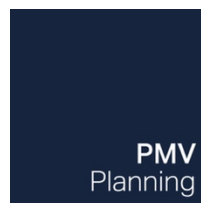


Pontoon at Richmond Riverside, Richmond upon Thames

Written Statement of Grounds of Appeal
against Enforcement Notice

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Richmond upon Thames**
Written Statement of Grounds of appeal
against Enforcement Notice

21 November 2023



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Appendices

Appendix 1

Copy of Enforcement Notice 22/0346/EN/EOP including
Red line plan

Appendix 2

Copy of planning permission dated 1985 Ref 85/0139.

Appendix 3

Copy of planning permission dated 1992 Ref
92/0659/FUL

Appendix 4

Copy of planning permission dated 1993 Ref
93/1734/FUL

Appendix 5

Extract of Richmond Local Plan and relevant policies

Appendix 6

Copy of Delegated Enforcement Report prepared by
Richmond upon Thames (RBRuT)

Appendix 7

Copy of Licence granted by Richmond Borough Council
on 25 April 2006

Appendix 8

Extract email from LPA confirming Barge original
permission is extant 92/0659/FUL

Appendix 9

Copy of receipt for £924 paid to RBRuT

1. Introduction

- 1.1. This appeal has been submitted on behalf of Turks Launches Ltd (the Appellant). It sets out the grounds of the appeal, pursuant to section 174 of the Town and Country Planning Act 1990, against an enforcement notice issued by Royal Borough of Richmond upon Thames (the Council) (LPA ref 22/0346/EN/EOP) relating to “*Pontoon and land adjacent to Richmond Pier, Riverside (the site)*”. It also sets out why this matter should be dealt with by a public inquiry procedure.
 - 1.2. The Enforcement Notice was issued by the Council on the 11 October 2023 and is due to come into effect on the 22 November 2023. A copy of the Enforcement Notice has been provided within **Appendix 1**.
 - 1.3. The description of the alleged breach is set out within the Notice as follows:
 - (i) Without planning permission and within the last four years, alterations to the existing pontoon, which have consisted of increasing its height with an additional lower deck and raised seating area, altering the external materials, erecting fixed covers with heaters, external railings, lower deck kitchen facilities and ancillary storage space.
 - (ii) Without planning permission and within the last ten years, a material change of use of the pontoon into a restaurant.
 - 1.4. The Notice requires the appellant to:
 1. Carry out all necessary remedial works to restore the pontoon to its condition before the breach of planning control;
 2. Permanently cease the unauthorised use of the pontoon; and
 3. Remove from the Land any waste associated with steps 1 and 2 above.
 - 1.5. The Notice sets out a time for compliance of within six months of the notice taking effect on 22 November 2023.
 - 1.6. An Inquiry is the necessary forum for deciding this appeal, as stated on the appeal forms and having regard to the statutory criteria. As set out below the Appellant has appealed on grounds (a),(b),(c),(d),(f),and (g).
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- 1.7. The Appellant will substantiate its contentions regarding the lawful status of the pontoon having regard to evidence of fact and legal submissions. There is a need for that evidence to be presented by Counsel, cross examination and for legal submissions to be made in respect of the history of the pontoon and its alleged material change of use.
 - 1.8. The Ground (d) evidence relates to the use of the site over a period of ten years and there will be a need for evidence to be presented from those with knowledge of the actual use of the site over time. Evidence will need to be given under oath and tested under cross examination. This appeal raises issues of law and fact including in respect of ground (d) and falls within the relevant statutory criteria for a Public Inquiry.
 - 1.9. Further to this, an inquiry will need to explore the statement within the LPA Enforcement delegated report that any accrued lawful use of the pontoon for the restaurant use was lost through abandonment. The Appellant will contend that either planning permission was granted for the Jesus College Barge under consent 92/0659/FUL and the application included the pontoon and hence that as there is no principle in planning law whereby a planning permission can be abandoned the use is lawful; or in the alternative that if the permission did not include the Pontoon then the accrued use of over 10 years by 2015 was not lost as a matter of fact by reason of abandonment. The resolution of these matters will require legal submissions and a testing of the evidence through cross examination under oath.
 - 1.10. Additional issues arise regarding the proper planning unit in this case which will need to be considered by way of legal submissions and factual evidence. It is the appellant's case that the use of the pontoon for a restaurant as well as a range of other boating related uses represents a composite use and a single planning unit; with the Barge by virtue of the above planning permission, or by reason of the acquisition of immunity from enforcement over a period of longer than 10 years.
 - 1.11. The Ground (a) evidence relates to the fact that planning permission should be granted and there will need to be evidence presented by expert witnesses on heritage, impact on the MOL and planning. This further supports the need for this appeal to be considered at Inquiry.
 - 1.12. It is anticipated that an Inquiry would run for three days, with a minimum of five witnesses called by the Appellant. The Appellant is seeking to agree dates with the Council and will update PINS as soon as the parties have identified convenient dates. Therefore the Inquiry route provides the appropriate procedure to consider this appeal based on the merits of the case, and the requirement to rely on evidence supplied by witnesses under oath in line with the expectations of the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, Statutory Instrument 2022, No 2685 and in view of the detailed legal submissions that are anticipated in support of grounds (b)
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(c) (d) and (f).

- 1.13. There is the possibility of the Appellant seeking a costs award against the Council.
- 1.14. This statement sets out the grounds of the appeal, why the Council was incorrect in its decision to serve the Enforcement Notice and why the appeal should be allowed.

2. Site Context

- 2.1. The appeal site comprises the pontoon at Richmond Riverside, Richmond upon Thames and consists of a single pontoon, accessed by a covered gangplank with security gate from the pedestrian riverside footpath. It is owned by the appellant with a lease from the Crown Estate and the Port of London Authority (PLA).
 - 2.2. The pontoon has been in its current location since (at least) 1985, identified within consent ref 85/0139. A copy of this decision notice has been provided at **Appendix 2**.
 - 2.3. As has been the case since the 1985 consent, the pontoon is also used for water based activities by Richmond Bridge Boat Club; London Cornish Gig Club; 14th Richmond Boating Scouts Centre; Skerries4Schools; Jubilant Trust, Richmond Freewaterman's Turnway Society; Thames Wherry Trust; Richmond Boat Hire; Richmond Paddleboards; London Paddle Boards; The German School; Bench Blisters; and Mark Edwards Richmond boat builders. The pontoon provides mooring and landing, storage and changing facilities for these operations as well as the provision for the restaurant.
 - 2.4. The Jesus College Barge is moored at the pontoon, along with some other leisure vessels. The barge and pontoon are used by a restaurant called "Peggy Jean Riverside", which specialises in Australian Cuisine. Peggy Jean Riverside has been operating at the site since July 2022. Planning permission for a restaurant operation was granted in 1992 [92/0659/FUL and attached in **Appendix 3**. As a result, the Barge and pontoon have been used for many years since 1992 as a restaurant, firstly as the Jesus College, H2O restaurant and more recently as Peggy Jean.
 - 2.5. The use of the Barge as a restaurant is not in dispute with the Council and neither is the canopied gangplank access granted under consent 93/1734/FUL.
 - 2.6. Equally, the location, length and width of the pontoon is not being contested by the Council. It continues to 'sit' between the two fixed piles in the Richmond Riverside. This is set out within services plans approved by application 93/1734/FUL. Plans are provided within **Appendix 4**.
 - 2.7. The site is within the setting of the Grade I listed Richmond Bridge and is located within the Richmond Riverside Conservation Area and Metropolitan Open Land. The Riverside at this location is included in the designated Main Town Centre Boundary. An extract from the Richmond Local Plan map showing these designations has been provided within **Appendix 5**.
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- 2.8. A site location plan has been provided within the Enforcement Notice attached at **Appendix 1**. The scope of the enforcement notice solely relates to the use of the pontoon and alleged increased built form and fixtures on the deck.

Relevant Planning History

- 2.9. The Council has included a planning history for the pontoon within the officer's enforcement delegated report. A copy of the report is provided within **Appendix 6**.

- 2.10. The key planning history dates refer to:

85/0139 – Engineering operations in connection with the location of a floating pontoon for use of hiring out motor boats and rowing skiffs. GRANTED

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

92/0659/FUL – Mooring of Jesus College Barge Against R J Turk Pontoon for Use as a Restaurant below and above deck. GRANTED

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

01/1079 – Proposed relaxation of condition no.5 of planning permission 92/0659/FUL GRANTED

Other relevant consents

- 2.11. Richmond Premises License from Richmond Council dated 25 April 2006 for H2O Floating Restaurant including marked areas of pontoon with tables and chairs (DWG 5676/M&E/01) (attached at **Appendix 7**).
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3. Grounds for appeal

3.1. The Enforcement Notice alleges that a breach of planning control has occurred:

(i) *“Without planning permission and within the last four years, alterations to the existing pontoon, which have consisted of increasing its height with an additional lower deck and raised seating area, altering the external materials, erecting fixed covers with heaters, external railings, lower deck kitchen facilities and ancillary storage space.*

(ii) *Without planning permission and within the last ten years, a material change of use of the pontoon into a restaurant.”*

3.2. There are seven grounds of appeal set out within Section 174 (2) of the Town and Country Planning Act 1990. This appeal is based on six of these grounds. Each of the grounds is argued without prejudice to the Appellants position on the other grounds.

3.3. The Appellant will provide detailed evidence and legal submissions in accordance with the appeal timetable. The Appellant also reserves its position to amend these grounds should it become necessary to do so.

3.4. It is the Appellant’s case that the Appeal should be allowed on the following grounds:

Ground (b)

Section 174 (“that the alleged breach of planning control has not occurred as a matter of fact”)

3.5. The council allege that a range of alterations to the pontoon have been undertaken to increase its height and creation of a lower deck and raised seating area and install fixtures/fittings (referring to tables, chairs, umbrellas, fixed covers with heaters, external railings, lower deck kitchen facilities and ancillary storage space. The Council also allege a material change of use of the pontoon to a restaurant use.

3.6. The length, width and location of the pontoon is not contested by the Council. The height is not materially different from that shown on the consented drawings attached to consent 85/0139 (see **Appendix 2**).

- 3.7. For more than 20 years, apart from when the barge and pontoon were taken off site for restoration repair, the pontoon has had restaurant tables, chairs and umbrellas positioned on it. This followed the grant of planning permission in 1992 for the Jesus College Barge to be used as a restaurant moored and accessed via the pontoon. Services were also shown in the permission 93/1734/FUL going through the pontoon to the Barge [Dwg no. 3/1329-04 A titled Services Plan dated August 1993 as shown in **Appendix 4**].
- 3.8. The Appellant will provide evidence and legal submissions in support of the position that the current operation of the pontoon is a lawful use, as the pontoon has a long and well established planning history of a restaurant use in association with the lawful use of the Barge. The lawful use of the Barge is established in correspondence received from the LPA in July 2021 (provided in **Appendix 8**). Indeed, the interlinked operation of the barge and pontoon create a single planning unit, given its role to provide access, services, e.g. electricity/foul water/water, sitting out areas and storage.

Ground (c)

Section 174 (2) (c) says “*that those matters (if they occurred) do not constitute a breach of planning control*”.

- 3.9. The Appellant challenges the enforcement notice on ground (c) that to the extent there may have been a change of use or operational development this is supported by the grant of planning permission or the changes to the pontoon are not material so as to require planning permission.
- 3.10. The pontoon is a part of the existing planning unit of the Jesus College Barge and benefits from planning permission for the restaurant operation. Indeed, the pontoon is well established as part of the operational requirements to facilitate the Jesus College Barge. All servicing and access is and has been taken from the pontoon.
- 3.11. 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.

Ground (d)

“*at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters*”

- 3.12. The Appellant will demonstrate that if the alleged material change of use has occurred then the breach is anyway immune from enforcement as the pontoon was in use for purposes within restaurant use has acquired immunity for a period of over 10 years.
- 3.13. Aside from the temporary periods to which the Jesus College Barge and pontoon were necessarily removed from the site for repairs, following damage due to a fire and partial
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sinking, the pontoon has been utilised to provide accommodation/services/access for the restaurant operation on the Barge for many years.

- 3.14. The LPA obtained the advice of KC Robin Green of Cornerstone Chambers on 15 June 2023 on these matters. This concluded that *“I consider the evidence before me does show, on balance of probabilities, that part of the pontoon was used as a sitting out area for more than 10 years before 2015”* (**See Appendix 6**). Further arguments will be put forward as part of the appeal that this established lawful use, was not lost between 2015 and 2022. The appellant will demonstrate that there is no issue of abandonment.
- 3.15. Following the issue of the enforcement notice, further evidence is being gathered to demonstrate the full planning operation over ten years. This will include evidence not limited to:
- Pontoon undergone a change of use to a restaurant:
 - Lease evidence
 - Customer evidence of use of the pontoon
 - Photographic evidence of the site and surrounding area

Ground (a)

Section 174 (2) (a) of the Town and Country Planning Act says “*that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged*”.

- 3.16. If the Inspector concludes that a material change of use has taken place/that the physical works do require planning permission, it is the Appellant’s case that planning permission should be granted for the development. The relevant planning application fee of £924 was paid to Richmond Borough Council ahead of this appeal submission. A copy of this receipt has been provided within **Appendix 9**.
- 3.17. Richmond is an identified ‘major centre’ within the London Plan. The riverside is within the Town Centre within the Richmond Local Plan (2018). The use as a restaurant is compliant with planning policy given its town centre location.
- 3.18. Equally, the pontoon is appropriate in this river front location and associated with the lawful use of the barge. And it is a river related use ie related to the lawful use of the barge.
- 3.19. London Plan policy G3 Metropolitan Open Land affords the site the same level of protection as Green Belt. NPPF (2023) Para 147 refers to *‘inappropriate development, by definition, harmful to the Green Belt and should not be approved except in very special circumstances’*.
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- 3.20. NPPF Para 149 (b) sets out that exceptions within the Green Belt would be provide appropriate facilities outdoor recreation, as long as it preserves the openness of the Green Belt. The use of the pontoon is therefore not inappropriate given its association with the barge operation.
- 3.21. Richmond Local Plan Policy LP13 sets out the approach to MOL. The site is also identified as a River Corridor (LP 18). This promotes riverside development within the Thames Policy Area should ensure it promotes the river, maximise the setting, incorporates uses that enable local communities and the public to enjoy the riverside.
- 3.22. The appeal site context is urban in nature and character, within an identified town centre. The use is consistent with Policy LP25 as this shows this location as appropriate for commercial development to attract people to the Borough. It is the location of a thriving major centre with shops, employment, leisure and tourism, cultural and social facilities.
- 3.23. The 'river bank' steps up to the commercial building facades, all set within the town centre. The appeal will explore the impact of the appeal site on openness.

London Plan Policy G3, Local Plan Policy LP13 on MOL and Draft Local Plan Policy 34 on Green and Blue Infrastructure (Strategic Policy)

- 3.24. In relation to RfR b, and in addition to the above, evidence will be submitted to demonstrate that:
- the siting of the pontoon remains unaltered;
 - the length and width of the pontoon has not been altered;
 - the pontoon alterations, which are the subject of this appeal in terms of scale, mass and bulk, do not materially alter the sense of openness to this part of the MOL; and
 - there will be no physical change to the network of blue and green infrastructure with the Appeal Scheme retained.
- 3.25. Whilst Green Belt and MOL are both spatial planning designations, the visual dimension and perception of 'openness' is a key consideration. In addition to the MOL policies, Local Plan Policy LP13 also refers to character, openness and visual impact, which are matters raised separately in RfR c and e. These matters will therefore be assessed separately and then combined to assess the overall landscape and visual effect on this part of the MOL.
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Local Character

Local Plan Policy L1 and Draft Local Plan Policy on Local Character and Design Quality and Draft Local Plan Policy 19 on Managing impacts

3.26. In relation to RfR c, evidence will be submitted to demonstrate:

- an understanding of the character and appearance of the local area within which the pontoon sits, and the Appeal Site's relationship with that existing context in relation to published documents (the Thames Landscape Strategy, 2012 and the Urban Design Study, 2021,), alongside any supplementary / supporting evidence;
- in particular, an assessment of the Appeal Scheme relative to the existing townscape, development patterns, views (relative to those identified on the Local Plan Policies Map and the Thames Landscape Strategy, 2012), local urban grain and frontage, scale, height, massing, density, landscaping, proportions, form, materials, detailing and movement patterns, permeability and street widths;
- that again, the pontoon is no larger than that which existed prior to the Appeal Scheme;
- the above deck elements are not a continuous solid form.

Openness and Character of the Views of the River

London Plan Policy LP18 and Draft Local Plan Policies 40 on Rivers / River Corridors, LP19 and Draft Local Plan Policy 41 on Moorings and Floating Structures

3.27. In relation to RfR e, evidence will be submitted to demonstrate:

- As per RfR c, an understanding of the character and appearance of the River Thames Corridor within which the Appeal Site sits, and the Appeal Site's relationship with that existing context in relation to published documents (the Thames Landscape Strategy, 2012 and the Urban Design Study, 2021), alongside any supplementary / supporting evidence;
 - that the pontoon does not materially harm the views or vistas identified on the Local Plan Proposals Map or those identified in the Thames Landscape Strategy, 2012;
 - that the pontoon does not alter public access alongside or adjacent to the River Thames and the riverside walk; and
 - does not affect the river related uses associated with the pontoon.
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Impacts: Light pollution

Local Plan Policy LP10 and Draft Local Plan Policy 53 Local Environmental Impacts, Pollution and Land Contamination

- 3.28. Evidence will be presented in relation to the existing night-time character of the local area, a description of the lighting of the Appeal Site and an assessment of effect on night-time character.

Heritage

- 3.29. It will be demonstrated that the alleged alterations to the pontoon causes less than substantial harm to the heritage assets of the Grade I listed Richmond Bridge and the wider Conservation Area setting in line with LP3, LP5 and that such harm is outweighed by public benefits.
- 3.30. To reiterate the pontoon itself is lawful and is not the issue at the heart of this appeal. However, the elements on the pontoon are to be assessed as to the level of harm which may be caused by each element and weighed against the public benefit (see below).
- 3.31. However, given the level of harm which is identified then there is scope within the submitted application for the LPA to consider a lesser scheme (e.g. the reduction of tables, umbrellas, the plastic sides, or alternative style/colour style/materiality).

Environmental impacts and amenity

- 3.32. Given the town centre location and distance from any residential receptors, the proposed development will not lead to any harmful amenity or environmental impacts to the development site or surrounding area in line with LP10.

Public benefits and VSC

- 3.33. Evidence will be presented in relation to the public benefits of the proposals and very special circumstances (VSC) in regard to the use of the restaurant and associated economic benefits to facilitate local employment opportunities, promoting an active frontage and footfall to this part of the town centre and ultimately supporting the vitality and vibrancy of the town centre for local residents and visitor economy.
- 3.34. Subject to the outcome of heritage assessment, permission should be granted based on the public benefits arising. In the event that the Inspector considers there to be a lack of public benefit to outweigh specific elements of harm, conditions are suggested to ensure any such elements are amended or removed from the scheme.
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Public safety

- 3.35. Some elements of the proposals such as the railings are required under Health and Safety operational requirements.

Ground f Section 174 (2) (f)

“the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.”

- 3.36. The principles of expediency and/or proportionality have not been applied in the drawing up of the requirements of the Notice.
- 3.37. The appellant will set out some suggested amendments to the unauthorised works that will address any harm arising from the use or operational development.

Ground g Section 174 (2) (g)

“that any period specified in the notice in accordance with section 174 (9) falls short of what should reasonably be allowed.”

- 3.38. The requirement to cease this considerable operation within six months is unreasonable.
- 3.39. Alternative accommodation for the restaurant operation will need to be identified, and the lease with the current restaurant operation will need to be terminated in line with its legal clauses.
- 3.40. If the Enforcement Notice is upheld, it is considered that a period of at least 2 years, for the appellant to make a planning application to Royal Borough of Richmond upon Thames (RBRuT) would be required for compliance.
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