Development Management - Delegated Officer Report

Application Number: AWDM/1103/13 **Recommendation – Approve**

Site: **Houseboat Myrtle, 2 Riverbank, Shoreham-by-Sea**

Proposal: **Application for a Lawful Development Certificate for use of houseboat 'Redwood' as ancillary to houseboat 'Myrtle'**

Date of site visit: Various including 13 November

Neighbours checked: N/A

Additional neighbour notifications: N

Proposal, Site and Surroundings

This application seeks a Lawful Development Certificate for use of houseboat 'Redwood' as ancillary to houseboat 'Myrtle'

Redwood is directly to the west of the existing houseboat 'Myrtle' and a second houseboat 'Redwood' that is the subject of a separate Certificate application (AWDM/1103/13). This is the westernmost houseboat of those that are situated to the south of the river. Norfolk Bridge is to the west.

Residential properties in Beach Green and Ormonde Way are to the south of the site.

Relevant site history

Temporary planning permission until March 2013 was granted under reference AWDM/0099/12 for the mooring of Redwood which remains in situ at present, pending the determination of this application and that submitted under reference AWDM/1421/13.

Consultations

The Senior Solicitor commented:

The application is made under S192 TCPA '90 in respect of a proposed use or development albeit the additional houseboat is already in situ. I would envisage this needs to be corrected.

The application is described as an 'Application for a Lawful Development Certificate for use of houseboat 'Redwood' as ancillary to houseboat 'Myrtle',

Again there is no plan than deals with Mooring 2 in isolation. I would contend that this is probably a separate planning unit, although this is ultimately a planning judgment.

The Supporting Statement

Again the applicants have submitted a lengthy supporting document dealing with the background, decided cases, the Law, Planning Policy and the Human Right's position. I do not propose to insert the paragraphs into this part of the advice in order to avoid repetition; I will however refer to the numbered paragraphs.

In essence, it is necessary to consider the correct planning unit being considered here as the applicant does not make this clear. It would be advisable for a site visit to be undertaken to verify the plans and representations of where the boats are currently sited and indeed to ensure the dimensions are correct. Historically, I understand that each individual plot has been considered to be the appropriate planning unit with the houseboats situated on the River Adur at Shoreham.

I believe that it now established that the stationing of a houseboat is not operational development (other operations on or over land) albeit, the use of the land to station a residential houseboat is considered to represent a material change of use of land. I am not aware that the Council have argued that the siting of an additional houseboat in itself constitutes operational development, although the applicant has spent some time refuting this position at paras 3.1 to 3.5.

The key question here is whether the change of use, namely from the stationing of one houseboat on the plot, to the stationing of two houseboats represents a material change of use of the land requiring planning permission.

The applicants maintain that the second houseboat is purely ancillary to the original one and that no change of use has therefore occurred.

The supporting statement refers to numerous cases and appeal decisions in support of the cases although not all these relate to houseboats.

The first of these is the appeal decision relating to land known as Barton Turns Marina, at para 3.7 in the supporting statement. Although the Enforcement Notice was quashed in this case, the ensuing planning permission imposed conditions to prevent the vessels, which were used as holiday lets, being used a permanent residential accommodation. Accordingly, it cannot be seen to have been decided in similar circumstances to the current application.

The applicant also cites the Land at Sheering Mill appeal decision (para 3.8). I do not consider it is in dispute that it is the change of use of the land we are seeking to control. In that case the appeal was allowed but the use of the mooring for residential use was limited to 28 days in a calendar year. So again, the Inspector was dealing with different set of issues to the case in hand.

The applicant also relies on an appeal relating to Riverside Moorings, Hoveton (3.9) although as stated in my response to the application in respect of plot 1, this appeal decision dealt with barges that regularly left their moorings and by way of appearance did not differ from any of the other barge boats moored in the vicinity. The only identifiable difference from the boats not subject to Enforcement Notice was that the owners of the boats subject to the appeal did not have a separate permanent address. As such I do not consider the facts are analogous. In addition, these barges had no curtilage surrounding their particular moorings.

Again the Ladies Bridge Appeal case is referred to at paragraphs 3.10 and 3.11 in used in support of the fact that the mooring of boats is a normal activity inherently associated with the primary use involving the passage of boats and that accordingly no material change of use has occurred. It is important to note therefore that this

appeal referred purely to navigable boats, not those used as permanent residential accommodation.

The decision that remains to be considered is whether the use of this stretch of river is so inherently associated with the mooring of navigable and non-navigable boats to such a degree that one an additional ancillary houseboat on a plot would not amount to a material change of use. To reach such a conclusion however would potentially permit intensification of all the plots along the riverbank at Shoreham.

At a paragraph 3.12, the applicant seeks to argue that the entire area of riverbank within the red edging is a mooring and the use of land related to the entire stretch.

The cases considered at paragraphs 3.7 to 3.12 were not directly dealing with houseboats used as permanent residential accommodation and I would therefore argue that the need to control smaller individual planning units did not arise. As previously outlined, the decision as to the extent of a planning unit is matter for the LPA to consider as a matter of fact and degree.

Paragraph 3.14. I have not direct dealt with the issues concerning the Jetty. The applicant contends there is no additional operational development in this regard and I have no instructions to the contrary.

At paragraph 3.16 and 3.17 the Applicant refers to the Fische and it is this point that requires careful consideration in the light of this appeal decision which concerned the same stretch of the River Adur. The inspector determined in that case that the lawful use of the plot was as a houseboat mooring and this is considered to be equally applicable to mooring 2.

Assuming the cumulative size of the two houseboats Redwood and Myrtle are less than the Fische, there is the fallback position that a much larger, and more unsightly vessel could lawfully be brought to the site. When considering any fallback position, however, it is entirely proper to consider the likelihood of the Appellant actually resorting to the fall back position. Despite the lengthy supporting statement submitted on behalf of the Applicants, this proposition was not put forward!

Intensification?

As decided in the Fische Appeal, the Lawful use of the plot is as a houseboat mooring, it may be the preferred approach to consider the siting 2 houseboats is unlawful either as it, because of a strict interpretation, it does not fall within the definition the lawful use, as the plot now contains two rather than one houseboat, or because, as a matter as a matter of fact and degree, the stationing of 2 houseboats, represents an unacceptable intensification of the use as such that it represents a material change of use requiring planning permission. The judgment is a planning one and should perhaps be considered with regards to the impact of other boats situated in the vicinity.

Is the use ancillary?

This is the argument being put forward. I have no direct instructions in this regard, although I assume that Redwood is a self-contained houseboat with its own facilities.

Even, by comparing the position relating to dwelling houses, the position is far from clear.

In relation to new buildings within the residential curtilage of a dwelling, the ancillary use must be subservient, as The TCPA (s.55(2)(d)) confers the right to use any

buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such.

However with regards to the change of use of an existing building, it has been held that the basic question to be answered was whether the application involved a material change of use. This turns on whether a separate planning unit would be created. In one cases, an inspector had correctly made a finding of fact and degree that the garage with the living accommodation would remain a part of the same planning unit with the house. Because the "granny annexe" accommodation provided a certain degree of independence, it did not consequently become a separate planning unit from the main dwelling. So long as the planning unit remained in single family occupation, no material change of use was involved.

Policy/ Human Rights

I have not commented on policy considerations or the Human Rights implications which will have a bearing on the manner in which this case is determined. I have no reason to suggest that that outlined in the supporting statement in this regard is not a true reflection of the situation.

Representations

None received

Relevant Planning Policies
Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AH7 and Appendix 11 'Supplementary Planning Guidance' comprising: Development Control Standard No.3 'Extensions and Alterations to Dwellings'

National Planning Policy Framework (CLG 2012)

Planning Practice Guidance (CLG 2014)

Planning Assessment

It is considered that the key issue in the determination of this Certificate is whether Redwood could be considered as ancillary to Myrtle and accordingly not require a separate planning application for its retention.

The basis for the original grant of temporary planning permission was on the basis that Redwood was to replace Myrtle which was alleged to have fallen into a poor state of repair. However, information in this regard when considering the latest planning application appeared somewhat contradictory: Myrtle was stated as being in poor repair but similarly as stated in the officer report of the time: 'still good enough to be sold to another owner as a replacement for one of the older failing timber houseboats.'

The officer report also refers to the fact that Myrtle was now being co-occupied by the daughter of the applicant due to personal circumstances, including an illness that required a degree of care. It is also understood that the position of Redwood was moved to the west of Myrtle but irrespective of the changed position, it is noted that the access to Redwood was via the jetty that accessed Myrtle. While it is not uncommon for a single jetty to access

more than one houseboat along the riverbank, the access to Redwood is effectively via Myrtle itself rather than a centrally shared entrance.

Given the occupation of the unit by a family member, therefore, the position of the jetty and the houseboats relative to each other, it can be considered that Redwood is indeed ancillary to Myrtle and since it is within the mooring area of the applicant can be considered to be an ancillary structure that does not require planning permission.

As a result, therefore, it is considered that the Certificate should be granted.

Recommendation

APPROVE for the reason:-

The use of the houseboat Redwood as ancillary to houseboat Myrtle is considered to be permitted development as the stationing of a houseboat does not constitute operational development, Section 55(2)(d) of the Town and Country Planning Act confers the right to use any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such, the houseboat Redwood is occupied by a member of the same family as houseboat Myrtle, and the access to Redwood is not via a separate jetty but via one shared with Myrtle.

Note to applicant: the applicant is requested to note that the granting of a Certificate is strictly on the basis of the current situation at the site as described above and the applicant's supporting information. Should the current situation alter and Redwood is no longer ancillary to Myrtle then it is highly unlikely that that the Council would consider the use of Redwood for non-ancillary purposes to Myrtle as permitted development.

Is recommendation contrary to letter(s) of representation?

Case Officer: Gary Peck Date: 12 September 2014

Authorised by: Date: 12th September 2014.