Murphy Associates
Planning.Urban Design.Conservation

SUPPORTING STATEMENT
CERTIFICATE OF EXISTING LAWFULNESS
IN RELATION TO:
(1) AN ANCILLARY BOAT TO MYRTLE AT MOORING 2

ADUR & WORTHING
PLANNING SERVICES

PLAN	AWDM/ 1103/13
DATE VALID	- 6 SEP 2013

2 RIVERBANK
LOWER BEACH
SHOREHAM-BY-SEA



Revision B

August 2013

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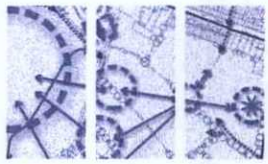

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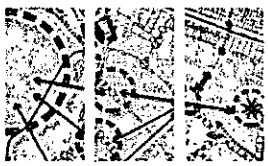

1.0 BACKGROUND

1.1 Murphy Associates was approached by Reverend Jessica Aidley and Ms Kate Aidley to represent them in matters relating to houseboats Myrtle and Redwood and to progress an application for a Certificate of Existing Lawfulness in relation to the ancillary houseboat, Redwood.

1.2 The Local Planning Authority [LPA] had prepared a report to the Planning Committee for presentation on 3rd June 2013 stating that the alleged breach was '*without planning permission the mooring of an additional houseboat and the extension of the superstructure on the deck'.* The report, in recommending that an Enforcement Notice be served on Rev'd Jessica Aidley, indicated that the matter of the superstructure to the deck of Myrtle would not be pursued. However, the Local Authority remained of the opinion that the replacement of one houseboat for another constituted development citing the *'Fische'* case as an example where they considered that a second boat could be brought in for a temporary period on the same plot for a period of 6 months and no more. The Fische case was more complicated than that and It is contended that the LPA had relied heavily on their "Good Practice Guide for Houseboats" which does not carry any material weight.

1.3 A letter was dispatched to members of the Planning Committee and the Enforcement Officer explaining that the second houseboat, Redwood, as a chattel, did not require planning permission as it did not constitute operational development and did not result in a material change of use of the land. The exceptional need for the second houseboat was clearly explained. It was contended that it was erroneous of the LPA to advise Rev'd Aidley to submit temporary applications for planning permission for the bringing in of Redwood when it was clear that it was and remains a chattel. I am firmly of the opinion that in such cases, the bringing in of a second boat whilst repairs/maintenance or conversions are being undertaken does not constitute development and does not result in a material change of use, similar to the stationing of a mobile home or caravan on residential land as ancillary accommodation or whilst construction works are being undertaken.

1.4 Some two years ago the applicants were seeking to bring Redwood to its current position to provide ancillary accommodation to Myrtle for Ms Aidley's daughter. The Harbour Master who

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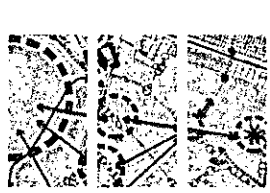

allegedly reported the matter to the Local Planning Authority, Adur District Council, halted this process. As a result and despite protestations that Redwood, a floating vessel, was a chattel, the applicants were forced to place the boat in a private marina incurring extensive costs and delays, whilst they followed the advice of the Planning officer and applied for a temporary planning permission under reference ADC/0296/10.

1.5 My clients report that they were informed that planning permission would not be granted for a second boat at the mooring and that the only way Redwood would be able to the taken to the riverbank where it currently is was to seek a temporary planning permission for the placing of Redwood as a replacement to Myrtle and whilst Redwood was being converted. The Applicants considered that they had no other option but to follow the advice of the Planning Officer and progress applications for a temporary planning permission and a further temporary permission.

1.6 I am firmly of the opinion that it was incorrect of the Planning Officer to direct the applicants along this route, as it was counter productive. It only served to complicate matters when it was clear that there was an ancillary relationship between the two houseboats and no operational development involved nor any impact on the riverbank.

1.7 The matter was deferred from this Committee meeting to allow discussions to continue with the LPA and as advised by the Enforcement Officer, the submission of a Certificate of Proposed Lawfulness application. It was as a result of these discussions that the first submission was for a Certificate of Proposed Lawful Use but following a meeting with Mr Peck, Planning Services Manager, it was agreed that a Certificate of Existing Lawful Use is the more appropriate approach in terms of the application of the law.

1.8 It now remains for the Applicants to justify their case and prove that the ancillary boat Redwood is lawful in that it does not actually constitute development. That the ancillary boat falls within the 'site' that contains mooring 1 and 2. Mooring 2 has a wooden walkway attached to the riverbank for which planning permission was granted circa 1960s. It is contended that the use of the existing wooden walkway for Redwood, via a removable 'light' gangway to Myrtle does not constitute development or any operational development. The issue of mooring 1 is a matter to be dealt with separately and does not form part of this certificate.

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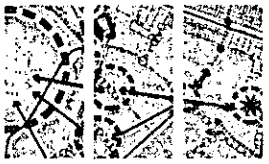

1.9 Firstly I explain the site falling within Rev'd Aidley's ownership and its setting. I explain why the area edged red, in particular that forming part of the riverbank constitutes a mooring and in fact contains two moorings. Nevertheless, I do not believe that the introduction of Redwood, ancillary to Myrtle at can possibly be construed as constituting a material change of use of the land.

1.10 Ultimately I should explain that my clients did not set out to mislead the LPA. They do not wish to attract the service of an Enforcement Action. They would prefer to resolve the issue correctly within the remit of the legislation insofar as it relates to houseboats being chattels and to demonstrate that there has been no change of use and no operational development that requires any action.

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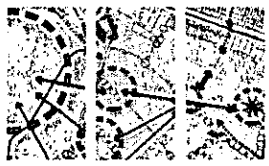

2.0 SITE AND ITS SURROUNDINGS

2.1 The subject site is addressed as Mooring 2, at 2 Riverbank, Shoreham-by-Sea, West Sussex, is located east of the Brighton Road (A259) and the Flood Arch over the water course that leads to small pool to the south west of the Adur Recreation Ground into which a number of tributaries and ditches drain.

2.2 The site is shown in the Title Deed Plan includes part of the muddy foreshore and tidal water of a creek off the estuary of the River Adur, part of the riverbank and towpath which is a public footpath and a section of land beyond the bank to the rear of 27 Ormonde Way, 102 – 106 Beach Green – See Plan included as Appendix A.

2.3 Due to the alignment of the Norfolk Bridge (A259) and the riverbank, the boats are not readily viewable. It is only once walking along the towpath/public footpath that the boats come into sight. As previously stated, the plot at present is only discernable as it contains the first houseboat that is seen at the start of the group along this section of the riverbank.

2.4 The Norfolk Bridge, as it leaves the junction of the High Street and the Old Shoreham Road is aligned North East – South West. The riverbank, at this point is south sou' east before turning to continue in a more easterly direction. There are points to the rear of buildings fronting the High Street from where the Houseboats can be viewed including the rear of Britannia House, the path accessed between the Slip adjacent to Britannia House and the Crown and Anchor, and Coronation Green. However, the houseboats Myrtle and Redwood are not readily identifiable and are at the far end of the houseboats, away from the main navigable channel.

2.5 The river is located within the Strategic Gap between Shoreham-by-Sea and Lancing. This gap is intended to prevent the coalescence of the settlements. Aside from the riverbank and land to the south, the riverbed is considered to fall within the countryside. It is however the housing development from the 1960's and 1970's that has interloped into this gap and not the house boats. Historic photographs show that the houseboats were present before the arrival of permanent houses, including those in Ormonde Way.

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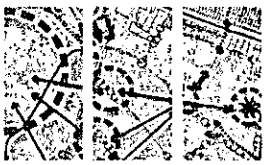

2.6 The site lies within the Adur Estuary Site of Special Scientific Interest (SSSI) of national importance principally because of its habitat for wading birds. A nature reserve that falls under the control of the RSPB overlaps a lot of the SSSI lands. *Note: The boundary of the Adur Reserve lies along the boundaries of the moorings (SSSI) without overlapping.*

2.7 The plot, the majority of which includes the riverbed, has two moorings - Mooring 1 and Mooring 2. Although historically there were more boats between this plot and the Norfolk Bridge, Mooring 1 and 2 on the subject plot are the first to be arrived upon when walking along the riverbank from the Brighton Road.

2.8 The plot currently sees the mooring of Houseboat Myrtle and the ancillary houseboat Redwood as a 'family' arrangement and the care arrangements for Rev'd Jessica Aidley for her daughter. This arrangement is low in visual density when compared with situations further along the riverbank to the east.

2.9 Redwood is perpendicular to the riverbank, bow in. It is a streamlined vessel with a small timber housing on the deck and is not recognisable as being utilised for residential use. Myrtle has undergone improvement and is parallel to the riverbank but set some distance from the bank with a wooden jetty providing access. Its housing to the deck has been enlarged and was only noticeable in longer views when the blue insulating panels were not covered. Now that it has been clad over with boarding as per the rest of the structure, it is not as conspicuous and for that matter, nor is Redwood.

2.10 Unlike other situations along the Riverbank, the boundary with the public footpath is open and therefore allows uninterrupted views of the houseboats. In other situations the back edge of the towpath/public footpath is demarcated and/or festooned with a variety of treatments and paraphernalia.

2.11 As the entire riverbank was purchased from West Sussex County Council in 1986 for use as moorings, every part of the land has mooring rights. The land was subsequently divided into plots before being sold to the present owners. Each houseboat may be placed anywhere within its plot as shown in appeal cases. This applies to houseboat 'Myrtle' which could be placed anywhere within the plot and does not have to be linked to the jetty. The position of Myrtle is historic and due to the size of the boat that was originally moored at plot number 2.

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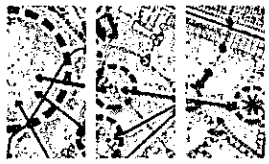

2.12 However, the houseboat could be moved so that it was accessed via a removal gangway from any point along the footpath falling within the ownership of Rev'd Jessica Aidley. Therefore and despite the presence of the fixed jetty to the riverbank, the land within the applicant's ownership provides exclusive mooring rights over its length - a position that is strengthened further by the presence of mooring 1 and appeal cases.

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3.0 THE LAWFUL USE & LEGAL POSITION

3.1 In planning law a houseboat is not a building. It does not fall within the definition of development according to Section 55 (1) of the Town and Country Planning Act 1990. Houseboats as with caravans are chattels. Therefore and having the legal status of a 'chattel' a houseboat cannot be considered as a building for purposes of Section 55 (2) (d) of the 1990 Act just as a caravan or mobile home does not constitute development. This status has been made clear in various appeal decisions and court cases and therefore throws doubt on the LPA's actions.

3.2 The findings of various appeals and court cases have corroborated the fact that the towing in of the additional boat, in this case Redwood, ancillary to Myrtle, in itself does not constitute development. It is also clear that the provision of a removable 'light' gangway between Myrtle and Redwood also does not constitute any building or engineering operation and if so, it would be categorised as 'de minimis'. There have been no changes to the riverbank and no additional structures added. Therefore no operational development has therefore occurred and no change of use.

3.3 It is contended that the site including a stretch of the riverbank, constitutes the mooring. Although Redwood is not fixed to the riverbank, it does not constitute development and as a result, no planning control has been breached. This was a point the Inspector noted in the Fische case as referred to in Hansard, *18 Jul 2005: Column 1436W,* Yvette Cooper, when questioned about plans of the ODPM to issue guidance on the mooring of houseboats she stated that *'The Office of the Deputy Prime Minister has no plans to issue guidance on the mooring of houseboats. Because they are mobile properties, boats are 'chattels' rather than buildings or structures…'*. Rightly so as the definition of houseboat that can be considered appropriate when read alongside that given in paragraph 24.811 of DCP and that of British Waterways is the definition to be found in the *Pier and Harbour Order (Langstone Harbour) Confirmation Act 1962.* This is: *"Any vessel lying in the water or on the foreshore of the harbour which is used or capable of being used as a place of habitation and if so used, whether such use be temporary, intermittent or permanent. Or as a place for accommodating or receiving persons for the purposes of shelter, recreation, entertainment or refreshment, entertainment or refreshment or as club premises or as offices but shall not include – (i) a vessel normally engaged in the transport of persons or goods; or (ii) any pleasure yacht used*

in navigation; or (iii) any lightship or watch barge; or (iv) any canal boat or other boat registered under Part X of the Public Health Act 1936; or (v) any vessel used by a bona fide fisherman in fishing as a means of livelihood.'

3.4 When responding to a query regarding the status of a houseboat, in the case of ***Chelsea Yacht and Boat Co Ltd v. Pope [2000] 1WCR 1941 in the Court of Appeal,*** it was stated that '*house-boat is a chattel not a dwelling if it is not attached (annexed) to the land ie. it can be removed without damaging (injuring) the boat or the land.'* The legal argument draws out the conditions under which a houseboat is a chattel not a dwelling and is very clear. It was contended that a houseboat is not regarded as a permanent "building" or dwelling. The semi-permanent fixing to land for utility services and anchorage is not regarded as significant. In this case it was stated that *"it is common sense that a boat on a river is not part of the land. A boat, albeit one used as a home, is not of the same genus as real property"*. Also it was held that it was a chattel because the mooring ropes could be undone, the boat could be moved without damaging it or the land and it had not become part of the land, not least because it was unclear what land it might have become part of. It followed in a 2003 case, ***Cinderella Rockerfellas Ltd v Rudd (2003)*** it was confirmed the status of a boat as a chattel.

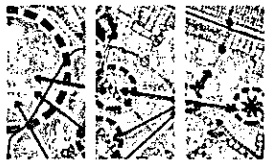
3.5 It therefore begs the question why Adur-Worthing Councils would seek to issue a 'Good Practice Guide' on houseboats and include policies seeking to control matters that do not fall within the definition of development. I therefore consider that the LPA have become confused between the issue of permanent moorings on the riverbank representing a material change of use and where demarcated by jetties with the actually bringing in of a boat, barge or vessel. The latter constitutes development whilst the other does not. Nor does the bringing in of a houseboat alongside another and having a light removable gangway between it and a moored houseboat

3.6 In addition to the above cases I draw to the LPAs attention the following cases:

3.7 **Appeal Ref: APP/B3410/C/06/2020734**

Land know as Barton Turns Marina, Burton under Needwood, Burton upon Trent , Staffordshire DE13 8DZ

Appeal Allowed and Enforcement Notice Quashed. This appeal was against the service of an Enforcement Notice relating to *'without planning permission, change of use of the land from*



use for mooring canal cruising vessels, to a mixed use for mooring canal cruising vessels and to accommodate floating timber-clad structures on pontoons used as holiday accommodation.' I draw attention this case because (1) evidence in defence drew a comparison to caravans and where an increase in caravan numbers had not been considered material – this has a direct relationship to the case of Myrtle and Redwood as it cannot be considered that Redwood, ancillary to Myrtle, is material. (2) the Inspector considered that the British Waterways Act 1971 *"houseboat" definition of any "boat or barge or any vessel or structure"* which are not *"bona fide used for navigation"* to be more appropriate than the case of ***Sussex Investments Ltd V Secretary of State for the Environment and Spelthorne Borough Council (1977) EWCA Civ 3049***. The Inspector considered that the British Waterways Act 1971 implied that *a " 'houseboat' must be a boat or barge or any vessel"* and *"floating and are capable of being towed around the marina ..".* This was not considered to constitute development. Redwood is not attached to the land in the sense that the Inspector meant in the appeal case. Redwood has ropes lightly tying it to Myrtle's mooring which can be untied. It would then be capable of floating away from its current position and is capable of being towed.

3.8 **Appeal Ref: APP/C/95/J1535/638871 & APP/J1535/A/94/246733**

Land at Sheering Mill Moorings, Sheering Mill Lane, Sheering

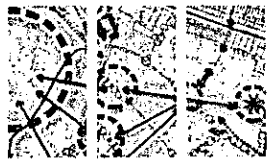
This case is of relevance as it sets the case whereby it is the mooring that resulted in a material change of use and not the boat itself. Paragraph 12 indicated that the term *'residential boats'* was too wide a description and therefore the Inspector amended the wording to *'residential mooring'* since the notice did not relate to the land over which the boats were floating. In the case of Myrtle and Redwood, only one residential mooring is being used and there is therefore no material change to the riverbank. The mooring remains residential in use. Redwood is not *'moored'* to the riverbank and no operational development has occurred to constitute of a breach of planning control.

3.9 **Appeal Ref: T/APP/E9505/C/98/1014232; 1014373 & 76**

Riverside Moorings, Riverside, Hoveton, Norwich.

Appeals allowed and notices quashed.

The relevance of this appeal is that the basin of the River Bure at Hoveton was considered to have an overall use for the mooring of boats. I consider this to be of relevance to the case of the riverbank at Shoreham-by-Sea. At paragraph 2 of the Decision letter it is stated *'the overall*



use of the whole basin is for the mooring of boats. It is not subject to any seasonal restrictions or to any limitations, in terms of planning legislation, as to the number of boats that can be kept there ....'. At paragraph 3 it is indicated that *'the primary reason for mooring boats is to provide them with a secure base attached to the land when they are not being navigated'*. The key phrase is '*attached to the land'* which Redwood is not and not as the Inspector means in this case. See paragraph 3.7 above.

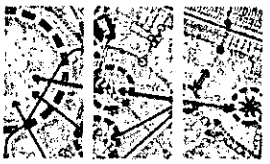
3.10 **APP/E3905/C/06/20199613**

Canal Bank, West of Ladies Bridge, Wilcott, Pewsey, Wiltshire SN9 5DP
Appeal against an alleged breach for *'the unauthorised use of the land for the mooring of residential barges/boats not in the course of navigation'*.
An inspector quashed an enforcement notice, agreeing with British Waterways that the entire length of the Kennett and Avon canal should be considered as a single planning unit in determining whether the siting of houseboats along its length constituted a material change in the use of the site. In his opinion the mooring of boats along its length was a normal activity inherently associated with the primary use involving the passage of boats. He held that the mooring of 17 canal boats on the bank was more akin to parking a car on the public highway outside a dwellinghouse. Consequently there had not been a breach of planning control.

3.11 As with the matter of Redwood, it has not been contended by the LPA that operational development has occurred. The use of this section of the riverbank has a long association with the mooring of both navigable and non-navigable houseboats prior to the first planning act and therefore it cannot be held that the current arrangement between Redwood and Myrtle constitutes any form of planning breach. Redwood does not alter the situation vis-à-vis the number of lawful moorings along the riverbank or their 'residential' use. I would contend that as a matter of fact and degree the use of Redwood ancillary to Myrtle does not amount to a material change of use and again that no breach of control has occurred'.

3.12 **APP/E2001/C/10/2122441**

Land at the Driffield Navigation Canal and its East and West banks, North and South of Bethell's Bridge, Hempholme, Brandesburton.
The appeal was against the alleged breach of planning control as alleged in the notice is without planning permission use of the land for the stationing of boats "Tanamara" and "Raleigh" used for human habitation purposes and not being in the course of navigation or



mooring incidental to navigation. In this case, the Inspector referred to the Wilcot appeal (see preceding paragraph) where that Inspector's rationale was that boats, whether moving or moored, were intrinsic to the character of the canal. Furthermore, he said that *"home mooring is more akin to parking than a storage use, such that the constant mooring of a line of boats no more amounts to a change of use of the canal than cars parked on the public highway outside dwellings, which equally could be for an extended period, result in a material change of use of the road on which they are parked."* Although this stance was not entirely concurred with, it was agreed that a mooring need not be restricted to a permanent fixing to a riverbank but can be moved along the bank. Whilst this may not be considered by the LPA to be relevant, I would contend that it is and on the grounds that the entire area of riverbank within the red edging is a mooring and the use of the land relates to that entire stretch.

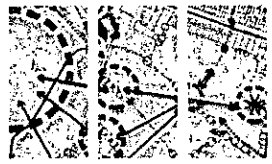
3.13 The operational development associated with the jetty to which Myrtle is associated and accessed constitutes a material change of use of the riverbank and operational development as such. However, as there is no additional jetty attached to the riverbank to serve Redwood, as with Driffied and Thames Heliports PLC (see below), whether the matter alleged constitutes a material change of use of the planning unit is also a question of fact and degree. There must be some significant difference in the character of the activities from what has gone on before. In this case it is contended that there is no difference in the character of the activities on this mooring as Redwood is ancillary to Myrtle and the use of the mooring 2 remains as per the status quo..

3.14 Turning to the Officer's committee report, I disagree with the references to the impact on the openness of the strategic gap – I already comment that it is the permanent dwellings constructed of bricks and mortar that actually interfere and clutter the visual appearance and character of this part of the strategic gap, blurring the edges between town and country. I also contend that the presence of houseboats, barges and vessels used for residential purposes and associated ancillary activities is typical of active, living waterways and do not appear visually harmful to this location overall. In any event , one cannot apply criteria related to permanent structures to chattels that do not require planning permission.

3.15 **APP/Y3805/C/01/1064343**

23 Riverbank, Shoreham-by-Sea

Although the Enforcement Notice in respect of this case was amended and upheld, there are



relevancies to the case of Myrtle and Redwood. The enforcement notice in the case of Alanorah and Lunasea and the tug Bridget referred to '*the breach of planning control alleged by the notice is, without planning permission, the stationing of 3 boats on a single houseboat mooring plot'* and required that two of the boats be removed. Despite being used as a residence, the Inspector agreed that as a matter of fact and degree, Lunasea, being moored and fixed to the bank, was not a building. The pertinent points relating to '*the Bridget' which was placed alongside Lunasea and it was not permanently attached to that position or the land, and its moorings did not appear substantial or greater than any other boat might use when tying up to a quay'*. The Bridget was still capable of movement and would have to removed should it have replaced Lunasea. Permanence was implied as being '*securely attached to the bank'*. It is also of note that the Inspector found that the stationing of two boats, one of which was being converted to a houseboat, did not involve operational development. If this were the case, then the LPA may as well attempt to argue that attaching a dinghy to a houseboat or a mooring also constituted breach of the lawful use which would be an asinine act.

3.16 In the case of Fische, on the same mooring as Lunasea and Bridget at 23 Riverbank the Secretary of State agreed that no evidence had been produced to show that in towing the vessel Fische to the site, positioning it and mooring it to the bank, any material physical change to the land has been brought about because it already was a mooring. This is because it is incidental to the normal use of a mooring and because a boat is a chattel. The Secretary of State accordingly accepts his conclusion; the reasons he gives being that as the lawful use of the site is as a houseboat mooring and as no operational development has taken place, stationing of the vessel did not involve any breach of planning control. The same rules should apply to houseboats Myrtle and Redwood.

3.17 With Redwood, it is located within the land and area of riverbed falling within the ownership of Rev'd Jessica Aidley, where Myrtle is moored. Redwood was towed into position and is clear of the channel of navigation. It has been confirmed that it does not affect the nature interests of the SSSI or the NRA by Natural England. Despite the fact that there is evidence in appeal cases to substantiate the fact that the whole area of riverbank within Rev'd Aidley's ownership constitutes a mooring and having regard to the fact that mooring 1 also exists within the same ownership, it is contended that as no operational development has occurred and no change of

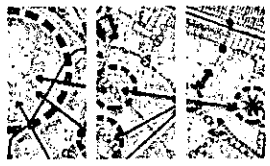
use, the towing of the chattel Redwood into position, is incidental to Myrtle and the use of the mooring. As no additional mooring has been created, no breach has taken place.

3.19 In ***Thames Heliports Plc v London Borough of Tower Hamlets [1997] 74 P. & C.R. 164*** it was held that one must ask: *"has anything changed on the land which is capable of being material from an environmental point of view?"* In the case of Redwood, it is contended that there are no environmental issues arising from it being towed to its position. As in the case of Driffield, the Council accepted that the *'where a boat is large enough and suitable for ...residential use, it will be very difficult to detect whether it is being so used'.*

3.20 In the Thames Heliport case, the LPA has erroneously tried to argue that activities on water do come under operational development because *'water is over land'.* However, it is the case that vessels (including houseboats) are the equivalent of helicopters, not the equivalent of the heliport itself. It was further held that one must look at the question of whether there has been a material change in use *"from the point of view of human beings likely to be affected by the change which has occurred."* In this case, the response is that no change has occurred that affects human beings. However, the effect on human beings who occupy Mrytle and the ancillary houseboat Redwood would be severe should the LPA order one of the vessels to be removed; this would constitute a breach of their human rights under the Human Rights Act.

3.21 I would opine that there are clear facts and examples whereby Redwood cannot be considered to constitute development requiring planning permission.

- It is not a building as defined by Section 55(1) and (2) (d) of the Town and Country Planning Act 1990.
- It is a chattel as defined by the British Waterways *"Any vessel lying in the water or on the foreshore of the harbour which is used or capable of being used as a place of habitation and if so used, whether such use be temporary, intermittent or permanent. Or as a place for accommodating or receiving persons for the purposes of shelter, recreation, entertainment or refreshment'*
- Due to the fact that it was towed in confirms the fact that it is capable of being moved and can float without damaging the riverbed or mudflats upon which it rests in low tide. It also floats and moves during high tides.



- In the case of ***Chelsea Yacht and Boat Co Ltd v. Pope [2000] 1WCR 1941 in the Court of Appeal,*** which stated that a *'house-boat is a chattel not a dwelling if it is not attached (annexed) to the land ie. it can be removed without damaging (injuring) the boat or the land'* and similarly no evidence was been produced in the case of Fische to show that in towing the vessel Fische to the site, positioning it and mooring it to the bank, any material physical change to the land has been brought about because it already was a mooring
- It is a houseboat for all intents and purposes, albeit used to provide ancillary accommodation, which is not the same genus as a real house affixed to the land. A boat on a river, tethered as Redwood is, is not part of the land.
- Any fixings to utilities and ropings are not significant and can be disconnected or untied.
- All services, excluding waste disposal are actually provided via Myrtle.
- No additional jetty permanently affixed to the riverbank is present and only one residential mooring is being utilised and there is no change to the riverbank.
- Redwood is not securely fastened to the land.
- As in the case of Barton Turns Marina the reference to the fact that an increase in caravans at a site was not considered material. Therefore it can only follow that the increase in the number of houseboats and in this case, an ancillary houseboat is not material.
- As with Hoveton Norwich, similarly Wilcott, Pewsey and Driffied, it is contended that the entire stretch of the riverbank within Rev'd Jessica Aidley's ownership is a mooring. The fact that it actually has two is another matter. And as it is residential mooring, with Redwood being ancillary to Myrtle there is no change of use.

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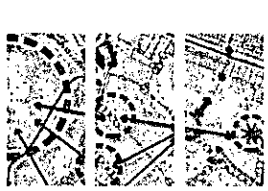

4.0 POLICIES AND GUIDANCE

4.1 Although I am strongly of the opinion that the towing in of Redwood does not to constitute development, I consider it pertinent to examine the Policies and Guidance that the LPA rely on when making judgements as to whether two houseboats using one mooring constitutes development. I also refer to National Policies and Ministerial Statements where appropriate.

Development Plan

4.2 Following the enactment of the National Planning Policy Framework, it was decided to progress a Local Plan as opposed to a Core Strategy for the Adur District. The Draft Local Plan was issued for consultation between 19th September and 31st October 2012, the responses to which remain under consideration. The Revised Draft is programmed for consultation in September 2013, under one month away with a public examination in public scheduled for November 2014. At this stage and bearing in mind the Ministerial Statement on 17th July 2013, Nick Boles stated that ' .... *once a plan has reached the point that, first, it has become specific and secondly, it has gone through a fairly substantial level of public consultation, it will become something of real materiality – to use the lawyers' phrase – as a consideration in decision-making."*

4.3 On that note, I consider it quite a revelation that the Draft Local Plan does not contain specific policy relating to houseboats or moorings to this part of the riverbank. Therefore and having regard to Section 38(6) of the Planning and Compensation Act 2004, I am of the opinion that as the Draft Local Plan was issued after the enactment of the NPPF, it is the most recent and up-to-date document relating to the Adur District. As far as the saved policies are concerned, the NPPF allowed saved polices to be retained for a period 1 year from its enactment unless the policies were in general conformity with the NPPF. That period has now lapsed and the 'saved' policies have not been thoroughly assessed in terms of their consistency with the NPPF.

4.4 In cases where the LPA has insisted that planning permission was required, the LPA cite 'saved' Policies AG1, AC1, AC4 and AB16 as being relevant. Having examined the wording of those policies I would state the following:

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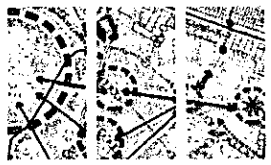

4.5 Policy AG1 'Definition of built up area' is a general policy relating to 'development' outside the defined development boundary and confines of the town. Its intentions are in conformity with the NPPF. Although it is a broad policy, it does allow for the consideration of exceptional circumstances.

4.6 Policy AC1 'Protection of the countryside' is also a general policy of restraint seeking to control 'development'. I do not see how this applies to houseboats on the river that are legally chattels. Nevertheless, the LPA seem to be of the opinion that it does apply and has sought to refuse houseboat-related applications on the basis of its criteria. I contend that this is a flawed policy in that it fails to take account of the sustainable use of waterways, particularly in light of Housing Minister Grant Shapps' statement (August 2011) seeking to promote the provision of more moorings which would be eligible for the New Homes Bonus. I therefore consider that Policy AC1 is general in its application and as a result fails to properly address the presence of houseboats. It can only be considered partly consistent with the NPPF.

4.7 Policy AC4 'Protection of Strategic Gaps' as with the previous policies is one of restraint and relates to development. It cannot be held to be applicable to houseboats as it the housing development from the 1960's and 1970's that has interloped into the strategic gap. In any event, the moorings along the riverbank are existing and do no constitute new development. In this case the policy would only extend to apply to operational development or development involving a change of use.

4.7 Policy AB16 'District Riverside setting of Shoreham' to protect and enhance the important amenity value of the River Adur, development which adversely affects views along and across it between the Surry Hard and the A27 will not be permitted. Opportunities will be taken, when considering development proposals, to improve the river scene. No explanation is provided as to why the LPA consider this policy to be in conformity with the NPPF. Nevertheless, I do not consider that one can substantiate a claim that the additional houseboat adjacent to Myrtle adversely affects views of across the River Adur which includes all the houseboats on the riverbank – a view that seems to be used by local establishments to reflect the quintessential character of Shoreham-by-Sea. In any event, as the houseboat is a chattel and not development, this policy is not applicable.

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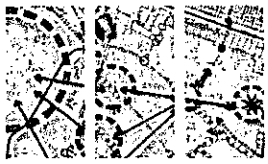
4.8 The 'Good Practice Guide for Houseboats' dated May 2007, predates the NPPF. It is merely a guide and can only relate to the change of use of a riverbank or use of a residential mooring for non-residential purposes and the provision of structures affixed to the land such as jetties, platforms and sheds. Yvette Cooper, when questioned about plans of the ODPM to issue guidance on the mooring of houseboats she stated that *'The Office of the Deputy Prime Minister has no plans to issue guidance on the mooring of houseboats. Because they are mobile properties, boats are 'chattels' rather than buildings or structures...'* (Hansard, *18 Jul 2005: Column 1436W).* I therefore question why the LPA considered that they should issue guidance when the Minister at the time did not see the necessity.

4.9 Having regard to the appeal cases cited and court cases, I contend that the LPA have sought to define certain aspect of works to houseboats as 'development' when clearly this is not the case. It is stated that it is a guide but it is being applied as if it were policy and thus sacrosanct. In any event as a 'planning' guide, it tends to stray beyond the planning remit into areas where other legislation would apply.

4.10 Paragraph 4,1 seeks to define that which requires planning permission. The first bullet point is in fact incorrect as a mooring can be applied for as a change of use of the land without there being a houseboat. It is mooring itself that is the subject matter not the houseboat as it is a chattel. It therefore follows that without a houseboat, a mooring does not cease to exist when one considers the case is Shoreham. If a car parking space is vacated by car the space does not vanish. Likewise, if a caravan as a chattel is sited on land that has planning permission for the stationing of caravans, the purpose of the land does not change should the caravan be repositioned within the land unless a specifically worded condition restricted it to being pitched at one spot.

4.11 The Guide quite rightly refers to the case of Fische which for all intents and purposes seeks to control activities and development on the 'land'. The bringing in of a houseboat does not in itself require planning permission. Therefore Bullet Point 2 is ambiguous in its current form and requires rewriting.

4.12 Based on the appeal decisions and case law, Bullet Pt 3 is incorrect as it fails to recognise that a houseboat is a chattel. To tow or float in a boat does not constitute development. To place a boat alongside another houseboat and use it for ancillary residential purposes does not



constitute development, as there is no material change in the use of the riverbank and no operational development.

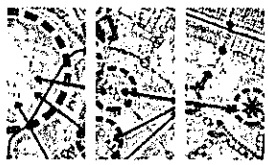
4.13 Bullet 4 relates to alterations to a houseboat. This is also erroneous and contradictory as a houseboat is a chattel and therefore any aspect of it is part of that chattel. To attempt to control alterations to the external appearance of a houseboat as if it were a building is fundamentally flawed. I consider that the same situation applies to superstructures in Section 9.

4.14 Bullet Points 5 and 6 do relate to development and therefore fall under the control of planning law. In fact these are the only two clear 'developments' that the planning laws can control.

4.15 Section 6 seeks to control the dimensions of houseboat. Whilst this may be the caravan with caravans under the relevant Caravans Act, it is not the case with houseboats. I am yet to find any legal controls over the size or a houseboat or any attempt to do so. The only matter that has recently come to my attention is the extent of work and whether it results in activities more akin to a boat yard. The redeeming fact in this section is an acknowledgement that the dimension should be used as a 'guide.'

4.17 Section 7 may seek to attempt to control second boats on a single mooring. Again and as already stated, there is no specific legal criteria that prevents the towing in of an additional boat for ancillary use associated with the main houseboat especially where no additional operational development arises such as additional jetties affixed to the riverbank. In any event, I have already cited appeal cases whereby the entire stretch of a riverbank constitutes a mooring and has mooring rights. It is only the act of providing and attaching a fixed jetty to the riverbank that is deemed to be a structure requiring planning permission as defined by Section 55 of the Town and Country Planning Act 1990.

4.18 Sections 10 - 14 relate to requirements and controls over landward and land-based structures exercised and subject to the control of the Environment Agency, Natural England, Southern Water. Car parking is an ancillary land-based activity. However where a vehicle is taxed and insured there is no reason why occupants' cars cannot legally park on the highway. The car parking order referred to is provided under separate legislation and has no bearing on the houseboats themselves.



4.19 I cannot see any evidence that this 'guide' was the subject of a formal period of consultation as should be contained in a Statement of Community Involvement and at that time, PPS12. More recently and with the enactment of the NPPF, I have not seen any indication that it is intended to carry out a formal consultation on the document to accord with the SCI as it is clearly a document that has no weight. As no specific national planning policy guidance has been published in respect of houseboats or riverside development, it is no surprise that the document is a merely to be taken as it states - a guide. As it does not flow from national policy guidance and does not have the status of a supplementary planning document, it has no weight in planning law and cannot be relied upon to inform the LPA as to what requires planning permission or to have regard to it in the decision-making process.

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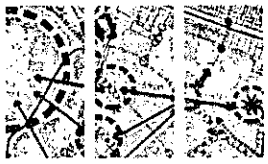


5.0 SPECIAL CONSIDERATIONS & HUMAN RIGHTS

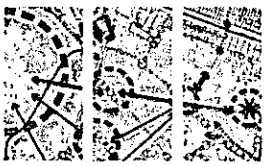
5.1 In the exercise of its duties a Local Authority is required to have regard to a person's human rights under both European and UK law. Article 8 of the Human Rights Act gives everyone the right to a home and private and family life. Therefore and when considering the facts, it is clear that the LPA should have regard to the special and personal circumstance. It is contended that the personal circumstances of the Aidleys albeit sensitive, reinforce the dependency factors and the ancillary relationship between the two boats.

5.2 This is particularly important when considering that this is a family unit whereby Reverend Aidley is the registered carer for her daughter who suffers from ME. This fact was never concealed from the Planning Officer when first seeking to bring Redwood in.

5.3 Indeed, it is as a result of this situation that Rev'd Jessica Aidley went to the expense of purchasing a second boat to provide her daughter with a home, a private life and support given her medical condition. Jessica Aidley provides much required assistance and daily care to her daughter Kate who is a long-term sufferer of ME. At the same time Rev'd Jessica Aidley lives with her partner, now husband and she too has the right to a family life and a private life. This need and dependency is even greater now that Kate has had a baby and is without her partner for 6 months of the year. She needs the support of her carer, her mum, to function normally and carry out everyday tasks. As an ME sufferer, it is hard enough trying to function normally for oneself, let alone a baby.

5.4 It is as a result of the requirement and legal right to a home and a quality of life that the arrangement exists. Redwood is therefore positioned well back from the riverbank with its stern a short distance away from the bow of Myrtle. This has enabled a short, lightweight and removable gangway to be placed between the two boats. No additional jetty has been required. To exclude these facts would be contrary to such rights under the European Convention on Human Rights.

5.5 Due to the close connections and dependencies, the Aidleys did not consider the need for an additional mooring at the time despite the fact that the stretch of riverbank within Rev'd Jessica Aidley's ownership contains two moorings.



5.6 It is therefore contended that the introduction of Redwood does not constitute development and does not involve development. No material change of use nor operational development has occurred.

5.7 Therefore and based on the inextricable ancillary relationship between the two houseboats, the first claim of lawfulness relates to this arrangement as this is not development as defined by Section 55 of the TCPA 1990.

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6.0 CONCLUSION

6.1 It is widely accepted in planning law that a houseboat is not a building and does not fall within the definition of development according to Section 55 (1) of the Town and Country Planning Act 1990. Houseboats are chattels. Call them floating caravans if you wish for they also are not development. Having the legal status of a 'chattel' it cannot be considered as a building for purposes of the 1990 Act, Section 55 (2) (d). It is readily accepted that the floating of a boat into position does not constitute development nor a material change of use of the riverbank. This was illustrated by the Fische case. As with a caravan or mobile home, a houseboat it not development. It is a chattel. Its size is however, not an issue, unless it projects into the channel of navigation, blocking free movement - this does not fall under the jurisdiction of the planning system.

6.2 It is contended that there is no evidence in planning law to indicate that a mooring should only serve one boat especially where there is an inextricable dependence and ancillary relationship between one and the other. It can only be concluded that the present arrangement where one houseboat is ancillary to the other no breach of planning law has occurred.

6.3 I have already explained why the towing in of a second boat and its use for ancillary purposes to the main houseboat does not constitute development and thus lawfulness of the act. I have already indicated that the entire section of the riverbank is a mooring and indeed includes Mooring 1. Nevertheless and despite this position, the act of bringing in Redwood does not materially affect the appearance of the riverbank insofar as the use is concerned and does not result in any operational development or the erection of structures requiring planning permission.

6.4 In any event, I consider that the development plan documents and policies cited are only applicable if the second ancillary houseboat constitutes development - it does not. The Good Practice Guide for Houseboats is a guidance document without material weight, at odds with the whole intent of the NPPF and seeks to control matters that do fall within the remit of planning law. I have clearly demonstrated that this arrangement is not development and is therefore lawful in all respects.

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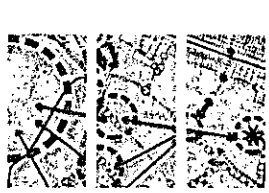

6.5 Due to the urgency of this matter and personal circumstances involved, it is requested that the LPA liaise with the applicants and agent to ensure that a positive outcome is arrived at and a Certificate of Lawfulness be issued.

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