From: Phil Rowe <phil.rowe72@bluebottle.com>
Sent: 18 October 2012 09:04
To: Hannah Barker
Subject: RE: 31 Riverside Road AWDM/0378/12
Attachments: Revised Site plan with red line 18102012_0000.pdf; Sworn statement - Anthony Swift - scanned with Exhibit.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Hannah,

I apologise for the slight delay in replying.

I now attach the signed sworn statement and Exhibit from Anthony Swift confirming that he occupies the house b 'Hannah Nui' in its same mooring position and has done so for the required balance of the 10 year period immediat following Pat Fowler's relocation onto the adjoining houseboat 'Renata'.

Following the discussion at our meeting, I have amended the red line site plan so as just to include Hannah Nui.

I entrust that this information sufficiently allays your concerns, represents a pragmatic way forward and the decisio notice approving the Certificate can be issued shortly.

Thank you in advance for your assistance.

Kind regards

Phil Rowe, BA Hons, BTP

PROwe Planning Solutions
07946 641835

Melton Lodge,
Rusper Road,
Newdigate,
Surrey. RH5 5BX

-------Original Message-------

From: Hannah Barker
Date: 24/09/2012 09:17:24
To: 'Phil Rowe'
Subject: RE: 31 Riverside Road AWDM/0378/12

Good morning,

Thank you for your email. I look forward to receipt of the finial version of the document and also the revised red line site plan discussed at our meeting.

Yours sincerely,

Hannah Barker

Hannah Barker - Senior Planning Officer,(Part-time hours Mon-Tues 9-5 Wed 9-12.30) Planning,Community and Wellbeing | Adur & Worthing Council Services
Location: Portland House, Worthing
Internal: (8) 1475 | External: 01903 221475 | E-mail: Hannah.Barker@adur-worthing.gov.uk
Follow us on Facebook and Twitter - or search Adur and Worthing

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From: Phil Rowe [mailto:phil.rowe72@bluebottle.com]
Sent: 21 September 2012 12:56
To: Hannah Barker
Cc: chris phillips; Jo Morin
Subject: RE: 31 Riverside Road AWDM/0378/12

Dear Hannah,

Thank you for your time spent at our recent meeting to discuss the above application. I attach the draft sworn statement and exhibit for Anthony Swift the occupier; I will forward you the completed statement upon receipt.

Kind regards

Phil Rowe, BA Hons, BTP

PROwe Planning Solutions
07946 641835

Melton Lodge,
Rusper Road,
Newdigate,
Surrey. RH5 5BX

-------Original Message-------

From: Hannah Barker
Date: 06/08/2012 10:06:56
To: Phil Rowe
Cc: chris phillips; Jo Morin
Subject: RE: 31 Riverside Road AWDM/0378/12

I confirm our meeting on Tuesday 4th September 2012 at 10am at our offices Portland House, Worthing.

If in the meantime you can advise us of the details of the matters you wish to discuss we can prepare appropriately for our meeting.

Yours sincerely,

Hannah Barker

Hannah Barker - Planning Officer,(Part-time hours Mon-Tues 9-5pm Wed 9-12:30pm) Planning,Community and Wellbeing | Adur & Worthing Council Services
Location: Portland House, Worthing
Internal: (8) 1475 | External: 01903 221475 | E-mail: Hannah.Barker@adur-worthing.gov.uk
Follow us on Facebook and Twitter - or search Adur and Worthing

---

From: Phil Rowe [mailto:phil.rowe72@bluebottle.com]
Sent: 06 August 2012 10:00
To: Hannah Barker
Cc: chris phillips
Subject: RE: 31 Riverside Road AWDM/0378/12

Dear Ms Barker,

I can confirm attendance on Tuesday 4th September; **would 10am be acceptable?**

Thank you in advance for your assistance.

Kind regards

Phil Rowe, BA Hons, BTP

PROwe Planning Solutions
07946 641835

Melton Lodge,
Rusper Road,
Newdigate,

Surrey. RH5 5BX
-------Original Message-------

From: Hannah Barker
Date: 06/08/2012 09:49:30
To: Phil Rowe
Subject: RE: 31 Riverside Road AWDM/0378/12

Dear Mr Rowe,

Good Morning, I have discussed with Jo the options of dates for a meeting with you at our offices. Due to holiday and office cover I am afraid we can only offer tomorrow 7th Aug (which I note you have an informal hearing and cannot attend.) Otherw we can offer Tuesday 4th September when both Jo and myself are back in the office after alternative weeks of annual leave.

I hope that this date is convenient and please let me know what time is best for you.

In the meantime as requested the application will remain undetermined.

Yours sincerely,

Hannah Barker

Hannah Barker - Planning Officer,(Part-time hours Mon-Tues 9-5pm Wed 9-12:30pm) Planning,Community and Wellbeing | Adur & Worthing Council Services
Location: Portland House, Worthing
Internal: (8) 1475 | External: 01903 221475 | E-mail: Hannah.Barker@adur-worthing.gov.uk
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From: Phil Rowe [mailto:phil.rowe72@bluebottle.com]
Sent: 30 July 2012 10:51
To: Hannah Barker
Cc: Jo Morin; chris phillips
Subject: RE: 31 Riverside Road AWDM/0378/12

Dear Hannah,

Thanks for the reply (*and changing your email signature*!)

I'm afraid next Tuesday 7th August I am at an informal hearing all day at East Hants. **Could we do the afternoon of Monday 6th August say 2pm?**

The offer of a meeting would be welcomed so long as the current application remains undetermined; **we potentia want to have the option to withdraw the application as opposed to having it determined.**

I await your reply.

Thank you in advance for your assistance.

Kind regards

Phil Rowe, BA Hons, BTP

PROwe Planning Solutions
07946 641835

Melton Lodge,
Rusper Road,
Newdigate,
Surrey. RH5 5BX
-------Original Message-------

From: Hannah Barker
Date: 30/07/2012 09:51:08
To: 'Phil Rowe'
Cc: Jo Morin; chris phillips
Subject: RE: 31 Riverside Road AWDM/0378/12

Good morning,

Thank you for your email of course we can meet to discuss this matter further. Jo Morin is on leave this week therefore if we could meet next week? Tuesday appears to be clear at the moment we could provisionally make an appointment for the afternoon? That will hopefully give Jo and I a chance to have a discussion with legal prior to our meeting.

If we make a time I can contact you Monday morning to confirm.

Thanks

Hannah

Hannah Barker - Planning Officer,(Part-time hours Mon- Tues 9-5pm Wed 9-12.30) Planning,Communit
and Wellbeing | Adur & Worthing Council Services
Location: Portland House, Worthing
Internal: (8) 1475 | External: 01903 221475 | E-mail: Hannah.Barker@adur-worthing.gov.uk
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From: Phil Rowe [mailto:phil.rowe72@bluebottle.com]
Sent: 25 July 2012 15:14
To: Hannah Barker
Cc: Jo Morin; chris phillips
Subject: Re: 31 Riverside Road AWDM/0378/12

Dear Ms Barker,

Thank you for your detailed reply which I have read through thoroughly and relayed to the applicant. I am well aware of the complexity of the planning law as regards LDCs.

In order to respond to your questions, advance / alter the current application and 'look at the bigger picture', I note you only work the first part of the week as such the applicant and I would wish to meet with you at your offices early next week. In light of the new National Planning Policy Framework there would appear a strong opportunity for a planning gain and small scale enabling development at the site over the current status quo which is not particularly favouring the applicant, the Council or the neighbours.

Please confirm when would be appropriate. Aside from Monday morning I am currently flexible.

Thank you for your endeavours to date and in advance for your assistance.

Kind regards

Phil Rowe, BA Hons, BTP

PROwe Planning Solutions
07946 641835

Melton Lodge,
Rusper Road,
Newdigate,
Surrey. RH5 5BX
-------Original Message-------

From: Hannah Barker
Date: 24/07/2012 11:44:36
To: 'Phil Rowe'
Subject: 31 Riverside Road AWDM/0378/12

Dear Mr Rowe,

Sorry for the delay with this matter as you will appreciate this is a complex case and we have spent tim researching and discussing this matter in great depth.

In conclusion the Lawful Development Certificate as sought cannot be supported and therefore the recommendation is for refusal. This reason is based on the site as outlined in red as amended 3rd April 2012. This site outline shows the existing mooring of Hannah Nui and the existing and former mooring Renata. Renata has only existed in its current position for 12 months, (according to Bing Maps and evidence from local resident) prior to that it was turned 180 degrees and positioned further to the north The Hannah Nui based on the evidence has not moved since 2001 and has occupied the same moorin

and position. Therefore the evidence provided however does indicate that Hannah Nui has been in situ on the same mooring for a continual period of 10 years or more and the area of land (covered by water is deemed to be lawful in respect of a material change of use. If you were to submit and application outlining in red the Hannah Nui only then it is likely that a Lawful Development Certificate will be issued

The following is taken from the current ***draft*** report to explain the grounds of our argument.

The application is submitted by the owner of the whole property which comprises the bungalow (No.31) and its garden, plus the jetty/causeway and accessway and the mudflats which extend behind the adjacent bungalows (No's 27 & 29) to the wes and houses (No's 33 & 35) to the east, northwards to the low water line.

The application relates to the use of a specific mooring site (described as 'Renata') for mooring a boat used as a residential dwelling. The applicant makes the claim on the basis that the site concerned has been used for these purposes for more tha 10 years (since 2001) and supports it with a Statutory Declaration from the resident of 'Renata'.

The site plan originally submitted with the application showed the wrong location for 'Renata'. It depicted the site of the hulk the former barge.

The aerial view of the site on Bing Maps (2010/11) shows 5 boats moored at the jetty plus 4 boats moored either side of the causeway (excluding the hulk of the barge). The 'Renata' and 'Hannah Nui' are moored side by side to the immediate west the hulk of the former barge, with 'Hannah Nui' closest to it. 'Renata' has subsequently been moved about 15m closer to the riverbank (and reversed so that its stern rather than bow faces the riverbank) as shown on the photograph submitted by the applicant, and is behind the bungalow at No.29.

Subsequently the applicant's agent substituted the site plan (received 3rd April 2012) to include the current mooring position the Hannah Nui and the former and current position of Renata.

` **Site history**

The jetty/causeway/concrete accessway was granted permission in 1980 under SU/23/80/TP and is subject to conditions (2 preventing the storage of materials, fishing catch or any other items on it; (3) prohibiting the parking of vehicles on the accessway and causeway other than for loading and unloading of boats using the jetty; and (4) restricting the number of boats moored at the jetty/causeway to a maximum of 5.

Subsequently, several enforcement notices have been issued:-

1. Enforcement Notice requiring removal of shellfish storage tanks constructed in a barge – Appeal dismissed 06.09.1983 following dismissal of appeal against refusal of earlier application SU/84/81/TP for 12 storage tanks on 15.02.1982.

2. 19 March 1997 – Breach of Condition and Enforcement Notices served in respect of breaches of conditions 2 and 3 of SU/23/80 and deposition of rubble, standing of a lock-up store, use for storage of fishing gear, containers, drums and steel rods and for parking a lorry.

   On 29 May 1997, a letter to owner sought compliance with the above notices and the removal of the large rubble filled hulk of the remaining barge.

1. 15 April 2003 – Enforcement Notice for operational development without permission comprising the construction of hardstanding, deposition of rubble and material change of use from the mooring and loading/unloading of up to 5 boats at the jetty to mixed use for mooring and loading/unloading of up to 5 boats and the storage and parking of vehicles, trailers, boats, plant, equipment, tyres, timber and other materials.
2. 20 October 2003 – Letter explaining that non-compliance with above Breach of Condition Notices and Enforcement Notices would result in legal action being taken. 6 December 2004 – Owner fined £1,580 at Magistrates Court.

In 2008, a previous application ADC/0037/08 was refused for an additional seven berths at the jetty plus the formalisation o parking area on the river bank to the rear of No's 31 & 33 for 8 cars; with a widened vehicular access with lay-by to the fron of the property accessing Riverside Road. At the time of the site visit, the jetty/causeway had 10 boats moored, and the site was generally untidy, with stacked and stored materials throughout the site, concrete causeway, jetty and land to the rear o the bungalow.

Third Parties: Neighbouring residents and properties have been notified of the application in case they have information regarding previous use of the property. The following letters have been received: -

Owner of no. 35 Riverside Road – I agree that the applicant has been living on the boats named for over 10 years. Howeve the house boat Hannah Nui has now been occupied since 2006 by another person and both Hannah Nui and Renata are deteriorating rapidly. The occupiers of both park cars and vans and cause traffic hazards to residents. There are now 7 boa moored on the jetty instead of 5. The whole site is a disgrace as none of the boats are ever moved and it appears to be a dumping ground for old boats. The gates to the jetty are kept shut and there is no access to emergency vehicles.

Owner of no. 29 Riverside Road – I agree that Mr Fowler has possibly been living on the jetty for 10 years, although the boa Renata has only been in her present position (bows on to the derelict barge) for about 9 months. If the Council is obliged to grant a certificate in this case, it is vital to adjoining residents and conservers and users of the river, that the Council uses a available powers to make the Certificate as specific as possible with regard to the following: - The length, width and height o any replacement should not exceed the dimensions of Renata. An accurately defined houseboat positioning with the specification that it be moored alongside the jetty, as Hannah Nui always has been and as Renata was until 9 months ago, when she was turned bows on. This defining position needs to be marked on a plan which includes the derelict barge which now a large immoveable extension to the west side of the jetty. The barge/extension is omitted from both plans submitted b the applicant. It is my understanding that the Council has the power to draft a Certificate in this way but that if the Certificate worded loosely then the Council has no powers it can exercise later to control the size or orientation of a replacement houseboat.

Additional points: - Map inaccuracy – Exhibit 2 site plan the jetty extension is not shown. So it is impossible to tell whether th proposed houseboat is alongside the jetty or the extension. Sewage pollution – with the increasing congestion along the riverbank comes an unacceptable level of visible sewage pollution as the current in constrained and unable to wash it on ou of the estuary. On a high tide this is deposited at my garden gate, and must surely be a health hazard to river users. This Certificate will legitimate another addition to the dozens of houseboats which pump raw human excrement into this reach of the Adur. The Council is aware that a second person is possibly living on the jetty (if in fact he is) for more than a few years and was not preceded by anyone else apart from Mr Fowler, I hope that the Council will take steps to ensure that this situation does not develop into grounds for a second Certificate of Lawfulness.

Relevant Guidance

Circular 10/97 “Enforcing Planning Control: Legislative Provisions and Procedural Requirement” (DoE 1997): Annex 8

Assessment

Under section 191 of the Town and Country Planning Act 1990 (as amended), the Council is obliged to grant a Certificate if on the balance of probability, the use of the site shown on the plan for mooring a residential houseboat was commenced more than 10 years ago and has continued since that time, thereby rendering it outside the scope of enforcement action under section 171B of the Act. The basis of determination is ‘balance of probability’ rather than actual evidential proof. It is t use of the land for mooring a houseboat used as a dwelling that is the relevant factor, not whether the same houseboat has been on the site throughout the 10 year period.

In this case, the supporting evidence comprises a Statement from the resident of the ‘Renata’(Mr Fowler) not the applicant (although the applicant, as his landlord, offers to make one). Mr Fowler states that he has lived on his existing houseboat called ‘Renata’ since he bought it in 2006, it having been advertised for sale whilst moored at Riverbank. He states that he bought it as a direct replacement for his previous houseboat called ‘Hannah Nui’ which he had brought to the site and permanently moored in August 2001. He states that when he bought Renata, he “*swapped over straight away from Hannah Nui*” so that he “*continuously occupied the same mooring*”. He states Hannah Nui is now occupied by someone else and moored adjacent to the wooden jetty.

Despite what is stated by him, it appears unlikely that ‘Renata’ occupied the same mooring as ‘Hannah Nui’, as, on the evidence of Bing Maps, it was moored alongside ‘Hannah Nui’ on its western side where no mooring had previously existed was therefore not a direct replacement and did not result in the continuous occupation of the same mooring. It appears mor probable that the mooring site of ‘Hannah Nui’ may be eligible for a certificate of lawfulness if it has been in the same positio occupying the same mooring since 2001 and occupied as a dwelling continuously. Apart from this, the current mooring site ‘Renata’, closer to the river bank, appears only to have existed since 2011 (on the evidence of Bing Maps). The Hannah Nu and Renata exist adjacent to each other within the red line boundary (as amended 3/4/12)

Normally, use rights are determined by looking at the whole ‘planning unit’ and deciding upon primary as compared to ancillary uses. In this instance, the history and use of the whole site (which comprises mudflats and a jetty/causeway in the same ownership as the adjacent bungalow at No.31) has become somewhat complex and there have been a number of enforcement notices and a prosecution. The bungalow and its garden are a planning unit in their own right. The mudflats an the jetty/causeway, both of which have various boat moorings, are probably also a planning unit in their own right. The jetty/causeway was permitted in 1980 and is subject to restrictive conditions, including a limit of 5 on the number of boats moored at it.

The use of any part of the site for mooring a residential houseboat used as a single self-contained dwelling (or using an existing moored vessel for the purposes of a dwelling) is a material change of use. If such use escapes detection for 10 yea then it becomes eligible for a certificate of lawfulness under section 191. However, advice has been sought from the Counc Solicitor as to whether or not the applicant needs to show evidence of such use (a) relative to a specific mooring position or the site or (b) just that the site as a whole has been used for mooring a residential houseboat used as a dwelling.

It is our view that the certificate fails on this ground. Also however is the issue of operational development. We are still not satisfied if this is an issue for consideration in this case in addition to the material change of use. You state in your email of 3rd April that you do not consider it to be, yet it is our

opinion that the application is also likely to fail on this basis. It is necessary to ascertain how it is attached to the land and when that attachment was created, as well as the residential use issue. The former is subject to a 4 year rule, the latter a 10 year rule. The creation of a mooring for any vessel (including a navigable one) can be 'operational development' as defined by section 55 the Act. Consequently, in the instance of this case, the bringing in of the houseboat 'Renata' in 2006 and mooring it where no mooring previously existed would have to entail operational development by requiring the installation of some form of mooring post(s) or attachment(s) to the land to prevent it drifti at high tide. Only if it had used an existing mooring and replaced a houseboat on that particular moorin would it potentially not have needed permission. When brought to the site in 2006 the Renata would have resulted in an additional mooring as Hannah Nui remained on the same site.

The specific mooring of the houseboats known as Hannah Nui and Renata have changed over time as the houseboats within the site boundary appear to have occupied three moorings within the 10 years period. The current mooring of the Renata has only existed for 12 months. Therefore without either of these houseboats occupying a permanent (non transient) mooring for a continual period of time exceeding 4 years no lawful, operational development can be proved. On this basis this also results in their being no lawful change of use of the land, as if there is no operational development then no chang of use of land can occur.

You have provided no information on the means of attachment and or access to the boats within the re line area. Please could you provide this additional information as we feel this is relevant to the case. Especially where Mr Fowler states that when he brought in Renata he 'continuously occupied the same mooring' this is not what the evidence suggests. How are the Hannah Nui and Renata attached to the jetty now and do you have evidence of this from the past? If you are unable to provide this information myself and Jo Morin would request to visit the site and seek the information required. If we could arran this with you if necessary.

Once this additional information is received we will reconsult with our legal colleagues to discuss whether the issue of the operational development is also relevant to this case as the case law we have found to date appears to be inconclusive.

I look forward to hearing from you on this matter.

Yours sincerely,

Hannah Barker

Hannah Barker - **Planning Officer**,(Part-time hours Mon-Wed 9-5pm) Planning,Community and Wellbeing | Adur & Worthing Council Services
Location: Portland House, Worthing
Internal: (8) 1475 | External: 01903 221475 | E-mail: Hannah.Barker@adur-worthing.gov.uk
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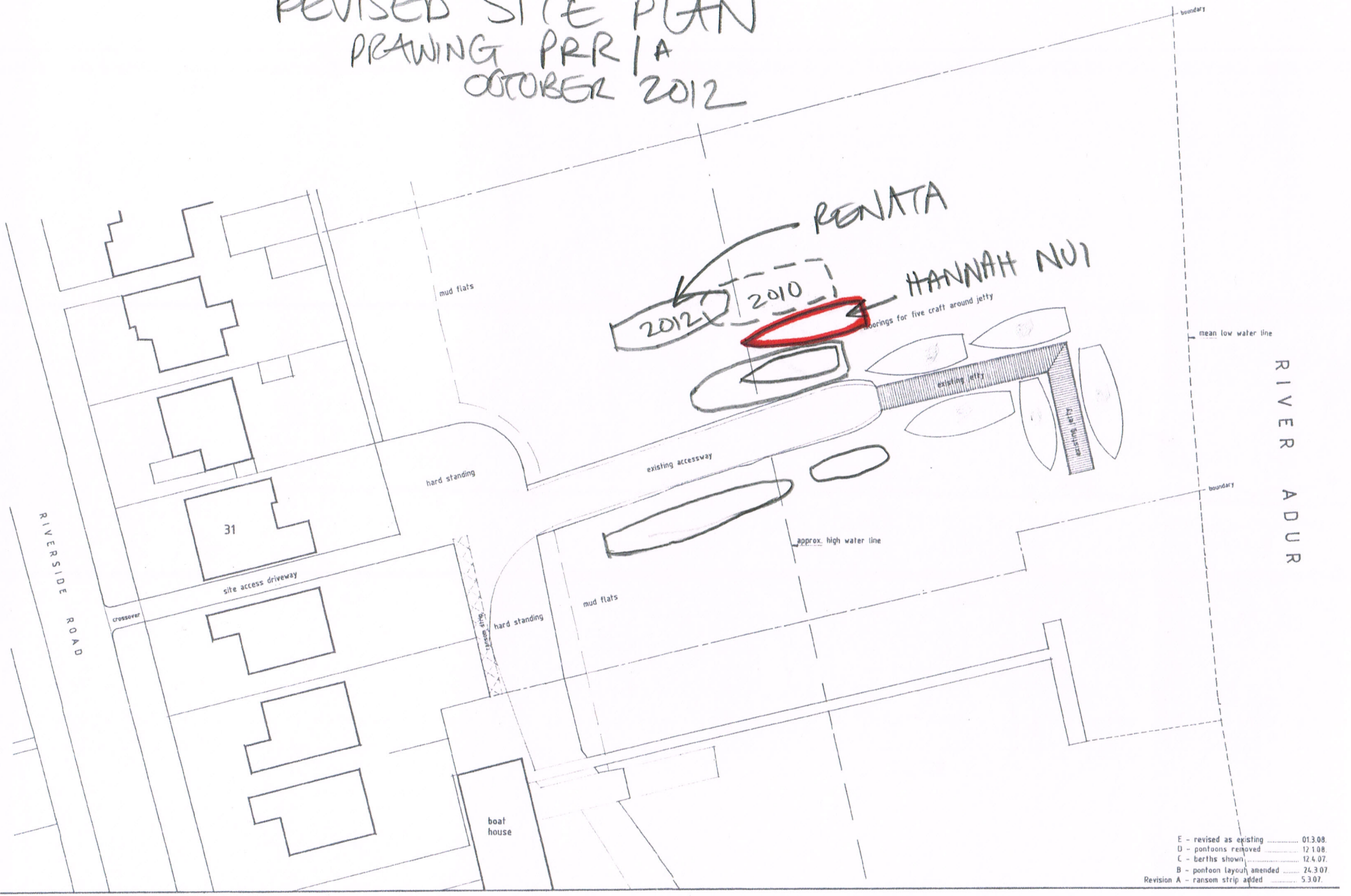
REVISED SITE PLAN
DRAWING PRR/A
OCTOBER 2012



Proposed Additional Berths/Moorings at
Site to rear of 31 Riverside Road, Shoreham-by-Sea.

Site Plan
As Existing

scale = 1:250 date : Feb.2007

Drawing No. 982/2/01D

I Anthony Swift of 'Hannah Nui', houseboat on the water to the rear of 31 Riverside Road, Shoreham-By-Sea, West Sussex, DO SOLEMNLY AND SINCERELY DECLARE as follows:

In 2006 due to a change in my personal circumstances I needed somewhere to live. I moved onto Hannah Nui as soon as it had been vacated by the previous occupier Pat Fowler; Pat who remains my neighbour having moved onto his adjacent houseboat Renata. I previously rented a room at 26 Manor Way, Brighton, BN2 5DZ . From memory it was Spring that I moved onto Hannah Nui. It was lovely to have my independence again when I moved in; it was a good time in my life and allowed me to feel settled and come and go as I pleased. I have no tenancy agreement and my all inclusive rent is paid monthly; no rent books are kept. I keep myself to myself whilst living on Hannah Nui, I have not registered for Council tax and I do not register to vote.

My accommodation over two levels consists of a living area comprising of my bedroom and cooking facilities with further kitchen facilities and toilet / shower on the lower deck; I enclose photos of the interior and exterior of Hannah Nui as Exhibit 1. The accommodation, whilst simple, allows me sufficient space to keep my personal effects from the house I previously lived in.

To sum up I can confirm from my personal knowledge and experience that I have continuously and independently lived at Hannah Nui, a houseboat on the water to the rear of 31 Riverside Road, Shoreham-By-Sea, West Sussex as my principle residence from 2006 until the present day.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed ..... **Anthony Swift**

DECLARED AT 23-25 High Street, Shoreham by Sea, W. Sussex

In the County of .....

This day of 4th October 2012

Before me .....

FITZHUGH GATES SOLICITORS
23-25 HIGH STREET
SHOREHAM-BY-SEA
WEST SUSSEX
BN43 5EE
TEL: 01273 461 381
FAX: 01273 465 332

A Solicitor/Commissioner of ~~Oaths~~ .....










EXHIBIT 1
INTERIOR & EXTERIOR PHOTOS SHOWING SELF CONTAINED ACCOMMODATION OF HANNAH NUI.

before me, [illegible] Solicitor
this 4th day of October 2012