Planning Inspectorate

Room 3B

Temple Quary House

2 The Square

Bristol

BS1 6PN

19 River Close

Shoreham-By-Sea

West Sussex

BN43 5YF

Dear Sir/Madam

Ref APP/Y3805/X/25/3364215

I am writing on behalf of the residents listed at the bottom of this document about the appeal against Adur District Council's decision not to issue a Certificate of Lawful Use to the construction known as “Kingfisher” at number 26 Riverbank in Shoreham-by-Sea[1].

In summary, we consider that issuing a Certificate of Lawful Use would:

- Circumvent the purpose of planning system.
- Remove our right to have Human Rights impacts considered.
- Be contrary to the case law quoted.
- Create illogical positions and ‘double binds’
- Prevent other statutory assessments of suitability / impact.

We believe the appellants’ case is undermined by:

- No evidence being presented that the current planning permission is for ‘a houseboat mooring’.
- A clear admission that development occurred on the site.
- A highly misleading assessment that there is no material difference between the Kingfisher and the previous houseboat.
- A clear intent to keep the Kingfisher permanently at 22 Riverbank and a failure to consider the legal and practical hurdles to moving it.

As you are undoubtedly aware, after due consideration of all the facts Adur District Councilors have already authorized enforcement action (following the withdrawn planning application).

We acknowledge that interpreting planning law along the Riverbank is complex. However, this is not a reason to allow a loophole to be exploited.

Therefore this appeal should be rejected.

[1] Reference AWDM/1083/24 for the application and AWAP/0008/25 for the details.

1. Should the Certificate of Lawful Use system be used for such a development at all?

1.1. We have been unable to find a definitive definition of the policy intent behind the Certificate of Lawful Use system, other than the mechanistic description that it is to inform the applicant that the development does not need planning permission[2].

1.2. However, the Government's Plain English Guide to the Planning System[3] states that "*Planning ensures that the right development happens in the right place at the right time, benefitting communities and the economy. It plays a critical role in identifying what development is needed and where, what areas need to be protected or enhanced and in assessing whether proposed development is suitable.*"

1.3. Therefore, it is a reasonable assumption that the purpose of the Certificate of Lawful Use system is to simplify and streamline planning for minor, non-contentious developments.

1.4. Our view is that construction of a two story, four-bedroom structure in close proximity to other dwellings and in a critical location for the wider enjoyment of the river scene in Shoreham-By-Sea, is clearly contentious.

1.5. If this Certificate of Lawful Use is issued, it would set a precedent which would allow uncontrolled development along the Riverbank which is clearly not the intention of the Certificate of Lawful Use system.

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[2] https://www.gov.uk/government/publications/certificate-of-lawful-use-or-development-appeals-procedural-guide/procedural-guide-certificate-of-lawful-use-or-development-appeals-england

[3] https://assets.publishing.service.gov.uk/media/601034938fa8f5655299d23e/Plain_English_guide_to_the_planning_system.pdf

2. Issuing a Certificate of Lawful Use would impinge our Human Rights

2.1. The Human Right Act article 6[4] grants the right to a fair trial.

2.2. The Human Right Act article 8[5] and Protocol 1[6], Article 1 protects our rights to a home and to enjoy our properties respectively.

2.3. The Planning Application system is set up to ensure that any application gets a 'fair trial', including hearing from both supporters and objectors on the merits of that application and considerations on the right to a home / enjoyment of a property are fully examined.

2.4. The Certificate of Lawful use system is not set up to make these considerations, and in our view, is not intended to deal with contentious matters.

2.5. Therefore, if a Certificate of Lawful Use is issued, our rights would be infringed as there would be no Planning Application to which we could make our views heard.

3. Case law considerations

3.1. We have attached a copy of the submission from the Environmental Law Foundation on our behalf to Adur District Council during their consideration of the application for a CLUED, which provides a robust legal case for refusing the application and hence this appeal.

3.2. The case references in 4.9 relates to a prefabricated building and therefore is not directly relevant.

3.3. The case references in 4.10 related to three concepts which were specific to the planning permission for that location. Dealing with each of these in turn:

"*Is Haulfryn 1 capable of navigation*" – this is not a planning condition relevant to the mooring the Kingfisher is on and therefore is not a relevant consideration.

[4] https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/5
[5] https://www.equalityhumanrights.com/human-rights/human-rights-act/article-8-respect-your-private-and-family-life
[6] https://www.equalityhumanrights.com/human-rights/human-rights-act/article-1-first-protocol-protection-property

"*Does Haulfryn 1 have an independent integral means of propulsion?*" – this is not a planning condition for the mooring the Kingfisher is on and therefore is not a relevant consideration.

"*Is Haulfryn 1 a houseboat*" – whilst a reasonable person would undoubtedly conclude that the Kingfisher is potentially a houseboat (an undefined term) – the appellants have not demonstrated why the end state is relevant to whether - or not- operational development occurred.

3.4. In 4.11 of the appellants' case, the case law concludes that, on the River Adur the construction of a two-story floating structure on site was a building and therefore planning permission was required (and therefore presumably was operational development). This seems to be the most relevant case, yet the appellants' have not addressed why they consider it to be irrelevant.

3.5. We believe that there is relevant case law not covered by either the appellant or the opinion from ELF.

This is planning application AWDM/0554/21 for the creations of "*creation of new four-bedroom floating home and associated access and ancillary solar array, bike storage, plant room, shower and WC enclosure"* at number 22 Riverbank which was granted permission on 13/12/2021.

The owners of this plot applied for planning permission for a construction on site. At no point did they, the council or any respondents, state that planning permission wasn't needed by virtue of the potential of the structure to be moved.

The piles now used to hold this structure in place did not form part of the original application where the intent was to moor the structure using ropes. This is clear precedent that such structure should be dealt with via planning application.

3.6. The Fische was found by the Planning Inspectorate to the 'oppressive and overbearing'. This clearly shows that houseboats along the Riverbank can have a material impact on their neighbors.

4. <u>Lack of evidence of existing planning permission</u>

4.1. In section 3.10 of the appellants' case, and throughout their document there is an assumption that no 26 Riverbank has planning permission for 'a houseboat'.

4.2. At no point in the (withdrawn) planning application, the application for a Certificate of Lawful use or this appeal do the appellants; reference the original planning permission.

4.3. Unless the permission can be located – and Adur District Council Planning Officers have been unable to provide a copy[7] - there is no reason to think that the original permission, (or any deemed permission) relates to a generic 'houseboat' rather than specifically to the Laguna.

4.4. As such, the whole of the appellants' case is based on an assertion for which they provide no evidence.

5. Development occurred on site

5.1. The appellants' have conceded that there have been activities that have involved the construction of the Kingfisher on site, and that the only element constructed offsite was the floating platform the superstructure is fixed to.

We would like to raise that the appellants' have not addressed whether the individuals involved in the construction were '*carrying on business as a builder'.* The recollection of residents in River Close is that, whilst constructions was taking place, there were four or five people involved at points and we believe professional electricians were used to carry out specialist construction work (i.e. wiring up of the dwelling).

6. There is a material difference in size and appearance between the Kingfisher and the Laguna

6.1. We believe the appellants' statement on size to be misleading. The plans in the (withdrawn) planning permission show a 1.07m floating platform (called the 'hull' by the appellants) and a 5.77m superstructure, which is a total height of 6.84m not 5.6m as claimed.

6.2. There is no evidence that the Laguna was 5.07m high, and it appears to us that it is improbable that the roof height of the Laguna was in fact this high.

6.3. The change in overall size / mass between the Laguna and the Kingfisher is not addressed by the appellant, but is clearly materially significant.

6.4. We evidenced this at the (withdrawn) planning application hearing with photographs taken from properties in River Close[8] showing the differnec between the Laguna and the Kingfisher.

[7]– personal communication.
[8] See photographs in the attached presentation used at that meeting.

6.5. Permanence

In section 5.5 of their case, the appellants clearly indicate that the structure is intended to be used, permanently as a dwelling at 26 Riverbank.

6.6. Physical attachment

In section 5.6 the appellants state that the Kingfisher could be detached and moved.

Whilst we do not dispute that the Kingfisher could be detached and potentially could be moved.

However, the appellant has made no attempted to address any of the legal and practical issues that would need to be resolved to allow this to occur (despite owning another houseboat on the Riverbank).

This omission strongly suggests that the appellants have no intention of moving the Kingfisher.

We believe that the legal and practical matters that would need to be considered include:

6.6.1. Whether the RSPB - land-owner to the north - would consent to it transiting their land, which is a "restricted access" nature reserve with SSSI designation.[9]

6.6.2. Whether West Sussex Country Council would allow the Kingfisher to be moved through the opening part of the Adur footbridge (if moved east).

6.6.3. Whether the Harbour Master would allow transit of the port entrance (if moved out of the exit of the River Adur).

6.6.4. Whether the requirements of the Shoreham Port General Directions[10] -which apply to all 'vessel' movements could be met. This including the requirement in section 23 that the movement of unseaworthy vessels must get permission from the Harbour Master.

We regard this as relevant because the appellants have stated in section 3.4 of their case that "*The houseboat has a seaworthy, Glass Reinforced Polymer (GRP) catamaran hull. Its superstructure is clad in plastic-coated aluminum with recycled corrugated iron to the upper level*."

Which shows that they only consider the platform whichw as build off site to be seaworthy, not the final structure.

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[9] https://www.rspb.org.uk/days-out/reserves/adur-estuary.

[10] https://www.shoreham-port.co.uk/fileadmin/uploads/shorehamport/Documents/Marine/Key_Marine_Documents/Shoreham_Port_General_Directions_2021.pdf

6.6.5. Whether the mooring points on the Kingfisher would be sufficient to withstand the strains imposed by towing.

7. Illogicalities / 'double binds' that would occur if a Certificate of Lawful Use is issued.

7.1. The appellants' case contains arguments that, if followed through to their logical conclusion, create illogical position or place the owners of the Kingfisher - or indeed any other houseboat – in a 'double bind' – these are:

7.2. The appellants' conflate the right to moor a houseboat with the right to construct a houseboat in that mooring. A logical extension accepting this argument is that any houseboat stucutre could be constructed in any place with permission to be used as a houseboat mooring – which is clearly an absurd proposition.

7.3. The appellants' argue in 3.8 of their case that the Kingfisher is moored in the same position as the Laguna was (central to the plot). The appellants' appears to be arguing that location on the plot is important to meet the Adur Houseboat Good Practice Guide 2021, which in turn is needed to meet the definition of houseboat.

Therefore if a Certificate of Lawful Use is issued, and the location of the Kingfisher on the plot changes (which the appellant acknowledges happens regularly) does each movement have to be addressed for materiality? Alternatively, how could a requirement to be central to the plot be enforced without it being a planning condition?

7.4. There is an illogical outcome of issuing a Certificate of Lawful Use on the basis that the Kingfisher currently floats. Since some of the houseboats along the Riverbank no longer float, this leads to a series of questions:

Do those houseboats that no longer float (or are no longer capable of meaningful movement) no longer count as houseboats?

If so, do they therefore count as operational development and need planning permission as they are no longer moored?

If that is the case, then how will it be known when a structure ceases to float and therefore need such permission?

Such an outcome would create perverse incentives such as an owner undertaking regular movement of the houseboats on and off the plot to demonstrate that they are still capable of movement – which we presume is not a desired outcome of the appellants.

8. Impact on other statutory protections

8.1. A planning application would require the impact upon the neighboring SSSI and a flood risk assessment (for the safety of the occupants) to be undertaken. This may result in either refusal, or conditions being placed on usage (for example, not being allowed to rent out as renters would be unaware of the flood procedures). Clearly if a Certificate of Lawful Use is issued, these material impacts cannot be assessed and mitigated.

9. Conclusion

That the superstructure was constructed onsite is not in dispute.

Our view is that case law concludes that operation development took place.

In any case a common-sense approach to the concept of 'building' (and hence operational development) should be taken as the construction involved:

- building a two story timber framed structure which is materially different in size to the previous structure,
- equipping it as a four bedroomed dwelling;
- and permanently securing it to the floating base

without the 'floating base' this would so clearly be operational development that no developer would seek a Certificate of Lawful Use.

The fact that Kingfisher currently floats and the remote possibility that it might be detached and moved, should not supersede what a reasonable person would conclude – that it was built like a building, looks like a building, is being used like a building and therefore should be subject to planning permission - like a building!

David Calderbank

No 19 River Close

On behalf of:

10 River Close: Tony Elphinstone

12 River Close: Ester & Dan Rowe

13 River Close: Vanessa & Bob McCulloch

14 River Close: Daniel Cook & Tony Richens

15 River Close: Cindy Desjarlais

16 River Close: Michael Chandler

17 River Close: Wendy & John Marshall

18 River Close: James Panton & Angela Brandini

19 River Close: Asmara Calderbank

20 River Close: Mette Larsen & John Davidson