

# Appendices

**Appendix A-**  
**REPORT 19-12-23**

## **Planning Enforcement Investigation ENF/23/05465**

**Land at: 106 Cheyne Walk, London, SW10 0DG**

### **1.0 Summary**

1.1 In June the Council received a report that two large houseboats had been moored at Chelsea Reach without planning permission. A report was received subsequently that a further houseboat of the same size was brought to the land in September.

1.2 This report sets out the results of a planning enforcement investigation that has been carried out. The report considers whether planning permission is required for the mooring of these houseboats and whether enforcement action can be taken in respect of them.

1.3 The alleged breach of planning control which has been investigated is the mooring of three houseboats without planning permission.

1.4 For the reasons set out below, officers consider that no breach of control with regards to the mooring of the three houseboats has occurred and enforcement action therefore cannot be taken.

### **2.0 Reason for committee consideration**

At the request of Councillor Kemahli.

### **3.0 The site and its surroundings**

3.1 The site, known as Chelsea Reach (and also Battersea Reach) is located on the northern bank of the River Thames adjacent to the Embankment, bounded by Battersea Bridge to the north-east and 106 Cheyne Walk to the south-west (the building which houses the offices of the Cheyne Yacht and Boat Company). The site has historically been used for the residential mooring of houseboats, there are berths allowing for a maximum of 60 houseboats to be moored at the site, arranged in two groupings of pontoons that are separated by a central gap.

3.2 The three houseboats that are the subject of this report are located at the western end of the site, the nearest access to them is via the entrances at Cheyne Pier and Old Ferry Wharf. The site is located within the Thames Conservation Area and is designated as a site of Nature Conservation Importance within the River Thames and tidal tributaries. It is also within the Thames Special Policy Area and the Chelsea Riverside Archaeological Priority Area.

### **4.0 Relevant Planning History**

4.1 A summary of the planning history is set out below. What is set out below includes what officers consider to be the most significance elements of the planning history of the Chelsea Reach moorings and their use.

4.2 In 1973 the Council, on receiving several complaints from local residents about "*changes for the worst*" at Chelsea Reach, which related to the appearance of the

houseboats and anxiety over additional moorings, began an investigation into the degree of control exercisable within the framework of Local Government (the Port of London Authority, the Corporation of London and the Council as the Local Planning Authority).

4.3 The outcome of the investigation was presented to the Town Planning Committee in a report dated March 1975. This report described boats being first moored and lived in at Chelsea Reach after the Second World War (during the war it was used as a boat breaking yard). The report stated that, since then, more craft had been brought in and moored there without planning permission but with the consent of the Port of London Authority (PLA), the PLA considering that, as it was operational land in their ownership, any development was not development within the meaning of the Town & Country Planning Act.

4.4 The report stated that the PLA owned the freehold estate (the riverbed of the River Thames from Teddington Lock to the Estuary) and the section of the river within RBKC had been let to the Cheyne Yacht and Boat Company (CYBC) on a licence renewed annually for over 20 years.

4.5 Under the Port of London Act (1968) the PLA had powers to define the limits of the mooring site, assess the structural stability of craft, require rights of entry and to refuse the mooring of any houseboat it considered to be unsuitable. The PLA carried out annual inspections.

4.6 The site as a whole was let to CYBC from the PLA on a licence terminable within 7 days from either party. The licence to CYBC had been renewed annually for the last 20 years. CYBC let in turn individual plots *"to anyone desirous of living on a houseboat on the site without any guarantee of permanence"*.

4.7 The report stated that 56 houseboats were moored at the site in 1973 and 58 were moored there in 1974, and that no planning permission was sought for the additions, despite a warning from the Council in November 1973, that planning permission was required for the permanent moorings.

4.8 The report described the houseboats being *"craft of different lengths, ranging mostly between 40 and 86 feet. The longest ones are 104 and 115 feet respectively. Nearly half the total number comprise two decks; the other half, one deck"*. It states that neither the PLA or CYBC had set limits on the number of houseboats that can reasonably be put on the site, or the relation between the number of occupants and effective floorspace.

4.9 Considering the visual amenity of the houseboats, the report concluded that *"there seems to be no reason why aesthetic control cannot be exercised in the normal way. It would thus be possible to enhance the appearance of the moorings by controlling the design of new or rebuilt boats. The policy would insist on the traditional use of nautical materials and details, providing these did not conflict with safety standards. The colours could be controlled by means of an Article 4 Direction, and guidelines laid down to avoid the construction of excessively bulky superstructures."*

4.10 The committee concluded that:

- i) *There is no objection to the principle of permanent moorings on the site;*
- ii) *No retrospective action should be taken to reduce the number of boats below 59;*
- iii) *there should be no further increase in the number of boats;*

- iv) *design guidelines should be produced, relating specifically to the cladding of superstructures;*
- v) *normal planning control should be exercised over material development on the foreshore;*
- vi) *that houseboats moored before 31<sup>st</sup> March 1975 had acquired rights of established use and are thus immune from enforcement procedure.*

4.11 The report advised that the Department of the Environment had confirmed their opinion that planning permission is required for the mooring of houseboats and are thus subject to planning control. It also stated that the *“extent of control that exists over the details design and colour of individual boats remains in doubt”*. For the avoidance of doubt, the use of Chelsea Reach for mooring of houseboats in residential use is considered now, in principle, to be within the scope of the Town and Country Planning Act 1990 and of planning control generally.

4.12 In June 1976 the Council published Design Policy Guidelines for houseboats in Battersea Reach (Chelsea Reach). This stated that people had been living in houseboats here since the beginning of the 20<sup>th</sup> Century and without the exercise of planning control until 1975. It noted that *“many people feel that the design of the new boats is unsatisfactory”*, therefore the design guidelines have been introduced to establish a satisfactory design approach to be adopted by boat owners and builders and for committee members to refer to when considering individual applications for planning permission.

4.13 The Design Guidelines state that since 1975, any new boat or superstructure requires planning permission; in summary, houseboats should be *“boat-shaped”* (rather than rectangular), the superstructure should be proportionate to the size of the hull, box-like shapes are discouraged, nautical detailing (such as port-holes) is preferred, as are timber/brass/zinc materials; paraphernalia such as tv aerials, pipes, flues and cables are discouraged.

4.14 On 15 November 1978 planning permission was granted for development described as, *“The reorganisation of the moorings at Chelsea Yacht and Boat Company Ltd, Cheyne Walk, Chelsea as shown on the submitted drawings nos. T88/6788, applicants drawings no. CMSK.3 (as revised)”*. Four conditions were imposed:

- *No more than 60 houseboats (including two ‘company’ boats) shall, at any future time, be moored on the site.*
- *The ‘gap’ between the two groups of houseboats shall not, at any time, be less than 53 metres in width.*
- *The piles shall be retained as shown on Drawing No. CM/SK/3 (as revised) and shall not, at any future time, be repositioned without prior permission of the Council.*
- *Detailed plans and drawings showing the design and disposition of pontoons shall be submitted to and approved by the Council before they are moored on the site.*

4.15 Two informatives were added:

- *Refuse storage must be provided to the Council's satisfaction. You are therefore advised to consult with the Director of Public Cleansing and Works Services, Central Depot, Warwick Road, and;*
- *Your attention is drawn to design policy notes issued by the Council in July 1976 regarding alterations to individual houseboats.*

4.16 The approved plans and drawings for this permission have been lost, the only record the Council holds is the decision notice. Officers, having taken legal advice, consider that the correct interpretation of this planning permission is that (a) it extends in terms of the site area to the whole of the area of the moorings at Chelsea Reach and (b) permission is limited to the reorganisation/layout of the moorings and did not grant or purport to grant planning permission the use of the area for the moorings of houseboats. In substance, the planning permission allows for a particular arrangement of the moorings, including pontoons and other infrastructure, rather than permitting the use of the Chelsea Reach for the mooring of houseboats. This interpretation has had regard to the terms of the planning permission itself and the wider context provided by the planning history, which reveals that Chelsea Reach has been used for the mooring of houseboats since the end of the Second World War, some 30 years before this planning permission was granted. Accordingly, it is considered that the use of Chelsea Reach for the mooring of houseboats is lawful under Section 191(2) by reason of the passage of time since the use commenced (which pre-dated modern planning controls) and not through the grant of planning permission. As such, planning permission is therefore not required for the continued use of Chelsea Reach for the mooring of houseboats (up to 60 in number, as provided for by the 1978 planning permission which controls the organisation of the moorings).

4.17 Since 1978 a number of planning applications have been determined for alterations and moorings of various houseboats at the pier (see the table below).

Reference	Description	Decision
T/78/559	Reconstruction of houseboat "Diogenes"	Granted 05/09/1978
PP/80/00359	Reconstruction and conversion of houseboat "Moby Dick"	Granted 16/05/1980
PP/83/01394	"The Gap" houseboat. Incorporation of top cabin to houseboat	Granted 09/10/1983
PP/86/00818	The Blue Moon" houseboat; to reconstruct the houseboat as a two storey superstructure.	Granted 23/07/1986
PP/86/00961	Replacement of houseboat "The Ark" to be moored at existing residential mooring.	Granted 15/07/1986

PP/86/00962	Replacement for the mooring of a replacement house barge "St Lucia".	Granted 15//07/1986
PP/86/02604	Change of use of existing berth from residential to restaurant	Refused 10/03/1987
PP/88/00328	To replace wooden boat which has been disposed of, with a Dutch barge, which has been converted to residential use	Granted 28/03/1988
PP/88/01015	Replacement of houseboat with reconstructed superstructure on existing hull.	Granted 27/06/1988
PP/88/02235	Mooring of replacement houseboat for residential use	Granted 19/12/1988
PP/89/01598	Replacement of vessel Karrina 18 metres involving the creation of a new mooring off Pontoon F	Granted 19/01/1990
PP/91/01471	Formation of new residential mooring, proposed relocation of vessels "The Flagship" and "Charles Fleming" to new moorings and change of use of vessel "The Flagship" to use for B1 purposes. Proposal was amended and planning permission	Granted 13/05/1992
PP/94/02553	Replacement of the vessel Karrina involving the creation of a new mooring off Pontoon F.	Granted 19/01/1990
PP/94/02553	Replacement of the vessel Karrina involving the creation of a new mooring off Pontoon F. Renewal of planning permission dated 19.1.1990.	Granted 14/02/1995
PP/02/00313	Provision of a new steel barge PH3 for residential use to be moored in existing berth number 20.	Granted 22/03/2002
PP/02/02343	Creation of new landing stage, additional houseboat berth and re-opening of pedestrian access from Cheyne walk through the mooring of 4 pontoons (M,N,O & P) and the provision of 10 additional mooring piles (Nos. 45 to 55).	Granted 26/08/2003

PP/03/00587	New steel barge PH5 (to be moored in existing Berth 19) for residential use as a houseboat.	Granted 06/05/2003
PP/06/02455	New steel narrow boat for residential use	Granted 07/02/2007
PP/07/00011	Erection of an extension to vessel to provide additional residential accommodation on the upper deck. (Patriarch vessel)	Granted 05/04/2007
PP/08/01646	Erection of a rear extension to Houseboat "Current Affairs".	Granted 29/07/2008
PP/09/00765	Removal of existing rotted window framing and surround to bow and replacement with a new upright enclosed sundeck area	Granted 14/07/2009
PP/09/01568	Replace existing houseboat ("Scarlet O'Hara") with new houseboat ("Scarlet O'Hara").	Granted 16/12/2009
PP/09/01571	Replace existing houseboat ("Toad Hall") with new houseboat ("Toad Hall").	Granted 17/12/2009
PP/09/02515	Provision of new 2 bedroom houseboat with direct access of existing pontoon.	Refused. Appeal dismissed 19/09/2010
PP/10/01630	Erection of extension to upper deck of existing houseboat ("Joseph Conrad").	Granted 08/09/2010
PP/10/02839	Stationing of a new 23m x 5m Houseboat to be located at berth 10.	Granted 21/10/2010
PP/10/02975	Installation of steel levelling wedges under bow end of "Victory", "Trafalgar", "Nomadisch", and "Maddalena" houseboats	Refused 02/03/2012
PP/10/03956	Rebuilding of superstructure on top of existing hull to form a 2 bedroom houseboat. Vessel Esperance	Granted 24/02/2011
PP/11/01918	Replacement of existing houseboat ("Rudyard Kipling") with new houseboat ("Delta Dawn").	Granted 29/12/2011



PP/11/02451	Replacement of existing vessel moored at Berth 48 with new houseboat	Granted 22/12/2011
PP/11/03804	Provision of 2 bedroom houseboat with direct access off existing pontoon.	Granted 30/05/2012
PP/12/00105	Retention of refurbishment/upgrade works to existing houseboat as already undertaken (Retrospective Application) Vessel John Clare	Granted 29/03/2012
PP/12/01970	Erection of a rear extension to houseboat. Vessel Philippa	Granted 25/07/2012
PP/13/00633	Variation of Condition 2 (minor amendments to drawings) to planning permission PP/11/03804 (provision of a 2 bedroom houseboat with direct access off existing pontoon). variation seeks to amend houseboat to one bedroom, minor revision to windows, increase deck space and amend external finish along with changes to roof profile	Granted 18/03/2015
PP/13/00681	Provision for mooring with 1-bedroom houseboat with direct access off pontoon P.	Refused, appeal dismissed 11/03/2014
PP/14/03568	Construction of a replica houseboat (Trafalgar) with minor alterations to window positions and additional skylight	Granted 11/08/2014
PP/14/04220	Replacement of slanted window to bi-fold doors on upper level. Installation of two additional windows on upper deck and a porthole on lower deck. Straightening up slanted window on lower deck at bow end. Removal and replacement of skylight. General refurbishment and improvements. Vessel Blue Moon	Granted 29/08/2014
PP/16/01828	Rebuilding of superstructure on top of hull to form a 2 bedroom houseboat. "Esperance".	Granted 31/05/2016
PP/16/08281	Refurbishment of Thames Barge with external changes to upper deck including installation of overhanging roof and insertion of sliding shutters below windows. Vessel Black Hoe.	Granted 26/01/2017

## 5.0 The Investigation

5.1 Planning enforcement officers have carried out four site visits, the first accompanied by a concerned local resident on the 6<sup>th</sup> June, the second visit was with the owner of the CBYC on 12<sup>th</sup> October, and the third and fourth visit were unaccompanied, on 12<sup>th</sup> October and 21<sup>st</sup> November . Officers have viewed the houseboats from the pontoons, from the Embankment, from Battersea Bridge and from the Thames path on the opposite side of the river. It was observed that the houseboats moored at Chelsea Reach vary in size, colour, shape and condition; they are moored in 2 groups, separated by the gap protected by the 1978 planning condition. The PLA have provided a mooring plan from the CYBC confirming that there are 60 berths at the pier and CYBC have advised in October that the number of houseboats moored were 55 and has not exceeded 60, in compliance with the planning condition attached to the 1978 planning permission.

5.2 The gap between the two groups of houseboats is now separated by a gap of some 45m as the Planning Inspector makes clear in the decision letter dismissing the appeal against the refusal of planning permission PP/09/02515. The Inspector notes that *“Since 1983 the gap appears to have been encroached upon by an additional berth. Further, in 2003 new pontoons linking to the shore were approved and the consent has been partially implemented”*.

5.3 The three houseboats that are the subject of this enforcement investigation are the HB Iris, HB Pacifica and HB Zephyr moored in berths 5, 11 and 12, respectively. They are moored close to the CBYC office at 106 Cheyne Walk, at the southern end of the site, furthest away from Battersea Bridge and perpendicular to the flow of the river. They are all comprised of a hull of boats that had previously been in commercial use on the river, the superstructures being added to the hulls and fitted up for living in at a boatyard and then brought to the site.

5.4 The houseboats all have the same size hull, they measure 29.3m in length at the waterline (LWL), 33m bow to stern and 7.5m wide. The boatyard owner has stated that, for comparison, the following vessels are of a similar size (LWL):

Joseph Conrad is 29.9m, Colne Denton is 26.2m, Delta Dawn is 26.8m, Antje is 26.8m, Stow and Trafalgar are both 26.2m and the Victory is 27.8m.

Officers have no reason to dispute this. Moreover, the Council has not received any allegations that these other houseboats are a breach of planning control.

5.5 The owner has confirmed that each of the three houseboats comprise two self-contained units; officers have not requested an inspection of the 3 houseboats internally, they are satisfied that this is the case, and that the enforcement investigation can be concluded without access internally to the three houseboats of concern.

The owner of CYBC has advised that three houseboats have been designed to follow the Design Guidelines published in 1976 as follows:

- *“A boat shaped hull is preferred to a rectangular pontoon and is likely to result in a less rectangular superstructure.”* The vessels have boat shaped hulls.

- *“the superstructure should not exceed 2 ½ times the height from waterline to the top of the hull”.* The vessels comply with this guideline.
- *“localised half-levels, deck houses etc., which help to break down a box-like form, are to be encouraged.”* The vessels have varying sections of roof so as to break up the visual massing of the superstructure.
- *“The superstructure should not (a) cover more than 80% of the hull’s plan area at deck level, nor (b) at any point rise sheer from the water.”* The vessels comply with this guideline.
- *“A box shape superstructure is to be avoided”.* The vessels have varying levels and cladding and roofs to ensure that they are not boxes.
- *“Boat construction usually exhibits a series of curved or sloping forms ... which also happen to be visually satisfying”.* The vessels have curved roofs.
- *“symmetry should be avoided” (referring to the side profile).* They do not have symmetrical side profiles.
- *“Timber boarding – shiplap or tongued and grooved, vertical, horizontal or diagonal” (are preferred materials).* The vessels have timber boarding.
- *“Copper and bronze, brass and zinc (are preferred materials).* The vessels include these materials.
- *Colours – hulls should be dark with black specifically mentioned.* The vessels have black hulls.
- *Colours – superstructure hulls should be “a little lighter colours”.* The vessels have muted lighter painted superstructures or stained wood.
- *Windows – “metal framed portholes are clearly suitable, but larger glazed areas will often be required”.* The vessels have steel marine windows in the hull.
- *Windows “windows never forming more than about 40% of the area. Circular windows are particularly suitable”.* The vessels comply with this guideline.
- *“All plumbing must be internal. Rain water pipes must also be internal”.* The vessels have internal rain water pipes.
- *“Electricity supply and telephone cables must be at low level running underneath the access spines and must not form an overhead ‘wire-scape”’.* The vessels comply with this guideline.
- *“Railings – These should preferably follow the normal ship’s railing pattern. Closely spaced uprights belong to building, not boats, but being required in dwellings due to safety considerations may have to be accepted occasionally”.* The vessels comply with this guideline.

5.6 Officers do not dispute that the three houseboats meet the guidelines as stated above.

## 6.0 Legal Framework

6.1 Section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Operational development would result in some physical alteration to the land with some degree of permanence.

6.2 Section 336 interprets the meaning of a 'building' and section 55(1A), inserted by the Planning and Compensation Act 1991, defines 'building operations'. These include demolition, rebuilding, structural alterations or additions, and other operations normally carried on by a person in business as a builder.

6.3 A relevant court judgment is the case of *Skerritts of Nottingham Limited* which identified three primary factors in establishing whether a structure should be regarded as a building, or building operation, for the purposes of the Act. These are firstly, that a building would normally be constructed on site as opposed to being brought already made to the site; secondly, that a building, structure or erection denotes a physical change of some permanence (rather than being transient or mobile); and thirdly, some degree of physical attachment (rather than being simply deposited on the land). No one factor is decisive.

6.4 The question of whether a material change of use has occurred is judged against the legal construct of the planning unit. In the case of *Wakelin V SoS* (1978) it was held that for a material change of use to occur, the character of the use of the planning unit is changed in a way that has material consequences. A material change of use can in principle arise as a result of increased use of land with an lawful use; this is referred to as a material change of use through intensification. However, such a change will arise only where the increased extent of use has changed the character and nature of the existing use, including by reason of external effects of the increased use. It is fair to report that incidents where a material change of use through intensification has been concluded to arise are relatively rare.

6.5 In *Thames Heliports PLC V London Borough of Tower Hamlets* the Court of Appeal held that even when there is no physical connection between a structure placed on the river and the riverbed or bank, the use of the structure or activity may amount to the material change of use of the land. The court observed that ordinary incidental use of the River Thames is "*the activity of ships, boats and other vessels passing over the water for the purposes of navigation, commerce, trade and intercourse*".

6.6 Section 171(a) states that carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

6.7 Section 172 states that the local planning authority may issue an enforcement notice where it appears to them that that there has been a breach of planning control and it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

6.8 Section 171B states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

6.9 Section 191 (2) states that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

6.10 The Council in its decision making must act reasonably in accordance with Wednesbury principles which head that a decision is unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223).

6.11 The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant when considering enforcement action. Section 149 of the Equalities Act 2010 also applies.

## **7.0 Evaluation**

7.1 The main issues for determination are whether the three houseboats constitute operational development requiring planning permission or whether the mooring of the three houseboats is a material change in the use of the land. The resolution of these issues will determine whether the mooring of these three houseboats are lawful or otherwise and whether enforcement action is in principle capable of being taken in respect of the mooring of them.

### **Operational Development**

7.2 The issue to be addressed is whether the three houseboats themselves are operational development under the first limb of Section 55 and constitute development requiring planning permission. A boat is generally not considered to be a “building” because of its element of mobility, and the mooring of a boat would not generally be taken to involve a building operation, having regard to the factors of permanence and attachment. Whether a boat, and specifically a houseboat can be considered to be a building is a matter of fact and degree and planning judgement taking into account the three primary factors (construction on site, degree of physical attachment and permanence) identified by the Court of Appeal in the case of *Skerritt's of Nottingham Ltd v Secretary of State for the Environment Transport and the Regions* (2000) 2 PLR 102.

7.3 The owner of CYBC has advised that all of the houseboats at the pier are required to dry dock every six years. He has confirmed that the three houseboats are all capable of being detached from the services within 10 minutes; they have no rigid connection to the riverbank or to the mooring pontoons and that they are secured in the normal way with a system of tied ropes and mooring fenders in between, much like the other boats moored there.

7.4 It is therefore concluded, as matter of judgment, that the three houseboats, constructed elsewhere and brought to Chelsea Reach are not fixed to the land with any degree of permanence and as such, should not be considered to be a building and their introduction should not be considered to be a building operation. Consequently, they are not operational development requiring planning permission.

7.5 It is therefore necessary to consider whether the mooring of these vessels amount to a material change of use of land.

## Material Change of Use

7.6 Whether a material change of use has occurred is a matter of fact and degree which requires the planning unit to be defined. In this case, a relevant issue is whether the residential moorings at Chelsea Reach as a whole is the planning unit, or whether the planning unit can be regarded as each individual mooring.

7.7 The determination of the planning unit is made generally by applying well-established factors set out in *Burdle v Secretary of State for the Environment* (1972) 1 WLR 1207. This confirmed that where there is a single main purpose in terms of the use of land, the unit of occupation should be considered as the planning unit.

7.8 In considering whether there is a single main purpose to the use of the land at Chelsea Reach, the factors to take into account are whether there is a general level of homogeneity in respect of the use of the individual berths, the ownership and planning history.

7.9 The land at Chelsea Reach has been used for the mooring of houseboats for over 70 years and had begun before planning controls came into existence. The land has been let to CBYC for all that time. Houseboats of varying size and design have been moored at the land throughout the period and there is a planning permission granted in 1978 for the reorganisation of the moorings which is construed as being for the whole of the moorings at Chelsea Reach.

7.10 What is the extent of the planning unit is ultimately a matter of judgment. In this case, by reason of the leasehold of the whole moorings by a single party, the planning history and the nature of the use of the individual moorings being used for the mooring of houseboats, using shared infrastructure (e.g., pontoons and gangways). It is considered, as a matter of planning judgment, that the planning unit is the moorings as a whole rather than each mooring being a self-contained planning unit. Officers acknowledge that planning permission has over time been sought for and concerning individual moorings, however, and notwithstanding this, officers view is that the moorings as a whole are a single planning unit.

7.11 To approach a series of berths as one planning unit reflects the approach generally taken and which has been approved by the Courts in respect of caravan sites, comprising a series of pitches which has involved considering the whole site (rather than individual pitches) as a single planning unit (see *Gregory v Secretary of State for the Environment* (1990) 60 P&CR 513).

7.12 In *R(KP JR Management Company Limited v London Borough of Richmond Upon Thames* (2018) EWHC 84 (Admin) the High Court upheld, on the facts of that case, as rational the decision of Richmond LBC that the appropriate planning unit was the entire mooring and pontoon area, rather than the mooring of each individual berth.

7.13 Officers note that in the case of the *Church Commissioners v Secretary of State for the Environment* (1995) 71 P&CR 73, which concerned units in a large shopping mall, i.e. the Metro Centre, the Court upheld the Secretary of State's conclusion that although the whole mall was owned by one landlord and was one building, for the purposes of planning control each of the 300 shop units was a separate planning unit. However, a main difference with the circumstances of the Church Commissioner case and the houseboats is that each shop unit is self-contained and easily defined physical unit comprising a subdivision of and within a building. That is not the position at these moorings (or indeed in moorings generally). As explained, the moorings are not a building, and the mooring of houseboats is not a building operation. In any event, the decision in the *Church Commissioners* case

involved an exercise of planning judgment, just as officers have done in the present case. The particular characteristics of these moorings are such that the whole moorings should be considered to be the planning unit.

7.14 The lawful use of the planning unit is for the mooring of houseboats in residential use. This lawful use has been established due to the passage of time rather than through the grant of a planning permission (as discussed above). As the planning history makes clear, Chelsea Reach has been used for the mooring of houseboats since the end of the Second World War and by the time the Council considered what planning controls could be applied in the mid 1970's, that use had become immune from enforcement action.

7.15 The issue which next arises is whether the introduction of the three houseboats under investigation has given rise to a material change of use within the planning units. Consideration has been given to whether these three relatively larger houseboats, which comprise 2 self-contained units, would effect a change to the character and use of the planning unit so as to constitute a material change of use of the planning unit, whether through intensification or otherwise.

7.16 It is the case that the three houseboats comprise 2 self-contained units and are the only boats moored at the pier to do so, with all the other houseboats on the pier formed of one dwelling. However, that there are two units rather than one is not materially evident externally including when observed from public vantage points.

7.17 These three houseboats, by reason of their design and materials, informed, officers accept, by the Council's Design Guidelines for houseboats in Battersea Reach, have the appearance of a "typical houseboat" and are considered by officers to be properly described and considered as houseboats (notwithstanding that each accommodates two residential units, as described above). Whilst they are somewhat larger than many of the other houseboats moored at Chelsea Reach, they are not substantially larger, in particular when seen in public views from the Embankment, Battersea Bridge or from the Thames Path on the other side of the River Thames. Indeed, there are some other boats of a generally a similar size. The three boats are located furthest away from Battersea Bridge, moored perpendicular to the flow of the river. The smaller houseboats are moored nearer to the bridge, attached to two pontoons which are parallel to the Embankment. This means that the three houseboats do not appear to project further into the River Thames than the smaller houseboats. The Council have received an aerial photograph of the moorings showing two of the three houseboats that are subject to this investigation, in situ. From this aerial perspective the two houseboats do appear larger than the other houseboats moored at Chelsea Reach, however, although this is a view that may be visible from private views from nearby properties at high level, this is not a view that is readily visible to the public, and is not one which is considered to materially affect the character of the use of the moorings as a whole and how it is appreciated in practice.

7.18 Overall, it is considered that the each of the three vessels are houseboats and that although each comprises two self-contained units their introduction has not resulted in a material change of use of the planning unit so as to amount to a material change of use of the unit, through intensification or otherwise, such that planning permission is required.

7.19 For completeness, officers are aware that in *Sussex Investments Ltd V Secretary of State* (1998) the Court held that the Secretary of State was entitled lawfully to hold that a floating two storey structure standing on a platform which floats on the river and is attached by metal mooring rods was not, as a matter of judgement, a houseboat. For the reasons set out above, the character and appearance of the three vessels under investigation are such

that they can and should be considered to be houseboats. The position here is considered to be materially different from that which arose in the Sussex Investments Ltd. case.

7.20 It is therefore concluded that the planning unit is most reasonably taken to be the moorings of the houseboats as a whole, the lawful use of the planning unit is for the mooring of houseboats and that the introduction of the three larger houseboats moored at Chelsea Reach has, as a matter of judgment, not resulted in a material change of use. No enforcement action may be taken.

7.21 It is the case that certain representations suggest that the 1978 planning permission itself establishes the lawful use of the moorings as opposed to that use being established through the passage of time and the 1978 planning permission relates to the organisation of the moorings. Officers do not agree, as explained above. However, *if* the 1978 planning permission, correctly interpreted, does establish the lawful use of as being for the mooring of houseboats, then for essentially the same reasons set out above it remains the view of officers that the mooring of the three vessels of concern do not give rise to a material change of use by intensification or otherwise. For completeness, officers do not consider that the mooring of the three houseboats under investigation has given rise to any breach of a condition attached to the 1978 planning permission.

## **8.0 Conclusion**

8.3 In light of what is set out above, officers are satisfied that the three houseboats may be lawfully moored at Chelsea Reach as the land has established lawful use for the mooring of houseboats through the passage of time. The introduction of these three houseboats has not given rise to a material change of use and does not give rise to development requiring planning permission. In conclusion, no breach of planning control has occurred.

## **9.0 Recommendation**

**9.1 It is recommended that the Committee determines that no breach of planning control with regards to the mooring of the three houseboats has occurred.**



**Appendix B-**  
**REPORT 27-02-24**

## **Planning Enforcement Investigation ENF/23/05645**

**Land at: 106 Cheyne Walk, Chelsea Reach, London, SW10**

### **1.0 Summary**

- 1.1 This report relates to the residential mooring of three houseboats at Chelsea Reach. The three houseboats are the HB Iris, HB Pacifica and HB Zephyr moored in berths 5, 11 and 12, respectively.
- 1.2 On 19<sup>th</sup> December 2023 the Planning Applications Committee determined that the mooring of the three houseboats is a breach of planning control on the basis that each berth is a separate planning unit and the introduction of significantly different boats constitutes a material change of use by reason of intensification, and would do so even if the moorings as a whole were treated as one planning unit. The material change of use by intensification was found to have occurred, due to the size of the houseboats and their configuration as two self-contained units.
- 1.3 It was accepted by the Planning Applications Committee that the houseboats are not operational development requiring planning permission.
- 1.4 Having determined that a breach of planning control has occurred, officers have considered whether it is expedient to take enforcement action against the material change of use of the land. For the reasons set out below, officers consider that it is not expedient to take enforcement action.

### **2.0 Reason for committee consideration**

- 2.1 At the request of the Planning Applications Committee.

### **3.0 The site and its surroundings**

- 3.1 The site, known as Chelsea Reach (and also Battersea Reach) is located on the northern bank of the River Thames adjacent to the Embankment, bounded by Battersea Bridge to the north-east and 106 Cheyne Walk to the south-west (the building which houses the offices of the Cheyne Yacht and Boat Company (CYBC)). The site has historically been used for the residential mooring of houseboats; there are currently 55 houseboats moored at the site, arranged in two groupings of pontoons that are separated by a central gap.
- 3.2 The site is located within the Thames Conservation Area and is designated as a site of Nature Conservation Importance within the River Thames and tidal tributaries. It is also within the Thames Special Policy Area and the Chelsea Riverside Archaeological Priority Area.
- 3.3 The three houseboats that are the subject of this report are located at the south-western end of the site, close to the CYBC office at 106 Cheyne Walk, furthest away from Battersea Bridge and perpendicular to the flow of the river. The nearest access to them is via the entrances at Cheyne Pier and Old Ferry Wharf. The rear of the houseboats face towards the Worlds End Housing Estate on the opposite side of Chelsea Embankment.

- 3.4 The three houseboats are all comprised of a hull of boats that had previously been in commercial use on the river, the superstructures being added to the hulls in at a boatyard and fitted up for living and then brought to the site. The houseboats all have the same size hull, they measure 29.3m in length at the waterline (LWL), 33m bow to stern and 7.5m wide. It is recognised that the length of each of the houseboats is comparable to other houseboats moored at Chelsea Reach (the boatyard owner has stated that the LWL of Joseph Conrad is 29.9m, the Colne Denton is 26.2m, the Delta Dawn is 26.8m, the Antje is 26.8m, the Victory is 27.8m and the Stow and Trafalgar are both 26.2m) however, the three houseboats, taking into account their width and height, are the largest houseboats by volume.
- 3.5 Officers have not carried out an internal inspection of the three houseboats, however the owner of CYBC has confirmed that the houseboats the Iris and the Zephyr are each comprised of two, 2-bedroom homes. The houseboat the Pacifica is comprised of one 1-bedroom home and one 3-bedroom home.
- 3.6 Planning enforcement officers carried out four site inspections during the investigation to determine whether a breach of planning control had occurred. Those visits were carried out in 2023 on 6<sup>th</sup> June, 12<sup>th</sup> October (two visits) and 21<sup>st</sup> November.
- 3.7 A further visit was undertaken on 4<sup>th</sup> January 2024 as part of the assessment by officers into whether the unauthorised use is causing harm that would warrant formal enforcement action. It was observed that only two of the houseboats remain moored at the site. The owner has advised that the Iris has been taken into dry dock but will be returning to berth 5.

#### **4.0 Relevant Planning History**

- 4.1 The investigation of the planning history of the site as set out in the report to Planning Committee on 19<sup>th</sup> December 2023 found that the site has been used for the residential mooring of houseboats since the end of the Second World War. Planning permission has not been granted for the use, rather it has acquired immunity from enforcement through the passage of time and is lawful under Section 191(2) of the Act. Consequently, there are no conditions controlling the size and design of the individual houseboats.
- 4.2 Planning permission was granted for the reorganisation of the moorings at *Chelsea Yacht and Boat Company Ltd, Cheyne Walk, Chelsea* in November 1978 subject to four conditions:
- *No more than 60 houseboats (including two 'company' boats) shall, at any future time, be moored on the site.*
  - *The 'gap' between the two groups of houseboats shall not, at any time, be less than 53 metres in width.*
  - *The piles shall be retained as shown on Drawing No. CM/SK/3 (as revised) and shall not, at any future time, be repositioned without prior permission of the Council.*

- *Detailed plans and drawings showing the design and disposition of pontoons shall be submitted to and approved by the Council before they are moored on the site.*

4.3 Two informatives were added:

- *Refuse storage must be provided to the Council's satisfaction. You are therefore advised to consult with the Director of Public Cleansing and Works Services, Central Depot, Warwick Road, and;*
- *Your attention is drawn to design policy notes issued by the Council in July 1976 regarding alterations to individual houseboats.*

4.4 Since 1978 a number of planning applications have been determined for alterations and moorings of various houseboats at the pier, noted in the table below.

Reference	Description	Decision
T/78/559	Reconstruction of houseboat "Diogenes"	Granted 05/09/1978
PP/80/00359	Reconstruction and conversion of houseboat "Moby Dick"	Granted 16/05/1980
PP/83/01394	"The Gap" houseboat. Incorporation of top cabin to houseboat	Granted 09/10/1983
PP/86/00818	The Blue Moon" houseboat; to reconstruct the houseboat as a two storey superstructure.	Granted 23/07/1986
PP/86/00961	Replacement of houseboat "The Ark" to be moored at existing residential mooring.	Granted 15/07/1986
PP/86/00962	Replacement for the mooring of a replacement house barge "St Lucia".	Granted 15//07/1986
PP/86/02604	Change of use of existing berth from residential to restaurant	Refused 10/03/1987
PP/88/00328	To replace wooden boat which has been disposed of, with a Dutch barge, which has been converted to residential use	Granted 28/03/1988

PP/88/01015	Replacement of houseboat with reconstructed superstructure on existing hull.	Granted 27/06/1988
PP/88/02235	Mooring of replacement houseboat for residential use	Granted 19/12/1988
PP/89/01598	Replacement of vessel Karrina 18 metres involving the creation of a new mooring off Pontoon F	Granted 19/01/1990
PP/91/01471	Formation of new residential mooring, proposed relocation of vessels "The Flagship" and "Charles Fleming" to new moorings and change of use of vessel "The Flagship" to use for B1 purposes. Proposal was amended and planning permission	Granted 13/05/1992
PP/94/02553	Replacement of the vessel Karrina involving the creation of a new mooring off Pontoon F.	Granted 19/01/1990
PP/94/02553	Replacement of the vessel Karrina involving the creation of a new mooring off Pontoon F. Renewal of planning permission dated 19.1.1990.	Granted 14/02/1995
PP/02/00313	Provision of a new steel barge PH3 for residential use to be moored in existing berth number 20.	Granted 22/03/2002
PP/02/02343	Creation of new landing stage, additional houseboat berth and re-opening of pedestrian access from Cheyne walk through the mooring of 4 pontoons (M,N,O & P) and the provision of 10 additional mooring piles (Nos. 45 to 55).	Granted 26/08/2003
PP/03/00587	New steel barge PH5 (to be moored in existing Berth 19) for residential use as a houseboat.	Granted 06/05/2003
PP/06/02455	New steel narrow boat for residential use	Granted 07/02/2007
PP/07/00011	Erection of an extension to vessel to provide additional residential accommodation on the upper deck. (Patriarch vessel)	Granted 05/04/2007

PP/08/01646	Erection of a rear extension to Houseboat "Current Affairs".	Granted 29/07/2008
PP/09/00765	Removal of existing rotted window framing and surround to bow and replacement with a new upright enclosed sundeck area	Granted 14/07/2009
PP/09/01568	Replace existing houseboat ("Scarlet O'Hara") with new houseboat ("Scarlet O'Hara").	Granted 16/12/2009
PP/09/01571	Replace existing houseboat ("Toad Hall") with new houseboat ("Toad Hall").	Granted 17/12/2009
PP/09/02515	Provision of new 2 bedroom houseboat with direct access of existing pontoon.	Refused. Appeal dismissed 19/09/2010
PP/10/01630	Erection of extension to upper deck of existing houseboat ("Joseph Conrad").	Granted 08/09/2010
PP/10/02839	Stationing of a new 23m x 5m Houseboat to be located at berth 10.	Granted 21/10/2010
PP/10/02975	Installation of steel levelling wedges under bow end of "Victory", "Trafalgar", "Nomadisch", and "Maddalena" houseboats	Refused 02/03/2012
PP/10/03956	Rebuilding of superstructure on top of existing hull to form a 2 bedroom houseboat. Vessel Esperance	Granted 24/02/2011
PP/11/01918	Replacement of existing houseboat ("Rudyard Kipling") with new houseboat ("Delta Dawn").	Granted 29/12/2011
PP/11/02451	Replacement of existing vessel moored at Berth 48 with new houseboat	Granted 22/12/2011
PP/11/03804	Provision of 2 bedroom houseboat with direct access off existing pontoon.	Granted 30/05/2012
PP/12/00105	Retention of refurbishment/upgrade works to existing houseboat as already undertaken (Retrospective Application) Vessel John Clare	Granted 29/03/2012

PP/12/01970	Erection of a rear extension to houseboat. Vessel Philippa	Granted 25/07/2012
PP/13/00633	Variation of Condition 2 (minor amendments to drawings) to planning permission PP/11/03804 (provision of a 2 bedroom houseboat with direct access off existing pontoon). variation seeks to amend houseboat to one bedroom, minor revision to windows, increase deck space and amend external finish along with changes to roof profile	Granted 18/03/2015
PP/13/00681	Provision for mooring with 1-bedroom houseboat with direct access off pontoon P.	Refused, appeal dismissed 11/03/2014
PP/14/03568	Construction of a replica houseboat (Trafalgar) with minor alterations to window positions and additional skylight	Granted 11/08/2014
PP/14/04220	Replacement of slanted window to bi-fold doors on upper level. Installation of two additional windows on upper deck and a porthole on lower deck. Straightening up slanted window on lower deck at bow end. Removal and replacement of skylight. General refurbishment and improvements. Vessel Blue Moon	Granted 29/08/2014
PP/16/01828	Rebuilding of superstructure on top of hull to form a 2 bedroom houseboat. "Esperance".	Granted 31/05/2016
PP/16/08281	Refurbishment of Thames Barge with external changes to upper deck including installation of overhanging roof and insertion of sliding shutters below windows. Vessel Black Hoe.	Granted 26/01/2017

## 5.0 Concerns raised by residents

5.1 With enforcement investigations, there is no statutory consultation requirement as there is with planning applications. However, given the local interest, the concerns raised by residents are summarised in this report, and where appropriate, are addressed in section 8 of this report. It should be noted that the issues raised regarding the licence fees and evictions cannot be taken into account. These are civil matters that are beyond the scope of planning control.

- 5.2 In March 2023 enforcement officers were asked to investigate the mooring of a new vessel, the Viceroy, in berth 17, which is adjacent to the protected gap. The investigation considered whether the mooring of this vessel was a breach of planning control and concluded that the vessel was a houseboat, it was moored in an existing berth, there was no new mooring created within the gap and that therefore the conditions of the 1978 permission were met, and there was no breach of planning control established.
- 5.3 In May 2023 a local resident association contacted the Council following an approach to them from a resident living on one of the houseboats at Chelsea Reach asking for the details of the lease agreement between CYBC and the Council. The reason for the request was because the resident considered that CYBC were, "*evicting boat owners and refusing them licences in order to install massive luxury boats in their place*". The Council explained that they would not be able to share the details of the lease agreement but could confirm that the agreement limited the size of the boats to 32 metres in length, a maximum of 3.5 metres from the deck and no more than two floors including any in the hull. The resident association requested that they were now seeing vessels being moored at Chelsea Reach which were too long and too large and asked the Council to support enforcement action to curb such abuse.
- 5.4 A request for enforcement action followed regarding an alleged breach of planning control, that an additional mooring had been created between existing moorings 57 and 58. Officers contacted the boatyard who confirmed that the vessel had been removed and that the number of houseboats was 55. The investigation was closed on the basis that no new mooring had been created and the number of houseboats did not exceed 60.
- 5.5 Residents have raised a number of concerns regarding the introduction of these three houseboats to Chelsea Reach between June and September 2023 and have asked for enforcement action to be taken. The concerns raised are summarised below:
- The planning guidance requiring planning permission for all new houseboats should be applied, the Council should take enforcement action against the 3 new "megaboats";
  - Failure to take enforcement action would set a dangerous precedent;
  - The developer is evicting residents to moor these boats;
  - The boats are enormous and obscure the views of the river;
  - The three boats amount to an intensification of the berths they occupy;
  - The presence of the three boats adversely affects the visual amenity of the riverside;
  - Planning control and guidance has not been properly exercised since 2017;
  - The Chelsea community is being destroyed;
  - Planning permission has been required for alterations in the past;
  - Houseboats are being used for short term letting;
  - The houseboats cause loss of light and privacy due to their sign;
  - CYBC are putting up the licence fees;
  - The large boats put a strain on infrastructure;
  - Planning controls on the size and shape of individual boats should be reintroduced;



- Retrospective planning applications for alterations to houseboats has previously been required;
- The foreshore has been excavated;
- Houseboats have been moved to accommodate the mooring of the three houseboats.

5.6 The extent to which planning control may be exerted and whether enforcement action could be taken has been fully considered and on 19th December 2023 the Planning Applications Committee determined that the mooring of the three houseboats constituted a material change of use of the land by intensification. Officers have taken into consideration the views expressed by residents in their assessment of whether enforcement action should be taken and whether there is an identified harm arising from the breach of planning control.

## 6.0 Legal Framework

6.1 Section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Operational development would result in some physical alteration to the land with some degree of permanence.

6.2 The question of whether a material change of use has occurred is judged against the legal construct of the planning unit. In the case of *Wakelin V SoS* (1978) it was held that for a material change of use to occur, the character of the use of the planning unit is changed in a way that has material consequences.

6.3 In *Thames Heliports PLC V London Borough of Tower Hamlets* (1996) the Court of Appeal held that even when there is no physical connection between a structure placed on the river and the river bed or bank, the use of the structure or activity may amount to the material change of use of the land. The court observed that ordinary incidental use of the River Thames is, "*the activity of ships, boats and other vessels passing over the water for the purposes of navigation, commerce, trade and intercourse*".

6.4 Analysis of the law as it relates to intensification and whether a material change of use occurs has been conducted by Ouseley J and, later, the Court of Appeal in *Hertfordshire CC v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin) and [2012] EWCA Civ 1473 respectively. The principles drawn from this analysis made clear that intensification of a use can in principle amount to a material change and this can be the case even where the use remains of the same generic type. Intensification will require an increase in the scale of activities on site and will require a definable change in the character of the use made of the land and that off-site impacts (such as traffic or noise) and their effect on other premises may be taken into consideration.

6.5 In *Barton Park Estates Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 1200 (Admin) the Inspector concluded that although both the permitted and the proposed use could be described as a caravan site, the year round occupation of the whole of the site by permanent residents in a larger number

of units would change both its appearance (by introducing more activity, light and domestic paraphernalia, and by extending its visual impact) and the pattern of movements to and from the site. This would be a change in the definable character of the use, sufficient to trigger a material change of use amounting to development, for which consent would be required.

- 6.6 In *R(KP JR Management Company Ltd) v London Borough of Richmond & Kew Marine Ltd* (2018) Lang J considered whether the Council was correct to issue a lawful development certificate to the Interested Party for the mooring of six residential houseboats at its mooring adjacent to Kew Bridge. It was held that a material change in use may arise by intensification of the number of houseboats at a particular mooring. However, the development plan policies which heavily restricted additional houseboat moorings and residential use generally on Metropolitan Open Land (which included the River Thames), were not relevant in deciding whether there had been a material change of use because the development plan policies in question did not affect the character of the land and therefore did not give rise to significant planning consequences.
- 6.7 Section 171(a) states that carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
- 6.8 Section 171B states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- 6.9 Section 172 states that the local planning authority may issue an enforcement notice where it appears to them that there has been a breach of planning control and it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- 6.10 The Council in its deciding whether it is expedient to issue an enforcement notice must act reasonably in accordance with *Wednesbury* principles which held that a decision is unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223).
- 6.11 The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14, are relevant when considering enforcement action. Section 149 of the Equalities Act 2010 also applies. Where relevant, regard should be paid to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

- 6.12 In summary, the law provides that development constituting a material change of use by intensification on land, which can be the river, may be subject to enforcement action by the Council if it appears to them that the use is harmful and has occurred within the last 10 years. A decision to take enforcement action must be reasonable and must take into account the impact of that action upon those affected.

## 7.0 Policy Framework

- 7.1 Government Guidance (Ensuring Effective Enforcement) states:

*Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan. In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 59.*

- 7.2 Paragraph 59 of the National Planning Policy Framework (2023) states:

*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.*

- 7.3 The Council's Local Enforcement Plan (2018) reflects the values of discretion, expediency and proportionality enshrined in the planning enforcement regime.
- 7.4 Paragraph 205 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 7.5 For the purposes of Section 38 (6) of the Planning and Compulsory Purchase Act 2004 the RBKC 'Development Plan' comprises of the Local Plan 2019 and the London Plan 2021. The contents of the Government's National Planning Policy Framework 2019 have also been taken into account.
- 7.6 The Council started a New Local Plan Review ("NLPR") and consultation on Publication Policies (Regulation 19) closed on 22 December 2022. The Council submitted the NLPR for examination (Regulation 22) on 8<sup>th</sup> February 2023. Examination hearings were held in June and July 2023. The Council have opened a six-week consultation closing on 12 March 2024 on proposed Main Modifications to the submitted New Local Plan. The Examination remains open until the receipt of the Inspector's report. There is no published timetable for this. The emerging Local Plan will be a material consideration but is afforded moderate weight at this stage.
- 7.7 The relevant Local Plan policies are:

	Local Plan
Conservation Area	CL3, CL11
General townscape	CL1, CL2
Listed building	CL4
Living conditions	CL5
Waste	CE3
Transport	CT1
Waterways	CR5
Housing	CH1

### Other local strategies or publications

7.8 The main relevant supplementary planning document adopted by the Council for this case is the Thames Conservation Area Appraisal which can be read online at:

<https://www.rbkc.gov.uk/planning-and-building-control/heritage-and-conservation/conservation-areas/conservation-area>

### 8.0 Evaluation

8.1 The legal and policy framework provide that enforcement action is discretionary and may only be taken against a breach of planning control that is considered harmful and should be proportionate to the degree of harm.

8.2 The Council must therefore consider whether the material change of use by intensification, either as individual residential moorings forming three separate and distinct planning units or for the use of the whole of the site for residential moorings forming one planning unit, causes harm that would justify formal enforcement action.

8.3 The main issues to take into account when considering whether it is in the public interest to take enforcement action are the effect of the development upon:

- i) *the Thames Conservation Area and the existing residential moorings at Chelsea Reach, having particular regard to the statutory test to pay special attention to the desirability of preserving its character and appearance;*
- ii) *the river as a navigable route and bio-diversity;*
- iii) *road traffic congestion and on street parking pressure;*
- iv) *the living conditions of nearby residential properties;*
- v) *waste;*
- vi) *housing provision.*

### Character and appearance

8.4 Officers have considered whether the material change of use by intensification, either regarding each berth as a separate planning unit or regarding the entirety of the moorings as the planning unit, as manifest by the introduction of these three houseboats, has caused harm to the character and appearance of the area and in particular, the Thames Conservation Area.

- 8.5 The planning history makes clear that the use of Chelsea Reach for the residential mooring of houseboats is long established and is lawful through the passage of time. Their presence is recognised as being a specific character of the Thames Conservation area that the Council consider desirable to preserve. The presence of the houseboats is protected in Local Plan Policy CR5 which states that development that has an adverse effect upon the existing residential moorings will be resisted. The Thames Conservation Area Appraisal recognises the importance of the gap between the two groups of moorings which allows a clear view of the river from Cheyne Walk and separates the line of large boats.
- 8.6 The Planning Inspector in the appeal decision in 2013 upholding the Council's decision to refuse planning permission for a new mooring described as paramount the importance of maintaining the gap between the two areas of moorings.
- 8.7 The three houseboats are moored in the midst of the western group of moorings, and do not protrude into the protected gap between the two groups, maintaining the current level of unobstructed views of the river from some parts of Cheyne Walk and the Embankment. Their introduction has not resulted in the number of houseboats moored at the pier to exceed 60, which is the maximum number of houseboats permitted to be moored as controlled by condition imposed on the planning permission for the reorganisation of the moorings in 1978. The three houseboats preserve the gap and in this regard do not have an adverse effect upon the existing residential moorings.
- 8.8 Officers have viewed the houseboats from the pontoons, from the Embankment, from Battersea Bridge and from the Thames path on the opposite side of the river. It was observed that the houseboats moored at Chelsea Reach vary in size, colour, shape and condition.
- 8.9 From these public vantage points the three houseboats do not stand out as being excessively large in scale or discordant with the character of the area. The river is over 200m wide at this point, when looking at the houseboats from Battersea at this distance it is not evident that these boats are larger, particularly as they are being viewed head on.
- 8.10 The three houseboats are moored within the western group of moorings, furthest away from Battersea Bridge, and again, from this distance, they do not appear overly large or at odds with the other houseboats; the houseboats closer to the Bridge in the eastern group of moorings are more dominant in these views, particularly those that are moored parallel to the Embankment. The eastern group of moorings are attached to two pontoons which run parallel to the Embankment, one in front of the other, which means that the three houseboats do not appear to project further into the River Thames than the two sets of smaller houseboats attached to these pontoons.
- 8.11 When viewed from the Embankment, which is the nearest public viewpoint to the three houseboats, as they are moored perpendicular to the Embankment together with the other houseboats in this grouping, the view of them is predominantly of the stern; they appear wider than many of the other houseboats, but not excessively so. Further, the moorings are in the midst of the western group of houseboats, flanked by other houseboats so they do not appear in views which expose their length.

- 8.12 The Council has received an aerial photograph of the moorings showing two of the three houseboats that are subject to this investigation, in situ. From this aerial perspective the two houseboats do appear considerably larger than the other houseboats moored at Chelsea Reach, however, although this is a view that may be visible from some private views from nearby properties, when viewed from a high level, this is not a view that is readily visible to the public, and does not materially affect the character of the use of the moorings as a whole and how it is appreciated in practice.
- 8.13 The three houseboats are not excessively large, they do not look particularly incongruous with the character and appearance of the site, they are constructed in appropriate materials and their design, informed by the Council's Design Guidelines for houseboats in Battersea Reach (1976), is appropriate, such that they appear as a typical houseboat.
- 8.14 In light of the above, if the planning unit is taken to be each individual mooring, the location of these three houseboats in established berths, at a distance from the protected gap, and where the entirety of the houseboats are not visible in public or private views, does not have a detrimental impact upon the character and appearance of the moorings and wider conservation area and the significance of the conservation area is preserved. Accordingly, it would not be expedient to take enforcement action against them on the basis of impact on the conservation area. The mooring of these three houseboats in each individual mooring would comply with Local Plan Policies CL1, CL2, CL3, CL11 and CR5.
- 8.15 If the planning unit is taken to be the whole of the residential moorings, officers consider that the mooring of the three houseboats is in line with and appropriate to the long established character and appearance of the site for that purpose. They appear as typical houseboats, albeit slightly larger than other houseboats moored at the pier, which also have no uniformity in terms of size, and are not considered to cause undue harm to the character and appearance of the moorings, or to conflict with Local Plan Policies CL1, CL2, CL3, CL11 and CR5 and as such, it would not be expedient to take enforcement action for this reason.

#### Impact on setting of Battersea Bridge

- 8.16 Battersea Bridge is a Grade II listed building. Local Plan Policy CL4 recognises that listed buildings can be negatively affected by inappropriate use and unsympathetic neighbouring development and that such changes can diminish the architectural and historic value and detract from their setting. The three houseboats are moored in berths at the opposite end of Chelsea Reach to the bridge and have no detrimental impact upon the setting of the bridge; there is no conflict with this policy.
- 8.17 In regard to the NPPF (see para 6.4 above) the designated heritage assets are the Thames Conservation Area and the Grade II listed Battersea Bridge. For the reasons give above, the mooring of the three houseboats does not result in harm to these heritage assets.

#### Living conditions

- 8.18 Local Plan Policy CL5 states that the Council will ensure good living conditions for occupants of new, existing, and neighbouring buildings. The nearest residential buildings are within the Worlds End Estate across Chelsea Embankment, and set back from the road. Given the distance between these buildings and the site, the three houseboats do not have a material impact on the living conditions of these residents. They are not overbearing, nor do they result in a sense of enclosure or loss of privacy.
- 8.19 Concerns have been raised by occupants of other houseboats in the mooring that the size and design of these three houseboats causes loss of light and loss of privacy. The nearest residential occupants who could be affected would be those living in the adjacent houseboats on either side. All the houseboats within this western group, including the three houseboats, are moored side by side, perpendicular to the Embankment. This allows an unobstructed view of the River from their bows. The three houseboats are designed with outdoor seating areas to the front, centre and rear that afford views towards the river, the embankment and of other houseboats moored at the site. The terraces provide opportunities for overlooking and possible loss of privacy to the occupants of neighbouring houseboats, however, this would be the case if smaller houseboats were moored in these lawful berths. Further, the majority of the houseboats have terraces to front and rear, such that any overlooking is currently and would continue to be mutual. There is no uniformity in the size of the houseboats moored lawfully at Chelsea Reach, although they are all, including the three subject houseboats, no more than one storey above the hull. The size of these houseboats is not significantly greater than other houseboats; the superstructure of each of these boats is formed of two parts which minimises any sense of enclosure caused by their larger size. As such, the size, design and position of the three houseboats within existing berths does not result in a harmful increase in the sense of enclosure, loss of outlook or loss of privacy to the occupiers of neighbouring houseboats, and are seen to comply with policy CL5. It would not be expedient to take enforcement action on this basis.

#### Impact on the River Thames

- 8.20 Local Plan Policy CR5 (j) states that the Council will resist permanently moored vessels on the River, except where they would not have a detrimental effect on the river as a transport route and its special character, including biodiversity, or an adverse affect on the character or appearance of the existing residential moorings at Battersea Reach.
- 8.21 Para 21.3.28 of the above Policy recognises the potential of the River Thames as a leisure, recreation, biodiversity and transport resource that is underused. It also recognises that permanently moored vessels or the extension of riverside sites into the river can have a detrimental effect and reduce the river's potential as a navigable waterway.
- 8.22 Local Plan Policy CE4 states that the Council will protect the biodiversity in, and adjacent to, the Borough's Sites of Nature Conservation Importance and require opportunities to be taken to enhance and attract biodiversity. To deliver this the Council will protect the biodiversity value of Green Corridors and the Blue Ribbon Network.

- 8.23 The three houseboats are moored in existing berths, perpendicular to the river, at the western end of the site. They are located centrally within the western group of moorings accessed from an existing pontoon. They do not project beyond the existing mooring posts and do not interfere with or impede the use of the river as a navigable waterway to any greater extent than the existing and established moorings.
- 8.24 The mooring of the three houseboats in this location, where there is an historic and established use, accessed from existing pontoons, would not have any greater impact upon biodiversity than the existing moorings established, lawful and historic and would not have an adverse impact on the biodiversity of the River Thames. It would not be expedient to take enforcement action on these grounds.

### Transport

- 8.25 Local Plan Policy CT1 states that the Council will ensure that there are better alternatives to car use by making it easier and more attractive to walk, cycle and use public transport and by managing traffic congestion and the supply of car parking. To do this the Council will (amongst other things) require that all new additional residential development be permit-free.
- 8.26 The houseboats the Iris and the Zephyr comprise of two self-contained units each of two bedrooms, providing a maximum occupancy of 4 people. The houseboat the Pacifica is comprised of one 1-bedroom home and one 3-bedroom home, also providing a maximum occupancy of 4 people. This provides for a maximum occupancy of 8 people per houseboat.
- 8.27 Occupants of houseboats are entitled to apply for a resident parking permit if the vessel appears on the Local Land and Property Gazetteer. Each of the 6 homes appear on the gazetteer. Each residential parking permit is issued to an individual in the same way permits are issued to standard residential properties. There is no limit to the number of permits issued other than only one car and one motorcycle permit may be issued per person.
- 8.28 Consequently, the mooring of the three houseboats would enable 8 occupants each (24 in total) to apply for one car parking permit and one motorcycle permit, and has the potential to impact upon traffic congestion and on street parking pressure in the borough. Local Plan Policy CT1(c) requires that all new additional residential development be permit-free, however, because houseboats are not buildings (and not development) there is no mechanism for this criteria to be applied to the three houseboats and indeed all the houseboats at Chelsea Reach. There is no restriction on the number of permits that may be issued to the occupants of any new houseboat moored at the site lawfully, without triggering a material change of use. Therefore any potential increase in on street parking and traffic congestion as a result of the mooring of these three houseboats would be unlikely to be significantly greater than that which may occur as a result of the lawful mooring of houseboats at the site. On this basis, the mooring of the three houseboats is not contrary to Local Plan Policy CT1, and it would not be expedient to take enforcement action on grounds of traffic congestion and parking pressures.



## Waste

- 8.29 The owner of CYBC has confirmed that there is a commercial waste collection contract for the whole of the moorings, and the three houseboats benefit from these arrangements. Given there are established waste management facilities in place, and the limited increase in number of units, the material change of use would not have a negative impact upon the waste management facilities in place, in compliance with Local Plan Policy CE3.

## Housing Provision

- 8.30 The three houseboats, each comprised of two self-contained homes, make a positive contribution to the Borough's housing stock, in accordance with Local Plan Policy CH1, and accordingly, there is no material harm in this respect.

## **9.0 Equalities Implications**

- 9.1 Consideration has been given to section 149 of the Equalities Act 2010. Enforcement action requiring the removal of the three houseboats from Chelsea Reach would result in the loss of 6 homes. The owner of CYBC has advised that to the best of his knowledge, no occupants of the boats are identified as being vulnerable. It is noted that, as they are not buildings the occupants of the houseboats are not afforded protection under the Housing Act and have no security of tenure, although this is a civil matter outside of the jurisdiction of the Council.

## **10.0 Conclusion**

- 10.1 In light of the above, officers conclude that the material change in the use of the land, taken to be either the three individual residential moorings or the entirety of the residential moorings at Chelsea Reach is not causing harm and therefore it would not be expedient to take enforcement action.

## **11.0 Recommendation**

- 11.1 It is recommended that the Committee determines that no enforcement action is taken.