

**Pontoon at Richmond Riverside,  
Richmond upon Thames  
PINS Ref: APP/L5810/C/23/3333609**

**Statement of Case**

**Pontoon at Richmond Riverside,  
Richmond upon Thames  
PINS Ref: APP/L5810/C/23/3333609  
Statement of Case**

January 2024



The Boathouse Design Studio  
27 Ferry Road  
Teddington  
TW11 9NN

info@pmvplanning.com  
pmvplanning.com

---

**Pontoon at Richmond Riverside,  
Richmond upon Thames  
PINS Ref: APP/L5810/C/23/3333609  
Statement of Case**

Contents	Page
<b>1. Introduction</b>	<b>1</b>
<b>2. Site and surroundings, planning history and background</b>	<b>4</b>
<b>3. Planning Policy</b>	<b>5</b>
<b>4. Appellant's Case</b>	<b>6</b>
<b>5. List of Documents</b>	<b>13</b>

# 1. Introduction

- 1.1. This Statement of Case is submitted by PMV Planning (the agent) on behalf of Turks Launches Ltd (the Appellant).
- 1.2. This appeal was submitted under Section 174 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1990) against an enforcement notice served by Royal Borough of Richmond upon Thames (the Council and LPA) (LPA ref 22/0346/EN/EOP) relating to “*Pontoon and land adjacent to Richmond Pier, Riverside (the site)*” on 11 October 2023.
- 1.3. A Statement of Common Ground (SOCG) has been discussed with the Council and has been submitted to the Inspector. Discussions will continue with the Council to try and reach agreement on those matters shown as areas of disagreement in the document. This Statement of Case does not therefore repeat those areas covered in the SOCG relating to site description; planning history; planning policy; and relevant documents. It will focus on addressing the issues raised by the Council in the Enforcement Notice dated 11 October 2023 (The Notice), and the appellant’s grounds of appeal as stated in the original appeal submission, in the light of what is set out in the SOCG, including the removal of the canvas and transparent plastic surround on the pontoon with the associated lighting.

## **Enforcement Notice**

- 1.4. The alleged breach within The Notice reads:
    - (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.
  - 1.5. The Council’s stated reasons cited for issuing the Enforcement Notice are:
    - a) It appears to the Council that the above breaches of planning control:
      - i) Referred to in Para i) has occurred within the last four years and;
      - ii) Referred to in Para ii) has occurred within the last ten years.
-

- b) The alterations to the pontoon, by virtue of their siting, size, scale, mass and bulk, are harmful to the openness of the Metropolitan Open Land and constitute inappropriate development, for which there are no very special circumstances to justify this harm. The use of the pontoon as a restaurant (Class E) has an urbanising effect, which fails to preserve the openness of the Metropolitan Open Land. As such, these developments do not comply with the National Planning Policy Framework, London Plan Policy G3, Local Plan Policy LP13 or Draft Local Plan Policy 34.
  - c) The pontoon is far larger than any other examples in the locality and it is also enclosed which increases its overall height significantly and is now predominately used as a restaurant. The covered seating has been constructed by using large, fixed umbrellas and the sides have been enclosed with a transparent plastic material, it's a poor quality construction and detracts from the character of the area, which is predominately smaller, fleeting and open structures, with river uses, as well as river fronting buildings of high architectural quality. In summary, the pontoon appears as an incongruous structure and is unsympathetic to the character of the area. Accordingly, it does not comply with Local Plan Policy LP1, Draft Local Plan Policies 19 and 28 and the National Planning Policy Framework.
  - d) The pontoon, as altered, appears as a dominant and unsympathetic addition to the riverside, due to its size being disproportionate to similar structures within the Conservation Area and the use of large umbrellas and transparent plastic covers to enclose the area, representing a poor quality design, which fails to preserve or enhance the character or appearance of the Conservation Area. The pontoon also affects the setting of the Grade I Listed Richmond Bridge, due to the poor quality design and materials and the increased size and therefore dominance on river frontage, it negatively affects the setting of that Listed Building. The alterations to the pontoon result in a dominant and incongruous structure on the river frontage, which negatively affects the Conservation Area and Grade I listed Richmond Bridge. The alterations to the pontoon amount to less than substantial harm to the designated heritage assets however there are no public benefits attributable that outweigh this harm. Accordingly, this development does not comply with Local Plan Policy LP3, Draft Local Plan Policy 28 or the National Planning Policy Framework.
  - e) The alterations to the pontoon, by virtue of their siting, size, scale, mass and bulk are harmful to the character, openness and views of the river. The use of the pontoon as a restaurant is not river dependent and results in the substantial reduction in the previous river dependent use, which was for the mooring of leisure boats, with the absence of any evidence to demonstrate that use was not feasible or viable. Accordingly, the development does not comply with Local Plan Policies LP18 and LP19 and Draft Local Plan Policies 40 and 41.
-

- f) The alterations and material change of use to the pontoon, has resulted in a floating restaurant adjacent to the Richmond Riverside and Richmond Bridge. In the absence of any evidence to demonstrate that these developments will not give rise to unacceptable environmental impacts, including but not limited to, air pollution, noise pollution, light pollution and odours and fumes, the development does not comply with Local Plan Policy LP10 or Draft Local Plan Policy 53.

1.6. 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.

#### **Grounds of appeal**

1.7. This Statement sets out the case on behalf of the Appellant in respect of the following submitted grounds of appeal:

- Ground (a) – that planning permission should be granted for what is alleged in the notice;
  - Ground (b) – that the alleged breach of planning control has not occurred as a matter of fact;
  - Ground (c) – that there has not been a breach of planning control;
  - Ground (d) – that at the time the Enforcement Notice was issued it was too late to take enforcement action against the matters stated in the Notice;
  - Ground (f) – that 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 remedy any injury to amenity which has been caused by any such breach; and
  - Ground (g) – that the time given to comply with the notice is too short.
-

## **2. Site and surroundings, planning history and background**

### **Site and surroundings**

- 2.1. This is as set out in the Statement of Common Ground between the appellant and the council (the SOCG).

### **Relevant Planning History**

- 2.2. This is as set out in the SOCG.

### **Other relevant consents and documents**

- 2.3. The appellant will refer to numerous Richmond Premises Licenses from Richmond Council, including 25 April 2006, for H20 Floating Restaurant including marked areas of pontoon with tables and chairs (DWG 5676/M&E/01), Licenses and Leases including the following Crown Estate/Port of London as well as the following documents in the following paragraphs.
- 2.4. Letter to Turks from Pilgrims Solicitors, dated 7 March 1996, acting for Grosvenor Inns, attaching a plan with a hand sketched area of existing pontoon tables and chairs and proposed areas together with a reply from Turks which notes additional area is already being used by Grosvenor Inns.
- 2.5. Lease to Grosvenor Inns, dated 20 September 1995, relating to Barge and Pontoon.
- 2.6. Lease between Owen Williams and M J Turk, dated 30 November 1993, including the pontoon referred to in the First Schedule edged in blue on the annexed plan.
- 2.7. Lease with H20, dated 2 July 2002, showing Barge and pontoon.
- 2.8. Lease dated 25 September 2009 with GGM Restaurants Ltd with plan showing Barge and area of pontoon.
- 2.9. A further list of documents to be relied upon is referenced within Section 5.
-

### **3. Planning Policy**

3.1. This is as set out in the SOCG.



## 4. Appellant's Case

- 4.1. The appellant is appealing on grounds a, b, c, d, f and g.

### Ground (b)

- 4.2. The length, width and location of the pontoon structure is not contested by the Council. The height has as a matter of fact changed and so this is not contested under b) or the fact that safety railings and demountable umbrellas have been installed. A canvas and plastic canopy surround in place at the time The Notice was served has been removed in discussion with the Council.
- 4.3. 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.
- 4.4. The allegation in The Notice (see para 1.4) 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.
- 4.5. For more than 30 years, apart from when the barge and pontoon were taken off site for restoration and repair, the pontoon has been used in association with the restaurant use of the barge and the use for river craft. This followed the grant of planning permission in 1992. Services were also shown in the permission 93/1734/FUL going through the pontoon to the Barge [Dwg no. 3/1329-04 titled Services Plan dated August 1993 as per consent 92/0659/001). In addition, there are a range of leases between restaurant operators over the previous 30 years, confirming the operation at the site, as referenced above at paras 2.4 – 2.9.
- 4.6. The Appellant's evidence will demonstrate that the current mixed use of the pontoon is lawful, as the pontoon has a long and well established planning history of a restaurant use in association with the lawful use of the Barge and the use by river craft for mooring and storing equipment, etc. 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 for the mixed uses. The pontoon does not and cannot be used independently from the barge and vice versa. The river related craft and activities require the commercial use of the barge and pontoon. As a matter of fact, there has not been a material change in use of the pontoon as it remains a part of the barge use as a restaurant and facility for small river craft and enterprises, within a single planning unit.
-

**Ground (c)**

- 4.7. 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, 10 years continuous use and that any changes to the pontoon are not material so as to require planning permission, save the plastic canopy which the appellant has agreed to remove.
- 4.8. The pontoon is a part of the planning unit of the Jesus College Barge and gangplank and benefits from planning permission. Indeed, the pontoon is well established as part of the operational requirements, not least the sole means of access from the consented gangplank to the Jesus College Barge. All servicing and access is and has been taken from the gangplank and pontoon (see para 4.5 above) and as noted in the committee report, dated 20 August 1992, although “*rubbish must not be stored on the pontoon*”, liquid waste is provided for in the cesspit facility on the pontoon.
- 4.9. 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)**

- 4.10. The Appellants case under ground d is that by the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
- 4.11. The alleged breach is immune from enforcement action as the pontoon was in use for purposes within restaurant use and has acquired immunity for a period of over 10 years, going back to 2005 until 2015 [and benefited from the planning permissions in 1992 and 1993 for a restaurant use].
- 4.12. 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 sinking, the pontoon has been utilised to provide accommodation/services/access for the restaurant operation on the Barge during this period.
- 4.13. 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*”. The Council accepts that up until 2015 the barge and pontoon comprised a sizeable planning unit in composite use (restaurant, mooring and storage).
- 4.14. The appellant maintains that the established lawful use was not lost between 2015 and 2022. The barge sank in 2015, and remained at the pontoon for approximately 12 months following which it was taken to Kingston for repair. Following repair work, the Barge sank again during
-

a storm before returning to the Richmond Riverside pontoon.

- 4.15. The appellant will present the case that a planning permission exists for the use of the pontoon and barge as a single planning unit for restaurant use and for the mooring/use of a small sailing craft for local charities, etc. This mixed use has carried on for many years, since the planning permissions for the restaurant in 1992 and 1993.
- 4.16. The immunity accrued by the passage of time has not been abandoned due to cessation in use for a period of time and nor has there been any further act that has led to the loss of that immunity.

#### **Ground (a)**

- 4.17. 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. Each element of the operational changes will be assessed separately in terms of their impact and level of harm; if any. The appellant will demonstrate that development is in accordance with the Development Plan, emerging draft Local Plan and the NPPF and PPG and SPG comprising the Thames Landscape Strategy Report and there are no other material considerations to indicate otherwise.

#### Town centre and riverside location

- 4.18. 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.
  - 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"*.
-

- 4.21. Equally, the pontoon is appropriate in this river front location and the agreed lawful use of the barge.

Metropolitan Open Land (MOL)

- 4.22. 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'*.
- 4.23. 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.
- 4.24. 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 which supports the use of the river, maximises the setting, incorporates uses that enable local communities and the public to enjoy the riverside.
- 4.25. 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.
- 4.26. 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 (both its use and associated physical activity) on openness. Reference will be made to London Plan Policy G3, Local Plan Policy LP13 on MOL and Draft Local Plan Policy 34 on Green and Blue Infrastructure (Strategic Policy) and LP35 MOL.
- 4.27. Evidence will be submitted to demonstrate that:
- the pontoon structural alterations, 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.
- 4.28. 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. The appellant will demonstrate that without the canopy structure (comprising the umbrellas and side panels), both the openness of the MOL and the character and appearance of the area will not be harmed.
-

### 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*

4.29. 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 not materially higher than that approved; and
- the above deck elements are not a continuous solid form with the canopy structure removed and are not harmful.

### 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*

4.30. Evidence will be submitted to demonstrate:

- 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 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 other river related uses associated with the pontoon.
-

### Heritage

- 4.31. The appellant will demonstrate that the alterations to the pontoon, particularly with the removal of the canopy structure, 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 and LP5 enabling a judgement to be made that such harm can be outweighed by public benefits.
- 4.32. 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. However, the remaining operational elements on the pontoon (excluding the canopy which it is agreed will be removed) will be assessed as to the level of harm which may be caused by each element and weighed against the public benefit (see below).

### Environmental impacts and amenity

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

- 4.33. 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. It is also agreed with the Council that noise and fumes can be controlled by condition if necessary.
- 4.34. 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. The restaurant use in this location is accepted by the Council and has not identified any harm associated with it in terms of noise, pollution or other emissions. Suitable lighting can be covered by conditions.

### Heritage and MOL - Public benefits and VSC

- 4.35. 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.
- 4.36. The income from the restaurant use allows the owner of the barge, pontoon and gangplank (the appellant) to provide and maintain the pontoon for continued use for river related activities by local charities who would otherwise have no other mooring facilities and access
-

to use. This is a significant VSC and public benefit in its own right.

Public safety

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

**Ground f**

- 4.38. The Appellant maintains that the steps required to comply with the requirements of the Enforcement notice are excessive.
- 4.39. 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**

- 4.40. The Appellant maintains that the time given to comply with the notice is too short. The requirement to cease this considerable operation within six months is unreasonable.
- 4.41. 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. Without the revenue from the restaurant, alternative arrangements/facilities will need to be found for the many local uses of the mooring, including charities as the continued use of the pontoon will be unviable for such users.
- 4.42. 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 therefore be required for compliance.
- 4.43. The entire premise of the Enforcement notice is misconceived. The pontoon benefits from immunity from enforcement action, given the site history and equally the pontoon benefits as part of the planning unit associated with permitted restaurant use of the Jesus College barge. There was no abandonment of its use.
- 4.44. The Notice should therefore be quashed as a matter of law.
-

## 5. List of Documents

### 5.1. List of documents that may be referred to

- Documents from RBRuT Planning Enforcement files
  - Policy documents, as in the LPA's Questionnaire and as referred to in this Statement of Case
  - Relevant Case Law and Appeal Decisions
  - Copy of Enforcement Notice 22/0346/EN/EOP including Red line plan
  - Planning Chronology of the site to include relevant Plans and drawings
  - Copy of planning permission dated 1985 Ref 85/0139 including plans and elevations.
  - Photos dated 1993, 2002, 2005, 2007, 2008, 2009, 2010, 2012, 2015, 2018, 2020 and 2021.
  - Copy of planning permission dated 1992 Ref 92/0659/FUL including drawings 3/1329/02 and 03 dated April 1992
  - Copy of planning permission dated 1993 Ref 93/1734/FUL
  - Copy of Leases with Crown Estate and Port of London
  - Copy of Licenses issued by Richmond Council
  - Letter to Turks from Pilgrims Solicitors dated 7 March 1996, acting for Grosvenor Inns, attaching a plan with a hand sketched area of existing pontoon tables and chairs and proposed areas together with a reply from Turks which notes additional area is already being used by Grosvenor Inns.
  - Lease to Grosvenor Inns, dated 20 September 1995, relating to Barge and Pontoon.
  - Lease between Owen Williams and M J Turk, dated 30 November 1993 including the pontoon referred to in the First Schedule edged in blue on the annexed plan.
  - Lease with H20 dated 2 July 2002 showing Barge and pontoon
  - Lease dated 25 September 2009 with GGM Restaurants Ltd with plan showing Barge and area of pontoon.
  - Extract of Richmond Local Plan and relevant policies
  - Copy of Delegated Enforcement Report prepared by Richmond upon Thames (RBRuT)
  - Copy of Licences granted by Richmond Borough Council including 25 April 2006
  - Extract email from LPA confirming Barge original permission is extant 92/0659/FUL
  - Planning Chronology of the site
  - Evidence from witnesses with first hand knowledge of the site history
-



- Appeal Decision Panton v SSETR (1999) 78 P. & C.R. 186 at [193]
- The Thames Landscape Strategy, 2012
- The Urban Design Study, 2021
- Extract of NPPF and relevant policies
- London Plan and relevant policies

5.2. The Appellant reserves the right to revise/supplement its Statement of Case and documents in its evidence.

