

Planning Statement

Application for Certificate of Lawful Use

Continued Use of Site as Commercial Boatyard

The Moorings, Mill Green, Caversham, Reading, RG4 8EX



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1.0 INTRODUCTION

1.1.0 Background

1.1.1 This report relates to an application for a certificate of lawful use for the existing use as a commercial boatyard at The Moorings, Mill Green, Caversham, Reading, RG4 8EX.

1.2.0 Summary

1.2.1 Based on the evidence submitted and on the balance of probabilities The Moorings have been used since at least 1898 as a commercial boatyard and in the absence of an intervening use, or any intention to cease that use, the commercial boatyard use has not been abandoned. In all these circumstances the certificate can be safely granted.

2.0 THE EXISTING USE

- 2.1 Owned by Duty Town Ltd., the long-standing commercial boatyard use at The Moorings comprises riverside moorings, a workshop, wet dock and slipway. There is an access to the application site via a set of double gates to the eastern boundary, as well as a separate pedestrian access to the west, from the Mill Green footway.

3.0 THE SUPPORTING EVIDENCE

3.1.0 The Commercial Use of The Moorings

3.3.1 The Moorings are a long-standing commercial boatyard and have been so since the late 19th century.

3.3.2 By the time of the 1898 O.S. a covered wet dock and the existing slipway are shown. By the time of the 1912 O.S. the existing workshop building is shown, in addition to the covered wet dock and slipway on the previous O.S. These features are also shown on the 1938 OS, albeit the wet dock is now uncovered. Appendices 1, 2 and 3 are copies of these O.S. extracts.

3.3.3 The slipway is served by a winch capable of hauling boats out of the water onto dry land.

3.3.4 To the side of the slipway was a diesel pump and store, recently removed by the current owner.

3.3.5 **Mr. Derek Kendall.** Mr. Kendall licensed the land and moorings from Mr. Leslie David Hurlock, the owner of The Moorings from 1978 to his death in 1995, for a 2-year period, from April 1993 to March 1995. Mr. Kendall has confirmed to me, by way of an email dated the 14th February 2022, attached as part of Appendix 4 to my statement, that:

1. On his first occupation the land and moorings were totally overgrown and covered in silt. This was removed to reveal the current Yorkstone paving adjacent to the river.
2. An electricity supply was created.
3. The purpose of obtaining the licence was to convert his 21m long Dutch oil tanker to a houseboat.
4. This was achieved by craning out the oil tank and installing domestic accommodation using 4m by 2m steel sheeting.
5. The steel sheeting was delivered and left on the land adjacent to Mill Green footway, this land being included in his lease/licence agreement which was “...*in David Hurlock’s ownership up to the entrance gates into Better Boating boatyard. Also, the double gates would indicate previous vehicular access to the land.*”

3.3.6 **Mr. Russell Abbott.** He has confirmed to me, via an email of the 23rd February 2022, attached as part of Appendix 4 to my statement, that he used The Moorings from about 1996 to 2010:

1. Mr. Abbott rented The Moorings after the previous tenant, Derek Kendall (as noted above) used the workshop and mooring to fit out his Dutch barge and subsequently moved it to London Marina at South Dock.
2. Mr. Abbott moored his boat, Barge Apolonia, at the site during that time and worked as a boat repairer based at The Moorings. He employed several persons in doing so.
3. Whilst there, an Annie Davis ran a marine upholstery business from the workshop on the site. She used the riverside moorings for her customer's boats whilst designing, measuring, and fitting the canopies, cushions and curtains for them.
4. Ms Davis continued the business from the site for several years once Mr. Abbott left the site in 2010. Sadly, Ms Davis died 18 months ago.
5. As with Mr. Abbott, Ms Davis employed several assistants. Of these, one – a Catherine Colyer – has confirmed to me that she worked for Ms Davis as a marine trimmer based at The Moorings for a year in the late 1990s.

3.3.7 **Business Rates.** In answer to an enquiry from the Applicant, the Borough Council's Rates Office confirmed that business rates had been paid on The Moorings since 1995, being described as 'Moorings and Premises'. Appendix 5 contains a copy of the email of the 9th February 2022 from the Borough Council, which confirms the above.

3.3.8 **Conclusion on the commercial use of The Moorings as a boatyard.**

Based on the above evidence, I consider that on the balance of probabilities, and particularly given the recollections of Messrs Abbott and Kendall and the payment of business rates since at least 1995, The Moorings continue to have a commercial boatyard use, there having been no evidence of its abandonment.

4.0 PLANNING CONSIDERATIONS

- 4.1 The Planning and Compensation Act 1991 introduced Certificates of Lawful Use for existing as well as proposed developments. In the Government's Planning Practice Guidance, the section headed 'Who is responsible for providing sufficient information to support an application' makes it clear that the relevant test of the evidence is the balance of probability.

"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

- 4.2 Section 171B (3) of the Town and Country Planning Act 1990 states that:

'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.'*

* Section 1 refers to building, engineering, mining or other operations and Section 2 refers to the use as a single dwellinghouse.

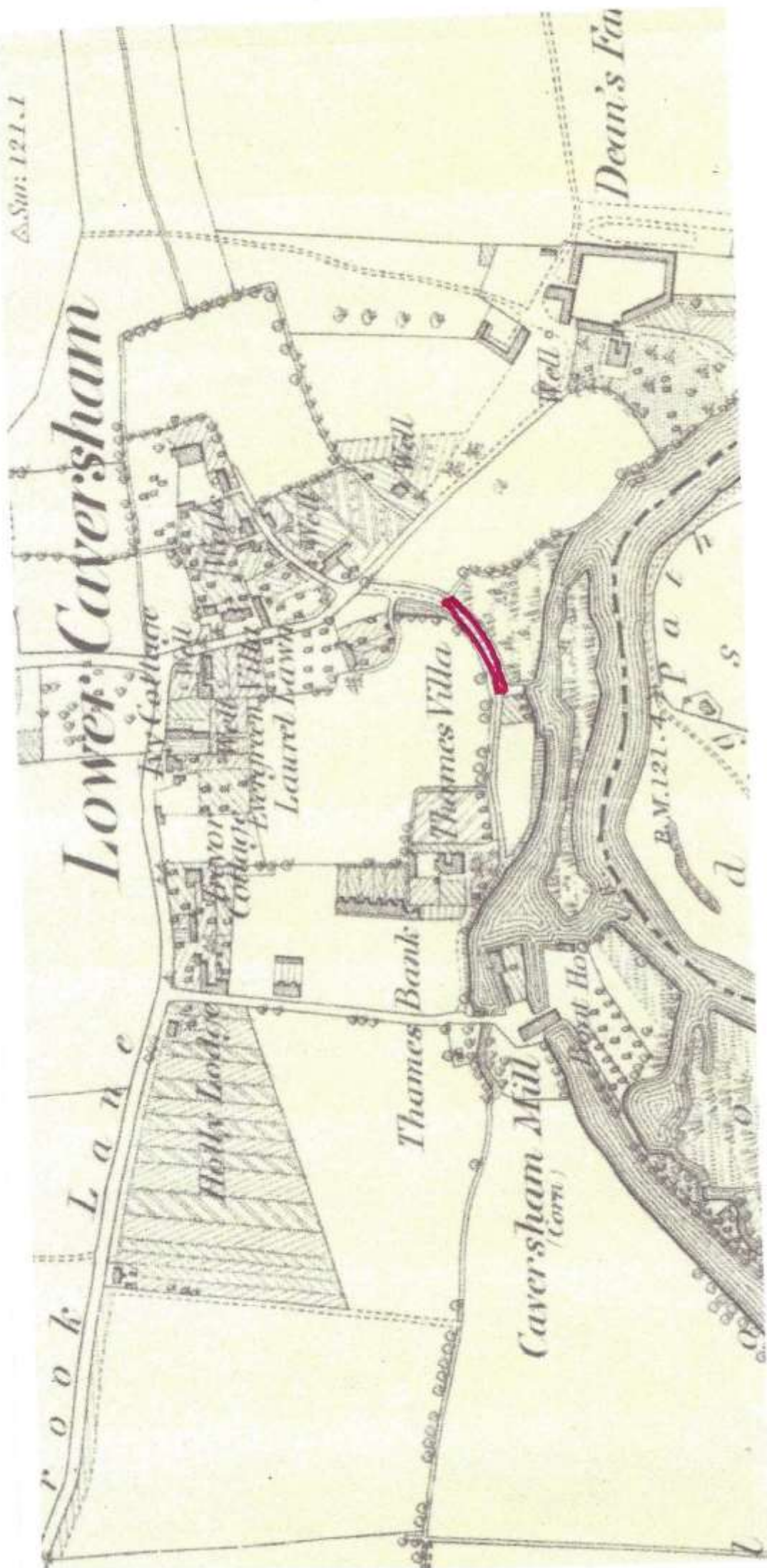
- 4.3 **Counsel's Opinion** Attached as Appendix 6 to this report is the opinion of Paul Stinchcombe QC of 39 Essex Chambers. He concludes that, on the above evidence, the lawful use of the site has not been abandoned and that a certificate of lawfulness for the use as a commercial boatyard would have to be granted.

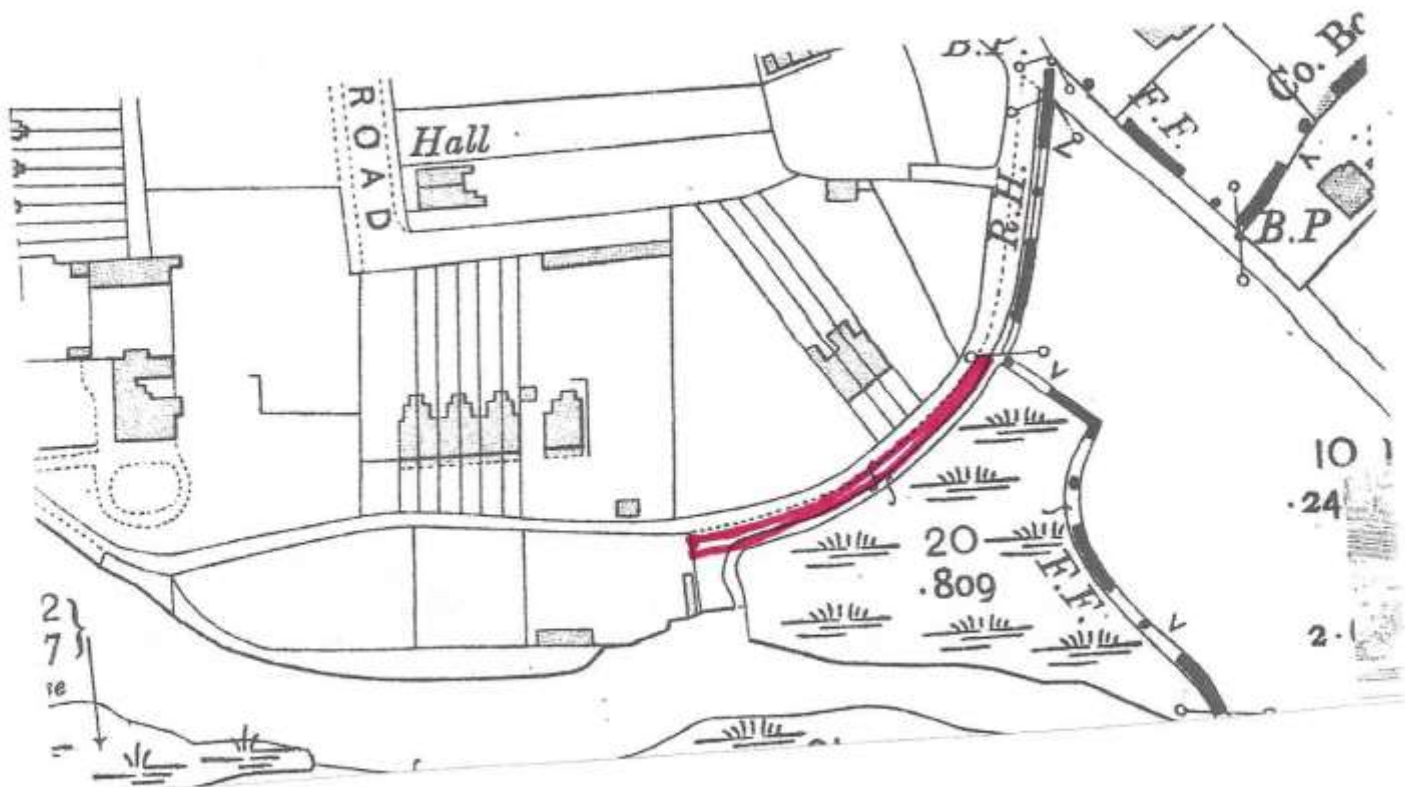
5.0 CONCLUSIONS

- 5.1.0 This report relates to an application for a certificate of lawfulness for the use as a commercial boatyard of The Moorings, Mill Green, Caversham, Reading, RG4 8EX. The submitted evidence gives clear, precise and unambiguous information to support the application and therefore a certificate of lawful use is justified for the use of the property as made out. Moreover, as set out in paragraph 4.1 the test for the evidence is the balance of probabilities, which is satisfied.

6.0 APPENDICES

1. 1898 OS extract.
2. 1912 OS extract.
3. 1938 OS extract.
4. Emails from Messrs Kendall and Abbott.
5. Email from RBC Rates Office.
6. Opinion of Paul Stinchcombe QC of 39 Essex Chambers dated April 2022







David Lane

From: [REDACTED]
Sent: 23 February 2022 04:32
To: David Lane
Subject: Re: The Moorings

Hello David.

OK this is what I know of the Moorings, to me I knew it as Mill Meadows, it was next to Better Boating and had a Thames River frontage.

I rented the land after the previous occupant moved his Dutch Barge to a London Marina at South Dock, once again on the Thames. I know he used the workshop and mooring to fit out his barge. His Name is Derek Kendle a vey well known heritage photographer in London.

I can't remember the name of the owner after all these years. Exact dates are also lost in time but I think I was there with my Barge Apolonia from about 1996 until 2010.

My partner at that time was Annie Davies, she ran a marine upholstery manufacturing business from the workshop and used the mooring for her customers boats whilst designing, measuring and fitting the Canopies the cushions and curtains to these boats. Annie also had a mobile workshop in a Bedford horse transporter which she parked at the blocked off entrance to the Moorings. I also worked as a boat repairer from there. After I moved on from the moorings in Apolonia Annie Davis continued the business from there for a number of years, how many I do not know, we no longer communicated then. We restarted communications recently, however, she sadly died 18 months ago.

Annie did employ a number of assistants, as indeed I did.

As to access, there were metal barriers preventing vehicle access even though the Moorings had double metal gates which would have allowed vehicles on site. My feelings are that these barriers had be there for many years. Vehicle access would have impeded or restricted the towpath foot traffic for about 50 metres.

I have just remembered that I was told the site was once an orchard, might be worth checking out your end.

I have given this some considerable thought and that is all I can remember. Unfortunately I have no photos of the site being used for business. No publicity or advertisements exists as all works was found by recommendation.

Hope this helps, I would be interested to know what is planned for the site.

Kindest Regards

Russell L Abbott

Sent from my iPad

> On 22 Feb 2022, at 7:26 pm, David Lane [REDACTED]
 >
 > Dear Russell, No worries and any help much appreciated. Kind regards, David
 >
 > Sent from my iPhone
 >
 >> On 22 Feb 2022, at 06:35, Russell Abbott [REDACTED]

David Lane

To: Ivan Carter
Subject: FW: The Moorings, Mill Green, Caversham, Reading, RG4 8EX

Dear Ivan, What a very helpful chap. Hopefully his copy license will be revealing? Kind regards, David.

From: David Lane
Sent: 24 February 2022 12:48
To: Derek Kendall [REDACTED]
Subject: RE: The Moorings, Mill Green, Caversham, Reading, RG4 8EX

Dear Derek,

That is most helpful and yes, the set of double vehicular gates are still there, as are the wet dock, slipway, riverside moorings, and adjoining boathouse, which Ivan has renovated to excellent condition. The vehicular access gates seemed to indicate that vehicular access had existed at one time, as confirmed by Susan Hurlock in a statutory declaration she swore in 2008, when living in France, that it had existed between 1978 and 1995 and had been owned by her late husband, Leslie Hurlock, who had died in 1995. Despite this one of the neighbours claims they own the access and so have erected fencing across it. Consequently, if you could, in due course, scan to me a copy of your license and any photographs you may have that would be most helpful. I do not think Ivan had any idea the fuss that would be created by him wishing to moor his boat at The Moorings.

Many thanks, David.

PS Russ is travelling in South Australia, and I was given his details by one of the marine trimmers, a Catherine Colyer, who worked for an Annie Davies, his then partner at The Moorings. What an interconnected world we live in!

From: Derek Kendall [REDACTED]
Sent: 24 February 2022 11:57
To: David Lane [REDACTED]
Subject: Re: The Moorings, Mill Green, Caversham, Reading, RG4 8EX

Hi David,

Firstly, glad to hear that Russ is still alive and well. Haven't seen him for years.
So the Mill Green site pops up again. I licensed the land and mooring for a two-year period from Mr David Hurlock from April 1993-March 1995 following him advertising it in a magazine as a "mooring to let." The reason for doing so was my wife and I had just purchased a small Dutch oil tanker in the Netherlands which we planned to live aboard. We had lived on two previous narrowboats in West London and this seemed a logical progression. Her job had moved from London to Swindon but mine, we worked for the same government department, stayed in London. Caversham seemed an accessible mid-point for commuting so we purchased a house in Star Road near the mooring. The land and mooring was totally overgrown and covered in Thames silt. With help from friends we removed tons of silt to reveal the York stone paving adjacent to the river. Joy.
The garden area was tamed and the many and varied fruit trees, planted as part of the WWII "Dig for Britain" initiative, pruned and invigorated. The neighbours at the time approved and were allowed to harvest whatever they needed.
One of our first tasks was to arrange an electricity supply to the "summerhouse" which I paid for. Never got around to a water supply due principally to price. To undertake the project to convert our tanker, only 21 metres long, to a mobile floating home we had to firstly remove the oil tank. Peter the owner of Better Boating next door craned the tank out and it was taken away for scrap. New steel was delivered in 4 metre by 2 metre sheets and we left it on the land adjacent to the drainage stream/Mill Green pathway leading to the double gates in the north east corner of the garden. The rambling significance of this is that

the land alongside the path was included in our lease/licence agreement and was in David Hurlocks ownership up to the entrance gates into Better Boating boatyard. Also the double gates would indicate previous vehicular access to the land. Are they still there? At one time there was a boathouse straddling the slipway/inlet east side of the garden which had collapsed but probably access existed to trailer a small boat from the road to the boathouse or vice versa.

I have, somewhere, many photos and probably the original licence which I could scan should I find it. Sorry won't be today.

We never mentioned our activities to anyone at the council as there didn't appear to be a "Change of Use" and we didn't undertake anything "commercial" by nature.

The neighbours at the time were friendly and fascinated by the process and I'm sure if they were upset by banging and welding they would have said something.

Hope that helps.

Best

Derek

Derek Kendall



On Thu, 24 Feb 2022 at 10:31, David Lane 

Dear Mr Kendall, I have been given your name by a Mr Russell Abbott, who succeeded you at the above moorings and boatyard. I am a Chartered Town Planner acting for Ivan Carter, the new and very recent owner of the site. He purchased it to moor his motorboat at the site rather than incurring high and increasing fees for doing so at his present moorings. However, ever since his purchase, his neighbours, including the adjoining boatyard, have made life difficult for him, including positioning a shipping container preventing access. The Council are now saying the site was not used as a boatyard.

Consequently, we are trying to prove that The Moorings were used as a commercial yard until recently and that at one time there was a vehicular access to the site. Ivan purchased the site based on a statutory declaration from the widow of a previous owner, a Mrs Horlock, confirming such access existed between 1978 and 1995.

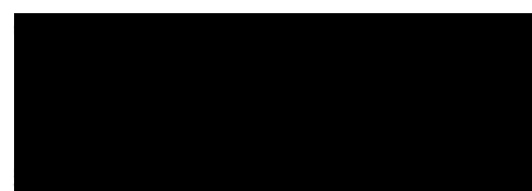
Whilst Russell could not recall a vehicular access, any information you can provide as to the commercial use of the Moorings would be gratefully received.

I will very happily reimburse any expenses you incur.

Many thanks in anticipation,

David Lane

DLA Town Planning Ltd



Hello Phil

Thank you for your email – I can see that this assessment has been on the business rates list going back to 1995 which is as far back as I can look and has always been described as a mooring & Premises. If you wish to change or contest this you will need to contact The Valuation Office on either [REDACTED]
[REDACTED] If they agree to your appeal we will be contacted directly with the new details and at that point can make the necessary amendments to the bill.

Regards

Peter Morgan

Income & Recoveries Officer
Business Rates | Directorate of Resources

Reading Borough Council
Level 1, Civic Offices, Bridge Street, Reading, RG1 2LU

[REDACTED]

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You will require an email address and your Business Rate account number

From: Phil Donovan [REDACTED]
Sent: 08 February 2022 11:14
To: Business Rates [REDACTED]
Cc: Ivan Carter [REDACTED] Lucy Jones
[REDACTED]
Subject: Property Ref: [REDACTED]

ACCESS TO THE MOORINGS, MILL GREEN, CAVERSHAM, READING RG4 8EX

OPINION

INTRODUCTION

1. I have been asked to advise by my Instructing Town Planners, DLA Town Planning (DLA), and on behalf of my lay client (Mr Ivan Carter), as to matters arising from a recent decision of Reading Borough Council to refuse planning permission for a vehicular access to The Moorings, a boatyard site adjoining the River Thames in Reading.
2. Mr Carter purchased The Moorings, at auction, in order to moor his motorboat there. He did so, believing the site to have both a lawful use as a commercial boatyard and the benefit of a past vehicular access alongside a footway known as Mill Green (albeit the access seemed to have lapsed some years previously). Those beliefs were based, *inter alia*, on a statutory declaration from the widow of a previous owner (Mrs Hurlock) and the presence of double access gate to The Moorings.
3. To establish the access, DLA sought planning permission for the “reinstatement of the vehicular access with permeable materials”. However, the description of the proposed development was changed by officers at Reading Borough Council, through deletion of the words referencing “reinstatement” of the vehicular access, made because the Council believed that there was insufficient evidence to establish that a vehicular access had previously existed.
4. The Council then proceeded to refuse planning permission for that proposed development. It did so for the following two reasons and, in doing so, also doubted the use of The Moorings as a commercial boatyard:
 - “1. The proposed new vehicular access is considered to be unacceptable in principle as it will lead to harmful impacts in terms of urbanisation of this green lane, an adverse effect on wildlife habitat along this designated Green Link, unclear impacts on landscaping/trees, drainage and flooding and an overall harmful visual effect on the natural character of this area of the Thames environs. These concerns are not outweighed by any planning benefits arising from

providing the new access. For these reasons the application is contrary to policies CC7 (Design and the Public Realm); EN12 (Biodiversity and the Green Network); EN13 (Major Landscape Features and Areas of Outstanding Natural Beauty); EN14 (Trees, Hedges and Woodlands); and EN18 (Flooding and Drainage) of the Reading Borough Local Plan (2019). 3

2. The works proposed would have an adverse effect on road safety and the flow of traffic. Further, the construction design with a standard flush edging adjacent to the existing footpath is also likely to result in conflict between vehicles and pedestrians, with vehicles over-running the footway to pass each other. The proposal would fail to provide for suitable pedestrian and highway safety, contrary to with Policy TR3 (Access, Traffic and Highway Related Matters) of the Reading Borough Local Plan (2019)."

5. Mr Carter is appealing against that refusal through DLA and I have been asked as to give my written Opinion as to whether there is sufficient to submit an application for a Certificate of Existing Use or Development (CLEUD), under section 191 of the Town and Country Planning Act 1990, for the use of The Moorings as a commercial boatyard.

LAWFUL USE OF THE MOORINGS

6. The Planning Practice Guidance states as follows, at Paragraph: 006 Reference ID: 17c-006-20140306, regarding the evidential burden when applying for a CLEUD:

"Who is responsible for providing sufficient information to support an application?"

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

7. The evidential burden therefore lies on the applicant for a CLEUD to establish the lawfulness of the use, on the balance of probability and by evidence to a requisite

degree of precision and unambiguity. However, provided such evidence is submitted, the Council will have no good reason to refuse the application unless it has evidence – whether from itself or others – to contradict that which was submitted in support of the application.

8. On the facts of this case, the evidence which I have thus far seen and been informed about demonstrates that The Moorings is a long-standing boatyard comprised of riverside moorings, wet dock, slipway and workshop:
 - a. A covered wet dock and the existing slipway are shown on the 1898 Ordinance Survey Map (Appendix 1 to the Appeal Statement);
 - b. The addition of the workshop building is shown on the 1912 Ordinance Survey Map (Appendix 2 to the Appeal Statement);
 - c. The wet dock, slipway and workshop are also present on the 1938 Ordinance Survey Map, although the wet dock is now uncovered (Appendix 3 to the Appeal Statement).
9. This development all occurred considerably before 1 July 1948 (the "appointed day" in the Town and Country Planning Act 1947), so that the boatyard itself, and the use to which it was put, will have been immune from enforcement unless subsequently lost.
10. In *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* (1999) 78 P&CR 186, it was confirmed that lawful use rights could be lost, but only in certain circumstances and by:
 - a. A Discontinuance Order made under section 102 of the Town and Country Planning Act 1990 (subject to the payment of compensation); or by
 - b. Operation of law, that is to say by:

- i. The formation of a new planning unit; or
- ii. A subsequent material change of use (because the reversion back to the original use will itself be development requiring planning permission);
or
- iii. Abandonment.

11. No Discontinuance Order has ever been served, however, and so the question arises as to whether the lawful use right has been lost by operation of law.

12. In these regards:

- a. Unless contradicted by the evidence of others, the evidence contained in Appendices 5, 6, and 8 to the Appeal Statement demonstrates that The Moorings have been used or occupied, successively, by the owners or tenants of that site as a commercial boatyard since 1978 and to at least 2010¹ – first by Mr and Mrs Hurlock; then by Mr Derek Kendall (1993-1995) and then Mr Russell Abbott (1996-2010);
- b. An aerial photograph in 2006 corroborates this, showing the boatyard commercially active with six boats moored alongside;
- c. I am instructed that the wet dock, slipway and workshop are all in good condition (indeed, the slipway was, until very recently, served by a winch capable of hauling boats out of the water onto dry land; and, to the side of the slipway (until very recently removed) was an underground diesel pump and store, given planning permission in 1978.; and

¹ I do not know what happened thereafter between the departure of Mr Abbott and the purchase by Mr Carter, nor the detail of Mr Carter's own activities on the site (or dates thereof) – this could usefully be addressed.

- d. The Borough Council's Rates Office has confirmed that business rates have been paid on The Moorings since 1995, being described as "Moorings and Premises" (Appendix 9 to the Appeal Statement).
13. On the basis of the above, I have seen no evidence that there has been no new planning unit formed; and no evidence that there has been subsequent change of the boatyard use.
14. The question becomes, accordingly, whether there has been an abandonment of that use. The legal framework on the issue of abandonment is well-established, as follows:
- a. In *Panton (supra)* it was decided that a lawful use right would not be lost merely by an interruption in that use, and could remain a lawful but "inactive" or "dormant" – for example, where a building, whilst not in active occupation, nevertheless remained adapted, equipped and available for resumed occupation.
 - b. However, if a building or land "remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned", then the concept of abandonment applies (see: *Hartley v Minister of Housing and Local Government* [1970] 1QB 413, *per* Lord Denning).
 - c. In *Trustees of Castell-y-Mynach Estate v Taff-Ely BC*, [1985] JPL 40, the Court suggested four criteria relevant to consideration as to whether a use had been for abandoned:
 - i. The period of non-use;
 - ii. The physical condition of the land or building;

- iii. Whether there had been any other use; and
 - iv. The owner's intentions as to whether to suspend the use or to cease it permanently.
- d. In *Hughes v Secretary of State for the Environment Transport and the Regions* [2000] 80 P&CR 397, the Court of Appeal held that the test of the owner's intentions should be objective and not subjective, on the authority of *Hartley* (*supra*) and *Castell-y-Mynach* (*supra*).
 - e. In *Bramall v Secretary of State for Communities and Local Government* [2011] JPL 1373, Wyn Williams J affirmed the four criteria of abandonment, as approved by the Court of Appeal in the *Hughes* case.

15. Looking at the four *Castell-y-Mynach* criteria, the evidence above indicates as follows:

- a. There was active use of the boatyard until at least 2010², with a photograph showing such use in 2006;
- b. The wet dock, slipway and workshop remain in good condition;
- c. There has been no material change of use from boatyard use (indeed, there has been ongoing payment of business rates for "Moorings and Premises" throughout and to present); and
- d. All of the above is consistent with there being no intention permanently to cease that use.

² As above, activities on the site since the departure of Mr Abbott could usefully be researched and/or addressed.

16. In the premises, as currently instructed and in the absence of any contradictory evidence from others, the lawful use of that site as a boatyard has not been abandoned. Accordingly, if an application was made under section 191 of the Town and Country Planning Act 1990 for a CLEUD with regard to use of The Moorings as a commercial boatyard it would, in my view, have to be granted.

Paul Stinchcombe QC
39 Essex Chambers
81 Chancery Lane
London WC2A 1DD

7th April 2022

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