



Planning Enforcement Appeal – Final Comments

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

Our ref: 22/0346/EN/EOP

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

07.02.2024

These are the final comments submitted by the Council of the London Borough of Richmond Upon Thames (“the Council”) in respect of the Statement of Case (SoC) submitted by Turks Launches Limited (“the Appellant”) relating to this enforcement appeal. This document should be read in conjunction with the Council’s SoC and Statement of Common Ground (SoCG). Within the SoCG, areas of agreement and dispute have been set out and these will not be repeated in this document.

The Council will not comment on every point made by the appellant in its SoC. The fact that the Council has not responded to a point does not mean that the Council accepts it.

Final Comments

1. Appellant's Statement of Case

1.1 Paragraph 4.2 of the appellant's SoC states:

A canvas and plastic canopy surround in place at the time The Notice was served has been removed in discussion with the Council.

1.2 A recent site visit has confirmed that the canvas and plastic canopy covering has been removed. However, the canopy frames have not, see Appendix 14 (photo taken on the 24th January 2024). It is worth noting that the canopy frames are fixed to the pontoon, see Appendix 15 (photo taken on 13 October 2022) which shows that these are an integral part of the pontoon structure and have a high degree of permanence. It is also worth noting that the restaurant is currently closed, so the canopy is presumably not needed at present.

1.3 The above statement also suggests that the covering has been removed with the agreement of the Council. This is not the case. The Council's position is that removal of the covering does not remedy the harm caused by the breach. Moreover, the canopy frames and covering could be replaced by similar structures which would not have a degree of permanence and thus would not require planning permission, though their impact would be comparable to the permanent canopy structures currently in place.

1.4 Paragraph 4.3 of the appellant's SoC states:

Measured survey plans are being produced in support of the appeal to clearly show the current position at the site, in comparison to the consented 1985 scheme.

1.5 The Council will need to satisfy itself that any such plans are accurate and asks that they be provided at the earliest opportunity.

1.6 Paragraph 4.4 of the appellant's SoC states:

The allegation in The Notice ... that there has been “a change of use of the pontoon into a restaurant” has not occurred as a matter of fact. The pontoon remains in a mixed use.

1.7 As stated in the Council’s SoC, the Council accepts that the pontoon was in a mixed use at the date the enforcement notice was served and it will invite the Inspector to amend the notice pursuant to section 176(1) of the Town and Country Planning Act 1990 to ensure that the description of the breach and the requirements of the notice reflect this. It remains the case, however, that (i) up to April 2015 the only “restaurant use” of part of the pontoon was as a sitting out area in connection with the barge, (ii) for a period of about seven years from April 2015 there was no restaurant use of the pontoon at all and no barge, (iii) in about 2021 the pontoon was removed and physically altered to convert it to a fully functioning restaurant with a kitchen and purpose-built seating area, (iv) in early 2022 the altered pontoon was returned to its mooring, and (v) in about May 2022 the barge was moored alongside it. In the Council’s view an unauthorised restaurant use of the pontoon began in 2022, albeit the other (lawful) uses for mooring boats and storage continued.

1.8 Paragraph 4.6 of the appellant’s SoC states:

The pontoon does not and cannot be used independently from the barge and vice versa.

This statement is not factually correct. The pontoon operated independently from the barge between 1985 and 1993, and between 2015 and 2022. Furthermore, it is known that in the period 2017-2019 the appellant sought and obtained permission from the Royal Borough of Kingston upon Thames to moor the barge there. Evidently, the barge and pontoon can and have been used independently from each.

1.9 Paragraph 4.17 of the appellant’s SoC states:

The appellant’s case under Ground a is that planning permission should be granted for the current use of the pontoon and the operational alterations excluding the canopy enclosure which the appellant has agreed to remove due to its impact.

The Council would refer back to its comments at paragraphs 1.2 and 1.3 above.

1.10 Paragraph 4.18 of the appellant's SoC states:

Richmond town centre is an identified 'major centre' within the London Plan and Richmond Local Plan. The riverside where the pontoon and Jesus Barge is moored is within the defined town centre in the Richmond Local Plan (2018) and Regulation 19 draft of the new Local Plan. The use as a restaurant and other river related activities, is compliant with planning policy given this town centre riverside location, a location where such uses are encouraged to enhance the vitality and viability of the centre and the use of the river.

As has been agreed in the SoCG (at paras 1.2 and 3.2) and as can be seen on the Local Plan Policies Map, the river, pontoon and barge are not within the identified 'major centre'. They are outside it, and it would be perverse to apply policies concerning development in the borough's defined centres to areas outside them. Instead, the applicable development plan policies, including LP13 (Metropolitan Open Land), LP18 (River Corridors) and LP19 (Moorings and Floating Structures), do not support the development enforced against. The same is true for emerging development plan policies 35, 40 and 41.

1.11 Paragraphs 4.19 and 4.20 of the appellant's SoC state:

4.19. The committee report in respect of the 92/0659/FUL planning permission for:

"Mooring of Jesus College Barge against RJ Turk pontoon for use as a restaurant below and above deck",

4.20. States that this location is within the Richmond Town Centre area, which differ from other proposed locations for floating restaurants which were "outside commercial locations" such as this. The Officer's report notes that the Plan (Policy 34) encourages recreational use of the river and that the proposed restaurant would "most certainly add to the riverside environment and activity this particular location".

The development plan policy referred to above has obviously been superseded by the current and draft policies, with which the alterations to the pontoon and its restaurant use conflict.

1.12 Paragraph 4.23 of the appellant's SoC states:

NPPF Para 154 (b) and (c) (d) at 155 sets out that exceptions within the Green Belt would be to provide appropriate facilities for outdoor recreation or extended or replacement buildings, as long as it preserves the openness of the Green Belt. The use of the pontoon as an open recreational use is appropriate and it is not materially larger than previously.

The exception in para 154(b) of the NPPF relates to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation...as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. A restaurant is not a facility for outdoor recreation. Furthermore, the alterations to the pontoon do not preserve the openness of the MOL. Paragraph 154(c) concerns "the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building". The altered pontoon is a significantly higher and bulkier structure than the original pontoon and in the Council's view the alterations result in a disproportionate addition. Paragraph 154(d) concerns "the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces". If the altered pontoon constitutes a replacement building, it is not in the same use as the one it replaced and it is materially larger than the one it replaced. It is not clear from the above paragraph if the appellant is also seeking to rely on the exceptions in para 155 of the NPPF, and if so, which one.

1.13 Paragraph 4.24 of the appellant's SoC states:

The site is also identified as a River Corridor (LP 18). This promotes riverside development within the Thames Policy Area which supports the use of the river,

maximises the setting, incorporates uses that enable local communities and the public to enjoy the riverside.

Local Plan Policy LP 18 (River Corridors) cannot accurately be described as a policy which promotes anything. This policy is focused on protecting the natural, historic and built environment of the River Thames corridor, particularly the special character of the reach; resisting non river related development; and enhancing existing river related development. The introduction of a non-river related use, i.e. the restaurant, and the reduction of the existing mooring use of the pontoon, conflict with this policy.

1.14 Paragraph 4.25 of the appellant's SoC states:

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.

The appeal site context is not urban in nature or character. The appeal site is within the River Thames. The adjacent riverside is designated public open space. The site is not within the identified town centre as a matter of fact and Policy LP25 is not relevant.

1.15 Paragraph 4.32 of the appellant's SoC states:

To reiterate the pontoon itself is lawful and the presence of the floating restaurant was judged by Council officers, at the time permission was granted, would make a positive contribution to the character and appearance of the conservation area and would not detract from the setting of nearby listed buildings including Richmond Bridge

Before its recent alteration and change of use, the pontoon was a lawful structure in lawful use. The assessment of the 1992 permission was based on different national

and local policy considerations, and the character of this part of the conservation area at that time. The Council would draw the Inspector's attention to paragraph 4.40 of the Council's SoC, which sets out an assessment of harm to the conservation area resulting from the existing barge and the restaurant extension onto the pontoon, based on current national and local policy and the most up to date character assessment of the area.

APPENDIX 14

Officer Photo – Taken on 24th January 2024



APPENDIX 15

Officer Photo – Taken on 13th
October 2022







13 Oct 2022 10:42:15
Richmond River Thames Towpath
Greater London
England