



Appeal Decision

Hearing Held on 17 July 2018

Site visit made on 17 July 2018

by Jonathon Parsons MSc BSc DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th September 2018.

Appeal Ref: APP/R5510/W/17/3183686

Land (canal) adjacent to The Old Orchard, Grand Union Canal, Park Lane, Harefield UB9 6HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Lewin against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 71797/APP/2016/1419, dated 11 April 2016, was refused by notice dated 24 May 2017.
 - The development proposed is the change of use to 2 No. residential moorings.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to 2 No. residential moorings at land (canal) adjacent to The Old Orchard, Grand Union Canal, Park Lane, Harefield UB9 6HL in accordance with the terms of the application, Ref 71797/APP/2016/1419, dated 11 April 2016, subject to the following conditions on the Attached Schedule A.

Procedural Matters

2. At the hearing, the Appellant changed the description of the scheme from 3 to 2 residential moorings. The respective residential moorings are in situ on the site and are in the areas marked 2 and 3 on the red-edged site location plan drawing number PL16-SLP.
3. The Council refused planning permission on the basis that the development harmed the Green Belt. The domestic paraphernalia on the canal's banks associated with the moorings is within the Green Belt but this is outside the red-edge shown on the site location plan. As a result, the issue of Green Belt harm has not been considered here.
4. The Appellant submitted a hospital referral letter and a leaflet on Harefield Marina at the hearing which I took into account. The revised National Planning Policy Framework (NPPF) was published on 24 July 2018 and both main parties have been consulted. Their views have been considered in my decision. The correct appeal notification of persons with an interest in the site was carried out after the hearing but no further comments have been received.

Main Issues

5. The main issues are the effects of the development on (a) the character and appearance of the area and (b) personal circumstances, and whether a refusal

of permission would be compatible with the provisions of the (c) Human Rights Act 1998 and (d) the Public Sector Equality Duty (PSED) under the Equality Act 2010.

Reasons

Character and appearance

6. Policy BE33 of the Hillingdon Local Plan (LP): Part Two – Unitary Development Plan Saved Policies (2012) states that planning applications for the establishment of residential moorings will be assessed in relation to certain criteria. The policy states that residential moorings should be located on urban stretches of the canal and not on rural or open stretches where they would be incongruous and out of place. Furthermore, the policy indicates that the number and the density of boats at any point should not be so great that they act as a barrier separating people on the bank from the canal or exert a detrimental effect on the canal scene.
7. The moorings are located outside of an urban area in the countryside and are located on a canal bank side opposite a tow-path. The moorings comprise two boats which are attached to the canal bank by wooden gang planks. There is low-lying vegetation behind one of the boats whilst there is a hedgerow behind the other. Beyond this, this is an agricultural field that slopes up towards The Old Orchard hotel which stands proud on a skyline. A public footpath is routed through this field.
8. Although outside of the application red-edge plan, there is significant domestic paraphernalia between the boats and the field which takes the form of private outdoor spaces, with tables, chairs, planted garden areas, fencing and a low-slung shed. To the north, there is a narrow lane, Park Lane, leading down to Black Jacks lock and some dwellings which are within the Black Jacks and Coppermill Lock Conservation Area. Colne Valley Nature Reserve lies to the east.
9. The appeal site and surrounding area are characterised by attractive rolling, open valley sides, predominately grassland, with small woods and copses, and the canal. Many of these rural qualities are identified within a Local Character Assessment (LCA) designation A2 Mid Colne Floodplain–Stockers Lake to Springwell Lock (floodplain) and LCA designation B1 Harefield Open Valley Sides under the Hillingdon’s LCA 2007. The LCA also recognises the area to have a ‘simple and unified landscape, with limited overt development, creating a tranquil and calm character’, which I find true.
10. The canal is used by a variety of boats for different purposes, including sight-seeing, which can moor for short periods of time. On my site visit, there were boats moored on the other side of the canal by the tow path. However, such boats would be largely travelling through the area and any moorings would not be permanent like that subject to the appeal, which have been in situ since June 2014. The two appeal moorings have a definite feeling of being permanent because the boats have been adapted for residential use. They have domestic storage, solar panels, flues and in the case of the boat closest to Park Lane, varied external treatment in terms of external finishes and fenestration. As a result, they do not appear part of a normal canal scene and are intrusive, especially against the attractive rural background of canal side vegetation and field behind.

11. The domestic paraphernalia on the canal bank is not part of the application but it clearly results from the residential moorings. In this respect, the permanent residential presence clearly has an associated knock-on impact in requirements for tables, storage areas, etc. Although they can be easily removed, the resultant cluttered and domestic effects add to the intrusiveness of the moorings.
12. The emerging policy DMHB20 of the Hillingdon Local Plan Part 2: Development Management Policies (DMP) 2015 states that moorings should generally be located on urban stretches of canal and not on rural or open stretches where they would be incongruous and out of keeping. The insertion of the word 'generally' gives the policy more flexibility than the development plan policy but the general thrust of this policy remains that moorings should not be located on rural or open stretches of canal. Notwithstanding this, it is too early to give this policy any significant weight because the plan is at an early stage of preparation given it has not advanced past an Examination in Public.
13. British Waterways (BW) and the Canals and Rivers Trust (CRT) set out policies that would enable residential moorings to be located in rural areas. In an enforcement appeal decision in Hempholme, an Inspector commented that a barge was large in comparison to most boats in the area but this was not unexpected on a canal and that there were many other substantial boats within the site, which are likely to be capable of residential occupation for long periods. Furthermore, it was accepted that whilst permanent residential use could give rise to the provision of domestic paraphernalia on the canal bank, so could 'home mooring' or holiday use.
14. However, the BW and CRT documents remain advisory and non-statutory limiting their importance and in respect of the appeal, they predate the revised NPPF as well as the original NPPF. In respect of the appeal, every scheme has also to be dealt with on its particular merits taking into account policy and site circumstances and in this case, there are significant adverse effects on the character and appearance of the canal for all the reasons indicated.
15. Consequently, there is harm to the character and appearance of the area and the scheme would conflict with LP policy BE33, and the emerging DMP policy DMHB20, albeit little weight is given to this conflict.

Personal circumstances

16. The Appellant occupies one of the moorings whilst there is a second occupier in the second mooring. The Appellant has served in the Army and suffers from long-term Post Traumatic Stress Disorder (PTSD). Medical evidence indicates severe mental and back conditions, and the person is registered disabled. Help is being received from a supportive friend based locally and there is a nearby doctor's surgery based at Denham where therapy meetings for veterans are attended on a frequent basis. The second occupier suffers from stress and has mental difficulties with dealing with people and everyday matters. He has undergone a heart operation in the past, has back conditions and is on disability benefits. The second occupier relies upon the Appellant for help and support.
17. Refusal of planning permission would result in both occupiers having to find new homes elsewhere. Alternative marinas were put forward as locations for both occupiers but there was no evidence that they would take on permanent

residential moorings. There is a lack of a 5 year supply of moorings in Hillingdon. Section 124 of Housing and Planning Act 2016 places a duty on local housing authorities to consider the needs of people residing or resorting in their district with respect to houseboat moorings. The London Borough of Hillingdon Strategic Housing Market Assessment Report (SHMAR) of Findings 2016 sets a housing requirement which is background to the emerging local plan. It takes no account of boat moorings. No other non-marina accommodation was put forward as an alternative. In summary, there is no evidence of available alternative accommodation which is suitable and affordable.

Other matters

18. In terms of promoting sustainable transport, the immediate area is predominately semi-rural with residential dwellings. However, there are a variety of services and facilities at Harefield which are within acceptable walking distance via the lane or footpath. Given the revised NPPF recognises opportunities to maximise sustainable transport solutions will vary from urban to rural areas, there is reasonable access to services and facilities.
19. Vehicle parking takes place on Park Lane which has interrupted the free flow of traffic. It also has blocked the entrance to a domestic property on the lane here. However, this area of road is available to all members of the public, despite not officially being laid out. Therefore, I am not in a position to confirm whether the difficulties are directly related to the appeal scheme and there has not been any concerns drawn to my attention from the highway authority. On this basis, there are not sufficient grounds to refuse the scheme on these grounds.

Planning Balance, Human Rights and PSED

20. The development is located within the countryside and harm has been found to the character and appearance of the area. The scheme conflicts with LP policy BE33 and the development plan as a whole.
21. In terms of the revised NPPF, there is a conflict with the requirement that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. In favour of the scheme, the proposal boosts housing and the occupiers have reasonable access to services and facilities by sustainable transport means. There has been some dispute about whether the Council has a five year supply of housing land. Nevertheless, even if there was a deficit, the contribution of two units of accommodation would be limited. For these reasons, the adverse impacts of granting permanent permission significantly and demonstrably outweigh the benefits.
22. Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, concerns a right to respect for private and family life. The PSED was introduced under the Equality Act 2010 which requires at section 149 that a public authority or person exercising a public function must, have due regard to the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Both mooring occupiers have disabilities that amount to a protected characteristic.

23. Refusal of planning permission would be disruptive to the lives of both occupiers, who have local connections and because they find the local peaceful environment helpful in addressing their medical situations. In particular, the Appellant has access to a nearby local surgery and his involvement with a local veteran's group signifies an important step in rehabilitation, and there is an important relationship between the Appellant and second occupier in terms of assistance. There is no alternative suitable accommodation available for the occupiers.
24. There would be a serious interference with the occupiers' rights in respect of private and family life and there would be an adverse impact on individuals with a protected characteristic. However, there would be harm to the character and appearance of the area which would be significant for the reasons indicated. Permanent permission would consolidate the appearance and activity over a long term. Given this, the personal circumstances do not outweigh the harm sufficient to justify the grant of a permanent permission. Such a conclusion is necessary and proportionate in the circumstances.
25. Consequently, other considerations do not outweigh the conflict with the development plan in respect of a permanent planning permission. However, the visual impact of the scheme would be short term with a temporary planning permission. Given the personal circumstances, I am satisfied that the balance tips in favour of the grant of a temporary planning permission.
26. Both parties have put forward a 5 year temporary permission in the event that consideration is given to this matter, with the Appellant suggesting this time period is appropriate given the Council's likely progress with allocating moorings. However, such a length of time would be considerable given the significance of harm. I recognise certain types of accommodation in denser urban environments, such as high rise flatted accommodation, may not be appropriate but the medical evidence does not indicate that moorings are the only form of appropriate accommodation for the occupiers. On this basis, a shorter period of two years would be reasonable to enable occupiers to find accommodation taking into account the personal circumstances.
27. In conclusion, I am satisfied that the legitimate aim of the protection of environment cannot be achieved by any other means which are less interfering with the occupiers. Granting permission for a limited period would have no greater impact on them than would be necessary to address the wider public interest and would be proportionate and necessary in the circumstances. It would also comply with the PSED duty.

Conditions

28. In addition to a condition limiting the permission to a temporary period, a personal condition has been imposed because the circumstances of the occupiers have been found to be important material considerations. For the purposes of clarity, a condition has been imposed detailing the approval of plans and the moorings. The prohibition of domestic paraphernalia, other structures, fences and other means of works on the canal banks has not been imposed because this would relate to land outside of the application.

Conclusion

29. For the above reasons, having regard to all other matters raised, including support, I conclude that the appeal should be allowed.

Jonathon Parsons

INSPECTOR

Schedule A

1. The moorings hereby permitted shall be carried on only by the following: Mr Paul Vincent Lewin and Mr Jeremy Hibbett, and each occupier's mooring shall be for a limited period, being either the period of 2 years from the date of this decision, or the period during which the mooring is occupied by the respective occupier, whichever is the shorter period.
2. When occupation ceases for each mooring in accordance with Condition 1), the respective boat, buildings, structures, materials and equipment, or works undertaken in connection with that mooring, within the red-edge of the approved site location plan drawing number PL16-SLP, shall be removed from the site.
3. The development hereby permitted on a temporary basis relates solely to the two residential moorings shown as x² and x³ on the approved site location plan drawing number PL16-SLP.

APPEARANCES

FOR THE APPELLANT

Dr S Ruston MRTPI
Mr P Lewin

Ruston Planning Limited
Appellant

FOR THE LOCAL PLANNING AUTHORITY

S Volley MSc DipTP MRTPI

Hillingdon Borough Council

INTERESTED PARTIES

L Wallace
L Nye
M Hendley

Local resident
Local resident
Local resident

DOCUMENTS

1. Hospital referral letter: NHS Veterans' Mental Health Transition Intervention & Liaison Service Referral letter dated 25 January 2018, with details of 'Presenting Problems', 'Risk' and 'Recommendations.'
2. Harefield Marina leaflet.
3. Statement of Common Ground.
4. Draft guidance to local housing authorities on the periodical review of housing needs Caravans and Houseboats DCLG March 2016.
5. Appeal Notification of persons with an interest in the land subject to the appeal.