

Report: PT1B
Ref Number: P/00328/16
Recommendation: No Objection
Decision Type: Planning Officer Delegated Procedure

Justification for Decision:

Principal Considerations

The main issues in considering this proposal centre on two assertions made by the applicant: –

- whether the proposed use of the land is lawful as defined by Section 191 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) and the use of the land for the continued mooring/stationing of 25 houseboats for permanent residential use, along with the remaining land being in a harbour use - and that this has been continuous for a period of a minimum of 10 years, with at the same level of intensification and without any significant breaks
- The use falls within the lawful use of the relevant area – referring to the Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963.

Details of Applications

Lawful Development Certificate for the use of those parts of the land within the areas numbered 1-25 on the plan numbered 14:1977:11D attached to this certificate for the mooring and/or stationing of 25 traditional and non-traditional houseboats for permanent residential use as detailed in the submitted plans and documents together with the use of the remaining land for harbour use (revised description) (revised plan)(readvertised application)

The application has been submitted with:

- Planning Statement which covers 2 LDC applications (this one and one which seeks confirmation that certain minor works can be undertaken without planning permission).
- Appendix A - Location plan with site edged in red;
- Appendix B - Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963 (the “1963 Harbour Act”);
- Appendix C - Limits of harbour dated 07/08/2015 which includes historical maps
- Appendix D – Bembridge Conservation Area: Conservation Area Appraisal – copy of Isle of Wight Council document adopted May 2011;
- Appendix E – Photographs of “houseboats”, includes:
 - Aerial image 1940s - 5 large houseboats
 - Aerial image 1999 – 17 houseboats
 - Aerial image 2004 – 22 houseboats
 - Reference to Google Street view June 2009 but no images included (refers to 27 houseboats)
 - Reference to Google Street view 2011 but no images included (refers to 26 houseboats)
 - Aerial image 2012 – 25 houseboats
 - Collection of other images and surveys
- Appendix F – proposal for floating pontoon and holding tank for plot 23

The plan has been revised several times from a much larger area including a large proportion of the overall harbour as originally submitted, to the one which has reduced the red line to a ‘crescent’ shape following the line of Embankment Rd and which approximately covers the area that the houseboats are sited. The latest revision included plot numbers of the 25 houseboats/vessels which is contended has permanent residential use.

The application’s description has also been revised several times and has been readvertised again with the above description (the plans did not change).

Location and Site Characteristics

Bembridge Harbour, Embankment Road, Bembridge, Isle Of Wight, PO35

The application site is a section of the harbour fronting onto Embankment Road which has historically had some houseboats stationed and moored to the embankment – historical aerial images show some houseboats on the 1945 images. Some houseboats are attached to the harbour bed by ‘spudlegs’ whilst others just sit on the bed. Some houseboats have decking and walkways. The houseboats differ in size and styles.

The embankment forms the road connection between St Helens and Bembridge and also the sea defence, separating Bembridge Harbour from Brading Marshes. There is sporadic development on the southern side of Embankment Road with large gaps between developments which are mostly employment and marine related uses.

From site visits the crescent shaped area currently includes the following houseboats/vessels:

- Rubstone
- Waikiki
- Day Dawn
- Seahorse
- Petrenda
- Harbour View
- Heyvon
- Blackrock
- Harbour Lights
- Phaedra
- Currently vacant but was occupied by Emily
- Spinnaker
- Arctic
- Currently vacant but was occupied by Fortune.
- Zambesi
- Bryher II (previously received an LDC to establish its presence)
- Marks Ark
- *Rijnstroom**
- Little Suzy (recently received an LDC to establish its presence)
- Samphire
- Houseboat Fairmile C (formerly Xoron) (recently received an LDC to establish its presence)
- Freebird
- Sturdy
- Blue Max
- Myosotis
- Gypsy Queen

* It is noted that Rijnstroom came onto the site approximately September 2016. It is understood this has not been used as permanent residential use and that the occupier has a separate address elsewhere on the Island. This vessel is not included within the evidence submitted.

There is one further vessel (Sirius) which may have been in situ for some time, certainly during the course of this application – but this is outside the red line and does not form part of this LDC application.

Relevant History

The Council acknowledge that there have been houseboats within Bembridge Harbour for a number of years but there is very limited planning history. There have been some applications recently within this area which have raised the issue of whether the houseboats are lawful in planning terms

P/00834/18 - Houseboat Fortune, Embankment Road, Bembridge, Isle Of Wight, PO355NS - Construction of gabion and raised platform to include proposed fence and gate – Decision Pending. This relates to works undertaken to create a platform in relation to the mooring of a vessel which it is understood has been refurbished and waiting to come back on to the site.

P/00709/18 - Houseboat Fairmile C (formerly Xoron) - Lawful Development Certificate for the use of the land for the stationing of a houseboat for permanent residential purposes - Houseboat Fairmile C (formerly Xoron)(revised description)(readvertised application) – Approved - 23/08/2018.

P/00898/17 - Houseboat Little Susie, Embankment Road, Bembridge, Isle Of Wight, PO355NS - Lawful Development Certificate for use of the land for the mooring of a houseboat along the shoreline – Approved – 12/09/2017.

P/01257/16 - Houseboat Day Dawn - Variation of condition 1 and 2 of P/00825/16 to provide alternative scheme for post removal – Approved – November 2016.

P/00825/16 - Houseboat Day Dawn - Retention of decking, walkway and outbuilding (revised scheme) – Approved – 03/08/2016. This addressed the previous reason for refusal (of P/01276/15) and Natural England's objection.

P/01276/15 - Houseboat Day Dawn - Retention of decking, walkway and storage shed – Refused – 15/12/2015, on insufficient information to ensure there would be no harm on the designated ecology/wildlife sites and the measures proposed would not sufficiently mitigate the impact of the development. This related to Houseboat Day Dawn. The following is noted from the officer report:

“The application relates to an existing house boat with Council records indicating that it has been in situ for some years (informal planning records show that Day Dawn was in situ in 1999, 2004 and 2012.”

P/01079/14 - Proposed retaining wall and holding tank – Withdrawn 04/02/2015. This related to plot 23 and Houseboat Rijnstroom (which was to relocate from the slipway further to the north-east).

P/00725/09 - Installation of piles & sewage system for 33 houseboats; provision of a boardwalk & repairs to the embankment, (revised scheme) – Refused – 20/10/2011. Reasons for refusal:

- 1 *The Local Plan Authority has not been provided with information to allow sufficient certainty that the measures of mitigation to offset the impact of the development on the designated European nature conservation site which are required by the Appropriate Assessment will be undertaken. In the absence of these measures the proposed development would have an unacceptable impact on the Solent and Southampton Water SPA / Ramsar. In consequence the proposal is contrary to Regulation 48 of the Habitats Regulations 1994, the Habitats Directive (Council Directive 92/43/EEC) and Government advice contained within Planning Policy Statement 9; Biodiversity and Geological Conservation.*
- 2 *The proposed boardwalk, by virtue of its siting, height and scale would have an adverse visual impact on the character and appearance of Bembridge Harbour. In consequence the proposal is contrary to Policies D1 (Standards of Design) and G4 (General Locational Criteria) of the Isle of Wight Unitary Development Plan.*

There were four main elements involved in this scheme, namely:

- The installation of piles for the mooring of 33 houseboats which amounts to an additional seven in the vicinity of the existing.
- The provision of a boardwalk to run parallel to the existing pavement to provide a means of escape in the event of a flood.
- Engineering operations to the embankment.
- The installation of a new foul sewage system to serve the 33 houseboats.

It is considered relevant to refer to appropriate parts of the officer report for this refused application:

*“The application relates to a length of foreshore of approximately 400m situated around the bend in Embankment Road at the southern extent of Bembridge Harbour. Within this length of foreshore there are currently **22 houseboats of various sizes and types** and the majority of which are buoyant although it is acknowledged that some do not float.”*

*“The application seeks to increase the numbers of houseboats by seven as it appears that there are **either 26 houseboats or potential moorings** in existence.”*

P/01133/08 - Houseboat Bryher II, Embankment Road, Bembridge, Isle Of Wight, PO355NS – Approved 22/07/2008. Information was submitted, including statutory declarations (which carry material weight) and from the evidence available, the Local Planning Authority was satisfied on the balance of probability that the use of the land for the siting of a houseboat has been so for at least ten years preceding the date of the application and is therefore lawful for planning purposes as defined in Section 191 of the Town and Country Planning Act 1990 (as amended).

P/00856/08 - Installation of piles and sewage system for 33 houseboats; provision of a boardwalk and repairs to the embankment (revised scheme). Refused – 31/03/2009. This was refused due to an adverse impact on internationally designated nature conservation sites. An appeal was lodged but was not valid due to essential supporting documents not being submitted to the Planning Inspectorate and no further action was taken on the appeal.

It is considered relevant to refer to appropriate parts of the officer report for this refused application:

*“Within this length of foreshore there are **currently 22 houseboats of various sizes and types** and the majority of which are buoyant although it is acknowledged that some do not float.”*

*“The letters [received in objection to the application] argue that there have never been 34 houseboats in the Harbour and that until the mid-1950s there were only sixteen and that an additional ten have been introduced since 1990 **totalling 26, six of which have been introduced in the last three years**. Point out that ten of the houseboats currently are not buoyant, that some are nearly derelict and are unsightly.”*

“The application seeks to increase the numbers of houseboats by seven as it appears that there are either 26 houseboats or potential moorings in existence.”

P/00439/06 - Certificate of lawfulness for continued siting of up to 34 houseboats – Refused – 28/04/2006 for the following reason:

“The application is not accompanied by evidence to satisfy the Local Planning Authority that on the balance of probability the site in question has been used for the siting of up to 34 houseboats for at least the last 10 years and the use therefore cannot be considered lawful for planning purposes.”

It is noted that within this refused application the red line area was a crescent shape along the embankment and extended slightly further to the north-east (i.e. close to Bembridge).

Consultee & Third Party Comments

It is acknowledged that LDCs differ to planning applications with regards to how the LPAs assess them. There have been a significant number of comments received, many objecting. The LPA acknowledge that many of these comments are not directly related to the assessment of this application but consider reference to them is appropriate and the most relevant points to the current LDC have been listed separately. It is also acknowledged that the majority of the comments were received prior to revised plans reducing the red line to the crescent shaped area and also prior to numbers of houseboats being agreed.

Statutory consultees _

Internal

Council's Ecology Officer reiterates the site's location wholly within the Brading Marshes to St Helen's Ledges SSSI also designated SPA and Ramsar and that future development and works associated with the maintenance of these houseboats would have the potential to significantly impact on these

designations. The revised plan has been significantly reduced in size and thus covers less ecologically sensitive areas. No ecological assessment has been provided however historical records show that there have been various structures in place for at least 10 years and concurs with Natural England's advice in that any LDC should allow for the maximum number of structures which at most has been 27 and not 34.

Legal section – the LPA has taken legal advice throughout the course of this application, which has included seeking external counsel advice. This advice has also taken into account the relatively recent LDC at Kew Marine, Richmond, London, issued via the High Court (KP JR Management Company Limited v London Borough of Richmond Upon Thames), which regarded a mixed use of residential and leisure purposed including two moveable boats in residential use over the relevant 10 year time period.

External

Bembridge Parish Council initially objected but following revised plans and descriptions, following the latest advertisement, they do not raise an objection, but recommends a condition that roadside fencing be restricted to a maximum height of 1m.

Case Officer Note: Such conditions would not be appropriate to an LDC - The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 2, Class A relates to gate, fence or wall or other mean of enclosure, stipulates such fences/enclosures be no more that 1m above the ground level adjacent to a highway used by vehicular traffic.

Natural England has made no further comments following the latest re-advertisement but previously stated that they are concerned that this application as submitted is unclear in its intent and also could impact on the interest features of the European and Nationally designated sites. Their comment is summarised as below:

- Concerned of application area and potential impacts by additional houseboats;
- Believes the likening to a caravan site or car park is incorrect;
- If this was a new development and planning permission was needed then the number of mooring s would have to be defined as each would need their own space for pontoons, fire safety, decking, utilities etc. Therefore, each houseboat mooring plot should be considered as a planning unit;
- The application area covers a much larger area than the stretch of shoreline adjacent to the harbour wall between the end of Redwing Quay and the wide slipway to the west currently being used for houseboats – and as well-defined in the applicants own evidence associated with the historical use of the harbour for houseboats;
- The LDC should specify the precise nature of the operation which is lawful;
- The maximum number of houseboats moored at any one time has been 27 and the minimum 17 (as outlined in the photographic evidence supplied by the applicant). Therefore given the variation in numbers Natural England would advise that the LDC stipulates the maximum number of houseboats moored within the stretch abutting Embankment Road which could be varied in number but the overall area of inter-tidal covered by the houseboats would have to equate to no more than that estimated equivalent to the 27 maximum houseboats based on the average current houseboat intertidal cover unless the applicant can provide the exact overall intertidal caver associated with the historical maximum 27 houseboats.

Natural England has also confirmed what other consents or legislation may be applicable, based on the two premises (a) existing houseboats and (b) lawful development rights under the Harbour Act:

With regards to premise (a)

- If LDC is approved for existing houseboats being immune through passage of time then the international designation cannot be taken into account as an LDC is not a planning permission and therefore cannot be assessed under likely significant effect. However the wildlife and Countryside act 1981 (As amended) overrides the planning law and therefore the LDC. This means that the applicant for the LDC will still need to consult Natural England as landowner. Any development within a SSSI will need consent under Section 28E of the wildlife and Countryside act 1981 (As amended).

With regards to premise (b)

- If it is found that the applicant has never needed planning permission for the houseboats and attached moorings through the Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963, they would then be a competent authority in respect of the powers identified in the above Act and in relation to the harbour limits (shown on a map attached to the Act). They would have a general duty under reg. 9(3) of the Habitats Regulations and would be required to carry out a HRA under reg. 61 before undertaking a plan or project likely to have a significant effect on a EU site. They would also need to consult Natural England to obtain assent under Section 28H of the wildlife and Countryside act 1981 (As amended).

It is noted that the premises A and B originally put forward has largely been superseded by the revision to the application - the red line on the plans and the revised description..

Third Party

Given there have been further changes to the description and that the application has been re-advertised again, it is considered appropriate to include the following summarised points from the 2 comments received following the most recent re-advertisement of the application in August 2018 and separate them from the large number of comments received prior to this re-advertisement of the application (which is then set out further below):

Bembridge Harbour Trust has provided a number of comments throughout the assessment of this application. Given the changes that have occurred (revised plans and description), the following summarised comments relate to their latest submission:

- Would like to be in a position to support this application with its new description but urge strongly to add 2 advisory notes to the decision notice as follows:
 - The description of 'harbour use' decision notice does not include use of land for mooring of residential houseboats and such use, would require a planning application.
 - Refers to x3 LDCs approved for existing houseboats which are within this current application and wants this to be clarified in any decision notice.

Other third party

- Previously commented and wishes to reiterate concerns about flood defences with reference to a recent approval of a major development in Brading Marshes and seeks reassurances that the Sea Wall and all the Flood Defences that currently protect Bembridge and St Helens from inundation are kept fully maintained.
- Also notes and is pleased with Bembridge Parish Council's comments

Case Officer Note: such concerns and comments relating to flood defences are outside the remit of this LDC application which as set out further below only seeks a point of law and that immunity has been achieved through the passage of time, and not an assessment of development plan policies.

Prior to the recent re-advertisement of the application there were 252 third party representations received in relation to this application, although there are a number of multiple comments from one person/one household/one group. From these comments received, the following points are of particular relevance in terms of dates/numbers of boats, the premises put forward by the applicant etc. and which are relevant to the assessment of this LDC:

Relevant comments

- This part of the shoreline is spoilt by the houseboats which are only there for reasons of historical circumstance;
- Seems to wishing to change the use of the land and does not seem to be the proper use of an LDC;
- Plan includes land that does not belong to the applicant;
- Approval of this LDC could also set dangerous and so far unexplored precedents for placing 'moored navigable craft'

- permanently elsewhere in the Harbour that
- Wrong approach to include potential for other moorings (other than the specific and agreed 25);
- Questions how additional boats could be included on this LDC;
- Queries that the gaps on the drawing does not equate to existing gaps and leaseholds;
- No evidence for further 9 houseboats and these should need full planning application;
- The 9 extra would be squeezed in, unsightly and a fire danger as well as discharging untreated sewage into the harbour;
- The 8 [sic] additional plots would not be suitable for moorings for vessels which would be taken out to sea regularly as they can only be accessed at the very top of the tide (some on Spring tides only) and thus feels that the applicant is seeking to sell more valuable plots for residential or holiday use;
- Houseboat plot 25 should be shown up to the road as per other plots;
- Some of the houseboats do not even float;
- First started to stay on one of the houseboats in 1966 – boats were spaced apart but today those old houseboats have gone and there are far more houseboats than before (no numbers or other dates give);
- Coming to Bembridge for last 40 years, the first 10 staying on his family's houseboat there. Acknowledges there have been houseboats long Embankment Road throughout this time, the use has been confined to the area of the houseboats themselves;
- Used the harbour for the last 17 years – save for the ribbon of the harbour parallel to the road no houseboats outside of this area, nor by the Redwing Quay;
- Owner of Zambezi and when purchasing had been advised it was lawful as it had been there for 10 years or more (although no date of purchase has been given). In March 2005 the previous harbour owner sold of 99 year leases to majority of existing houseboat owners into 34 plots – 8 or 9 of these being unoccupied gaps between existing houseboats. Recently 2 of these empty plots have been sold as houseboat plots;
- No houseboats have been stationed within the larger area;
- An LDC can only be granted for each individual and existing houseboat which has been there for the relevant time period;
- Any works/development cannot be permitted development and piles etc. will have an adverse impact with regards planning considerations;
- This commentator/objector states that:
 - There are double-counts on vessels within the submission – i.e. a vessel has been counted and then its replacement counted also.
 - all vessels were floated in and not constructed as permanent dwellings in their own right;
 - the greatest number of legitimate houseboats at any one time is 25 which includes 2 vacant plots;
 - The LDC area is supposed to include only the developments which have existed for a number of years and a full planning application is required for new development/works and change of use – most of the area has never had houseboats moored on it;
 - The applicant does not own the whole site – the verge strip falls outside their title;
 - Refers to incorrect information in the submission relating to the two harbour companies being separate from the Harbour Authority;
- Bembridge Harbour Improvement Company Ltd (BHIC) is the Harbour Authority as per the 1963 Harbour Act – it is not a management organisation or trading name for two legally independent limited liability companies and law is clear on this distinction;
- New works require a planning application as per the 1963 Harbour Act clause 45 and not an LDC;
- Questions how you can make an application for a proposal for works without stating what they are;
- States that it is correct houseboats have been moored or situated along a part of the shoreline between “*what is now the walkway to Selwyn Marina and the Nelson Slipway opposite what is now GP Motor works for many decades*” but disputes the rest of the area for this use and states that houseboats have never been moored or situated along the shoreline between the western end of Redwing Quay and what is now the walkway to Selwyn Marina, nor off-shore out to the low water mark – Bembridge Sailing Club;
- States that “*There have been houseboats sited at the waters edge roughly situated between the south westerns end of Wade's pontoon and the slipway opposite Bembridge Outboards for many years*” but disputes the rest of the area for this use – have known and sailed in

- Bembridge Harbour for 50 years;
- Agrees with Natural England comments with regards what could be lawful – 25 plus 2 old boats due to be replaced by newer ones;
- Need for larger area for manoeuvre/access space appears spurious given any houseboats entering or leaving would have the same area of navigation that other boats have;
- Only one LDC application has been submitted – the Planning Statement refers to proposed works and there is no sign (there must be a separate LDC for proposed works, separate from the existing LDC application);
- Suggestion within the submission that this use has been carried out from 1 July 1948 but is not supported by evidence;
- Refers to previous planning applications: P/00439/06 – LDC for mooring of boats which was refused as the Council was not satisfied that the use had been carried out for 10 years;
- This commentator states:
 - Any permitted development rights are not relevant (“dis-applied”) when the proposals require an Environmental Impact Assessment.
 - The 1963 Harbour Act does not provide ‘planning permission’ for moorings or works;
 - 12.1 of the Harbour Act is important as it alludes to a restrictive proviso which does not override planning legislation and the need to obtain planning permission or any requirements under the GPDO 2015 (and which for the reasons above cannot apply).
 - Section 15 is not sufficient to grant necessary planning powers and only sets out where moorings can be placed and a requirement to get consent from the appropriate owner and for the ability to charge for the use of the moorings;
- Bembridge Harbour Users Group – from the paperwork submitted and their own historical knowledge they seen no evidence of occupation for more than the current number of houseboats plus where 2 old boats are due to be replaced by newer ones;
- The Bembridge Redwing Club (based at Bembridge since 1896) state that “*it is correct that houseboats have been moored or situated along a part of the shoreline between what is now the walkway to Selwyn Marina and the slipway opposite GP Motors for many decades*”, and not within the remainder of the area;
- Need for manoeuvring/access is erroneous as houseboats float and would come in and out exercising their rights of navigation over the tidal water not a right of way over the sea-bed;
- Disagree with assertion that houseboats are akin to a car park and by the applicant’s own admission as vast majority have either never moved or are now incapable of being moved and therefore, unlike cars, are static;
- Acknowledges the numbers may vary marginally and would accept a zone varying in depth between 30m and 50m out following the line of the grass verge along Embankment Rd;
- Wrong to say houseboats within the area coloured in red – houseboats along the frontage with Embankment Rd, BUT with gaps. Wrong to grant an LDC based on the information provided;
- Harbour owner owns the sea bed below the high water mark and any houseboat that can float in and out of its berth will be exercising public rights of navigation over the tidal sea water which the Harbour owner has no ownership rights. Land law concepts of ‘right of way’ so not apply to navigation over the tidal water. The Harbour owner does have power to regulate navigation by vessels but this has no relevance to this LDC application and only relevance were if they were to be dragged across the mud/sandbank;
- Should be restricted to the ribbon round the edge of the harbour approximately 1 boat length;
- Their own figures shows the density has increased from 17 to 26/27 over recent years;
- Part 8 Class D of the GPDO refers to permitted development works “required for the purposes of shipping” – given the nature of the houseboats it seems highly unlikely that they could be described as shipping and thus works could not fall within PD;
- Works cannot be de minimus – they would have a material visual impact and an environmental impact. Furthermore, these works are not defined/unclear at this point;
- The Harbour Act does not override planning legislation and each houseboat is a separate planning unit;
- LDC can only regularise an existing long standing development and proposed works can only be done via a planning application as this would be extensive works and change of use of the land;
- the refused LDC (P/00439/06) covered a far smaller area and stated the number of houseboats (x34);
- Refers to recent pre-application advice given to other houseboat owners and advice given that planning permission needed for shore side works and evidence needed for continue use of an individual site;

The Bembridge Houseboat Association has made no further comments following the latest re-advertisement but previously stated (one person has written in on behalf of the 25 legitimate houseboat site owners):

- *“I write on behalf of a large number of the current 25 legitimate house boat site owners within the strip Selwyn Pier to Nelsons slip”*
- No evidence has been provided that suggests the remaining shore side gaps have been occupied within the test of an LDC i.e. continuously for the last 10 years, or if ever
- No evidence has been provided to suggest that the land to the North of “Selwyn Pier” towards the slip way and “Red wing sheds”, has ever had houseboats on it

Bembridge & St Helens Harbour Association has made no further comments following the latest re-advertisement but previously stated:

- Acknowledges that a number of houseboat plots have long existed, and each has in the past been separately defined and sold leasehold;
- Even before the Harbour was privatised in 1965 there were already a few houseboats along Embankment Rd;
- Photos showing unidentified craft in between leased plots is not evidence that they were houseboats, or moored for any but brief periods - these shore areas cannot possibly be the subject of LDCs at all since the sites are undeveloped;
- Never been houseboats or development in the wider area shown;
- De minimus works would likely involve the sea wall requiring EA Flood Defence approval and interfere with the seabed requiring MMO and NE approval and appropriate mitigation – therefore cannot be de minimus and would require planning permission;
- Submission refers to ‘plot 23’ with a plan showing de minimus works. But Plot 23 has not had a houseboat on, so questions how this can be relevant;
- Section 3 of TCP Act 1950 (as Harbour Act refers to) defines ‘houseboat’ means any vessel lying in the water or on the foreshore of the harbour which is used or capable of being used as a place of habitation and if so used whether such use be temporary, intermittent or permanent or as a place for accommodating or receiving persons for purposes of shelter, recreation, entertainment or refreshment or as a club premises or as offices but shall not include:
 - (i) a vessel normally engaged in the transport of persons or goods; or
 - (ii) any pleasure vessel used in navigation; or
 - (iii) any lightship or watch barge [BHO63(b)].

This means

(a) permissions under the Act for works in connection with shipping do not apply to houseboats

(b) visiting craft, even if people live on them, are not houseboats.

Refers to previous applications and information at the time showing a 1994 newsletter map showing only 15, a 2002 aerial photograph showing 18. A list also described 2 plots as recently cleared and 5 plots with no knowledge of houseboats in this area.

This left 27 plots in question with only visible in 2002, although this list may be unreliable. The LDC for Bryher showed the position of was not on plot 23 (as previously suggested).

The National Trust has made no further comments following the latest re-advertisement but previously raised an objection and considers there is insufficient information to demonstrate 10 years continuous of the area and therefore an LDC cannot be granted. They do not dispute that houseboats have been there for 10 years or more. They have sent three aerial photos taken on 04.09.1999, 18.05.2005 and 19.04.2015. However, the extent of the application area is far greater than what could be established for houseboat mooring. Furthermore, they are aware that a number of the houseboats have been stabilised on stilts although they are not sure which and whether they still are or can now float on the tide. This adds to the complexity with regards establishing a lawful area. This further undermines the LDC and consider the only appropriate way is to submit individual applications for each houseboat. They also state that the proposed works should be sought through a separate application for proposed use.

The Royal Society for the Protection of Birds (RSPB) has made no further comments following the latest re-advertisement but previously raise an objection, reiterating Natural England’s comments and

that the site is within designated sites. They states that the LDC is flawed because the application area than the piece of shoreline adjacent to the harbour wall between the end of Redwing Quay and the wide slipway to the west currently being used for houseboats.

One objection is from an owner of the houseboat which has received an LDC for their houseboat. They stated that this LDC required a lot of evidence to demonstrate it had been there for the required period and also that each plot should be an individual planning unit.

It is noted that comments have been received that raise an overall objection but state the following:

- Acknowledges that the status of the houseboats should be regularised but this should relate to the current area occupied by houseboats and not the larger area draw – this area should be redrawn;
- Need to regularise especially so that sewage treatment systems can be installed to each houseboat – but these permissions should be on a boat-by-boat basis and not a whole geographical area otherwise could lead to considerable expansion of houseboats and associated paraphernalia;

Comments that are not relevant to the LDC

Many of the comments received are not wholly relevant to an LDC application but it is considered appropriate to include a summary of the objections:

- Various sea defences are not be up kept and car park for houseboats owners is not fit for purpose and inadequate;
- Blanket approval could be potentially dangerous and detrimental to the area
- The example vessel shown is unnecessarily large and were all slots filled with similar size boats, there would be an unacceptable pressure on the locality and amenities.
- The area defined in this LDC application is used for casual sailing, racing or teaching others to sail.
- If the area of the harbour is lost to houseboats, it may result in the sailing communities diminishing including loss of local businesses.
- Congestion of the harbour
- Increased pollution
- Silting up of the harbour caused by restricted water flow.
- Areas of the land outlined on the plan as part of the LDC does not have an established use for houseboats and houseboats have never been in this area.
- Increase in sewage and lack of proper sewerage facilities to deal with this which could affect holidaymakers who use the beach and harbour.
- Dingy sailors will be forced out of the harbour into the sea which is potentially dangerous.
- Each plot is used as an individual home and they are all different and individual.
- Lack of car parking for any future houseboats
- Loss of navigational water
- Lorries required to pump out the sewage tanks would cause problems to traffic on Embankment Road
- Negative impact on visual appearance of the area
- Development would be contrary to the Bembridge Neighbourhood Development Plan that states there should be 'interspaced views of the harbour'.
- Adverse impact on the Bembridge Conservation area, Marine Special Protection area, SSSI, SPA and Ramsar wetland site.
- An environmental impact statement should have been submitted.
- Loss of summer moorings
- Impact on fish, wildlife and migrating birds.
- Inappropriate use of an LDC - the application should be for full planning due to the nature of the works intended and change of use of the land.
- Loss of tourism
- Effect tourism and local business
- The 'Harbour Act' should not override planning regulations
- The applicant planning statement is inaccurate and misleading.
- Approval would set a precedent for development within the harbour.

- The current houseboats lack architectural merit and the addition of more boats would adversely affect the character of the area.
- Parts of the site outlined in the application do not belong to the applicant.
- The owner of one of the houseboats also commented on the space between houseboats and that a fire occurred at their neighbour and fire brigade stated that any closer then the fire would have extended to their vessel;
- The Environment Agency, Natural England and the MMO should have been consulted and concerns this process will bypass them.
- An Environmental Impact Statement should be submitted;
- Loss of habitat; destroy natural beauty and create further pollution in the harbour;
- Overbearing nature and impact on landscape;
- Density of houseboats will result in a fire risk;
- Already inadequate parking and service provision;
- Road not wide enough to cope with additional traffic;
- Further sewage and waste water dumped into the harbour;
- Feels that any further houseboats would likely be in the harbour and impact on sailing and other activities.

There have obviously been a significant number of objections received. However, as stated above, many of these were received prior to the revised plan being submitted which reduced the red line to the crescent shape.

Evaluation

This LDC application has gone through a number of changes during the assessment, including the submission of revised plans which has significantly decreased the size of the red line area from that originally submitted to a crescent-shaped red line covering the land and harbour which contains the houseboats alongside Embankment Road. The description has also changed from the original submission – this has been in line with legal advice obtained and in conjunction with the applicant. The Local Planning Authority (LPA) now consider that both the red-lined area and the description are appropriate and relevant to the LDC application..

Relevant legislation

Prior to the main discussion it is worth outlining the manner in which this lawful development certificate should be assessed. The applicant is seeking to establish that the section of the harbour edged in red has been used for the mooring and/or stationing of 25 traditional and non-traditional houseboats for permanent residential use together with the use of the remaining land for harbour use, on a permanent basis for a period in excess of ten years and that as a result, the use is now lawful for planning purposes.

Section 171B(3) of the Town and Country Planning Act (1990) states that no enforcement action can be taken against (among other cases) a breach of in planning control after the end of certain prescribed periods. These are:

The four year rule - a breach in planning control relating to operational development or the change of use of any building to use as a single dwelling house becomes immune from formal enforcement action after a period of four years.

The ten year rule - all other breaches in planning control including the breach of a planning condition and the change of use of land to another use. In this case, of particular relevance is that the stationing of the harbour bed/land for houseboats/vessels 'use' has become immune after a period of ten years.

In effect, section 171 (B) states that there are four and ten year "immunity" periods applicable to the service of formal notices relating to breaches in planning control. Thus, assuming a breach has been continuous, any breach which first occurred more than four or ten calendar years before the date on which the LPA formally recognise its occurrence (e.g. by notifying their opinion that there has been a breach to the owner or occupier of the land) has perpetual immunity.

Applications for Certificates of Lawfulness differ from planning applications, in that issues of planning policy and general amenity are not considered. Instead, the applicant aims to prove that the use of the building/ change of use of land or whatever the breach relates to has achieved immunity through the passage of time.

Whether the applicant has supplied sufficient supporting documentary evidence to demonstrate that, on the balance of probability, the land outlined in red has been used for the mooring and/or stationing of 25 traditional and non-traditional houseboats for permanent residential use together with the use of the remaining land for harbour use, on a permanent basis for a period in excess of ten years and that as a result, the use is now lawful for planning purposes.

Harbour Act

Reference has been made of the following Act:

The Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963.

It is noted that this legislation includes the following:

- Paragraph 12 (1) – sets out that within the limits of the harbour there are a number of works which can be undertaken, but includes a proviso which does not override planning legislation and the need to obtain planning permission or any requirements under the GPDO;
- Paragraph 15 (1) – sets out that the Company can provide, place, lay down and maintain moorings, buoys, marinas and like apparatus and conveniences for vessels and houseboats
- Paragraph 15 then goes on to say that charges can be required for such use of these and makes reference to a person mooring or anchoring for a reasonable time.

General Permitted Development (England) Order 2015, Schedule 2, Part 8, Class B of the 2015 - Transport related development

- *Class B – dock, pier, harbour, water transport, canal or inland navigation undertakings*

General Permitted Development (England) Order 2015, Schedule 2, Part 18, Class A

- *Class A - development under local or private Acts or Order*
 - *for the purposes of shipping, or*
 - *in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.*
- Restrictions/criteria restrict this including if the buildings/construction is not required in connection with the handling of traffic

Assessment of evidence

Section 191 of the Town and Country Planning Act 1990 provides that the Local Planning Authority should approve Certificates of Existing Use where it is satisfied on the basis of the evidence to hand that, on a balance of probabilities, the use applied for has been in continuous effect for the requisite period of time (in this case ten years).

“Moreover, the Court has held (see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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". Whilst the evidence supporting the applicant's assertions is set out, it is important to consider whether any contradictory evidence exists.

The Governments recently revised and updated planning practice guidance states that:

“An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.”

It is the applicants' contention that the current use has been in effect in excess of 10 years and therefore is lawful by reason of the Council's failure to take enforcement action within the specified timescales detailed within s.191(2) and (3) of the Town and Country Planning Act 1990.

The following will analyse the evidence submitted by the applicant to support the contention of lawfully accrued use. *Panton and Farmer v. Secretary of State for the Environment, Transportation and Regions and the Vale of White Horse District Council* makes it clear that the term “existing use” in Section 191 (1)(a) of the Town and Country Planning Act 1990 does not necessarily imply that the use remains active at the time the application was submitted. Indeed, it was held that the use could be “existing” as long as that use had not been lost in the sense that any resumption of that use would be a material change of use.

Having regard to the case of *Panton and Farmer*, it is necessary to consider the evidence submitted by the applicant in totality, considering a) whether the evidence - on a balance of probabilities - demonstrates that the use has lawfully accrued over a continuous period of ten years, and b) whether there have been any subsequent abandonments or material changes of that lawfully accrued use (if demonstrated) so as to render the subsequent resumption of the use a material change of use of the land.

Case Officer Site Visit

Recent site visits by the case officer showed that there are 24 houseboats currently in situ – with one of these vessels having moored along Embankment Road in September 2016 on Plot 23 – Rijnstroom. However, two plots were until relatively recently occupied by two houseboats and it is understood that new/refurbished houseboats will be coming back to these plots.

Analysis of evidence submitted in support

A Planning Statement has been submitted with the relevant points being:

- LDC be granted on the basis of two separate premises (but not mutually exclusive) so that if one of them or both are found to have succeeded then the LDC should be granted:
 - **Premise A:** That the stated use has been exercised continuously for more than 10 years and has become lawful and/or
 - a) **Premise B:** The use falls within the lawful use of the relevant area
- b) Limits of the harbour are defined in Section 7 of the Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963 (the “1963 Harbour Act”).
- From their appearance, few of these “houseboats” could be floated and fewer still would be seaworthy.
- Many have been adapted by the addition of an additional superstructure and appear to be top heavy (and unstable in the water) as well as being fixed on their bases or having settled into place.
- A few are plainly building structures that were never designed to float.
- These “houseboats” are spaced out along the shoreline but the layout is informal and genuinely independent floating units cannot be precisely fixed in place.
- Ancillary structures (or other operational development) can be somewhat haphazard and include piers, mooring points, fences, patios and bin stores.

The Planning Statement then goes onto support both premises:

Premise A - “that the use applied for has been exercised continuously for more than ten years and that it has therefore become lawful”

- The group of “houseboats” lies within a defined frontage, between the end of Redwing Quay and the wide slipway to the west (where ‘Sirius’ is moored).

- The number of “houseboats” is variable and, currently, there are some obvious spaces where boats have been moored from time to time.
- It is submitted that neither the positioning of houseboats nor the proposed piling and drainage works require planning permission.
- The application is made in relation to a specific section of the Harbour which is readily identifiable within the overall area as a site for the mooring of houseboats. At this stage, it is not necessary, therefore, to consider the status of the whole Harbour as a “planning unit” or the lawful uses of the Harbour as a whole, in the context of these Applications.
- A small number of structures falling within the overall area of houseboat moorings have never been floating structures but have been constructed as permanent dwellings in their own right. These have, no doubt, created their own separate “planning units”, independently of the Harbour but within it.
- There is extensive evidence to show that the mooring of houseboats in this part of the Harbour has been carried on for many decades.
- Refers to Council’s Bembridge Conservation Area Appraisal (adopted in May 2011) confirms at page 23 that the mooring of houseboats dates from the beginning of the twentieth century and thus pre-dates the current planning legislation (the Town & Country Planning Act 1947, which came into effect on 1 July 1948). The “houseboats” area forms an identifiable enclave:

“The Houseboats reflect this further; a settlement with a strong community and now a tourist attraction in its own right, the community was established here in 1906 with the former Bembridge lifeboat the Queen Victoria.”
- Observation of the “houseboats” themselves, and the obvious great age of many of them also demonstrates that the use has been carried on for more than ten years.
- Photographic evidence over a long period shows that the area for which a Certificate is sought (currently occupied by houseboats) has been used for that period for many decades (see photographic appendix).
- Photographic evidence over a long period shows that the area for which a Certificate is sought (currently occupied by houseboats) has been used for that period for many decades (see photographic appendix).
- on the “balance of probability” and, in this case, that test has clearly been met, on the basis of the clear evidence of the use of the land for more than ten years (and thus is lawful in planning terms):
 - the photographic history;
 - the Bembridge Conservation Area Appraisal;
 - the physical condition of the houseboats.

Premise B that the use applied for falls within the lawful use of the relevant area.

- the area in question lies within the area of the Harbour, as defined in the 1963 Harbour Act, where the use of land between high water and low water marks for the mooring of houseboats (or other boats) evidently lies within the scope of the lawful use of the Harbour;
- that the mooring of houseboats is akin to the use of land for the stationing of caravans on a caravan site or the parking of cars in a car park. The relevant area is to be considered as a whole; it is not appropriate to identify individual plots or spaces as separate “planning units” (just as it would be incorrect to identify an individual plot in a caravan park or an individual parking space in a car park).
- The proposition regarding the use of the Harbour is made clear by the terms of the 1963 Harbour Act, itself. Section 15(1) provides, in full, that:

“The Company may provide place, lay down, maintain, use and have moorings, buoys, marinas and like apparatus and conveniences for vessels and houseboats on land owned or leased by the Company and on any other land with the consent in writing of the owner and lessee thereof in the harbour.”
- In terms of the “use” of the Harbour, the Act itself identifies the mooring of houseboats as being part of its fundamental nature.
- Refers to Section 57 of the Town and Country Planning Act 1990 provides that, in principle:

“planning permission is required for the carrying out of any development of land.”
- Section 55 of the Town and Country Planning Act 1990 provides that, in principle:

“ ‘development’, means 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”.
- It follows that the mere use of this section of the shoreline for the mooring of houseboats must

be lawful, since no “material change of use” would be involved, in relation to the area of land that has been identified, as a whole.

It is noted that other sections of the Planning Statement refer to the operational development and other minor works which make up a separate LDC application.

LPA RESPONSE

It is noted that considerable discussions have taken place with the applicant since the original submission of this application. This has resulted in a revised site plan showing the application site edged in red. The applicant has also accepted a specific number of houseboats within the application site and also a revised description. The applicant has also accepted that none of the houseboats within this site have become operational development – i.e. they are still boats/vessels and not physically attached to the ground. Whilst some use spudlegs, these are removable. No further information or revised information has been submitted, and thus some of the information and contentions raised by the applicant are now effectively superseded. It is now considered that the applicant and the LPA are in agreement in terms of what is being assessed.

Information obtained by the Council

Informal records

The LPA has been keeping informal records of the houseboats along this stretch of the harbour with a survey carried out in July 2013 which indicated there were 26 houseboats in situ at the time of the survey.

Planning History

As set out in the planning history above, several planning applications were submitted over the relevant period and which officer reports for the 2008 and 2009 applications indicate 22 houseboats.

Bembridge Conservation Area Appraisal – Adopted May 2011

This document was produced by the planning section of the Isle of Wight Council and includes sections on Bembridge Harbour. The following paragraphs are relevant to this LDC:

- 6.5 “... and the 25 houseboats which occupy the west side of the Embankment Road”
- 21.6 “Bembridge Harbour has provided moorings to house boats since 1902 when the former Bembridge Lifeboat, the Queen Victoria, was the first to moor there. **There are now 25 houseboats** and these are a quirky, colourful and surprising element which contributes strongly to the Conservation Area. The open space between the houseboats allows views across the harbour and this is important. The oblique view of the boats moored stern end into the Embankment is interesting although some boats are less in keeping with the marine theme than others by the lack of particular detailing. “
- 21.7 “The Houseboats are a variety of structures, mostly a floating platform such as a WWII ammunition barge with a superstructure affixed on top, but there are a few vessels namely the fishing trawler Scorpio, MTB 24 and a coastal lighter.”
- P9. “**The Houseboat community is 25 strong** and boats remain popular places to live and visit (Xoron is run as a B&B). It is a particular environment which has unique challenges and pressures. Currently the Houseboats are not connected to mains sewers and unfortunately historic agreements mean that untreated waste is dispersed into the harbour, a SSSI. The design of the houseboats is a sensitive issue. Although replacement houseboats may add interest to the river scene, to add or build larger structures than existing could threaten the

visual amenity and character and impact adversely upon the environmental sensitivities of the area. Those two storey floating marine vessels with a quirky, colourful character are a strength, but the significance of the grouping is weakened by inappropriate materials such as PVC cladding, insensitive design and where the highway verge is populated with sheds and fences. Some sub structures appear to be permanently fixed to the sea bed and there may be a need to address the legality of these and on shore structures.”

Whilst aerial images are a snapshot in time, such a document like this would have been prepared over a period of time and as such significant weight is given to the number of houseboats set out. However, it is noted that within this statement it is mentioned that some structures appear to be permanently fixed to the sea bed, although it is not confirmed whether this is via the spudlegs or by other means, and it is questioned whether such a report would have included surveying such detail.

Aerial imagery

The Council obtained/commissioned aerial images of the Island in 1940, 1999, 2004 and 2012 and informal LPA records hold other images (such as from Google Maps). Whilst these images are a ‘snapshot in time’ they do provide some indication of the numbers of houseboats and a general increase over time:

1940 image

- 5 large houseboats including Xoron, Vanessa and Zambesi

1999 image (Council’s aerial image)

- 17 houseboats.
- The LPA’s informal records have named 15 of these, although it is unsure how these were named or if there are other records showing surveys taken at the time.

2004 image (Council’s aerial image)

- 22 houseboats.
- The LPA’s informal records have named 21 of these, although, again, it is unsure how these were named or if there are other records showing surveys taken at the time.

2009 (June) Google Street image

- 27 houseboats
- The LPA’s informal records have named 26 of these, although, again, it is unsure how these were named or if there are other records showing surveys taken at the time.

2011 (September) Google Street image

- 26 houseboats.
- The LPA’s informal records have named 26 of these, although, again, it is unsure how these were named or if there are other records showing surveys taken at the time.

2012 image (Council’s aerial image)

- 25 houseboats.
- The LPA’s informal records have named all 25 of these, although, again, it is unsure how these were named or if there are other records showing surveys taken at the time.

Third Party

There has been a large number of third party comments received, which are set out above. Many of these comments were received before revised plans and revised descriptions were submitted and therefore these revisions may have addressed their concerns/objections. These have been set out above. Along with the other evidence, the third party comments assisted in defining the number of houseboats in situ over the relevant time period and also confirmed that none of the houseboats had become operational development through works (one comment included photographs taken at low tide showing the undersides of a number of vessels. With more limited numbers of comments being received since the latest revised description and re-advertising, it would seem there is no further evidence presented by third parties to now dispute what the applicant is alleging through the revised

description.

Analysis & Conclusions

Mooring and/or stationing of 25 houseboats

As set out above, in terms of the 25 existing houseboats, the above evidence and assessment along with a lack of any contrary evidence, shows that, on a balance of probabilities, those parts of the land within the areas numbered 1-25 on the plan numbered 14:1977:11D has been used over the relevant time period for the mooring and/or stationing of 25 traditional and non-traditional houseboats for permanent residential use, and as such has become lawful through the passage of time.

The remaining land for harbour use

Moorings

The Council having regard to the different types of mooring use, refer to *R (KP JR Management Company Ltd) v LB Richmond upon Thames [2018] EWHC 84 (Admin)*. In that case there was an issue as to whether a tidal part of the River Thames had an established lawful use for the mooring of houseboats for residential use. The LPA in that case concluded that there was a long history of such mooring (from 1916 onwards) and granted a LDC. A third party brought a judicial review challenge. In the course of her judgment, Lang J referred to the earlier *Thames Heliports case (1997) 74 P&CR 164* which found that the ordinary use of the River Thames was for the activity of ships, boats, and other vessels passing over the water for the purposes of navigation, commerce, trade and intercourse, and then said (at para 52):

“Applying these principles, it was common ground before me that the use of moorings for residential use was capable of amounting to a material change of use in the ordinary and incidental use of the land, and thus potentially may require planning permission.”

In other words, the ordinary use of a navigable river did not include mooring vessels for residential use as an integral component of the use, and so where such mooring activity did take place it may amount to a material change of use. Whilst a harbour is not entirely the same as a navigable river, the Council considers that the same general principle will apply. A harbour is used for harbour purposes, and those purposes do not have permanent residential use as an integral component of a harbour use. Mooring vessels for such a purpose is therefore capable of being a material change of use.

The Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963 (referred within this section as the 1963 Order).

The applicant along with the revised description refers to the use of the site also for harbour use. Much of the debate around this application centred on what the harbour use includes, with previous descriptions and assertions being put forward by the applicant to state moorings. It is the Council's opinion that the Harbour Act does not oust the planning jurisdiction or the planning functions of the Council. It provides at s.45 that the provisions of the Town and Country Planning Act 1962 and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to the land notwithstanding that development thereof is or may be authorised or regulated by or under the order”. The 1962 Act referred to in s.45 of the 1963 Order has been superseded by the Town and Country Planning Act 1990 and the Council's view is that the 1990 act is now the act which should be read into the Order. This is because The Interpretation Act 1978, s.17, provides as follows: “(1) *Where an Act repeals a previous enactment and substitutes provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come*

into force. (2) Where an Act repeals and re-enacts, with or without modification, a previous

enactment then, unless the contrary intention appears,—(a)any reference in any other enactment to the enactment so repealed shall be construed as a reference to the provision re--enacted;..”

The Council's view is that the 1963 Order provides a number of powers for the erection, construction or maintenance of the Harbour, but these are still subject to the 1990 Act. Whilst, therefore, the powers conferred by the 1963 Order are designed to provide the powers to the Company/statutory harbour authority to carry out works specified in the Order, this power can only be exercised in accordance with the prevailing planning legislative regime so far as the land affected (which includes water) is within the administrative limits of the Council.

Deemed permission is given by the General Permitted Development Order 2015, Schedule 2, Part 18, Class A for the works authorised in a local Act such as the 1963 Order. However the 1963 Order itself disapplies its effect in relation to the authorised works itemised in s.12(1).

The Council's opinion is that the powers granted to the Company under the 1963 Order, s.12 include a number of physical actions, but s.15 provides specific powers in relation houseboats: it can provide, place, lay down and maintain, use and have moorings, buoys, marinas or like apparatus or conveniences for vessels and houseboats on land owned or leased by the company or other land with the consent of the owner. The Council consider that s.15 does not provide the power to provide and maintain the houseboats themselves, but merely the means by which they may be accommodated, although it is noted that s.15 predicates that houseboats may be accommodated within the limits of the Harbour.

As such, the Council's view is that the mooring of houseboats (by whomsoever) for permanent residential use requires planning permission as it represents a material change of use of the land. This would extend to the permanent mooring of a houseboat within the curtilage of another for use independently for residential occupation, because the original planning unit would be effectively divided into two separate planning units.

It is also the Council's view that a houseboat does not constitute a dwellinghouse for the purposes of the GPDO 2015, Schedule 2, as its provisions clearly do not contemplate, or can be sensibly related to, extensions or alterations to a floating structure used as a dwellinghouse. Planning permission will be required for any alteration to a houseboat involving operational development (once permanently stationed). This could include any additions or alterations that constitute building operations or other operations normally undertaken by a person carrying on business as a builder (TCPA 1990 s.55).

It is acknowledged that two plots are currently vacant but until relatively recently houseboats were 'permanently' stationed there and form part of the Council's information with regards the length of time they have been in situ. It is understood that replacement/refurbished houseboats will be coming back to these plots and it is noted that the Secretary of State has decided that the replacement of a houseboat with another houseboat does not constitute development requiring planning permission so long as it involves no operational development. This follows the premise that the change of use to the mooring and/or stationing of 25 traditional and non-traditional houseboats for permanent residential use has already occurred in relation to the relevant planning unit.

Conclusion

The application has been submitted with relatively limited information but the information submitted, along with the Council's own records, aerial images and other documentation, such as the Conservation Area Appraisal clearly indicates that 25 traditional or non-traditional houseboats being used for residential purposes have been in situ within the revised red-lined area on the site plan. Third party evidence along with some consultee feedback further indicates the level of houseboats here.

Whilst there have been a large number of comments received on this application, almost all these

comments and concerns were received prior to the latest revised description, and most were received after the initial submission and site plan where the red line covered a much larger area than the revised plan now shows. In assessing these comments, it is now considered the revised plan and description has likely addressed the majority of comments and that given that only 2 third party comments have been received since the latest submission, it is considered that no evidence has now been submitted which disputes what the applicant is now alleging - the use of the land for the continued mooring/stationing of 25 houseboats for permanent residential use, along with the remaining land being in a harbour use - and that this has been continuous for a period of a minimum of 10 years, at the same level of intensification and without any significant breaks.

With regards the remaining land for harbour use, it is considered that this could include some types of mooring activity, such as the short term mooring of navigable and floatable vessels, but that such a use would have a significant distinction between that and the 25 houseboats used for permanent residential use. Furthermore, the Council's opinion with regards such mooring that a vessel which is clearly floatable/navigable and which is moored overnight or for some other short duration, whilst in the course of navigation from one place to another, would be a vessel moored for an activity generally regarded as falling within a 'harbour use'. However, a vessel which is not navigable/floatable and/or which is permanently moored in one location and used for permanent residential purposes would not be ordinarily regarded as within a 'harbour use'.

Noting this, and taking into account the above, the Council is therefore satisfied on the basis of the evidence to hand that, on a balance of probabilities, the use applied for has been in continuous effect for the requisite period of time (in this case ten years) so as to grant a Lawful Development Certificate.

Conditions & Reasons:

Informatives:

Part One Authorisation:

Signature: _____

Date: _____