



**Planning Enforcement Appeal Statement of Case**

Site: Pontoon and land adjacent to Richmond Bridge Pier, Richmond Riverside,  
RICHMOND, TW9 1TH

Our ref: 22/0346/EN/EOP

Appeal ref: APP/L5810/C/23/3333609

23.01.24

This is the appeal statement of the London Borough of Richmond Upon Thames ("the Council") in respect of an appeal lodged by Turks Launches Limited ("the Appellant") against an enforcement notice served by the Council on the 11<sup>th</sup> October 2023. A copy of the enforcement notice has been provided at the questionnaire stage.

The Appeal is proceeding under the following grounds:

1. Ground 'b' - *That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.*
2. Ground 'c' - *That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").*
3. Ground 'd' - *That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.*
4. Ground 'a' – *That planning permission should be granted for what is alleged in the notice.*
5. Ground 'f' – *That the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.*
6. Ground 'g' – *That the time given to comply with the notice is too short*

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## **1. Site Description**

The site consists of a single pontoon, located to the north of Richmond Bridge, accessed via an existing gangway from the towpath. The Jesus College Barge is currently moored at the pontoon, along with some other leisure vessels. The barge and pontoon are occupied by a restaurant called 'Peggy Jean Riverside', which specialises in Australian cuisine. The site is within close proximity to the Grade I listed Richmond Bridge and is located within the Richmond Riverside Conservation Area.

## **2. Relevant Planning History**

85/0139 – Engineering operations in connection with the location of a floating pontoon for use of hiring out motor boats and rowing skiffs. GRANTED 22 May 1985 (see Appendix 1)

89/1632/FUL – Erection of a new security gateway leading to existing pontoon. GRANTED 4 October 1989

92/0659/FUL – Mooring of Jesus College Barge Against R J Turk Pontoon for Use as a Restaurant below and above deck. GRANTED 25 August 1992 (see Appendix 2)

93/1734/FUL- Erection of a canopy over gangplank to match that on Jesus College Barge. GRANTED 20 January 1994

93/1735/LBC - Provision Of Gas, Water & Electricity Supplies To Jesus College Barge Run Within Boathouses From River Terrace Restaurant, Thence Via Riverside Path To Barge. GRANTED 20 January 1994

01/1079 – Proposed relaxation of condition no.5 of planning permission 92/0659/FUL GRANTED 13<sup>th</sup> July 2001

17/12837/FUL (Granted by Royal Borough of Kingston Upon Thames) - Change of use and permanent mooring of Jesus College Barge for restaurant and café (Class A3), including an extended pontoon and piles into the river bed for access. GRANTED 31 July 2019 (see Appendix 3)

21/P0162/PREAPP - The use of the pontoon for Class E (i.e. providing tables, chairs and covers) and the erection of a roof canopy. NOT SUPPORTED 2 August 2021 (see Appendix 4)

3. Timeline of events

The Council consider it useful to set out a brief timeline of events, relevant to the pontoon, and its use at different times.

<p>Planning permission 85/0139 granted for 'Engineering operations in connection with the location of a floating pontoon for use of hiring out motor boats and rowing skiffs'. This permission was implemented.</p>	<p>Planning permission 92/0659/FUL granted for 'Mooring Of Jesus College Barge Against R J Turk Pontoon For Use As Restaurant Below And Above Deck'. This permission was implemented</p>	<p>Evidence has been provided by the appellant suggesting that the pontoon had been used for restaurant seating at certain times during this period. The evidence shows a limited area of the pontoon used for seating, though the lawfulness of this use still needs to be established through submissions made by the appellant as part of this appeal, should it seek to rely on that as part of their case.</p>	<p>Jesus College Barge sank in April 2015 and was removed from the pontoon. Turk Launches Ltd submitted a planning application in August 2017 (granted in July 2019) to moor the barge in Kingston Upon Thames. Any previous use of the pontoon for restaurant seating, whether lawful or not, ceased and was abandoned.</p>	<p>Substantial alterations carried out to the pontoon, creating a purpose-built restaurant. Jesus College Barge returns to pontoon to be used in conjunction with the pontoon restaurant.</p>
<p>↑</p>	<p>↑</p>	<p>↑</p>	<p>↑</p>	<p>↑</p>
<p><u>1985</u></p>	<p><u>1992</u></p>	<p><u>1993(?) - 2015</u></p>	<p><u>2015 - 2022</u></p>	<p><u>2022 to present day</u></p>
<p>Use of the pontoon for the mooring of boats and storage.</p>	<p>Use of the pontoon for the mooring of boats and storage; use of Jesus College Barge as a restaurant.</p>	<p>Use of the pontoon for the mooring of boats and storage, and (on the appellant's case) as an ancillary restaurant seating area in connection with the use of Jesus College Barge as a restaurant.</p>	<p>Change of use of the pontoon to sole use for the mooring of boats and storage; fundamental change in the planning unit by removal of the Jesus College Barge.</p>	<p>Material change of use of the pontoon for the mooring boats, storage and as a restaurant, resulting in another fundamental change to the planning unit.</p>

#### **4. Council's response to the grounds of appeal**

##### **(I) The appeal under ground 'b' – That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.**

4.1 In respect of a ground 'b' appeal, the onus of proof lies on the appellant. Insofar as the appeal relates to the works to the pontoon, the only discernible argument which is made under ground 'b' in the appellant's submissions is that the height of the pontoon is not materially different from that approved under permission 85/139. This is not an argument which should be made under this ground. Ground 'b' is only concerned with whether the matters alleged in the enforcement notice have occurred as a matter of fact. There can be no argument that alterations have been carried out to the pontoon, as detailed within the notice and shown in the appellant's own photographs. Whether or not the height of the pontoon is similar to that shown in plans for an historic planning permission is not relevant to this ground.

4.2 Insofar as this ground of appeal relates to the use of the pontoon as a restaurant, the appellant's position is that the pontoon has been used as a restaurant seating area associated with the barge for more than 20 years, not including when the barge was removed for restoration works between 2015 to 2022. As a matter of fact, however, in 2022 there was a material change in the use of the pontoon from use for boat moorings and storage alone to use as a restaurant, boat moorings and storage. Furthermore, there is a material difference between the use of the pontoon up to 2015 as a sitting out area for diners served by the barge, and from 2022 as a fully-equipped restaurant in its own right.

4.3 Accordingly, the Council considers that the matters alleged in the notice have occurred as a matter of fact.

##### **(II) The appeal under ground 'c' – That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").**

4.4 Insofar as the notice concerns the physical works to the pontoon, the appellant's argument is that: *'any structural changes to the pontoon have occurred in line with existing planning permissions and/or are de minimis and so do not constitute a breach*

*of planning control*'. The only planning permission referred to in its submissions is permission 85/139 – 'Engineering operations in connection with the location of a floating pontoon for use of hiring out motor boats and rowing skiffs' – and its reliance on this permission is only in relation to there allegedly being a similarity in the height of the barge approved under that permission and the pontoon as now altered.

- 4.5 The Council's position is that the existing pontoon was of a low level timber construction, sitting well below the level of the adjoining towpath, indicated by the incline on the bridge from the tow path onto the boat (see Appendix 5, Google Streetview Image dated October 2020). The current pontoon, as altered, sits at a much higher level above the water and in relation to the adjacent towpath. It is of a two storey construction, with the upper deck used for seating and the lower deck part used for seating and part used as a kitchen at the western end, with some additional storage of items at the eastern end, below deck. There are also fixed covers and heaters on the upper deck, increasing the overall height and mass of the pontoon. Railings have been attached to the outer edge of the pontoon, on the upper level. The cumulative result of the works is a pontoon which is much larger than previously existed. It is now of a two-storey construction, enclosed by the covers and railings. The works to alter the pontoon are extensive and have been undertaken over a significant period of time, with the aim of adapting the pontoon into a purpose-built floating restaurant. It no longer resembles the pontoon which existing previously (see Appendices 6 and 7).
- 4.6 There is nothing within the terms of planning permission 85/139 which is comparable with the works which were carried out to the pontoon in 2022. The works carried out to the pontoon are not minor. They are substantial structural alterations (see Appendix 6), which facilitate its use as a purpose-built restaurant (see Appendix 7). As far as Section 55 of the Town and Country Planning Act 1990 is concerned, the Council is in no doubt that the works constitute building or other similar operations amounting to development, which materially alter the appearance of the pontoon.
- 4.7 Insofar as the notice relates to the use of the pontoon, planning permission 85/0139 – *'Engineering operations in connection with the location of a floating pontoon for use of hiring out motor boats and rowing skiffs'* – did not authorise any use of the pontoon as a restaurant. Planning permission 92/0659/FUL – 'Mooring of Jesus College Barge Against R J Turk Pontoon for Use as a Restaurant below and above deck' – refers only to the use of the barge as a restaurant; the plans and drawings show no change to the pontoon; and conditions NS04 and NS06 would make little sense unless the restaurant



use was confined to the Barge. There is nothing within either of these permissions, or any other permissions granted for the site, which authorised use of the pontoon as a restaurant.

**(III) The appeal under ground ‘d’ - That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.**

4.8 To consider whether a use is lawful as a result of the passage of time, it is important first to assess what the relevant planning unit. Changes to the planning unit, as well as changes of use within a planning unit, can affect the prospect of acquiring immunity from enforcement action.

4.9 In *Manchester City Council v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 1920, at para 16 Lewison LJ held:

*“Whether a change of use of land is ‘material’ is a question of fact and degree and is decided by reference to the planning unit. The identification of the appropriate planning unit is itself a planning judgment, although there are well settled principles applicable to the identification of the appropriate planning unit: see, for example Burdle v Secretary of State for the Environment [1972] 1 WLR 1207. The court has no power to intervene unless the decision maker has made an error of law.”*

In *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, Bridge J held at 1212D-1213B:

*“... First, whenever it is possible to recognise a single main purpose of the occupier’s use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. ...*

*But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.*

*Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit. To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree. There may indeed be an almost imperceptible change from one category to another. Thus, for example, activities initially incidental to the main use of an area of land may grow in scale to a point where they convert the single use to a composite use and produce a material change of use of the whole. Again, activities once properly regarded as incidental to another use or as part of a composite use may be so intensified in scale and physically concentrated in a recognisably separate area that they produce a new planning unit the use of which is materially changed. It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. ...”*

- 4.10 Contrary to comments made by the appellant, the Council considers that there have been changes to the planning unit over the relevant time periods, these being from when the Jesus College Barge was first moored at the pontoon in 1992, to when it was removed in 2015, and then its return in 2022 until the present day. These changes are outlined in the timetable of events above.
- 4.11 While the barge was moored to the pontoon, and the pontoon was used (in part) to provide an outside seating area for the restaurant, the barge and pontoon could be seen as a single planning unit in composite use (restaurant, mooring and storage), or as comprising several planning units. Whichever one it was, part of the pontoon was in a restaurant use in conjunction with the barge and to that extent at least the two constituted a single planning unit. Upon the barge being removed and the restaurant use of the pontoon ceasing in 2015, the boat mooring and storage uses encompassed areas of the pontoon which were formerly part of the restaurant use. This resulted in both a material changes of use of the pontoon<sup>1</sup> and a fundamental change in the

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<sup>1</sup> *Wipperman v Barking LBC* (1966) 17 P&CR 225

planning unit (see appendices 8 to 13). The return of the barge in 2022 resulted in a further material change of use of the pontoon, which the Council now consider to be in a restaurant use with some minor boat mooring and storage, as well as a change in the planning unit. Even if it is alleged by the appellant that the mooring, storage and restaurant uses are equal in terms of their intensity and use of the site, this mixed use would still constitute a material change of use from the use immediately before the barge returned.

- 4.12 The appellant's case under ground 'd' only refers to the use of the pontoon as a restaurant. There is evidence that from 1993 to 2015, part of the pontoon had some limited use as a restaurant seating area. This is evidenced by historic photos provided by the appellant to the Council in December 2022, which show a section of the pontoon being used for restaurant seating over this period. The use shown in these photos was generally confined to the area immediately adjacent to the barge, which accommodated a handful of tables and umbrellas. It is ultimately for the appellant to demonstrate whether or not this use had become lawful through their own submissions, which the Council will reserve the right to comment on at the relevant time.
- 4.13 Notwithstanding this, any previous lawful use of part of the pontoon as a restaurant seating area serving the barge is of little consequence, as the Council consider that the use of the pontoon as a restaurant seating area ceased in 2015, when the barge was removed. During the period between 2015 and 2022, aerial and other photographs show that no restaurant use of any kind took place on the pontoon (see appendices 8 to 13). Within this period the appellant sought permission from the Royal Borough of Kingston upon Thames (see appendix 3) to moor the Jesus College Barge within their borough and therefore had no intention of resuming the restaurant use at the pontoon in Richmond. At this time, the pontoon had also materially changed its use to a use solely for the mooring of boats and storage, and had ceased to be part of a larger planning unit comprising the pontoon and barge. The Council will provide evidence to support this in the form of dated historical photographs. All of these factors combined, resulted in the abandonment of any previous restaurant use of the pontoon between 2015 and 2022, followed by a material change of use of the pontoon when it started being used as a fully-equipped restaurant from 2022.

- 4.14 In conclusion, the current use of the pontoon involves a material change of use, which cannot be immune from enforcement action, as at the date the notice was issued it had only been in this use since the summer of 2022.

**(IV) The appeal under ground ‘a’ – That planning permission should be granted for what is alleged in the notice**

Whether the matters alleged in the notice constitute “inappropriate development”

- 4.15 Metropolitan Open Land (MOL) is given the same level of protection as Green Belt (see policy LP13 of the Richmond Local Plan and policy G3 of the London Plan). New buildings, and uses which do not preserve openness, within Metropolitan Open Land are deemed inappropriate development unless within one of the exceptions set out in the National Planning Policy Framework (NPPF). The exceptions for new buildings are listed at paragraph 154 and other development which may not be considered inappropriate is also listed at paragraph 155:

*154. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:*

- a) buildings for agriculture and forestry;*
  - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;*
  - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
  - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
  - e) limited infilling in villages;*
  - f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and*
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- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*

- not have a greater impact on the openness of the Green Belt than the existing development; or*
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.*

*155. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:*

- a) mineral extraction;*
- b) engineering operations;*
- c) local transport infrastructure which can demonstrate a requirement for Green Belt location;*
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;*
- e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and*
- f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order*

4.16 The appellant relies on the exception at para 154(b) of the NPPF (although its statement of case refers to the wrong paragraph number): “the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it”. However, the conversion of most of the pontoon to a fully equipped restaurant is not the provision of “appropriate facilities” for “outdoor recreation”. Nor does it preserve the openness of the MOL or accord with the purposes of including land within it.

4.17 In the May 2022 Gaucho Grill appeal decision (reference APP/L5810/W/21/3278905; included at Appendix 8), which related to an application for planning permission to use the pier 200 metres further along the towpath from the appeal site at Gaucho Grill as a temporary al fresco restaurant with associated paraphernalia (i.e. tables and covers etc) the Inspector concluded that the proposed use did not fall within any of the policy

exceptions to inappropriate development. There is no reason to take a different view of the development in the present appeal.

- 4.18 Inappropriate development is by definition harmful to MOL and should not be approved except in very special circumstances. The works subject to the notice constitute inappropriate development within the MOL. The onus is therefore on the appellant to demonstrate what/if any very special circumstances apply which clearly outweigh the harm caused by the inappropriate development.

Whether the matters alleged affect the openness and purposes of Metropolitan Open Land (MOL).

- 4.19 Paragraphs 142 and 143 of the NPPF state that:

*142. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.*

*143. Green Belt serves five purposes:*

- a) to check the unrestricted sprawl of large built-up areas;*
- b) to prevent neighbouring towns merging into one another;*
- c) to assist in safeguarding the countryside from encroachment;*
- d) to preserve the setting and special character of historic towns; and*
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*

Paragraphs 152 and 153 state:

*152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*

*153. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason*

*of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.*

- 4.20 In this case, the river corridor creates a distinct sense of openness which stands out within the tight urban grain either side of the river at Richmond and Twickenham. This is complemented spatially by Richmond Riverside which introduces an urban oasis of open space next to the river.
- 4.21 Openness is both a spatial and a visual concept. The Supreme Court grappled with this exception in *Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council* [2020] UKSC 3, and (at para 25) the findings of Sales LJ in *Turner* [2016] EWCA Civ 466 were not disputed: *“The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach suggested by [counsel]. The word ‘openness’ is open-textured and a number of factors are capable of being relevant... Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.”* The Planning Practice Guidance directs attention to the following factors (among others):
- openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;
  - the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and
  - the degree of activity likely to be generated, such as traffic generation.
- 4.22 The Council’s position is that the existing pontoon was an open structure, which immediately before the alterations took place housed only one small building. It was low level and of timber construction, it appeared as a fleeting structure within the river scape. The current pontoon, as altered, sits at a much higher level above the water and in relation to the adjacent tow path. It is of a two-storey construction, with the upper deck used for seating and the lower deck part used for seating and part used as a kitchen at the western end, with some additional storage of items at the eastern end, below deck. There are also fixed covers and heaters on the upper deck, increasing the

overall height and mass of the pontoon. Railings have been attached to the outer edge of the pontoon, on the upper level.

- 4.23 The cumulative result of these works is a larger structure, in terms of bulk and mass. The works have been undertaken to facilitate the use of the pontoon as a restaurant and have created a large, enclosed space. This increase in bulk and mass, as well as the creation of an enclosed space, are at odds with the previous open structure and are harmful to the openness of the MOL.
- 4.24 The as-altered pontoon conflicts with the purposes of MOL, by not preventing the unrestricted sprawl of large built-up areas, as it creates a large built form in the previous open river corridor and by not preserving the setting and special character of historic towns, as it detracts from that character of this setting, which is located in a Conservation Area and in close proximity to Listed Buildings, due to its unsympathetic design and use of incongruous materials.
- 4.25 In terms of the use of the pontoon as a restaurant, this use is fundamentally linked with the alterations to the pontoon. In addition, the restaurant use itself results in a far more concentrated use of the pontoon, which trades for more daytime hours than the previous boat uses would have. This use is supported by a large amount of restaurant paraphernalia i.e. seating, tables etc and artificial lighting, all of which have an urbanising effect on the MOL. This, along with the physical elements which facilitate that use, fail preserve the openness of MOL.
- 4.26 The Inspector's findings in the Gaucho Grill appeal referred to above are relevant to the present appeal because of the very similar circumstances, similar use, in close proximity to the appeal site, with similar land-use impacts and characteristics. In dismissing the appeal, the Inspector made the following comments in relation to the scheme's impact on MOL:

*7. Currently the pier is a mostly open structure that runs parallel with the adjacent towpath and opposite the restaurant. The proposal is to place tables and chairs along the pier along with some cooking equipment, a generator and waste system, amongst other things. Sunshades would be fixed above tables if required. Although temporary, as it is proposed for the summer months primarily, the use would result in a much more intensive use of the pier which would be occupied daily by the chairs and tables, for example. Although much would be removed when not in use, such as overnight, the use of the pier as an outdoor restaurant would be for many daytime hours and would appear much less open than currently.*



*8. As set out above, there are uses appropriate to the Metropolitan Open Land, but the proposal for an effective extension to the restaurant to provide for an outdoor eating/drinking area does not fall within the policy exceptions to inappropriate development, with the openness of the pier significantly eroded for a substantial part of the year by the furniture and associated facilities as proposed.*

*9. In not complying with the exceptions set out within policy LP13 or with Policy G3 of the London Plan, the scheme would consequently comprise inappropriate development. As such, an assessment as to whether very special circumstances would exist for the proposed development will be considered later in this decision letter.*

- 4.27 There are distinct similarities between the above appeal and the present. However, the current appeal scheme is for a permanent change of use, with permanent alterations to the pontoon which increase its bulk, mass and sense of enclosure. Combining all of these factors, the current appeal scheme represents a greater encroachment into the MOL than the more modest scheme referenced above (which was refused).
- 4.28 In summary, the alterations to the pontoon, by virtue of their siting, size, scale, mass and bulk, are harmful to the openness of the MOL and constitute inappropriate development, for which there are no very special circumstances to justify this harm. The use of the pontoon as a restaurant has an urbanising effect, which fails to preserve the openness of the MOL. As such, these developments do not comply with the National Planning Policy Framework, London Plan Policy G3, Local Plan Policy LP13 or Draft Local Plan Policy 34.

#### Impact on the river and a non-river related use

- 4.29 Local Plan Policy LP18 River Corridors states that:

*E. The Council will resist the loss of existing river-dependent and river-related uses that contribute to the special character of the River Thames, including river-related industry (B2) and locally important wharves, boat building sheds and boatyards and other riverside facilities such as slipways, docks, jetties, piers and stairs.*

*This will be achieved by:*

*1. resisting redevelopment of existing river-dependent or river-related industrial and business uses to non-river related employment uses or residential uses unless it can be demonstrated that no other river-dependent or river-related use is feasible or viable;*

*2. ensuring development on sites along the river is functionally related to the river and includes river dependent or river-related uses where possible, including gardens which are designed to embrace and enhance the river, and be sensitive to its ecology;*

*3. requiring an assessment of the effect of the proposed development on the operation of existing river dependent uses or riverside gardens on the site and their associated facilities on- and off-site; or requiring an assessment of the potential of the site for river-dependent uses and facilities if there are none existing;*

Local Plan Policy LP 19 Moorings and Floating Structures states that:

*A mooring or other floating structure will be supported if it complies with the following criteria:*

*1. it does not harm the character, openness and views of the river, by virtue of its design and height;*

*2. the proposed use is river-dependent or river-related;*

*3. there is no interference with the recreational use of the river, riverside and navigation; and*

*4. the proposal is of wider benefit to the community*

Draft Local Plan Policy 40 Rivers and River Corridors states:

*Developments alongside and adjacent to the River Thames should ensure that they establish a relationship with the river, maximise the benefits of its setting in terms of views and vistas. Buildings fronting the river should incorporate uses that enable local communities and the public to enjoy the riverside, especially at ground level in buildings fronting the river*

*...*

*The Council will resist the loss of existing river-dependent and river-related uses that contribute to the special character of the River Thames, including river-related industry (B2) and locally important wharves, boat building sheds and boatyards and other riverside facilities such as slipways, docks, jetties, piers and stairs*

Draft Local Plan Policy 41 Moorings and Floating Structures states that:

*A new mooring or other floating structure or development of an existing mooring will be supported*

*if it complies with the following criteria:*

*1. it does not harm the character, openness and views of the river, by virtue of its design and height;*

*2. protects and/or enhances the biodiversity of the river;*

*3. the proposed use is river-dependent or river-related;*

*4. there is no interference with the recreational use of the river, riverside and navigation; and*

*5. the proposal is of wider benefit to the community.*

- 4.30 The use of the pontoon as a restaurant is not river-dependent and results in a substantial reduction in the previous river-dependent use, which was for the mooring of leisure boats. There is no evidence to demonstrate that that use was not feasible or viable. The development also harms the character, openness and views of the river, by virtue of its design and height. Accordingly, the development does not comply with Local Plan Policies LP18 and LP19 and Draft Local Plan Policies 40 and 41. It also conflicts with London Plan policy SI 16(A), which seeks to protect and enhance waterway infrastructure.

Impact on the character of the local area

- 4.31 Paragraph 131 of the National Planning Policy Framework states that:

*The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.*

Local Plan Policy LP1 states that the following should be considered when assessing development proposals:

*compatibility with local character including the relationship to existing townscape, development patterns, views, local grain and frontages as well as scale, height, massing, density, landscaping, proportions, form, materials and detailing;*

Draft Local Plan Policy 28 Local Character and Design Quality states that all developments are to be of high architectural and urban design quality:

*Ensure the proposal is compatible with the local character, including the relationship to existing townscape, development patterns, views, local urban grain and frontages as well as scale, height, massing, density, landscaping, proportions, form, materials and detailing*

Draft Local Plan Policy 19 Managing the Impacts of Development on Surroundings states that:

*New proposals and extensions to existing uses should be of a type and size appropriate to their location, the hours of use proposed, the nature and character of the area*

- 4.32 The river and river frontage form the distinct character of this area and locality of the site. The riverside is generally well preserved, with the predominant use being for the mooring of boats. There are commercial uses which operate within the locality of the site, most of which are boat hire businesses, which is typical of this and other popular riverside areas within the borough. There is also river fronting restaurants and drinking establishments, though these are separated from the riverside by the towpath. Examples of these include the White Cross and Gauchos. River structures in the locality include smaller, fleeting pontoon structures, used for mooring boats. The River Thames Visitor Centre, located south of Richmond Bridge, has a larger pontoon, which is partially used for the consumption of ancillary food and drink sales. The area has a high architectural qualities, with many Listed Buildings including Richmond Bridge and many designated Buildings of Townscape Merit.
- 4.33 The pontoon at the appeal site is far larger than any other examples in the locality and it is also enclosed, which increases its overall bulk significantly and it is predominantly used as a restaurant. The covered seating has been constructed by using large, fixed umbrellas and the sides have been enclosed with a transparent plastic material. It is a poor quality construction and detracts from the character of the area, which is of predominantly smaller, fleeting and open structures, with river uses and river front buildings of high architectural quality. In summary, the pontoon appears as an incongruous structure and is not sympathetic to the character of the area. Accordingly, it does not comply with Local Plan Policy LP1, Draft Local Plan Policies 19 and 28 and the National Planning Policy Framework.

Impact on the setting of the Grade I listed Richmond Bridge, and the River Thames corridor.

- 4.34 The Planning (Listed Buildings and Conservation Areas) Act 1990 imposes certain statutory obligations relating to development affecting Listed Buildings and Conservation Areas. Section 66(1) requires that in considering whether to grant

planning permission for development which affects a listed building or its setting, the local planning authority or Secretary of State must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Case law has established that preserve means to cause no harm.

- 4.35 The National Planning Policy Framework advises (paragraph 195) that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 206 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where a proposal would lead to substantial harm, the policy tests set out in paragraph 207 apply and where development proposals would lead to less than substantial harm, the policy test in paragraph 208 applies: the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 4.36 Local Plan Policy LP3 states that the Council will require development to conserve and, where possible, take opportunities to make a positive contribution to, the historic environment of the borough. Development proposals likely to adversely affect the significance of heritage assets will be assessed against the requirement to seek to avoid harm and the justification for the proposal. The significance (including the settings) of the borough's designated heritage assets, encompassing Conservation Areas, listed buildings, Scheduled Monuments as well as the Registered Historic Parks and Gardens, will be conserved and enhanced through:

1. *[Giving] great weight to the conservation of the heritage asset when considering the impact of a proposed development on the significance of the asset.*

The policy also seeks to resist changes that could harm heritage assets unless it is demonstrated that:

2. *In the case of less than substantial harm to the significance of the heritage asset, that the public benefits, including securing the optimum viable use, outweigh that harm*

Policy LP3 also requires all proposals in Conservation Areas to preserve and, where possible, enhance the character or the appearance of the Conservation Area.

- 4.37 The character of the Richmond Riverside Conservation Area is summarised in the recently revised and adopted Conservation Area Appraisal (2022). It refers to the picturesque quality of the eastern side of the river, and states that the river is a unifying element in the character of the conservation area, in which there are great variations in townscape character within short distances. Long views are stressed: 'There is a significant amount of public realm along the river allowing for its enjoyment and long views across and along the embankment are key to its character and appearance'. The Richmond Riverside development dominates the view from Richmond Bridge. This dates from the 1980s but includes listed buildings. Any commercial element is set away from the river itself, and this aspect is important to the distinctiveness of the setting.
- 4.38 The character of the conservation area is very distinctive with the area of the appeal site and is typified by unimpeded views dominated by the riverside as a setting for numerous listed buildings and structures, and other heritage assets such as Buildings of Townscape Merit. This section of riverside is characterised by a remarkable succession of views to and from highly distinctive bridges: Richmond Lock> Twickenham Bridge> Richmond Railway Bridge> Richmond Bridge. All are listed structures and act as local landmarks. There are also many other important listed buildings facing the river in this area, including Grade I listed Asgill House and Trumpeters' Lodge.
- 4.39 The appeal site is situated at key point in this distinctive setting, where commercial uses are contained within the buildings which surround the Riverside area. Importantly, these commercial uses do not spread onto the river itself, allowing an open public space to the Riverside. This public space forms an important element of this part of the conservation area, allowing an experience of sanctuary and calm, with uninterrupted views of the river, most importantly, Richmond Bridge, which forms a dominant feature as one moves along the riverside path. It forms a contrast to the more

enclosed and commercial elements of Central Richmond to the north and acts as a well-used public open space to allow appreciation of the wider historic environment.

- 4.40 The presence of the Peggy Jean barge, due to its height and scale, already causes less than substantial harm to the character and appearance of the conservation area but it was permitted in 1992. The extension of the restaurant onto the pontoon causes additional harm. This additional harm constitutes less than substantial harm, but as set out in the NPPF, great weight and importance should still be given to this harm. This harm would derive from the loss of appreciation of the pontoon as a riverside feature which contributes to an understanding of the history and use of the river in this part of the conservation area, through the introduction of structures on it. The development greatly impacts on the experience of the open Richmond Riverside space, due to its height and additional bulk, intensifying the commercial use of the barge on to the river. It forms a dominant feature in various views from the open space, particularly towards Richmond Bridge and from the bridge towards the open space. The two storey structure is incongruous and out of place in terms of its height, materiality and poor design, with plastic covers on the river, where structures are minimal (being largely either landing stages or moored small boats). Its incongruity accentuates its dominance in this location. The less than substantial harm caused by the unauthorised development is not justified and there are no public benefits to outweigh this harm as required by the NPPF.
- 4.41 In the Gaucho Grill appeal referred to above concerning the use of the Richmond landing stage, on the south side of Richmond Bridge, for a restaurant venue, the Inspector concluded that the proposal would fail to preserve the character and appearance of the conservation area, and would to some extent erode the balance of the landscaped and open river setting in this part of Richmond, leading to a more commercial and developed setting. These conclusions would apply equally to the appeal scheme here, which is additionally in much closer proximity to the Grade I listed Richmond Bridge. The Bridge is a stone bridge, built in 1777 by James Paine and Kention Couse. Its significance lies in its architectural interest, forming a fine example of an early bridge, surviving in its original 18th century form with high quality and restrained architectural detailing. It is also of historic interest, forming the oldest bridge, surviving in its original form, over the Thames River within the Greater London area. As discussed above, the setting of the bridge is defined by the River, and the open spaces and riverside paths, particularly Richmond Riverside, which form a large open landscaped area which allows many uninterrupted views towards the bridge. This open

space ensures the bridge forms a key dominant and landmark feature and allows longer views where the bridge can be appreciated as part of a wider open landscape with other listed bridges further down the river.

- 4.42 The Peggy Jean barge causes less than substantial harm to the setting of the listed bridge due to its height and appearance, making it a more visually prominent feature on the otherwise open setting of the river. Fixtures and fittings associated with the restaurant, like parasols, are uncharacteristic features within the bridge's historic setting, where river related uses and modest structures have historically dominated. The barge interrupts views towards the bridge from various points, reducing one's appreciation of its prominence and historic significance. The intensification of the restaurant use with the addition of the two-storey structure on top of the pontoon increases the bulk and mass of the restaurant, causing further harm to the setting of the listed bridge. As set out above, this additional harm would not amount to substantial harm, but great weight and importance should still be given to it. The external materials, such as the plastic covers, and additional features like parasols add to this harm, detracting from one's appreciation of the grandeur and prominence of the listed bridge in views from the riverside. It also causes further harmful change to the historic riverside setting of the listed bridge and function of this part of the river. The harm will be most pertinent in views from the Thames Bank where the barge and the two-storey structure of the pontoon, together, are highly dominant due to their close proximity to the bridge itself. Unlike the Peggy Jean barge, the two-storey pontoon structure forms a new permanent addition to the river, which would alter the setting of the bridge both in historic character and important views where one appreciates its special architectural and historic interest. The additional harm caused by the two-storey structure is not justified or outweighed by any public benefits as required of the NPPF and thus it fails to accord with the statutory test in the Planning (Listed Buildings and Conservation Areas) Act 1990 or the requirements of national and local policy.

The environmental effects of the matters alleged in the notice, including air, noise and light pollution, and odours and fumes.

- 4.43 Local Plan Policy LP10 Local Environmental Impacts, Pollution and Land Contamination states that:

*The Council will seek to ensure that local environmental impacts of all development proposals do not lead to detrimental effects on the health, safety*



*and the amenity of existing and new users or occupiers of the development site, or the surrounding land. These potential impacts can include, but are not limited to, air pollution, noise and vibration, light pollution, odours and fumes, solar glare and solar dazzle as well as land contamination*

Draft Local Plan Policy 53 Local Environmental Impacts states that:

*The Council will seek to ensure that local environmental impacts of all development proposals do not lead to detrimental effects on the health, safety and the amenity of existing and new users or occupiers of the development site, or the surrounding land. These potential impacts can include, but are not limited to, air pollution, noise and vibration, light pollution, odours and fumes, solar glare and solar dazzle as well as land contamination*

- 4.44 The alterations to, and material change of use of, the pontoon have resulted in a restaurant adjacent to the Richmond Riverside and Richmond Bridge, which has the potential to affect the amenity of existing occupiers of the surrounding land. The Council understands the appellant will be preparing a lighting survey, which the Council will consider. The Council in turn will suggest that, in the event permission is granted, conditions are included to mitigate environmental impacts from the development so that it complies with Local Plan Policy LP10 or Draft Local Plan Policy 53.

Whether the harm to the MOL by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations

- 4.45 In the Council's view there is no policy support for the development enforced against. The pontoon is outside the designated town centre shown on the Local Plan policy map, and is within an area where the loss of existing river-dependent and river-related uses that contribute to the character of the River Thames is to be resisted. The development is inappropriate, harmful to the openness of the MOL, and harmful to the setting of Richmond Bridge and the character of the area. These harms are not outweighed by other considerations.

**(V) The appeal under ground 'f' – That the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections**

- 4.46 In accordance with section 173(4)(a) of The Town and Country Planning Act 1990, the notice requires the land to be restored to its condition before the breach of planning control occurred and for the unauthorised use of the pontoon to cease. The notice remedies the breach and is proportionate to the breach of planning control.
- 4.47 The appellant has not yet indicated what it would consider to be appropriate lesser measures and the Council therefore reserves the right to comment on them should they do so.

**(VI) The appeal under ground ‘g’ – That the time given to comply with the notice is too short.**

- 4.48 For an appeal to succeed under ground ‘g’, the onus is placed on the appellant to demonstrate that the works required by the enforcement notice could not practicably be carried out within the given timeframe. Councils should avoid unnecessarily long compliance periods without good reason in order to limit the harm caused by the breach and the perception of a precedent being set by the unauthorised works.
- 4.49 The time period for compliance with the notice is six months. This would allow the appellant the requisite time to serve notice on the tenant allowing them to vacate and thereafter carry out the works required by the notice. It should be noted that the appellant has known since August 2022 that the Council consider the alterations and use of the pontoon to be unacceptable, and it and the tenant have had ample time to find alternative sites (if needed). The tenant is also the occupier of the barge and therefore they do not necessarily need to find an alternative site, just restrict their restaurant activities to the barge.
- 4.50 The appellant’s reference to a compliance period of two years is excessive and unjustifiable. The suggestion that this would allow time to submit a planning application appears to be a delaying tactic, as the appellant could have submitted a planning application before the enforcement notice was served, and in any event the ground (a) appeal will determine the planning merits of the unauthorised development.
- 4.51 In summary, the appellant has not provided any reasons why they cannot practically comply with the notice within the prescribed time period. Their reasoning for a longer time period has not been justified.

### **Conclusion on the grounds of appeal**

For the reasons set out above, it is respectfully requested that the appeal be dismissed, and the enforcement notice upheld.

### **5. The terms of the enforcement notice**

5.1 The material change of use allegation in the notice is as follows:

*‘Without planning permission and within the last ten years, a material change of use of the pontoon into a restaurant’.*

5.2 The Council’s position was that following the alterations to the pontoon to convert it into a purpose-built restaurant and the subsequent use of the pontoon as a restaurant again, the breach of planning control could accurately be described as set out in the notice, as the only unauthorised use of the pontoon was the restaurant use.

5.3 Upon reflection, the Council considers that for the purposes of clarity, the allegation should have included the other uses of the pontoon which were taking place when the notice was issued. The Council suggests that the Inspector amends the allegation to:

*‘Without planning permission and within the last ten years, a material change of use of the pontoon to a mixed use, comprising restaurant, mooring of boats and ancillary storage’.*

5.4 In addition and also for the purposes of clarity, requirement 2. of the notice should be amended to the following:

*Permanently cease the unauthorised restaurant use of the pontoon.*

5.5 These changes would not widen the scope of the enforcement notice, but they would make it more accurate. It is evident from the appellant’s grounds of appeal that it understood the notice only to be targeting the restaurant use and not any other uses of the pontoon, and that will remain the position if these amendments are made.

Accordingly, these amendments would serve only to clarify the uses which were occurring on the pontoon when the notice was served and would cause no prejudice to the appellant.

Aaron Dawkins

**Senior Planning Enforcement Officer**