Development Control – Delegated Officer Report

Application Number: AWDM/0378/12 Recommendation – Approval

Site: **31 Riverside Road, Shoreham-by-Sea BN43 5RB**

Proposal: **Application for a Certificate of Lawfulness for existing use of land (covered by water) on west side of causeway as mooring for a houseboat (used as self-contained dwelling)**

The Application

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 west and houses (No's 33 & 35) to the east, northwards to the low water line.

The application as originally submitted related to the use of a specific mooring site (described as 'Renata') for mooring a boat used as a residential dwelling. The applicant made the claim on the basis that the site concerned has been used for these purposes for more than 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 of 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 of 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 of the Hannah Nui and the former and current position of Renata.

Since this time it was advised that the application of lawfulness could not be supported as the area outlined in red contained both the Renata (both positions) and the Hannah Nui. Although within this red line area between the 2 boats and the 3 positions a houseboat had been occupied for 10 years or more the Council were not satisfied that the same mooring had been used continuously for 10 years or more. Renata and Hannah Nui did/do not occupy the same mooring and when Renata was brought in it was moored alongside Hannah Nui on the Western side where no mooring had previously existed.

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Following the consideration of the original submission it was the Council's view that the mooring site of Hannah Nui is likely to be eligible for a certificate of lawfulness as it appeared to have been in the same position occupying the same mooring since 2001 and occupied as a dwelling continuously. The applicant's agent has subsequently submitted a revised site plan and Statutory Declaration from the resident of Hannah Nui, (received 18th October 2012) The Hannah Nui only has been outlined in red and the Certificate of Lawfulness relates to this houseboat siting and mooring only.

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:-

- 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.
- 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.
- 15 April 2003 – Enforcement Notice for operational development without permission comprising the construction of a 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.
- 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 of a 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 front 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 of the bungalow.

Consultations and Representations

Adur & Worthing Councils: Advice relating to original submission: -The Assistant Solicitor advises that having considered the case law involving the planning position relating to houseboats, it is clear that the mooring of houseboats for their use on particular sites or stations for residential occupation is different from the mooring of boats for navigation as the mooring is not transient but is intended to continue for substantial periods. As such, the stationing of houseboats on their sites by the use of moorings constitute a material change of use of the land (covered by water) affected by such stationing. I would advise that it is a specific mooring that has to be considered and not the entirety of the jetty area and as such the current application cannot be granted in the terms it is sought. Accordingly I consider in conclusion that the information submitted does not support that any particular site has been used continuously in excess of 10 years and as such the current application should be refused. The amended plan includes the position where both the Hannah Nui and the Renata are situated. The site boundary allows space for 3 house boats in close proximity. If that application is granted to include this site boundary this could give rise to the entire site being used for a single much larger houseboat, potentially at some distance from the jetty which is likely to be immune from challenge.

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. However 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 boats 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 boat 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 all available powers to make the Certificate as specific as possible with regard to the following: - The length, width and height of 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 is now a large immoveable extension to the west side of the jetty. The barge/extension is omitted from both plans submitted by the applicant. It is my understanding that the Council has the power to draft a Certificate in this way but that if the Certificate is 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 the 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 out 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 the 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 as originally submitted 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. It was therefore not a direct replacement and did not result in the continuous occupation of the same mooring.

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 and 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 years then it becomes eligible for a certificate of lawfulness under section 191. However, advice has been sought from the Council's Solicitor as to whether or not the applicant needs to show evidence of such use (a) relative to a specific mooring position on 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 advised that it is the specific mooring that has to be considered and not the entirety of the jetty area, or in this case the entire area outlined in red as originally submitted.

In addition, there is an 'operational development' side to this as well as a 'material change of use'. It is necessary to ascertain how the houseboat 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 drifting at high tide. Only if it had used an existing mooring and replaced a houseboat on that particular mooring, 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 agent advised that the Certificate of Lawfulness does not refer to a specific mooring position moreover the continuous residential occupation within the mooring area to the side of the hulk barge.

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 change of use of land can occur.

In the light of the above the applicant's agent has submitted a revised site plan and Statutory Declaration relating to Hannah Nui and the evidence presented shows that the Hannah Nui has occupied the same mooring and has been used continuously as a house boat since 2001, initially by Mr Fowler between 2001 and 2006 and then by Mr Swift from 2006 to the present.

It is therefore concluded that the evidence and site plan relating to the information more recently submitted (18th October 2012) with reference to Hannah Nui show that on the balance of probability, the use is established. The land outline in red (covered by water) on the plan received 18th October 2012 has been used continuously in excess of 10 years and as such the Certificate of Lawfulness can be issued.

Recommendation

That the application for a Certificate be APPROVED for the reason:-

1. The local planning authority is satisfied from the evidence and site plan submitted 18th October 2012 that on the balance of probability, the full extent of land (covered by water) shown on the site plan has been used continually for the mooring of a houseboat for 10 years or more. Consequently the application meets the requirements for a certificate of lawfulness contained in section 191 of the Act.

Case Officer Hannah Barker Date 29th October 2012

Signed by Jo Morin Date 29 October 2012