



## Appeal Decision

Inquiry held on 9, 10 and 11 April and 7 May 2024

Site visits made on 8 and 12 April 2024

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20/05/2024

---

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

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("**the Act**"). The appeal is made by Mr Richard Turk, Turks Launches Limited against an enforcement notice issued by the Council of the London Borough of Richmond upon Thames.
- The notice, numbered 22/0346/EN/EOP, was issued on 11 October 2023.
- The breach of planning control as alleged in the notice is:
  - (i) Without planning permission and within the last 4 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; and
  - (ii) Without planning permission and within the last 10 years, a material change of use of the pontoon into a restaurant.
- The requirements of the notice are:
  - (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 carrying out steps (1) and (2) above.
- The period for compliance with the requirements is: Within 6 months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

---

### Application for Costs

1. An application for costs was made by Mr Richard Turk, Turks Launches Limited against the Council of the London Borough of Richmond upon Thames. This application is the subject of a separate Decision.

### Preliminary Matters

2. The Inquiry sat on 4 days, 3 in person with a virtual session on the final day. All evidence on grounds (b), (c) and (d) was given on affirmation.
3. In this decision, "**umbrellas**" are the large canopies incorporating heaters erected over dining areas on the pontoon in the period leading up to the

issue of the notice and “parasols” are the flimsier structures in historic photographs.

The appeal on ground (b)

*The alleged material change of use (MCU)*

4. The restaurant using the pontoon also occupies the Jesus College Barge (“the JCB”) moored to it and the use was taking place on both when the notice was issued. The appellant disputes that a MCU of the pontoon into a restaurant has occurred as a matter of fact. It is agreed that the pre-existing river-related use of the pontoon, comprising mooring of vessels other than the JCB, and ancillary storage, has continued alongside the restaurant use. The Council therefore suggests the allegation should be corrected to refer to a mixed use of the pontoon comprising restaurant, mooring of boats and ancillary storage.
5. Restaurant use and river-related use both occupy the pontoon and share the below deck storage area at the upstream (southern) end. However, there is scant evidence of any physical or functional connection between the restaurant use and the mooring of any vessels (other than the JCB) and storage ancillary to the mooring of those vessels. The fact that the JCB is a vessel moored at the pontoon does not alter that. It is, however, necessary to cross a part of the pontoon that also serves as circulation space for the restaurant to reach the store area associated with river-related uses and any vessel moored at the pontoon. It may be debatable whether the act of passage can change the use of land, but if it did, that part of the pontoon would be in a mixed use, being crossed by staff and customers of the restaurant and by river-related users.
6. River-related users must also pass through a restaurant seating area on the upstream raised section. The storage area below that section is used by the restaurant and river-related users.
7. Services for the restaurant use of the JCB, including electricity and water, have always been run through the pontoon and effluent has always been discharged to waste tanks that were already in the pontoon. I do not find **those arrangements to have, of themselves, altered the pontoon’s planning status**. To my mind, it is like the supply of services and discharge of waste from a building, via infrastructure located in adjacent roads or other land.
8. As drafted, the notice does not accurately describe how the pontoon was being used when it was issued and does not reflect statements made in the report that informed the decision to issue it. This had recorded that “The new use of the pontoon is as restaurant seating with some secondary use for the mooring of leisure boats and storage below deck.” Correcting the allegation as the Council suggests would resolve the misdescription.
9. Section 176(1) of the Act allows that any defect, error or misdescription in a notice may be corrected at appeal provided that would not cause injustice to the appellant or the Council. As the correction is suggested by the Council, I only need **to consider this from the appellant’s perspective**.
10. The appellant considers that correcting the allegation would defeat his appeal on ground (b) in respect of the alleged MCU, causing injustice. I do not agree. If a notice misdescribes the breach that occurred, then what it

alleges cannot have happened as a matter of fact, allowing success on ground (b).

11. The notice should therefore either be corrected or, if the correction would cause injustice, quashed. If there is success on ground (b), an appellant cannot be prejudiced in respect of the appeal on that ground. On the evidence, I am satisfied that the suggested correction need not make the notice more onerous. That is provided it were accompanied by a variation of requirement (2) to confirm that only the unauthorised restaurant use should cease, as the Council also suggests. This can be addressed in the appeal on ground (f) and, subject to that, there would be no prejudice to the remaining grounds of appeal.

#### *The alleged OD*

12. The main body of the pontoon had been increased in height to accommodate a restaurant kitchen and cold store at the downstream end and further restaurant storage and river-related storage at the upstream end. Safety railings had been installed on top of both raised sections, enclosing dining areas, and in the middle section providing shared access and circulation space. Demountable umbrellas had been installed in the 2 dining areas when the notice was issued, set into fixed bases.
13. The appellant considers the railings to be of limited significance because they are not solid. Nevertheless, they are an integral part of the pontoon, which has been increased in height as a matter of fact. The removal of 2 umbrellas and the side panels around the seating areas and the lowered height of the remaining umbrellas since the notice was issued have no effect on its accuracy in terms of the alleged OD.

#### *Conclusion on ground (b)*

14. For the reasons given, the appeal on ground (b) succeeds insofar as it relates to the description of the MCU, and the notice will be corrected.

#### *The appeal on ground (c)*

15. An appeal may succeed on this ground if an appellant can show that one or more of the matters alleged in the notice does not constitute a breach of planning control. This could be because it is not development or does not require planning permission. This ground of appeal is brought in respect of the alleged MCU.
16. The siting of the pontoon followed a decision made in 1985<sup>1</sup> for “Engineering operations in connection with the location of a floating pontoon for use of hiring out motor boats and rowing skiffs.” This did not permit restaurant use and the subsequent introduction of such a use, whether as the sole use of the pontoon or as part of a new mixed use, is development requiring planning permission.
17. The appellant contends that a planning permission granted in 1992<sup>2</sup> allowed restaurant use of the pontoon. A permission that is clear, unambiguous, and valid on its face should be interpreted by reference to that permission itself, including any conditions and the express reasons for those conditions.

---

<sup>1</sup> 85/139, granted 22 May 1985 (“the 1985 permission”).

<sup>2</sup> 92/0659/FUL, granted 25 August 1992 (“the 1992 permission”).

However, if there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material, including the application, to resolve that ambiguity.

18. The 1992 permission **related to "Turks Bridge Pier, Richmond Bridge, Richmond" and** was for "mooring of Jesus College Barge against R J Turk Pontoon for use as a restaurant below and above deck". On face value, and with no evidence that the pontoon had any below deck space suitable and intended for restaurant use, the wording suggests the permission was for the JCB alone.
19. It was clearly stated in the report to the 20 August 1992 meeting of the **Council's** Planning Sub-Committee ("**the report**") that customers and staff going to or from the JCB would cross the pontoon. Providing access to a vessel moored to it, such as the JCB, is a basic function of a pontoon, regardless of how any such vessel is used. In that sense, the relationship between the JCB and the pontoon is like that between a building and the road serving it, particularly if the access route serves more than one user. I am therefore not persuaded that a change of use of the JCB, or any other vessel moored to the pontoon, would also change the use of the pontoon. Following that logic, it could only occur if the relationship between the vessel and the pontoon involved the latter providing something more than access or, as noted above, routing of services.
20. An informative within the decision notice, IF44, confirms that it related to drawings 3/1329.01 (location plan), 3/1392/02A (proposed plan and boat elevations) and 3/1329/03 (perspective views) and photographs of the JCB. The photographs have not been presented but the 3 drawings have. The JCB is annotated "**restaurant" and "galley"** and the pontoon is annotated "**existing pontoon"** on drawing 3/13298/02A. It also shows other boats moored at the pontoon. While that detail may be illustrative, it is not consistent with an application to change the use of the pontoon to a restaurant, the only proposed use stated in the application. Nothing on that drawing suggests that restaurant use of the pontoon was proposed, either as the sole use or as part of a mixed use.
21. Drawing 3/1329/03 shows the JCB moored at the pontoon, with a canopy over the deck. The pontoon is a utilitarian structure in that drawing, with no indication or illustration of a proposed restaurant use.
22. **Condition NS04 states, "This permission shall enure for the benefit of the Jesus College Barge only and shall not enure for the benefit of any other vessel unless the Local Planning Authority in writing otherwise agrees."** Nothing in that wording suggests the permission applied to anything other than the JCB.
23. Condition NS06 **was imposed to protect "the amenities of the locality"** and stated, "**The** maximum number of covers provided on the barge shall not exceed 70." **The** omission of any reference to the pontoon in this condition further suggests that restaurant use was only proposed, and thus only permitted, on the JCB. An alternative interpretation would only make sense if the Council had been concerned that a large restaurant might harm amenity if it was confined to the JCB, but not if it also occurred on the pontoon. I have been given no reason to believe that.

24. The only available copy of the location plan, drawing 3/1329.01, is in black and white. **The appellant's planning witness**, Philip Villars, believes the solid lines around the JCB, the pontoon and the gangway on that plan would all have been edged red. That would mean all 3 were part of the application site and restaurant use of them all would have been permitted. Mr Villars noted that the line between the JCB and the pontoon is not double width, as might be expected if a red line and a blue line (the latter denoting other land in the same ownership) had been drawn alongside each other.
25. There are similar solid lines around 10, 11 and 12 Bridge Street, formerly known as Tower House. Mr Villars considers that these would also have been edged red. The report described the role of Tower House, **stating** "The restaurant is to be used in conjunction with the River Terrace Restaurant and one of the under terrace boat stores will be used to gain access to the existing River Terrace Restaurant basement for servicing purposes."
26. There is a solid line, like that between the JCB and the pontoon, between most of Tower House and where an under-terrace boat store is. The extract from the report quoted above indicates the proposal entailed some change in how the boat store would be used, providing some support to **Mr Villars' view** about the involvement of Tower House. However, there was no reason to seek permission for restaurant use of the main part of Tower House, which was already in that use. That is apparent from condition NS05, which stated, **"The restaurant hereby approved shall not be used other than as part of the River Terrace Restaurant situated in Tower House."** Furthermore, if the proposal had related to all of Tower House, that should have been evident from the site address given in the decision notice.
27. Accordingly, I am not persuaded that Tower House was part of the application site, although the small part of it comprising the under-terrace boat store may have been. That is suggested in the section of the report which describes how the application had been amended, stating, **"As** originally submitted, part of the under terrace boat store was to be used for storage for the restaurant. As this was not favoured, the application was amended to provide access only through the boat store to the existing restaurant store."
28. It therefore seems more likely that only the boat store was edged red, with the majority of Tower House edged blue. If so, and noting the width of the line separating the under-terrace boat store from the remainder of Tower House, it is equally possible that the JCB and the pontoon were edged in red and blue respectively. Mr Villars accepted in his oral evidence that some of the lines on the location plan around the JCB, the pontoon and Tower House could have been blue, although he had deduced otherwise.
29. If the application for the 1992 permission had proposed to introduce restaurant use to the pontoon, it would have led to consideration of whether and how that might affect the existing river-related use. The report did not address that directly. The closest it got was a comment from the River Thames Society that mooring the JCB (not any proposed use of the pontoon) would restrict river traffic and prevent access to the river by other users. The report dealt with this by noting the pontoon was private and used for hire boats. It also confirmed the **applicant's** view that the siting of the JCB would not affect the cruising business operating from the pontoon in terms of

volume or function. That statement made no mention of the effect of any proposed restaurant use of the pontoon.

30. For these reasons it has not been demonstrated, on the balance of probability, that the 1992 permission permitted restaurant use of the pontoon and the appeal on ground (c) must fail.

The appeal on ground (d)

31. For an appeal on this ground to succeed, it must be shown that it was too late for enforcement action to be taken on the date the notice was issued. It would therefore need to be demonstrated that the change of use of the pontoon to a mixed use comprising restaurant, mooring of boats and ancillary storage was instituted on or before 11 October 2013, 10 years before the notice was issued. It would also need to be demonstrated that, once instituted, the use continued without significant interruption for a period of not less than 10 years. The burden of proof falls to the appellant and the matters must be demonstrated on the balance of probability.
32. If that can be demonstrated, it will be necessary to consider 2 other matters. First, whether there was a change in the planning unit when the JCB was taken away in May 2016, and second, whether restaurant use of the pontoon was abandoned in the 7-year period that followed the partial sinking of the JCB in April 2015.
33. The appellant contends that the mixed use is one planning unit and that the JCB, the pontoon and the gangplank have been a single, mixed use planning unit for many years, not changing materially since 1992.
34. A **"Lease of Jesus Barge"** dated 30 November 1993 allowed restaurant use of the JCB and gave an exclusive right to use part of the pontoon edged blue on the plan accompanying the lease. Only a black and white copy of the plan has been produced, but it appears the blue area was half the width of the pontoon where it abutted the JCB, **approximately a quarter of the pontoon's** total surface. The lease does not state what the exclusive right entailed, but the wording of the second schedule, which refers to use of the JCB but not the pontoon, suggests it may not have been the same as the use of the JCB.
35. A licence dated 20 September 1995 assigned the lease to Grosvenor Inns and Taverns Limited (**"Grosvenor"**). The title page of the licence referred to **"Lease of the Jesus Barge and adjoining pontoon"**, whereas the title page of the lease had only referred to the JCB. A letter from solicitors acting for Grosvenor, dated 7 March 1996, enquired about placing restaurant tables and chairs on another part of the pontoon. While the letter referred to the exclusive right to use part of the pontoon in the lease, it falls short of stating that part of the pontoon was in restaurant use. The reply to that letter indicated that Grosvenor had already occupied some of the additional area **"on a casual basis" but this** was not explained any further.
36. There are several photographs showing the pontoon with the JCB moored alongside from 1993 onward in the evidence of Richard Turk. What appears to be a white plastic chair can be seen on the pontoon in Image 1, taken in 1993. What may be a trestle table, or a picnic bench can also be seen, but its precise identity and purpose are unclear. Several white plastic chairs can be seen on the pontoon, adjacent to the JCB, in Image 2, taken in 1997, but

the trestle table or picnic table from Image 1 is not apparent. Mr Turk states **that Image 2 shows tables and chairs, in his words "associated with Jesus College Operation" but the resolution is too poor to be confident that it shows tables as well as chairs.** No tables or chairs appear to be in use in either photograph.

37. Image 3, taken circa 1993, shows gas cylinders at the downstream end of the pontoon but no tables or chairs are apparent. Tables and chairs cannot be discerned on the pontoon in Image 4, taken circa 1997. Mr Turk states that Image 5, taken circa 1999, shows tables and chairs on the pontoon. The resolution of this photograph is also poor, although it does appear to show several people on the pontoon, some apparently seated. It is not clear exactly when this photograph was taken but it seems to feature a relatively large number of people on the riverside path and on small boats, possibly assembled to watch an event on the river.
38. The foregoing photographic evidence cannot demonstrate whether any person who was on the pontoon on any occasion was dining or engaged in a restaurant business there. A photograph provided by a local resident, Mike Adams, taken on 1 September 2002, shows a fence running along the centre of the pontoon downstream of the gangplank. The part on one side of the fence appears to be in river-related use while the other, adjacent to the JCB, has at least one parasol that is similar in design and colour to others on the JCB. This suggests the restaurant had control of that part of the pontoon, consistent with the exclusive right in the 1993 lease. However, and despite the parasols, the photograph cannot confirm that restaurant use was taking place on the pontoon. Even if it had been taking place, the photograph cannot assist with whether it was a continuous activity.
39. Mr Turk affirmed that H<sub>2</sub>O restaurant had signed a lease in July 2002 but a copy of that lease, or any premises licence issued or in force at that time has not been produced. The earliest available premises licence is dated 25 April 2006, for H<sub>2</sub>O restaurant. It refers to drawing 3/1392/02, the proposed plans and boat elevations from the 1992 permission, and one of the plans provided with this licence appears to be an extract from that drawing. The JCB and gangplank are edged solid red on it and the part of the pontoon adjacent to the JCB is edged with a broken red line. The broken red line extends further away from the JCB than the area of the 1993 lease, which appears to be edged blue underneath. The rest of the pontoon is edged green. The licence does not explain these markings.
40. A second plan produced with the licence shows 13 circles, each representing a table and chairs, on a slightly different part of the pontoon from what is edged with a broken red line on the first plan. Nothing within the licence indicates whether this was an existing or proposed layout, so the most it can confirm is that any tables and chairs on that part of the pontoon after 25 April 2006 would have been licenced. Nevertheless, it is the first indication of an ongoing formal use of part of the pontoon for restaurant purposes.
41. **Mr Turk's Image 6, taken in 2007, when H<sub>2</sub>O was operating,** shows 2 parasols in the part of the pontoon marked on the plan accompanying the premises licence, one raised with people seated below it. The fabric of these parasols matches others on the JCB, indicating common use of the JCB and the pontoon at that time. While it is not on the scale that had been shown on

**the plan accompanying the previous year's licence**, it does seem to be a realisation of the restaurant use that had been illustrated in it.

42. A lease dated 25 September 2009, stated to be of “**the Jesus Barge**”, conferred the tenant an exclusive right to use part of the pontoon in connection with the JCB. The plan attached to the lease confirms that this part of the pontoon was the same as in the 1993 lease, not the larger area of the 2006 licence. As with the 1993 lease, it is not made clear what the exclusive rights were. Similarly, the first clause of the third schedule<sup>3</sup> does not mention the pontoon, suggesting that the exclusive rights over it may not have been the same as the use of the JCB permitted by the lease.
43. Image 7, taken in 2009, shows several people on the pontoon, some standing, others seated. While the resolution of this photograph is poor, it appears to show people seated and standing on the JCB as well. Like Image 5, there are many people on the riverside path and on a slipway. A river race is taking place in the foreground, so it may be that people on the pontoon were spectators rather than diners.
44. The resolution of Image 8, taken from Richmond Bridge in 2011, is better than some of the earlier ones. This and the angle of the shot make it possible to identify a seating area on the pontoon alongside the JCB. This area is contained, on the side furthest from the JCB, by what appears to be a timber structure surmounted by greenery. The structure and the seating area are also visible in Image 9, taken in 2012 and appear to be the area of exclusive rights identified in the 2009 lease. It is possible to identify what may be the same timber structure, with a seating area behind it, in earlier photographs from circa 1999 (Image 5), 1999 and September 2010 (Image 10). However, no evidence of a premises licence relating to the pontoon prior to the one issued in 2006 has been presented.
45. A shed was built at the downstream end of the pontoon around 2009 to provide space for restaurant food preparation and storage. It can be seen in **Mr Turk's** Images 7 – 11, 14 and 15, taken between then and 2021.
46. On the foregoing evidence, the 1993 lease and its 1995 assignment do not demonstrate restaurant use of the pontoon at those times. While there is some evidence of tables and chairs having been placed on the pontoon in the 1990s and early years of this century, evidence that they may have been used for restaurant purposes or on a continual basis is thin.
47. In contrast, and on the balance of probability, the 2006 licence and Image 6, taken the following year, demonstrate intended and actual restaurant use of part of the pontoon. However, the probability of continuous restaurant use of the pontoon (rather than exclusive rights over part of it) pre-dating the 2006 licence has not been similarly demonstrated. Consequently, as restaurant use ceased in April 2015, 10 years of such use of the pontoon without significant interruption may not have been achieved.
48. The Council concedes that the pontoon was used for siting of tables and chairs associated with the restaurant up to 2015 but it considers that was as an ancillary sitting out area serving the restaurant on the JCB. In its view, all primary facilities were located on the JCB. It is not clear how the sitting out

---

<sup>3</sup> “To use and occupy the Jesus Barge for a use falling within Class A3 of the Town and Country Planning (Use Classes) Order 1987 only.”



area could be distinguished from the restaurant it was associated with in land use terms. In any event, **the Council's planning** enforcement witness, Aaron Dawkins, accepted in giving evidence that this sitting out area had become lawful, meaning immune from enforcement action, by 2015.

49. There was, however, a significant change in circumstances in April 2015, when the JCB partly sank, and all restaurant use ceased. The JCB was taken away for repairs in May 2016 and did not return for nearly 6 years. Restaurant use recommenced on the JCB and pontoon in July 2022.
50. The pontoon was only used for the mooring of boats and ancillary storage from April 2015 until July 2021, when it was taken away for repairs. The Council contends this was a different, smaller, planning unit and that the return of the JCB and the resumption of restaurant use in 2002 caused a new planning unit to be formed.
51. The High Court held in the case of *Burdle*<sup>4</sup> that a single unit of occupation may include 2 or more physically separate and distinct areas and that they may be 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.
52. A part of the pontoon solely in restaurant use may be identified from the 2006 licence and in subsequent photographs, although there may have been some fluctuation in the extent of this area over the years. It would follow that other parts of the pontoon, particularly the upstream end and the outer (river) side were solely in river-related use at those times although that is not stated in the evidence before me. At the same time, there would have been common use of the part of the pontoon nearest the gangplank for access in connection with both uses.
53. The post-2022 arrangements continue the common use of the part closest to the gangplank. They also include shared use of the upstream storage area and the passage of river-related users through the dining area above it.
54. In *Burdle*, Bridge J said, **"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."** The circumstances between the removal of the JCB in 2016 and its return in 2022 match this. During that period, the pontoon and gangplank were the only areas present and available for use and thus constituted a smaller planning unit. The only activities taking place on them during that time were river-related, with no restaurant use at all. That was clearly different, both physically and functionally, from any previous mixed use of the larger planning unit of the JCB, the pontoon and the gangplank.
55. The courts have held that whether a use has been abandoned should be assessed by reference to 4 criteria. These are:
  - The physical condition of the property.
  - The length of time for which (and extent to which) it has not been used.

---

<sup>4</sup> *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207.

- Whether it has been used for any other purposes.
  - **The owner's intentions** for the use of the property.
56. The JCB was absent for some 6 years between May 2016 and early 2022. Evidence from that period shows increased river-related storage across the pontoon. Evidence from Mark Edwards MBE, who has used the pontoon since 1992, confirms that this included a paddle board hire business that now operates from premises elsewhere. He also stated that the London Cornish Pilot Gig Club began to moor where the JCB had been.
57. **Mr Turk's Image 11** confirms that a storage building had been erected toward the downstream end of the pontoon by 2018.<sup>5</sup> This partly occupied the areas of exclusive rights for restaurant operators in the 1993 and 2009 leases. The same image indicates that some general mooring took place where the JCB had been. The physical condition of the pontoon was therefore different, and it was solely in river-related use. After the JCB was taken away in May 2016, the planning unit shrank to only comprise the pontoon and gangplank. There was no restaurant use for over 7 years.
58. This was not the only time that there had been a break in restaurant use. The JCB also sank in 1996 but was repaired relatively quickly. Mr Turk affirmed that this had resulted in a hiatus in restaurant activity of 6 to 12 months.
59. Mr Turk affirmed that it had always been his intention to return the JCB to Richmond and to put it to restaurant use. While I accept that restoration of historical vessels can take time, often years, a programme of work has not been produced. Nevertheless, Mr Turk identified several other reasons for the 6-year absence. These include delays in insurance payments, financial constraints limiting the initial extent of work and the need to secure additional funding, the need to put the hull in a steel tray and, in January 2020, a second sinking with consequential damage. Covid-19 also restricted activity, slowing repair work, constraining river-related use, and preventing restaurants from operating at certain periods.
60. In August 2017, the appellant's **company** applied for planning permission to permanently moor the JCB at Town End Pier, Kingston upon Thames for restaurant and café use ("the Kingston application"). This had followed the receipt of pre-application advice from the local planning authority in February 2016. Planning permission was granted over 3 years later, in July 2019. Despite the application being specific to the JCB, Mr Turk states that he hoped to moor another barge there, being in discussion about buying the Balliol College Barge at the time.
61. It would be unusual for a company to spend over 3 years and incur the expense of making a planning application in pursuit of something it had no intention of doing. It is, however, not impossible and I must afford weight to **Mr Turk's oral evidence, given on affirmation, in this respect. Nevertheless,** no evidence has been presented of any attempt to capitalise on the grant of permission. Even though the intended purchase of the Balliol College Barge fell through, a revised proposal involving another historical vessel or replica would have been consistent with the strategy Mr Turk described.

---

<sup>5</sup> See also figure 2.4 of Mike Adams' representations and appendix 5 to the Council's Statement of Case.

62. An application for renewal of the premises licence for “**The Jesus Barge at Richmond Bridge Pontoon**” was made on 18 February 2021, a clear indication of intention to resume restaurant use. The attached plans show that supply of alcohol and late-night refreshment were to be limited to part of the JCB. They also show the rest of the JCB and the adjacent part of the pontoon as areas to be used for the consumption of alcohol.
63. It is unclear how much of the pontoon this involved because of a discrepancy in the plans attached to the licence. The plan that shows the full extent of the areas for the consumption of alcohol does not show the pontoon the subject of this appeal. The pontoon on that plan is considerably smaller, and it adjoins a T-shaped pier. Those facts and other features on the plan, including a curve in the river bank, suggest it was originally a drawing from the Kingston application. Comparison with the location plan from the report to the Kingston Town Neighbourhood Committee<sup>6</sup> adds to the likelihood.
64. Viewing the foregoing evidence objectively, it is probable that a reasonable person with knowledge of all the relevant circumstances would conclude the mixed use of the pontoon had been abandoned. While the JCB remained at Richmond until May 2016, it would have been obvious that it was no longer being used as a restaurant and parts of the pontoon that had been associated with the restaurant then went over to river-related use, which became the only use of the pontoon. After the JCB was taken away, the same reasonable person would consider the possibility of future restaurant activity as part of a mixed use of the pontoon even more unlikely, particularly with the river-related storage building erected on a part of the pontoon previously associated with restaurant use.
65. Had the same reasonable person also known about the Kingston application and the preceding discussion, which began before the JCB left Richmond, they would most likely have concluded, even more firmly, that the mixed use of the pontoon had been abandoned. It is most likely that the same person would have viewed the February 2021 licence application as a first step toward reintroducing the mixed use that had been supplanted by river-related use.
66. Accordingly, even if the mixed use had become immune from enforcement action by April 2015, subsequent events brought about significant and long-lasting changes in the use of the pontoon that amounted to abandonment of the mixed use. Even if that were incorrect, there was an equally significant and material change in the planning unit between May 2016 and early 2022, when it reduced to the pontoon and gangplank only. Those changes amounted to a decisive departure from the previous larger planning unit in mixed use, and they opened a new chapter in the planning history.
67. For these reasons the appeal on ground (d) must fail.

The appeal on ground (a)

*The deemed planning application (DPA)*

68. Canvas and plastic canopy surrounds had been installed to enclose the restaurant seating on the pontoon when the notice was issued. These have since been removed and the appellant does not seek permission for them.

---

<sup>6</sup> Appendix 3 to the Council’s Statement of Case.

The 2 umbrellas nearest the upstream end of the pontoon were removed after the notice was issued, leaving only the base sections. The appellant does not seek permission for these umbrellas.

69. In the Inquiry, Prudence Freeman, a director of the company currently operating the restaurant, affirmed that the remaining 3 umbrellas at the downstream end had been lowered in height by 350 - 400mm. The appellant later advised that the umbrellas had been lowered by a further 800 - 850mm, giving a total reduction of 1200mm.
70. The above changes are shown on revised drawing TUK03-MAA-XX-XX-A-0002 revision P05 and had all been made before my site visit. They are therefore considered in the assessment of the DPA below.
71. **The site of the JCB was recorded as being within 'the Richmond Town Centre Area' in the report recommending the grant of the 1992 permission. The local plan at that time was the Richmond Town Centre Action Area Plan ("the AAP"), adopted in March 1982. The extracts from its proposals map provided to me do not show a designated 'Richmond Town Centre Area' but instead define the 'Action Area boundary' and the 'Town Centre boundary', as they were then. Most of the river, excluding the part closest to the Twickenham bank but including the site of the pontoon and the JCB, was within the Action Area boundary. The defined Town Centre boundary followed the embankment on the Richmond bank and therefore did not include the future site of the pontoon or JCB. Consequently, the AAP's town centre policies, which may have provided support for restaurant use, did not apply, despite what the report said.**
72. The appellant claims the pontoon is in a town centre location in the context **of current planning policy. While colloquial use of the phrase 'town centre'** may suggest it is, there is no planning policy support for the application of town centre policies outside of a designated town centre. The policy map from the London Borough of Richmond upon Thames Local Plan 2018-2033 (**"the Local Plan"**) confirms that the boundary of the main centre of Richmond, where town centre policies apply, follows the embankment, and so excludes the pontoon. The policy map fulfils the requirement, in paragraph 90 b) of the **National Planning Policy Framework ("the Framework")**, for planning policies to define the extent of town centres. Accordingly, the DPA cannot benefit from the general support for town centre uses, including restaurant use, provided by policy SD6 of the London Plan and policy LP25 of the Local Plan.
73. The main issues in this appeal are:
- Whether any matter alleged in the notice is inappropriate development within the Metropolitan Open Land (MOL), which is given protection equivalent to Green Belt in the London Plan.
  - The effect of the matters alleged in the notice on the openness and purposes of including land in the MOL.
  - The effect on character and appearance with particular reference to the Richmond Riverside Conservation Area (**"the CA"**), the setting of the Grade I listed Richmond Bridge, and the River Thames corridor.
  - The effect on river-dependent and river-related uses.

- The environmental effects including air, noise and light pollution, and odours and fumes.
- If any matter alleged in the notice constitutes inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

### *Reasons*

#### *Whether any matter is inappropriate development*

74. The appellant contends that the mixed use is not inappropriate development within the MOL, having regard to paragraph 155 e) of the Framework. This **confirms that** "material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)" is not inappropriate development. Any support provided by paragraph 155 is dependent on the change of use preserving the openness of the MOL and not conflicting with the purposes of including land within it. There can be little doubt that the river-related use of the pontoon is a form of outdoor sport or recreation, but the appellant suggests that the restaurant element of the mixed use is also outdoor recreation.
75. No clear precedents have been cited in support of this view, the closest being the reference to a now superseded policy on recreational use of the river in the assessment of the application for the 1992 permission. Nevertheless, I recognise that dining out may accord with a dictionary definition of recreational activity. However, and even though the Framework does not define recreation, I consider 'outdoor **recreation**' to mean activity of a different and less sedentary character in planning terms. From that perspective, it would include the main activities that are normally carried out at places such as playing fields or parks. While the changes of use identified in paragraph 155 e) do not form a closed list, other changes of use must have similar characteristics to also be not inappropriate.
76. The examples in paragraph 155 e) may be defined by their open and spacious character, with relatively low or sporadic associated activity. In contrast, a restaurant use, even with all seating outdoors, is not open or spacious in character, and involves regular activity. Accordingly, I do not find outdoor restaurant use to constitute outdoor recreation or to be within scope of the exceptions allowed for by paragraph 155 e) of the Framework.
77. The alterations made to the pontoon in 2021 have increased its height and bulk, particularly at the upstream and downstream ends where storage areas and the restaurant kitchen were formed. While it may be argued that any enlargement to facilitate river-related storage is not associated with the MCU, the restaurant storage and kitchen undoubtedly are and account for most of the enlargement.
78. However, part of the enlargement provides below-deck storage in connection with river-related use. If it could be disaggregated from the enlargement to facilitate restaurant use, it could constitute an appropriate facility in connection with an existing use for outdoor sport and recreation. However,

that disaggregation is not physically possible, and the OD overall is inappropriate development in the MOL.

*The openness and purposes of including land in the MOL*

79. The restaurant element of the mixed use of the pontoon and the activity associated with it encroach into strategic open land and reduce the openness of the MOL in spatial terms. The enlargement of the pontoon has increased its physical presence in the MOL and, consequently, has not maintained openness in spatial or visual terms. The enlarged form and the activity associated with the restaurant element of the mixed use weaken the contrast between land-based and water-based activities that is characteristic of this part of Richmond.
80. For these reasons the MCU and the associated OD are inappropriate development and harmful to the MOL by definition and by reason of encroachment. They also fail to preserve the setting and special character of a historic town, a further purpose of including land in MOL. This is a matter to be afforded substantial weight.

*Character and appearance*

81. The pontoon is within the Richmond Riverside Conservation Area (**"the CA"**), which is centred on the Thames, including all the river between Richmond Bridge and Twickenham Bridge, and the parts of Richmond and Twickenham fronting that stretch of the river. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (**"the LBCA Act"**) requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the CA.
82. The November 2023 appraisal of the CA (**"the appraisal"**) **records that** "The Thames is a major contributor to activity in the area and today adds to an active daytime and night-time economy, housing a number of businesses including many bars and restaurants." This provides a degree of support to **the appellant's contention that** restaurant use is in keeping with, and therefore maintains the vibrant character of the area.
83. A diversity of architecture can be found within the CA, with individual buildings and features including detailing and texture that create a coherent and vibrant street scene. Activity from public buildings ensures active frontages and vibrancy, while open spaces and the riverside are valued for their sense of openness. Boats, boat houses and activity on the river create a recreational water frontage of much interest, contribute to the setting of important buildings, and provide valued leisure functions.
84. The appraisal also notes "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 quality of views contributes significantly to the character, distinctiveness, and quality of the local and wider area. The policy map within the Local Plan confirms the importance of the view downstream from Richmond Bridge. The pontoon lies within the foreground of that view and, in its altered state, is an imposing and uncharacteristic element.

85. A map forming part of the Central Richmond, Richmond Green & Riverside Conservation Area Study<sup>7</sup> identifies 2 local views/vistas in which the pontoon may be seen. These are from the Richmond embankment, near the end of Water Lane, looking toward Richmond Bridge and from the eastern end of Richmond Bridge, looking toward the Richmond Riverside terraces.
86. The enlargement of the pontoon and the use of the raised areas for restaurant seating, with umbrellas above one, have made it a more prominent feature in views from the Richmond embankment downstream. The nearby views include from the identified local view/vista near the end of Water Lane. Further away, on Cholmondeley Walk, the pontoon is seen in a panoramic view of the river that takes in Richmond Bridge and Corporation Island. By reason of its scale, design and siting, the enlarged pontoon with restaurant paraphernalia is an uncharacteristic intrusion into the open river that is a key component of these important views.
87. The increase in built form and restaurant activity in an area historically associated with river-related uses has eroded the contrast between land-based and river-based activity and serves to limit views of the river. There is also a loss of appreciation of the pontoon as a typical low-lying riverside feature.
88. The appellant accepts there is less than substantial harm to the CA, although he attributes this to the effect of the umbrellas. However, they provide comfort to diners and are integral to outdoor restaurant use. Though reduced in number and height, they are uncharacteristic of the river scene that is a major component of the character of the CA, even when those on the JCB are considered.
89. For these reasons, the MCU and the associated OD fail to preserve or enhance the character or appearance of the CA, causing less than substantial harm to the significance of the heritage asset.
90. Section 66 of the LBCA Act requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The closest and most significant listed building in the vicinity of the pontoon is Richmond Bridge, listed grade I. Its status as the oldest surviving bridge crossing the Thames in Greater London is a clear indication of its historic significance.
91. The significance of the bridge is self-evident in functional terms: it forms a crossing from one side of the river to the other. Alongside this functional significance, which is common to all river bridges, Richmond Bridge displays high quality architectural detailing and form that are integral to its significance. It gently rises from each bank to its highest point in the centre of the river and rests on a series of 5 elliptical arches as it crosses the river. It connects Richmond and East Twickenham, acting as a gateway to both settlements.
92. The predominant characteristic of **the bridge's** setting is the river, without which it would have no purpose. The river setting affords relatively unbroken views of and from the bridge, although views from the Twickenham bank downstream are limited by the presence of Corporation Island and the

---

<sup>7</sup> Appendix 11 to the Proof of Evidence of Nick Collins.

absence of public spaces and riverside walks. The most significant views of the bridge are therefore from the Richmond bank downstream, particularly from Cholmondeley Walk, and from both sides upstream.

93. In these views, the open setting created by the river allows the bridge to be appreciated as a largely isolated structure, gracefully spanning the river much as it did when first built. This is particularly apparent in views from Cholmondeley Walk, where the bridge can be seen against a backdrop dominated by trees and with the river in the foreground. The open setting created by the river therefore makes an important and positive contribution to the overall special interest and significance of the bridge.
94. The alterations to the pontoon have changed it from a relatively low-lying structure to a taller and bulkier structure. In combination with the JCB, it intrudes in views of and from the bridge. The pontoon is now a significant feature in the foreground of views from the bridge toward Richmond Riverside. This diminishes the sense of separation from land that is characteristic of views from the bridge and important to the appreciation of its significance.
95. The intrusion is particularly apparent in views from Cholmondeley Walk and Riverside, in which, depending on the angle, views of the first or second arch of the bridge are blocked, and attention is diverted from the bridge<sup>8</sup>. In contrast, views of the rest of the bridge have changed little in the 250 years since it was built.
96. The presence of the altered pontoon therefore limits appreciation of the full span of the bridge, and thus of its full architectural quality and form. This erodes the contribution that setting makes to the special interest and significance of the bridge. This amounts to less than substantial harm to its significance as a heritage asset.
97. The JCB contributes to this effect and, as its mooring and use as a restaurant are authorised, that will continue regardless of my decision. Nevertheless, the changes to the pontoon have greatly increased the perceived bulk in views from Cholmondeley Walk, such that the first arch is entirely obscured, and the eye is drawn away from the bridge to some extent. Considering this and the other effect described above, I find that less than substantial harm is caused to the significance of the heritage asset.
98. The pontoon is seen in the foreground in views from Richmond Bridge toward other listed buildings that face the river. Those closest are 10, 11 and 12 Bridge Street, the Palm Court Hotel, the War Memorial, and the warehouse on the corner of Water Lane and Riverside. Because of the greater separation distances, and because they are all seen as part of the wider urban grain, the experience and views of them and the ability of the viewer to understand and appreciate their significance is unaffected by the MCU and associated OD. As such, there is no impact on the contribution that setting makes to their special interest and significance.
99. Development proposals within the Thames Policy Area are expected to respect and take account of the special character of the relevant reach of the **river as set out in the Thames Landscape Strategy ("the TLS")**. The appeal

---

<sup>8</sup> Viewpoints 2, 3 and 4 in the appendices to Ms Simes' Proof of Evidence.



**site is within the TLS's Reach 9, which lies between Buccleuch Gardens and Richmond Weir.**

100. The Richmond bank of Reach 9 is an important point for public access to the Thames, with the riverside path passing through a succession of green spaces and past various food and drink venues, including the restaurant on the JCB and pontoon, and boathouses. The activity associated with those features brings variety and liveliness to the area.
101. The mixed use of the pontoon is in keeping with this character. However, and apart from the restaurant use of the JCB, all permitted or lawful activity on the river is river-related or river-dependent. Restaurant use of the pontoon has therefore altered the character of the river corridor and has reduced the contrast between riverside and river-based activity that is characteristic of the reach. The inclusion of restaurant use in the mixed use of the pontoon has diminished its functional relationship with the river when compared with the previous wholly river-related use.
102. The OD has, by increasing the height and bulk of the pontoon, resulted in a form that is uncharacteristic of the riverside scene at Richmond Bridge and Richmond Riverside. While I noted large vessels moored downstream, on the Twickenham bank, these are relatively distant, beyond Corporation Island. They are therefore out of the line of sight in the important views of the reach from Cholmondeley Walk and Riverside toward Richmond Bridge mentioned above.
103. The MCU and the OD therefore fail to take account of the special character of the reach or to maximise the benefits of its setting in terms of views and vistas, even though restaurant use of the pontoon enables people dining there to enjoy the riverside. The design and height of the OD also harm the character, openness and views of the river.
104. The identified less than substantial harm must be weighed against any public benefits of the MCU and the associated OD. The restaurant currently operating on the JCB and the pontoon provides up to 50 full time jobs, largely filled locally, with 10-12 full time employees present on a typical day. This should be afforded weight in my decision, although it is reasonable to assume that a proportion of those jobs might be retained if restaurant use were limited to the JCB, as permitted in 1992.
105. While Ms Freeman affirmed that her business would not be viable without use of the pontoon, no financial data was presented to demonstrate that. In practical terms, it is unlikely that the JCB could operate as a restaurant in its current state, because the main kitchen and storage areas are on the pontoon. While reconfiguration to address that would be costly, and would reduce dining space, evidence that it could not be done, or that no restaurant could successfully trade that way, was not presented.
106. Mr Turk affirmed that relocating the kitchen onto the JCB would make the restaurant unviable because it would exclude seating from the entire lower deck. No illustration of this was presented, nor was it stated how many covers are required for viability. Neither was any information provided as to how that would differ from the way restaurants had been viable between 1993 and 2015 with a kitchen on the JCB. As it is, the current restaurant has a food preparation area accommodating a large pizza oven on the upper

deck of the JCB. In the absence of more comprehensive evidence, I can only accept these viability arguments in terms of the current business model, not any restaurant on the JCB.

107. Areas for mooring in connection with river-related uses are separated from the restaurant. As noted above, access to those areas and to the river-related store area requires passage through shared circulation areas and a dining area. Nevertheless, from all accounts, the components of the mixed use co-exist well.
108. Mr Turk affirmed that the river-related users cannot afford to pay the approximate £27,000 annual running costs of the pontoon. While accounts have not been produced, he affirmed that all but £6,000 is paid by the restaurant. It is to be expected that a smaller restaurant, with dining limited to the JCB, would have less turnover and thus might not be able to pay the same share of the running costs. However, no evidence of the income previously derived from restaurant use of the JCB alone or from the exclusive rights over part of the pontoon mentioned in leases has been provided for comparison. Indeed, Mr Turk affirmed that he had received commercial kitchen designs for the JCB in March 2020, during its repair and restoration, indicating that it had then been considered viable to resume restaurant use of the JCB with a kitchen on it.
109. Nevertheless, Mr Turk affirmed that he would have to remove the pontoon if the income from the restaurant ceased, ending access for the various charitable river-related users.
110. The 1985 permission had been sought and granted on the basis of the pontoon being used for hiring out motor boats and rowing skiffs, an income-generating activity. Mr Edwards stated and affirmed that he began running a boat hire business from the pontoon in 1992, at Mr **Turk's invitation**. Various images from between 1993 and 2021 include a sign advertising boats for hire on the gangplank.<sup>9</sup> This suggests many years of boat hire from the pontoon alongside restaurant use and, after 2015, when there was no restaurant use. Mr Turk affirmed that boat hire had moved away by 2021-22 and the sign is no longer on the gangplank in images from after the altered pontoon returned in 2022.
111. Mr Turk states that he receives £6,000 plus VAT each year for use of the pontoon by "boat clubs, boat charities, boat builders and boat hire use". However, boat hire moved away in 2021-22 and Mr Edwards affirmed that boat repair no longer takes place on the pontoon. The income must therefore be from a smaller range of river-related activities.
112. There is no evidence that reintroducing boat or paddle board hire as potential sources of income toward the running costs of the pontoon has been considered. Mr Turk affirmed that he had not conducted a marketing exercise for the pontoon, so it has not been demonstrated that the current restaurant use is the only option for generating the necessary income.
113. The pontoon remained in situ after restaurant use ceased in April 2015 until July 2021, when it was taken away for repairs. There was no income from restaurant use during that period. No evidence of running costs and income

---

<sup>9</sup> Images 1-5 and 9-11 in Richard **Turk's Statement of Fact**; appendices 8-10 to the Council's Statement of Case.

for that period has been produced, although Mr Turk affirmed that he had met all costs. He had, however, not anticipated the JCB would be away for so long and indicated that he bore the costs because he always intended it, and restaurant use, would return. Mr Edwards affirmed that he continued to use the pontoon during that period and that paddle board hire also operated from it during that time. No evidence as to whether any boat or paddle board hire paid for use of the pontoon or operated free of charge while the JCB was away has been presented.

114. The inclusion of restaurant use on the pontoon does allow people to get closer to the water and thus enjoy the riverside. However, that benefit is only available to paying customers and, for the reasons identified above, the bulk of the altered pontoon intrudes on public views that are integral to enjoyment of the river scene.
115. If permission were granted for the mixed use, it would allow for continued river-related use of the pontoon, aligning with part D of London Plan policy SI 16. It would be possible to prevent restaurant use of the parts of the pontoon intended for river-related use by planning condition. While the notice does not require the pontoon to be removed and does not attack its river-related use, the possibility of the pontoon being removed, as Mr Turk intimated, must be considered. However, if it were unavailable, as it was when taken away for repair and alteration between July 2021 and January 2022, river-related users would have alternative options in the form of slipways and steps.
116. I acknowledge that these alternatives would not be as attractive to river-related users and cannot provide storage, as the pontoon does. Nevertheless, they confirm that river-related use could continue in this location, as it had long before the pontoon arrived. In view of this, and the limitations noted in the evidence about funding the pontoon, I can only afford modest weight to the identified public benefits of the mixed use.
117. The continued provision of the pontoon for river-related use and associated storage is a public benefit, enabling uses that are supported by Local Plan policies LP18 and LP19. However, it has not been demonstrated that an appropriate benefit of this nature could not be secured without the OD or the restaurant component of the mixed use that are the causes of less than substantial harm to the significance of heritage assets. In applying paragraph 208 of the Framework, I am mindful that the balance is not even, and that great weight must be given to the conservation of the heritage assets. Whilst the magnitude of harms may vary in relation to each asset, the workings of sections 66(1) and 72(1) of the LBCA Act mean that this harm must be accorded considerable importance and weight. In my judgement, the less than substantial harm that has occurred to the significance of the designated heritage assets of the CA and Richmond Bridge, individually or cumulatively, is not outweighed by the identified public benefits.
118. The mixed use of the pontoon, by reason of the restaurant element, and the alterations to the pontoon fail to conserve the historic environment of the borough. They are not compatible with local character in terms of views, local grain and the river frontage.

### *River-dependent and river-related uses*

119. The loss of river-dependent and river-related uses that contribute to the special character of the Thames, including riverside facilities such as slipways, docks, jetties, piers and stairs should normally be resisted.
120. The reintroduction of restaurant use onto the pontoon since July 2022 has taken space that had previously been in river-related use. It must, however, be acknowledged that precise reasons why boat hire and paddle board hire moved away from the pontoon have not been explained. A representation from the manager of the boat hire business states that the alterations to the pontoon have limited **the business's visibility of customers when on the river**, with safety implications if they get too close to Richmond Weir. As a result, it has on occasion been necessary to run down the waterfront to check on boats or to operate an additional safety boat. Although those comments related to the pontoon as it was when the notice was issued, rather than as now applied for, they were reiterated in Mr Edwards' oral evidence.
121. A wooden platform was added to the outer side of the pontoon after it returned to the site in 2022, to facilitate access to and from vessels moored at the pontoon. It appears the platform was needed because the raised section occupied by the restaurant kitchen spans the entire original width of the pontoon. Without the platform, it would not be possible to reach any vessels moored off the downstream end without going through the dining area above the kitchen. Nor would it be practical to moor a vessel alongside that part of the pontoon.
122. No evidence that the platform is not development, or does not require planning permission, has been produced. It is not included in the alleged breach of planning control and therefore would not gain approval if the appeal were to succeed. The fact that this addition was deemed necessary confirms that the alterations that are subject of the notice have restricted river-related access to the pontoon.
123. While the appellant suggests the MCU and the associated OD can draw support from London Plan policies SI 16 and SI 17, I disagree. In particular, part D of policy SI 17 indicates that support should generally only be available for water-related uses or to support their enhancement. As noted, the restaurant element of the mixed use is not a river-related use and enhancement of water-related uses has not been demonstrated.

### *Environmental effects*

124. There are no residential properties near the appeal site and there have been no reports of harmful impacts in terms of noise, odours, or fumes. The parties agree these impacts could be adequately controlled by planning conditions. It is also agreed that a condition to secure approval of external lighting can protect local river ecology, thus avoiding unacceptable impacts upon any receptors, as required by Local Plan policy LP10.

### *Whether very special circumstances justify the development*

125. The inappropriate development of the MCU and the associated OD is harmful to the MOL by definition and, by reason of encroachment, to a purpose of including land in it. These are matters to be afforded substantial weight. For the reasons given, the identified benefits do not, individually or cumulatively,

amount to very special circumstances needed to outweigh the harm to the MOL.

*Conclusion on ground (a)*

126. I have found that there is less than substantial harm to the significance of the designated heritage assets of the CA and Richmond Bridge and that the public benefits of the MCU and the OD do not outweigh this. I have further found that the MCU and the OD constitute inappropriate development and that very special circumstances sufficient to outweigh their harm to the MOL and the purposes of including land within it do not exist. They further fail to have regard to the special character of the reach and harm the character, openness and views of the river. I have also found that the OD has restricted, rather than enhanced, water-related uses.
127. In reaching this view, I have had regard to the suite of planning conditions set out in the agreed Statement of Common Ground. However, I do not believe those conditions, or any others that might reasonably be imposed, would mitigate the identified harm to the MOL and designated heritage assets.
128. For these reasons the MCU and the associated OD are contrary to London Plan policy G3, Local Plan policies LP1, LP3, LP5, LP13, LP18 and LP19 and are unacceptable. Material considerations to indicate that the DPA should be determined other than in accordance with the development plan have not been shown to exist. The MCU and associated OD are therefore contrary to the development plan as a whole.
129. The appeal on ground (a) therefore fails.

*The appeal on ground (f)*

130. The Council suggests a variation to the second requirement of the notice to confirm that only the unauthorised restaurant use of the pontoon should cease.
131. Section 176(1) of the Act allows that any requirement of a notice may be varied at appeal provided that would not cause injustice to the appellant or the Council. As the variation is suggested by the Council, it is only necessary **for me to consider this from the appellant's perspective.**
132. As originally drafted and as now suggested to be varied, the second requirement only attacks restaurant use of the pontoon and the variation would therefore not make the notice more onerous. Consequently, the variation would not cause injustice to the appellant.
133. **The appellant's case on ground (f), set out in the Proof of Evidence of Mr Villars,** is largely a defence of the development as carried out, which I have already considered in the appeal on ground (a). That does not constitute a lesser step that would remedy the breach of planning control.
134. Mr Villars also suggests a grant of planning permission, subject to conditions to mitigate any harm identified, for a temporary period, perhaps 5 years. However, for the reasons given in the appeal on ground (a), the unacceptable harm to the MOL and the significance of designated heritage assets cannot be mitigated by conditions. Furthermore, while the 5-year

period was only given as an example, granting permission for any period would contradict the expediency of issuing the notice in the first place.

The appeal on ground (g)

135. No evidence has been presented to suggest the current **restaurant's lease** could not be terminated within the 6-month period stated in the notice. The appellant originally contended that a 2-year period should be allowed for compliance, for a planning application to be made. The nature of that application was never explained and as I have already considered the DPA, I see no reason to contemplate this line of argument further.
136. The appellant now seeks a 2-year period to facilitate relocation of the restaurant and the river-related users or for alternative funding for the pontoon to be sourced, to allow the latter to remain. As explored in the appeal on ground (a), the notice does not require the river-related use of the pontoon to cease. The funding argument is therefore based on the **appellant's assertion that** he cannot afford to maintain the pontoon without income from the restaurant as it currently operates. For the reasons given in the appeal on ground (a), that has not been satisfactorily demonstrated.
137. The 6-month period would allow the restaurant to trade during the most profitable time of the current year. Furthermore, it is not stated when any payment to be made against the annual running costs of the pontoon, whether in whole or in part, is next due. The financial basis for a longer compliance period is therefore unclear. However, the 6-month period would seem sufficient for alternative funding options to be identified, explored, and discussed with others, including the Council if necessary.
138. If the current restaurant cannot operate from the JCB alone, it would need to find alternative premises. The appellant questions whether suitable alternative premises exist in Richmond and, **having heard Ms Freeman's** explanation of the sites her company specialises in, that may be correct. However, the company's success in finding 15 such sites across London to date suggests it would be well placed to find another one.
139. For these reasons, it has not been demonstrated that a period of 6 months to comply with the requirements of the notice falls short of what should reasonably be allowed. The appeal on ground (g) must fail.

Conclusion

140. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

141. It is directed that the enforcement notice is corrected in section 3 (ii) by the deletion of "a material change of use of the pontoon into a **restaurant**" and the substitution of "a material change of use of the pontoon to a mixed use, comprising restaurant, mooring of boats and ancillary storage."
142. It is further directed that the enforcement notice is varied in section 5.2 by the deletion of "Permanently cease the unauthorised use of the pontoon" **and**

the substitution of "Permanently cease the unauthorised restaurant use of the pontoon."

143. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

*Mark Harbottle*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Saira Kabir Sheikh KC

She called

Nick Collins BSc (Hons), MRICS, Director, Portico Heritage

IHBC

Liz Simes BA (Hons), Dip LA, Operating Board Director - Landscape  
Dip UD, CMLI Planning, Fabrik

Richard Turk Managing Director, Turks Shipyard Ltd.  
and Turks Launches Ltd.

Philip Villars BA (Hons), MRTPI Director, PMV Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Robin Green

He called

Lauren Way BA, MA, IHBC Principal Conservation & Urban Design  
Officer, Richmond upon Thames LBC

Aaron Dawkins BA Senior Enforcement Officer, Richmond  
upon Thames LBC

### INTERESTED PARTIES:

Prudence Freeman

Director, Daisy Green Foods Ltd.

Mark Edwards MBE

Richmond Freewatermans Turnway Society

Hilary Pereira

River Thames Society

Mark Baragwamath

Former H<sub>2</sub>O restaurant

Mike Adams

Local resident

### Documents submitted during the Inquiry

- 1 Notice of the Inquiry in the Richmond & Twickenham Times 21 March 2024
- 2 Summary Proof of Evidence of Nick Collins
- 3 Index of appendices to the Proof of Evidence of Nick Collins
- 4 Index of appendices to the Proof of Evidence of Richard Turk
- 5 Local Plan policy map extract
- 6 Suggested viewpoints for the site visit
- 7 Response of Lauren Way to the LVIA
- 8 Extracts from the Richmond Town Centre Action Area Plan proposals map
- 9 Comments of people supporting the restaurant
- 10 Annotated copy of 5 above showing alternative access points
- 11 River Thames Visitor Centre appeal decision
- 12 Revised statement of Mike Adams
- 13 Revised Statement of Common Ground





## Costs Decision

Inquiry held on 9, 10 and 11 April and 7 May 2024

Site visits made on 8 and 12 April 2024

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20/05/2024

---

Costs application in relation to Appeal Ref: APP/L5810/C/23/3333609  
Pontoon and land adjacent to Richmond Bridge Pier, Riverside, Richmond  
TW9 1TH

- The application is made under the Town and Country Planning Act 1990, sections 174, 320, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Richard Turk, Turks Launches Limited for a full award of costs against the Council of the London Borough of Richmond upon Thames.
  - The inquiry was in connection with an appeal against an enforcement notice alleging, without planning permission, alterations to the existing pontoon and a material change of use of the pontoon into a restaurant.
- 

### Decision

1. The application for an award of costs is refused.

The submissions for Mr Richard Turk, Turks Launches Limited (the applicant)

2. The costs application was submitted in writing. The following additional points were made orally.
  - The applicant was not uncooperative; documents were submitted to the respondent in December 2022 but there was no response until the notice was issued unexpectedly in October 2023.
  - The respondent acted punitively; inconsistent with the proper purpose of planning enforcement, leading to the need to appeal including ground (b).
  - The respondent's failure was not a mere 'slip of the pen' but a misunderstanding of the breach of planning control.

The response by the Council of the London Borough of Richmond upon Thames (the respondent)

3. The response was made orally at the inquiry. The following points were made.
  - The respondent had made it clear, in replying to a pre-application enquiry in 2021, that restaurant use of the pontoon was unacceptable. A letter was sent in August 2022, requesting cessation of the breach. Neither communication was heeded, so the notice was a proper response.
  - The respondent has accepted, since it submitted its Statement of Case, that the terms of the notice should be corrected, in accordance with available powers. The parties agree what the mixed use is, so making the necessary correction would cause no real injustice.

- Had the respondent withdrawn the notice, as the applicant suggests, it would have issued a further notice and there would not have been an appeal on ground (b).
- All other grounds of appeal were robustly defended.

#### Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The appellant's **case in the** appeal on ground (b) was initially only made in respect of operational development. His criticism of the description of the alleged material change of use arose after I had queried the matter in my pre-conference note dated 14 December 2023. It is therefore far from clear that more effective engagement between the parties before then would have resulted in no enforcement action.
6. As set out in the main decision, the applicant has succeeded on ground (b) in respect of the material change of use. That success has resulted in a correction and a variation of the notice, both made without causing injustice.
7. The respondent was therefore correct to proceed on the assumption that the error could be rectified without any need to withdraw the notice.
8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*Mark Harbottle*

INSPECTOR