do any act that affects or might affect the UK marine area (s58(4)(a)).

12. The appeal before me does not appear to be derived from nor does it consist of any application for authorisation as envisaged by the legislation. Subsection (4) is less than crystal clear when it comes to planning enforcement appeal decisions that do not involve planning merits. However, paragraph (e) of subsection (4) includes within the definition of "authorisation or enforcement decision" the following:

"(e) any decision relating to the enforcement of any prohibition or restriction (whenever imposed) on the doing of any act, or of any act of any description, falling within paragraph (a)".

³ (per Andy Brigden, Maritime Manager, Cornwall Council email to appellant, 30 January 2019)

⁴ *Thames Heliport Ltd v Tower Hamlets LBC (1997)* 74 P & CR 164

⁵ South West Inshore and South West Offshore Marine Plan June 2021

13. Therefore, it seems to me that even where an act of enforcement is concerned, it must be related back to an application for authorisation of the type referred to in s58(4)(a), which is not the case here.

14. Defra describes the marine planning system and its interaction with terrestrial planning as follows:

“All public authorities on land or at sea, including the MMO, must take any authorisation or enforcement decision that affects or may affect the marine area in accordance with appropriate marine policy documents unless relevant considerations indicate otherwise [save in relation to nationally significant infrastructure projects which must have regard to these documents].”

15. If relevant considerations or reasons need to be expressed for the purposes of the 2009 Act, these are that the context of this appeal under s174 of the 1990 Act is to determine the sole question whether what is alleged to have taken place is a breach of planning control, where there is no prior or current authorisation that is relevant to the proceedings. Therefore, the marine planning merits are not considered.

The MMO Appeal Decision

16. Below the mean high water mark the Marine Management Organisation (MMO) has jurisdiction to license and enforce certain activities. In the submitted appeal decision of Inspector Davies dated 7 June 2021⁶, the deposit of spud legs on the seabed was deemed to be a licensable activity under s66 of the 2009 Act and not to benefit from exemption in Article 22 of the Marine Licensing (Exempted Activities) Order 2011. The appellant was refused a licence to use the spud legs for a temporary period on the barge, ie the same barge that is the subject of the current enforcement appeal. The Inspector described the appearance of the barge as follows:

“The vessel to which the spud legs are attached is an ex-navy, steel, dumb barge. At over 26 metres long and over 6 metres wide, it would be substantially larger and of entirely different character to any other boat along this foreshore. The spud legs are approximately 0.6 metres in diameter, about 10 metres in height and built of steel..., which adds to both the size and industrial appearance of the overall structure.”

17. The fact that the barge’s size may adversely affect local character as opposed to other smaller vessels moored in the vicinity is not relevant to this appeal which is on ground (c), namely that the matters alleged in the notice, do not constitute a breach of planning control. Consequently, the visual impacts on seascape in coastal areas are not relevant to the appeal before me. The views expressed by the Inspector on such matters, are not relevant here. Size itself may be relevant and is discussed below.

18. The Council considers it to be relevant that the MMO decision found that the use of spud legs was not in accordance with the course of normal navigation and maintenance, and its mooring for up to 5 years for storage use was beyond any reasonable interpretation of navigation, from which the right to anchor arises. The MMO decision concluded that the proposed activity, the use of “*spud legs to temporarily site spud legged barge*”, does not benefit from the right to anchor. The Inspector relied on a dictionary definition and Defra guidance on what was “*in the course of its normal navigation or maintenance*” which if met, would exempt a vessel from the need for a

⁶ Ref: APP/ML/20/01

licence to deposit on or under the “sea bed”⁷ and noted the lack of a specific timescale associated with the activities of navigation and maintenance.

19. It seems that the basis of the MMO appeal decision was that the application was interpreted as a proposal permanently to anchor a vessel for storage purposes, that arose from the course of normal navigation. Naturally, one would expect that no permanent right of anchorage or mooring would arise from the course of navigation, so the decision might not be unexpected if looked at strictly in that context.

Summary of the cases for the Council and appellant

20. The Council’s case is that, in considering whether the installation of spud legs is an engineering operation that is operational development, s336(1) of the 1990 Act defines “building” as including any structure or erection, and any part of a building, as so defined...’. It considers that the spud legs have been “retro fitted” and they are not an integral part of the barge as originally designed. They are welded and bolted to the barge. Nevertheless, the Council has it that they are part of the structure and so are within the definition of a building which includes any structure.

21. The appellant’s case is simply put: the spud legs are not operational development because they are an integral part of the boat. Furthermore, the LDC dated 4 April 2019⁸ certified as lawful, on that date, an “*existing use to moor boats on foreshore*” in respect of the land on the site/location plan referred to in the LDC application. Therefore, as an integral part of the boat, it is said that the legs are part and parcel of the lawful use of the land. For that reason, it is claimed that there is no engineering operation for the purposes of s55(1) (definition of development).

22. In support of his argument, the appellant points out that whilst some boats are moored by rope or chains to permanent physical features, when this barge moves the means of anchoring is taken with it. At the site inspection, I viewed the raising and lowering of the spud legs. It was said to be, and indeed it was, a simple manual operation performable in a matter of minutes by one person. When the spud legs are raised from the riverbed, being attached to the boat, they move with it.

Whether spud legs an integral part of the boat

23. The precise wording of the allegation is “undertaking an engineering operation to install spud legs” which could refer to the attachment itself of the legs to the barge, but more likely the target is the installation, or recurring installation of the spud legs (having been attached to the barge) into the land in the position noted as approximate on the plan.

24. The Council claims that as the spud legs have been retro-fitted, they are not an integral part of the barge as originally designed, but part of the structure and are within the definition of a building (building includes any structure). In making a distinction between the barge and the spud legs, characterising the latter as a building in its own right or on the basis that it constitutes part of the barge and is therefore still a building in its own right, the Council seems to ignore the simple fact (which I find as a fact from the evidence including what I saw) that the barge is a vessel that incorporates, as an integral part of its structure, spud legs as a means of anchorage when needed.

⁷ The exemption applies to “a deposit from a vehicle, vessel, aircraft or marine structure in the course of its normal navigation or maintenance”, see Articles 4, 22 of Marine Licensing (Exempted Activities) Order 2011/409.

⁸ Ref PA19/00669

25. The fact that the spud legs may be an integral part of the barge does not however overcome the Council's objection that by virtue of their size, degree of permanence, attachment to the land and so on, they constitute a "building" as defined in s336 which would amount to development for which planning permission is required.

Whether a building operation

26. A building built on the foreshore becomes a part of it.

27. The Council cited several cases related to the issue of operational development and "building", including Skerritts, Hall Hunter, Cardiff and Barvis⁹, but no judgements were supplied. The cases refer to land-based structures, not floating vessels, and whilst some of the passages cited appear relevant, they cannot all be sensibly compared to the context of the present appeal. That said, in relation to Skerritts, the Council states, correctly that three factors are relevant: the size of the structure, its permanence and the degree of physical attachment to the ground. I would add that no one factor is conclusive and each case is decided as a matter of fact and degree, on the balance of probability.

Size

28. The barge has a considerable size, bulk and mass but no valid comparison can be made with other vessels in the vicinity for in this respect it is no different from other barges of its class. I register that point since the complaints that have precipitated the enforcement action by the Council come from persons (legitimately) interested in preserving the character of the creek. Whether or not the barge represents an acceptable picture in this marine landscape is not relevant to the factors involved in assessing whether operational development has occurred. The Council, knowing that the appeal is restricted to ground (c), cited a passage from the MMO decision that comments on the adverse impact of the spud legs and moored barge on the character of the seascape, landscape and the surrounding AONB. Such matters are not relevant to an appeal on this ground.

29. Taken alone, the legs are, as the MMO decision found, c0.6m in diameter, c10m high and built of steel which the Council says, "*adds to the size and industrial appearance of the overall structure.*" The industrial appearance is not relevant, it was a comment made in the context of a marine planning appraisal.

30. The Council also states that "*the spud legs both on their own and also when considered with the associated barge, are of a size that is not insignificant*", so it is somewhat unclear whether the Council's case is focussed only on the spud legs or with the overall structure. The spud legs are large structures but in the context of what could reasonably be expected to anchor a barge of this size and design, nothing out of the ordinary. From experience size is seldom a determinative issue in the tests for operational development, as structures of this size, larger and smaller have been found to be or, depending on the context, found not to be operational development.

31. I have found in any case that the legs are an integral part of the boat and consider the overall structure. The mooring of the barge is established through the LDC. It is a large structure, certainly larger than most other leisure and recreation boats that can be seen dotted around the creek but that is not to the point. There is no characteristic size

⁹ Skerritts of Nottingham Ltd v SSETR (No. 2) [2000] 2 P.L.R 102; [2000] J.P.L. 1025; Hall Hunter v FSS [2007] 2 P & CR 5; Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd (1949) 1 KB 385 and Barvis v SSE (1971) 22 P and CR 710

or shape for a boat, the term might encompass submarines, coracles, catamarans, barges, ferry boats, Boaty McBoatface etc.¹⁰

Permanence

32. As to permanence, the barge appears to have been relocated to the appeal site between March 2021 and June 2022. A barge, even a dumb barge, is a floating vessel and the barge in question is physically capable of being moved from one place to another and then moored anywhere in the part of the foreshore owned by the appellant.

33. Whether the Council is conflating the spud legs with "spud piles" to which the appellant rightly draws attention, is unclear. Spud piles are long poles driven into the soil with the aid of some machinery that then act as a permanent mooring (such as are understood to exist at the RNLI Falmouth lifeboat station. The delegated report on the LDC application referred to *engineering operations to provide more permanent sturdy moorings piled into the creek bed* which would appear to suggest something more than the use of spud legs.

34. Considering the spud legs on the barge they cannot sensibly be considered as a separate stand-alone element. If they were not welded to the barge, it would seem likely that unless they were indeed "spud piles" they could not physically support themselves in or on the water or under the soil without the aid of some mechanical means to establish a permanent mooring.

35. Patently that is not the case here. It seems to me on the evidence that the spud legs are more of a stabilising element, rather than a permanent intrusion into the ground. They are not intended to provide a foundational or enduring structural support in one specific and precise location. Also, when raised it seems to me that being situated on the muddy flats of the foreshore, successive ebbs and flows of the tide will quickly fill the holes temporarily left by the marginal deposit into the ground of the legs.

36. The Council gives weight to the fact that the MMO licence applied for was refused, which would have been to deposit the spud legs on and just under the seabed for up to five years. I am not persuaded that this carries much weight for that proposal was itself made more than five years ago, and it was made on the basis of rights inherent in the ordinary course of navigation.

37. The Council references *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin) (Wooley) in which the court is said to have considered whether objects on land were portable, moveable, temporary or buildings or structures and it was noted that the mobile units in question were "*permanently in their field, and there was no limit on the length of time they would remain there*".

38. Accordingly, the Council said that they could be there for years "*as could the spud legs*" but they could not be there in any case without the barge, yet its lawful mooring within the foreshore is established. The legs are part and parcel of the vessel. It might be otherwise if permanent piles physically separated from the boat, were driven into the foreshore to act as a mooring in a single permanent location but that is not the case here.

39. The appellant previously enquired as to the use of the barge as a residence and for storage. Therefore, Council states that it is "*more than likely to be intended to be a*

¹⁰ Eg *Sussex Investments Limited v Secretary of State for the Environment and Spelthorne Borough Council* [1998] P.L.C.R. 172

permanent fixture in the estuary". The putative use of what the Council terms the "associated barge" for residential purposes is cited as evidence, ostensibly in relation to the spud legs, of their permanence. However, there is no evidence that the barge has been put to a residential use.

Attachment to the ground

40. The legs are separated, one at each of the barge. Having viewed the lowering and raising of the legs, my view is that it is a simple manual operation with on board hydraulic equipment, performed in a few minutes by one person, repeated for each leg.

41. As to physical attachment the spud legs are said to "*be there*" under their own weight. This is a curious assessment as in fact, they would be driven a metre or so into the seabed as I saw, which assists with stability. That said, the degree of intrusion into the bed is minimal in my view. Otherwise, I agree the legs are simply "there" when not actively deployed; they do not "rest" on anything save that they are fundamentally attached as part of the barge. In other words, the legs would only bear their own weight, allowing for buoyancy, as dead weight on the structure. When deployed, the legs are driven a metre or so into the foreshore, and the weight of the barge is transferred from the water to the legs and supported by the foreshore.

42. Significantly there is no evidence of attachment of utilities, ie cables for the supply of water, electricity, telephone and so forth running from the barge. An interested person notes that the owner has placed a collapsible catenary bridge which he states links it permanently to the shore. The bridge was in place when I accessed the barge. However, there is nothing to suggest that it is other than a temporary structure used as a form of access when required and not part of the barge or the spud legs. The notice does not allege any breach of planning control relating to the bridge.

43. When a building is defined to include any structure or erection and any part of a building so defined, the 1990 Act is referring to any structure or erection which changes the physical character of the land. I find from the foregoing that although the barge and/or its spud legs are a large structure, the degree of permanence and attachment to the foreshore are not such as to constitute the boat, or the legs considered separately, as a building.

Whether an engineering operation

44. The Council states that it is "*necessary to examine whether the installation of spud legs would be considered to be an engineering operation including whether their use would amount to operational development.*"

45. However, the Council characterised the alleged breach of planning control in a way contrary to its statement that also focussed on the barge/spud legs as a building. It is unclear whether it is the intrusion of the legs into the seabed that constitutes the engineering operation, or the attachment of the legs to the barge (or both). The legs are such an integral part of the barge that it is somewhat artificial a concept to hold that they constitute a building in their own right. Importantly, however, the intrusion of the legs into the foreshore is not analysed by the Council in terms of an engineering operation, either by reference to judicial authority or otherwise, it being said that: "*Paragraph [sic] 55 of the Town and Country Planning Act 1990 states '...development' means 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 buildings or other land.*"

46. Engineering operations generally involve works with some element of pre-planning, supervised by a person with engineering knowledge but it is not necessary for the operations to so supervised in the particular case. That said, typically, an engineering operation will involve some alteration of the landform in question, ie in this case the foreshore.

47. Engineering or other operations are not building operations. Building operations are separately defined in s55(1A). The two concepts appear to be kept separate in the overall scheme of the 1990 Act and subordinate legislation, despite the fact that they are both forms of operational development. For example, for the purposes of agricultural permitted development rights, “building” is stated in terms not to include anything resulting from engineering operations.¹¹

48. Therefore, in focussing on the concept of a “building” in its statement, the Council may be straying away from what it alleges to be the correct breach of planning control, ie an engineering operation. If not a building, the works could perhaps be “other operations” referred to in s55(1) which must at least be of a constructive character leading to an identifiable and positive result or similar to building or engineering operations¹². If sufficiently permanent and affecting the character of the land, then operational development obtains.

49. Of the several authorities briefly mentioned by the Council, no reference is made to the case of *Coleshill & District Investments Co Ltd v Minister of Housing and Local Government* (1969) 20 P. & C.R. 679 (Coleshill), a House of Lords case in which the removal of embankments and blast walls was assessed as to whether it was an engineering operation. A key point is the following passage:

“If development needs permission, which in most cases it does, and if development is defined, as in the Act it is, the true path of inquiry first involves ascertaining exactly what it is that it is desired to do, or exactly what it is that has been done, and then to see whether that comes within the statutory definition of development”. (my emphasis)

50. The Council is concerned that:

“the daily comings and goings of the tides in the estuary and the effect of winds the rocking and rolling motion of the barge will cause the spud legs to work their way deeper and deeper into the bed of the estuary as time progresses.”

51. I do not follow the logic of this statement. The legs are deployed through the hydraulic process which primarily controls the depth to which they are placed beneath the seabed. The precise way in which the legs may or may not be caused to intrude deeper into the seabed through other factors, is not clear to me. The Council does not bring forward any technical evidence to support its view. In *Coleshill* I note that the court (per Lord Upjohn) observed that:

“It is a great pity that there was no expert evidence on the question whether the removal of the blast walls and embankments was an “engineering ... operation””.

52. Lord Pearson added that:

¹¹ The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 6, Paragraph D.1.

¹² see Glidewell, L.J. in *Cambridge City Council v Secretary of State for the Environment* [1992] 3 P.L.R. 4 at 17 citing observations of Lords Wilberforce and Pearson in *Coleshill & District Investment Co Ltd v Minister of Housing & Local Government* (1969) 20 P. & C.R. 679; [1969] 1 W.L.R. 746.

“the removal of the embankments might also have been regarded as a “building operation,” or, perhaps, as “other operations normally undertaken by a person carrying on business as a builder,” though without expert knowledge or expert evidence, I do not feel able to form a view on this latter possibility.”

53. Lord Parker C.J. in *Cheshire County Council v. Woodward* [1962] 2 Q.B.126 at 133; 13 P. & C.R. 157, at 161, D.C. said:

“having regard to the prepositions describing the operations as “in, on, over or under land,” the concept must in regard to that limb be whether the physical character of the land has been changed by operations in or on it; secondly, whether the physical character of what is under the land has been changed, for example, by mining operations under the land and, thirdly, whether the physical character of the air above the land has been changed by operations which can be described as operations over the land.”

54. The appellant is probably best placed to describe the process, which he states is:

“carried out by hand. Each leg is lifted with a chain hoist, which is effectively the same as any anchor windlass on any sailing yacht...the scale of the spud legs varies at each state of tide. Although ten metres in length (the same height as any sailing boat mast) 1-2 metres are sunk under their own weight in the seabed like any anchor, 3 metres are level with the freeboard of the boat hull, the highest point of the hull is another 2 metres high meaning at lowtide only 3 metres of spud leg are above the hull. The tide can rise 2 metres and as the boat floats on every tide (the same as any moored boat with the anchors remaining in the seabed) that means only one metre of spud leg would be above the hull on a high spring tide.”

55. Whether a particular operation constitutes an engineering operation is a matter of judgment for the decision maker, based on the facts presented, or on inference from those facts. Applying the above considerations, I do not agree with the Council that the physical character of the land is changed in more than a relatively superficial way by the intrusion of the spud legs into the foreshore, where it can be appreciated that each time the legs are raised the ebb and flow of successive tides will ensure that the very muddy ground around them fills the void left by the legs.

56. Therefore, I do not find that the installation of the spud legs as alleged constitute an engineering operation, nor is the installation sufficiently permanent and affecting the character of the land, that any other form of operational development exists.

Other matters

Whether the LDC includes use of spud legs

57. The distinction between operational development and material change of use is important in an enforcement notice, to ascertain the correct breach of planning control where alleged operational development in fact includes operational development and a change of use, each of which is of such scale or importance in its own right that it cannot reasonably be regarded as ancillary to the other, thus requiring permission under both heads. Alternatively, the activity may fall into both categories where the question is whether they are to be regarded as primarily operational development or a change of use, with an ancillary element of the other.

58. The distinction was expressed for example by Lord Denning M.R. in *Parkes v. Secretary of State for the Environment* [1978] 1 W.L.R. 1308 , 1311; [1979] 1 All E.R. 211 ; 36 P. & C.R. 387 , 395; 77 L.G.R. 39, C.A.:

“... ‘operations,’ comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself: whereas in the second half ‘use’ comprises activities which are done in, alongside or on the land but do not interfere with the actual physical characteristics of the land.”

59. A leading case on this matter is *West Bowers Farm Products v Essex CC* (1985) 50 P. & C.R. 368 where Nourse LJ stated:

“the planning legislation is not impressed by the indivisibility of single processes. It cares only for their effects. A single process may, for planning purposes, amount to two activities. Whether it does so or not is a question of fact and degree.”

60. In the *West Bowers* case John Donaldson MR stated that “some activities may constitute a change of use or an operation, according to what is the object of the activity.” He gave the example of waste deposit with the aim of disposal, or to alter the character of the land, which might be an operation. The same activity might also constitute an operation and a change of use.

61. Therefore, an activity might be a change in use or an operation, or both, but there could be (1) composite activities where a constituent part is ancillary to the other, ie within the scope of a planning permission (or an LDC) granted in respect of the other or (2) two or more activities each being substantial and separate. Whether a single process amounts for planning purposes to two activities is a question of fact and degree. However, in *R. v Durham City Council Ex p. Lowther* [2002] P. & C.R. 22, the Court of Appeal stressed that it did not follow that different aspects of a process always fell to be categorised as different operations or uses of land for planning purposes. There was no reason why two or more activities should not constitute a single use covered by a single planning permission¹³.

62. In my view, the use of the site for mooring the barge is simultaneous with and part and parcel of the operation of deploying the spud legs. The barge cannot be moored without some means of mooring. In the LDC there is no specification for the method of mooring within the certificate.

63. One interested person a nearby resident and master mariner, had queried the validity of the LDC and received a reply from the Council’s “Feedback team” which was not referenced by the Council in its submissions, but is worth quoting:

“The application was seeking to establish the use of and lawfulness of land now known as Douglas Quay to moor a boat. Despite the application being granted consent on the 4.04.19 the consent only confirmed the pre-existing lawful use to moor a boat on the existing swing mooring within the located identified planning unit. This is explained within the officers report (enclosed) for her consideration in granting this certificate.”

64. What is surprising about this reply is that it is misleading as to the actual terms of the certificate (“consent”) which did not restrict the lawful use on “the” or indeed any “existing swing mooring”.

¹³ See paragraph 62, Durham

65. Several interested persons commented that the mooring method of spud legs is recognised as the most environmentally friendly form of mooring boats of this type. This is not strictly relevant, however I would note that as the spud legs are deposited into the seabed by their weight alone and given the condition of the foreshore where the boat is moored, it appears to me unlikely that they would disturb the seabed in the way that a conventional mooring might do because as noted, the holes left by the legs would refill with mud and merge with the land after a few tides.

66. One interested person wrote:

"The fact is the spud legs are part of the boat and the activity of mooring had been granted with a certificate of lawfulness so the council seem to be contradicting themselves. He's essentially just putting his boat on his mooring off of his own quay. He's tried his best to do everything by the book, and seems to be just having it all thrown back at him."

67. However, the Council's report on the LDC application stated:

"The application is for the continuance of mooring boats on the foreshore. A use of land which one of the objectors has first-hand knowledge of stating that he 'can confirm that there have been swinging moorings on the foreshores for many years'. I consider that the description of the application is sufficient and by definition reflects the number of differing craft that you often find within a creek location such as this. The applicant has already been informed via previous applications that more extensive permanent moorings would require planning permission."

68. More extensive permanent moorings might include a pontoon fixed to the foreshore, or a jetty of some kind. Clearly, that would amount to a permanent fixture that might not be within the scope of the certificate. The report continued:

"While I accept that we must carefully consider the wording of any certificate to ensure that can be no ambiguity going forward, as stated if the applicant in the future were to moor his large ex cargo barge within the foreshore in this location and it transpires that in order to do so [he] has to then embark on engineering operations to provide more permanent sturdy moorings piled into the creek bed, he has already been officially informed that such works would require planning permission."

69. As noted, the method of mooring was not specified in the certificate. The interpretive principles applicable to planning permissions apply to LDCs. If the scope of a LDC is clear and unambiguous on its face, extrinsic evidence is inadmissible. To understand the precise scope of an LDC its wording and accompanying plans must be considered. It is established that only if an LDC is not deemed clear enough on its face, limited extrinsic material might clarify what was the intention behind the grant. The principles of the interpretation of planning documents, including LDCs were rehearsed in *Breckland*¹⁴. In that case (paragraph 47) it was said that:

"generally, the lawfulness of the use set out in the CLEUD is "conclusively presumed" by virtue of section 191(6) TCPA 1990 . The use that is presumed to be lawful is that set out in the certificate and not that which is occurring at the time of grant and so there is no need to investigate factual matters occurring at the time of grant."

¹⁴ *Breckland District Council v Secretary of State for Housing, Communities and Local Government, Plum Tree Country Park Limited* [2020] EWHC 292 (Admin)

70. In a case¹⁵ related to established use certificates but relevant to the issue of LDC's it was said that Councils:

"should exercise great care concerning the terms of established use certificates which they issue. If a certificate is not drawn with care and expressly limited to the precise use in question, then its issue can lead to the consequence that the authority may, through its own act, find itself thereafter precluded from preventing a use for which a planning permission would not have been granted simply because the certificate had been used in terms wider than were necessary."

71. In my view the terms of the LDC are clear in that the means of mooring is left to that which would ordinarily and incidentally be used as a result of the nature of the craft, provided that no operational development is involved. As noted, the use of spud legs for barges of this size and class would not appear to be unusual.

72. If recourse has to be had to extrinsic material such as the delegated report and the application form, I consider the intention was to leave open the means of mooring the boats; the report noted that there were swinging moorings on the foreshore for many years but significantly that the description of the application was considered *"sufficient and by definition reflects the number of differing craft that you often find within a creek location such as this"*. In other words, the Council was prepared to accept the generality of the fact that several different types of craft have often been found in such locations, as support for a certificate with a wider scope than restricting it to a specific type or size. As to the application form, that did not refer to any specific means of mooring.

73. Had the Council intended to limit the scope of the certificate to use for mooring boats by means of swing moorings or similar, no doubt it would have done so. Significantly, it has not informed me that it considered the LDC was issued in error.

74. I find that the use of spud legs to moor a boat of this nature, would be directly and functionally related to the primary mooring use and is moreover incidental to the primary use. The operation of the spud legs is subordinate and relates to, the primary function of mooring the barge in question.

75. The other point worth noting is that the use was not certified as being a use in the course of navigation, and the Council does not suggest that the certified use is so limited. It was well understood that this was a mooring on the appellant's own land. Emphasis was laid on the MMO appeal decision to the effect that the proposal then to deposit spud legs on and just under the seabed¹⁶ for up to 5 years, would not be in the course of normal navigation or maintenance. Clearly, whatever the proposal was in the marine licence application, the LDC dealt with long-term residential mooring on the appellant's land, not incidental navigation.

Obstruction to navigation

76. The Council expressed concern *"on the navigational aspects of the barge positioning, and whether this could cause a negative impact on other water users of the creek"*¹⁷ but, assuming this were a factor in substantiating the allegation, the concern appears to be misplaced.

¹⁵ *Broxbourne BC v Secretary of State for the Environment* [1980] Q.B. 1

¹⁶ Technically the land under the foreshore is not seabed.

¹⁷ Comments of Cornwall Council on PA19/02863 - MLA/2019/00110 – Marine Management Organisation (MMO) Consultation. Application to use spud legs to temporarily site spud legged barge.

77. The abandonment of boats dumped on foreshores and tidal creeks in Devon and Cornwall is commonly understood as an environmental issue and in Restronguet Creek there appears to be no harbour authority which means when boats are abandoned, it is often on private land. The appellant's boat is not an abandoned vessel or a hulk as has been suggested. It has been maintained and repainted.

78. It is true that the public have the right to navigate over every part of the waterway: *Williams v. Wilcox* (1838) 8 Ad. & E. 314, and a ship must not be anchored so as to cause an obstruction to other navigators. Also, to permanently anchor a ship either for some particular purpose or to lay it up for the winter may also be an obstruction to navigation (see per Fletcher Moulton LJ in *Denaby & Cadeby Main Collieries v Anson* [1911] 1 K.B. 171 at 200). However, the delegated report of the Council stated that if the navigable channel were blocked by a large vessel it was assumed that "*the Maritime Manager and his team would have suitable legislation at hand to deal with such matters*".

79. The appellant has his boat anchored on what has become mudflats during low tide, in a controlled manner in common with, as I saw, several other boats nearby where the owners have no doubt taken account of ebbs and flows of the tide. The appellant's barge is moored on soil owned by the appellant, in a position that is in relatively close proximity to the high water mark. In such a position it seems unlikely that it would be an obstruction to the fairway or any navigable channel and I have not been given any technical details or charts that would support such a proposition.

80. In addition, being a barge, it has a flat bottom that allows it to remain stable on the mud as opposed to listing to one side, as I saw was the case with some other boats. The Council does not pinpoint the exact location of the mooring and it is to be expected that it may change over time within the foreshore owned by the appellant.

81. The barge in question is not abandoned and does not drift when moored (as is apparent with boats moored with a swing mooring such as those apparently operated by the appellant's neighbour H who owns two adjoining sections of the foreshore). H has two swing moorings on either side of the appeal site and states he has been unable to use these moorings "*as it is impossible for craft to swing on those moorings without colliding with the barge*". H points out that as it is a dumb barge with no means of propulsion, if the legs were lifted when the tide was in, the barge "*would drift dangerously and so this is not feasible*".

82. There is no evidence that this scenario has manifested itself. I also note from experience that boats on swing moorings tend to move with both the wind and the tide and it is a commonplace to see aerial images of mudflats marked in circles created by the action of the wind and tide on these moorings. Whether or not the position of a craft moored in this way by H, within his land but which then swings around to encroach on his neighbours foreshore, is not explained but in my view it is a possible explanation for any conflict that may exist between the vessels.

Summary

83. From the foregoing I conclude that the appellant has not undertaken an engineering operation to install spud legs, as is alleged to be a breach of planning control. Not every method of mooring may be a constituent element of the use, but it would appear that in this case the use of the spud legs, as an integral part of the barge, constitutes a use that is incidental or ancillary to the certified use of the foreshore for mooring the barge the subject of the enforcement notice.

Conclusion

84. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

Grahame J Kean

INSPECTOR