



## Appeal Decision

Site visit made on 13 June 2026

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 21 July 2026

**Appeal ref: APP/L5810/X/24/3353018**

**Cambridge Moorings, Cambridge Gardens off Clevedon Road, Twickenham TW1 2TA**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended ("the Act")) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Barry Edwards on behalf of Running Red Ltd against the Council of the London Borough of Richmond-upon-Thames.
- The application ref 24/0649/ES191 is dated 8 March 2024.
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is described as follows: *The current use involves all types of recreation and leisure, including rowing, kayaking, canoeing, paddleboarding, motorcraft storage, sitting, reading, and gathering by the water, supported by renovating the piles pontoon and walkway for access.*
- An application for costs is made by the appellant against the Council and vice-versa. This is subject to a separate Decision.

### Decision

1. The appeal is dismissed.

### Preliminary matters

2. An application for a LDC is not like an application for planning permission. The LDC application adopts a scattergun approach and conflates planning matters with those relevant to an LDC assessment.
3. Firstly, it is necessary to understand the purpose of a section 191 LDC application. The Act explains that if any person wishes to ascertain, amongst other things, whether any existing use of land is lawful, they may make an application for the purpose to the local planning authority (LPA) specifying the land and describing the use, operations or other matter. As the Planning Practice Guidance (PPG) explains, an application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, the LPA may be justified in refusing a certificate. The LPA, or Secretary of State on appeal, may choose to issue a LDC for a different description from that applied for on the facts of a case, as an alternative to refusing a certificate altogether. The decision-maker needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. The appeal parties, including interested parties, have made extensive arguments about planning merits. However, I am afraid that in this specific appeal, all this voluminous documentation and arguments are irrelevant.
4. Secondly, the word "lawful" has a specific meaning in law as explained in s191(2) of the Act. In summary, if development is declared to be lawful, then no enforcement action may be taken against that development provided there is no enforcement notice in force. It may

be lawful because planning permission is not required for an existing use or operation as it does not amount to development falling within the scope of s55(1) of the Act.

5. Finally, it is essential any existing use certificate accurately describes the existing use. In the banner header above, the italicised text describes the existing use, which I have taken from the application form, but it reads as a statement. It appears to me that the activities for which an existing use LDC is sought fall within activities characteristic of leisure and recreation use. The appeal is against non-determination of the LDC application, but the LPA indicate it would have been refused had it determined the application based on lack of information showing the existing leisure and recreational uses are lawful. I proceed.

## Reasons

6. The **main issue** is whether the implied decision to refuse the LDC would have been well-founded. The onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
7. The LDC application site is located on the southern side of the River Thames close to Richmond Bridge and adjacent to a towpath with the Cambridge Gardens public open space to the south and Riverview Mansions to the west. Cambridge Moorings includes 4 piles although the appellant maintains a pontoon and walkway access also existed for some time.
8. I have carefully reviewed all the representations including voluminous documents submitted with the LDC application. It appears to me that the nub of the appellant's argument can be distilled to the following points: firstly, the site's existing commercial boat mooring leisure and recreational use does not fall within the meaning of "development" and, secondly, even if it did, that existing use is lawful at the date of the LDC application.
9. Amongst other things, the word 'development' is defined in s55(1) of the Act as the carrying out of building 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. Building operations includes rebuilding and other operations normally undertaken by a person carrying on business as a builder. When considering whether a material change of use has occurred the former use of a site is compared against the current use of the site.
10. The term 'land' is defined in section 336(1) of the Act as any corporeal hereditament and taken to include the bed and banks of a watercourse<sup>1</sup>. The Court of Appeal held, in *Thames Heliport Ltd v Tower Hamlets LBC* [1997] JPL 448, that an activity on water, here being the establishment of a heliport facility on a vessel on the River Thames, could amount to a material change in the use of the riverbed. The use of the land for the mooring of boats, incidental to navigational use of the river, may not normally involve development.

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<sup>1</sup> The flow of water does not constitute a corporeal hereditament, but the appellant does not argue the leisure and recreational activities are not development due to flow of water.

11. The concept of a planning unit may assist to define the area to be assessed. What is the correct planning unit is a matter of fact and degree and of planning judgment. In this case, Cambridge Moorings is clearly identified on the site plan submitted with the LDC application, and the appeal parties do not dispute the identified area forms the relevant planning unit: I too concur with that approach.
12. The appellant argues that there is no difference between boat moorings linked to navigational use of the river and leisure or recreation. The appellant describes the existing use is for activities including rowing, kayaking, canoeing, paddleboarding, motor craft storage, sitting, reading, and gathering by the water, supported by renovating the piles pontoon and walkway for access. In comparison to boat moorings incidental to navigational use of the river, the nature, extent and scope of these kinds of leisure or recreational pursuits are significantly different in character and is likely to have diverse on and off-site effects. Contrary to the appellant's submissions, I find that the existing use described is materially different to use of the site for boat or vessel mooring incidental to the navigational use of the river.
13. The appellant claims that the existing commercial boat mooring for leisure and recreational purposes use is lawful, due to the passage of time. The claim is that existing use was established well before the relevant date, which is 8 March 2014. It is for the appellant to show when the material change of use first occurred. Against that context, the appellant has an uphill struggle.
14. I have reviewed all written representations however apart from generalised assertions and claims the existing use existed over 100 years<sup>2</sup>, there is no firm or conclusive evidence showing how or when the existing commercial boat mooring for leisure and recreational uses began. For example, although a snapshot in time, the 1935 image shows a wide pontoon and several boats moored along the riverbank, but it does not conclusively show the extent or scale of the site's leisure and recreational use. The evidence presented by the appellant does not clearly and unambiguously demonstrate the site use for leisure purposes as there is nothing to show when or how it was used for rowing, kayaking, canoeing or paddleboarding on or before the relevant date.
15. There is evidence to contradict the appellant's version of the events. The Council's bundle includes aerial images of the site. Again, while a snapshot, the images from 1981 to 2022 do not clearly show any boat moorings at the appeal site. There are no obvious signs of boat moorings in any Google street view image nor did Council officers see any boat mooring for leisure and recreational purposes at the time of their site visit on 31 January 2025. I too did not see any boat moorings or pontoon or walkway.
16. I have considered the possibility of issuing an existing use LDC in part for the piles, but there are some difficulties. Firstly, the appellant's evidence is that the pontoon and walkway supported the leisure and recreational use of the appeal site, but there is no evidence to indicate when the structures existed. Secondly, there is nothing before me to suggest these structures supported boat moorings incidental to the navigational use of the river. Finally, the existing piles are in advanced stage of dilapidation. The lack of evidence about the condition of the piles raises another complexity. The latter are in such a way, and for such a time, as to give the impression to a reasonable onlooker, applying an objective rather

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<sup>2</sup> Appellant's grounds of appeal, statement of case and final comments.

than a subjective test, that their use in connection with any boat mooring activity had ceased and it was not to be resumed.

17. Drawing all the above threads together, even if an alternative view prevails and it is held there was an established boat mooring use, a reasonable person might have assumed that that existing use, had, for all intents and purposes, been abandoned given the physical condition of the piles and the significant period of non-use evidenced by the submitted documents.

## Conclusions

18. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me, irrespective of the Council's muddled approach given the reference to the UCO<sup>3</sup>. Nonetheless, as the PPG says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented. The latter is relevant in this case because of the extent, nature and quality of the evidence presented.
19. Albeit for different and other reasons, I find that the Council's deemed decision to refuse the LDC was well-founded, because the quantum of evidence presented does not clearly show the existing use is lawful.
20. Having regard to all other matters raised, including concerns about the handling of the application but these are not for my determination, I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

*A U Ghafoor*

INSPECTOR

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<sup>3</sup> The Town and Country Planning (Use Class) Order 1987 as amended.