Town & Country Planning Act 1990

Appeal against refusal of Certificate of Lawfulness by Mr Lee Bennett & Mr Marco Pitt

Application for Certificate of Lawfulness for Existing mooring and use for residential occupation of the replacement houseboat, 'Kingfisher'.

'Kingfisher', 26 Riverbank, Shoreham by Sea, West Sussex, BN43 5YH

Appeal reference: APP/Y3805/X/25/3364215
Application reference: AWDM/1083/24

RESPONSE TO LPA'S STATEMENT OF CASE & THIRD-PARTY REPRESENTATIONS

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1.0 INTRODUCTION

1.1 This Statement is submitted on behalf of Mr Lee Bennett and Mr Marco Pitt (the Appellants) in relation to an appeal against the refusal of Certificate of Lawfulness application AWDM/1083/24 by Adur District Council. The appeal reference is APP/Y3805/X/25/3364215.

1.2 The appeal site is 'Kingfisher', 26 Riverbank, Shoreham-by-Sea, West Sussex. The application description is:

> *Application for Certificate of Lawfulness for Existing mooring and use for residential occupation of the replacement houseboat, 'Kingfisher'.*

1.3 The Statement responds to the LPA's Statement of Case on the appeal and the third-party representations made. It does not seek to repeat the Appellant's case as provided in the already submitted Statement of Case. It is confined to the matters raised in these submissions. The Appellant's case as submitted is maintained: 'Kingfisher' is a houseboat, akin to others in the area, and able to be moved with the tide and the process through which it occupies the mooring does not constitute a building operation for which planning permission is required.

1.4 For ease of reference the paragraph number of the LPA's statement being commented on is referred to.

2.0 RESPONSE TO LPA'S STATEMENT

2.1 *Paragraph 1.2:* The LPA note that the withdrawn planning application attracted a number of representations, for and against the proposal. A sample of the objections were appended to the LPA's Statement. In the interests of balance, a sample of the letters of support are appended to this response.

2.2 The suggested reason for refusal of that withdrawn planning application is not a matter of the appeal. However, the Appellant disagrees with the contention that the houseboat, Kingfisher, fails to protect or enhance the visual character and unique quality of the area. Kingfisher fits within the visual context of the houseboats here. It does not appear out of place, nor does it dominate any longer views from across the river. Kingfisher positively contributes to the characterful and eclectic group of houseboats at the riverbank.

2.3 *Paragraph 1.5:* The Appellant acknowledges the LPA's reasonable approach to holding enforcement action in abeyance. This arguably speaks however of the uncertainty over whether planning permission is required.

2.4 *Paragraph 2.1:* The appeal relates to a Certificate of Lawfulness and whether the actions by which Kingfisher came to occupy the mooring constitute building operations requiring planning permission. The planning consideration of a perceived impact upon residential properties is not a matter of the appeal. The Appellant agrees that Kingfisher is closer to residential properties than other houseboats by virtue of the mooring's position along Riverbank. This position has clearly influenced the LPA's and neighbour's contention and perception that Kingfisher is oversized compared to other houseboats here.

2.5 The perception of its size contrasts with its actual size compared to other houseboats here. The Inspector is urged to factor in this perception of size versus actual size when considering Kingfisher against the *Skerritts criteria* – as discussed in the Appellant's Statement.

2.6 *Paragraphs 3.1 – 3.4:* The cited planning policies are not relevant to this Certificate of Lawfulness appeal, which is not to be adjudged against them. Notwithstanding this, the Appellant reiterates that Kingfisher is respectful of its context and makes a positive contribution to a sense of place, local character and distinctiveness of the area – as required by *Policy 15.*

2.7 *Paragraphs 3.5 – 3.9:* The Appellant's case is relation to the *Adur Houseboats Good Practice Guide* has been made in the Appeal Statement.

2.8 *Paragraph 4.5:* The LPA contends that Kingfisher cannot be said to be of nautical appearance. The Appellant has made, and maintains, the case that what might be considered 'nautical' is so broad as to be unworkably subjective. A wide range of different looking vessels, equipment and paraphernalia could be described as 'nautical'.

2.9 *Paragraph 4.6 - 4.7:* The LPA relies on the *Verona* appeal to support its position. The Appellant acknowledges the comparability of the *Verona* case to that of Kingfisher. However, the *Verona* case is no more relevant to this appeal that the *Saltwind* case, the considerations of which are discussed in the Appeal Statement.

2.10 *Paragraph 4.10:* It is not evident that Kingfisher does not meet the guideline criterion of the Adur Houseboat guidance. Adherence to the guidance is discussed in the Appeal Statement. Whilst Kingfisher is higher than some of the houseboats to the east, it is lower than some of the houseboats to the west.

2.11 *Paragraph 4.13:* The LPA has highlighted a section of the *Saltwind* appeal decision. In this the Inspector notes that the most obvious characteristic of most of the craft accepted as houseboats is the boxy, flat roofed timber clad structure that contains the living accommodation. These additions to original vessels, the Inspector states, are difficult to distinguish from Saltwind. The description of the living accommodation is comparable to that of Kingfisher.

2.12 The Appellant reiterates that Kingfisher is comparable to the eclectic mix of houseboats at Riverbank and does not appear out of place or alien in this environment.

2.13 *Paragraph 4.14:* It is not evident from the description of Saltwind that the upper level is a subservient element over a larger curved area below of typical nautical appearance.

2.14 The Appellant disagrees with the LPA's contention that the *Saltwind* case is not relevant to the appeal. It is as relevant as any of the cited case law. The question of whether Kingfisher is comparable to Saltwind is a separate question and one which the Appellant has discussed in the Appeal Statement.

3.0 RESPONSE TO THIRD-PARTY REPRESENTATIONS

3.1 A detailed submission has been made by a third-party, resident of River Close - which is adjacent to the south of Riverbank. This Response takes the same approach to the third-party representation as with the LPA's statement. Where a comment is deemed necessary, the relevant paragraph being referred to is noted.

3.2 *Paragraphs 1.1 – 1.3:* There is no policy intent behind the Certificate of Lawfulness system. The purpose of a Certificate of Lawfulness application is to establish whether a use or operation is lawful in planning terms or does not require planning permission. The crux of the appeal is that the replacement houseboat does not constitute development requiring planning permission.

3.3 *Paragraph 2.5:* As evidenced by the third-party's representation the appeal process has allowed for their views to be heard.

3.4 *Paragraph 3.2:* The case referred to by the Appellant's counsel and referenced in the Statement of Case is relevant to the appeal. Within this case *(Sussex Investments Limited v Secretary of State for the Environment, Transport and the Regions [1998] P.L.C.R 172)* the meaning of a residential houseboat was considered through a planning enforcement case. The Court of Appeal stated that it is wrong to take the view that as a matter of law a houseboat must be 'boat-shaped'.

3.5 *Paragraphs 3.3:* We are unsure to what the third-party is referring to, as paragraph 4.10 of the Appeal Statement relates to the *Skerritts* criteria (ie size, permanence and physical attachment).

3.6 *Paragraph 3.4:* The Appellant has acknowledged the relevance of the *Verona* case above.

3.7 *Paragraph 3.5:* With regard to the planning application for a 'floating home' at 22 Riverbank, this does not set a precedent that matters relating to houseboats should be dealt with by planning application. That someone else has applied for planning permission for something else does not mean that planning permission is required at Kingfisher.

3.8 *Paragraph 3.6:* The Inspector of the *Fische* case did find that Fische had an impact on neighbours but also that no breach of planning control had occurred through the replacement of a houseboat with a larger vessel. The author of the third-party representation also objected to that case and took an active part in the Inquiry process.

3.9 *Paragraph 4.1:* Neither the Appellant nor LPA has discussed the planning permission for the use of the houseboat mooring at 26 Riverbank as this is not in dispute. The *Fische* decision notes the use of the plots here for the mooring of houseboats and the retention of jetty structures was granted temporary permission in 1951, expiring in 1956. Whilst no

renewal has been approved the use is long-established and immune from enforcement action.

3.10 *Paragraph 5.1:* As is normal for houseboats, works relating to the creation and adaptation to living accommodation have been carried out at the mooring. Electricians were employed to carry out some works but an electrician wiring connections at a houseboat does not constitute building works.

3.11 *Paragraphs 6.6 – 6.65:* The Appellant maintains that Kingfisher can be moved out of its mooring and indeed switched with the Appellant's other houseboat Ajax at no8 Riverbank.

3.12 *Paragraph 7.2:* It is not absurd to suggest that a houseboat can be converted or worked on at a houseboat mooring.

3.13 *Paragraph 7.3:* The Appellant has not stated that to be lawful Kingfisher needs to be central within its mooring but has described that it is, which is roughly the same position at its predecessor Lugana. The houseboat needs to be within the mooring to be lawful.

3.14 *Paragraph 9:* The third-party concludes by arguing that 'without the 'floating base'' Kingfisher would be operational development. The Appellant highlights that Kingfisher cannot be considered without the catamaran hull, as this is a fundamental element of the houseboat. The superstructure and hull are indivisible.

3.15 In light of the above, and previously submitted, the Inspector is respectfully requested to allow the appeal and grant the Certificate of Lawfulness accordingly.


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