



Appeal Decisions

Hearing held on 15 March 2022

Site visits made on 14 and 16 March 2022

by R W Allen B.Sc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Appeal A Ref: APP/K3605/W/21/3266924

Norman, Northwest of Cherry Orchard Gardens, West Molesey, Surrey KT8 1QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Thatcher against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1888, dated 30 July 2020, was refused by notice dated 18 December 2020.
 - The development proposed is retrospective application for the mooring of a pleasure craft.
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Appeal B Ref: APP/K3605/W/21/3266928

Pioneers Joy, Northwest of Cherry Orchard Gardens, West Molesey, Surrey KT8 1QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs J Casey against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1561, dated 30 June 2020, was refused by notice dated 18 December 2020.
 - The development proposed is retrospective application for a residential mooring of a houseboat.
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Appeal C Ref: APP/K3605/W/21/3266934

Water Buffel, The Old Wharf, Northwest of Cherry Orchard Gardens, West Molesey, Surrey, KT8 1QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr F Kastrati against the decision of Elmbridge Borough Council.
 - The application Ref 2020/2060, dated 18 August 2020, was refused by notice dated 18 December 2020.
 - The development proposed is retrospective application for a residential mooring of a houseboat.
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Appeal D Ref: APP/K3605/W/21/3266936

Midnight Rambler, The Old Wharf, Northwest of Cherry Orchard Gardens, West Molesey, Surrey, KT8 1QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Cross against the decision of Elmbridge Borough Council.
 - The application Ref 2020/2076, dated 18 August 2020, was refused by notice dated 18 December 2020.
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- The development proposed is retrospective application for a residential mooring of a houseboat.
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Appeal E Ref: APP/K3605/W/21/3266938

Skylark/MsDeHoop, The Old Wharf, Northwest of Cherry Orchard Gardens, West Molesey, Surrey, KT8 1QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr E Gjika against the decision of Elmbridge Borough Council.
 - The application Ref 2020/2061, dated 18 August 2020, was refused by notice dated 18 December 2020.
 - The development proposed is retrospective application for a residential mooring of a houseboat.
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Decisions

1. Appeal E is allowed, and planning permission is granted for a temporary period for retrospective application for a residential mooring of a houseboat known as Skylark/MsdeHoop, The Old Wharf, Northwest of Cherry Orchard Gardens, West Molesey, Surrey KT8 1QY in accordance with the terms of the application, Ref 2020/2061, dated 18 August 2020, subject to the conditions set out in the Schedule of Conditions at the end of this decision.
2. Appeals A, B, C, D are dismissed.

Preliminary Matters

3. I made a ruling at the Hearing that the objectionable point on whether the appeals, or parts thereof, constitute a material change of use as a matter of fact and as such whether planning permission is required, is not a matter before me. This is because the appellants, irrespective of their views on materiality, had nonetheless applied for planning permission, and these appeals and thus my remit is to consider and determine only the merits of the reasons for refusal, and not to question the lawfulness or otherwise of the uses themselves. I informed the parties that I would not dwell on these matters further in my decision, and in so doing this will not come as a surprise to them.
4. For Appeals B, C, D and E, I have used the description of the proposals as cited by the Council in the respective refusal notices, as I find it better reflects the appeals before me. The parties dispute the description for the proposal for Appeal A. Notwithstanding the Council's concerns on the characteristics of, and thus the likely use of the vessel, in my judgement the description of the proposal should reflect what the appellant is seeking consent for. I have therefore used the appellant's description in the banner heading above, albeit slightly amended. I deal with the matter at hand in the decision below.
5. I concur with the parties' position in the combined Statement of Common Ground that matters concerning reason for refusal nos.5 and 6 in respect of waste and recycling facilities, and the provision of cycle parking, can be controlled by suitably worded planning conditions. I have subsequently not considered these matters any further in my decision.

Main Issues

6. The main issues are:

- Whether the proposals amount to inappropriate development in the Green Belt;
- the effects on openness and any other harm;
- the other considerations; and
- whether 'very special circumstances' exist to outweigh the harm from inappropriateness, openness and any other harm.

Reasons

Whether inappropriate development in the Green Belt

7. Common ground exists that each appeal site lies within the Metropolitan Green Belt. The Framework¹ states that great importance is attached to Green Belts; that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and that the essential characteristics of Green Belts are their openness and permanence². Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances³. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations⁴. Local Plan policy DM17 is broadly consistent with the Framework in this regard.
8. The Framework identifies exceptions where development may be not inappropriate, and pertinent to the appeals is the content of paragraph 150(e). This states "*material changes in the use of land (such as changes of use of outdoor sport or recreation, or for cemeteries and burial grounds)*" are not inappropriate provided they preserve its openness and do not conflict with the purposes of including land within it.
9. I agree with the appellants that the bracket list contained within paragraph 150(e) is neither closed nor exhaustive. Because of the inclusion of the words "such as", and the clear commonality in the examples given in that they all require an outdoor location, I find it perfectly feasible that the mooring of boats could form part of this list. However, I stop short by some distance that the said list extends to the permitting of permanent residential moorings.
10. The Framework's Paragraph 149 becomes the starting point for proposals affecting the Green Belt. It considers the construction of new buildings should be viewed as inappropriate in the Green Belt. It goes on to set out exceptions, and in the case of residential development this is limited to the infilling in villages⁵ or to limited affordable housing⁶, or the redevelopment of previously developed land⁷.
11. I accept both parties' positions that the appeals do not constitute buildings. However, the paragraph is nonetheless relevant to the determination of the

¹ National Planning Policy Framework 2021

² Paragraph 137

³ Paragraph 147

⁴ Paragraph 148

⁵ Paragraph 149 (e)

⁶ Paragraph 149 (f)

⁷ Paragraph 149 (g)

appeals because it provides the policy objective on restrictions on residential uses in the Green Belt which I find cannot be set aside, particularly given that Appeals B, C, D and E seek a permanent residential use. As permanent residential moorings do not form part of the exceptions list in paragraph 149, it must in the first instance be deemed as inappropriate development in the Green Belt.

12. In my judgement, paragraph 150 does not come to the appellants' rescue. The paragraph opens with "*certain other forms of development...*", and as paragraph 149 has already considered where new residential development and uses may be not inappropriate, it stands to reason that paragraph 150 cannot be seeking to reintroduce it and permit new residential development or uses, even for permanent residential moorings, through a policy back door via subparagraph (e). In any event, paragraph 150 is predicated on the preservation of openness and, as I set out below, this would not be the case here.
13. Appeal A is a slightly different case because a permanent residential mooring is not sought by the appellant. However, I must first establish whether Appeal A is indeed a pleasure craft as stated by the appellant; or is for all intense and purposes a residential mooring, so as to consider whether appropriate conditions restricting residential use would fairly and reasonably relate to the development.
14. At the Hearing, Mr Thatcher admitted that he had previously slept on the boat for an extended time during the Covid-19 pandemic period. He explained that this was because he was undertaking renovations including insulation and re-wiring works, which I am told remain incomplete. The purpose of these works was to make the boat habitable primarily for the appellant's future use for travelling, although he would return to the appeal site which would be its permanent base. Mr Thatcher also confirmed the boat contains the facilities necessary for residential occupation including sleeping areas, washing facilities and a kitchen/cooking area.
15. Little evidence is before me as to what the appellant identifies as the differences between the boat as a pleasure craft from that as a permanent residence, other than the fact the appellant is currently residing elsewhere. From the evidence and my observations, the appeal boat is of a size similar to Appeals B, C, D and E which all function as residences. The appellant has accepted that his boat is capable of functioning as a residence, even if conditions onboard are at the present time less than desirable. It also notably dwarfs those boats I observed moored further along the riverbank to the east, which are considerably smaller in size and which are, in my mind, obvious pleasure crafts.
16. Given the facilities onboard and the future intended use, I find that Appeal A is more obviously aligned to a residential use; and it is not a pleasure craft. It would not be appropriate to impose restrictive conditions as such. Accordingly, I find that Appeal A is also not supported by paragraph 150(e) of the Framework.
17. In summary, Appeals A to E are inappropriate developments in the Green Belt. They are contrary to Local Plan policy DM17 and with the relevant parts of the Framework, details of which I have discussed above. In accordance with the

Framework, I attach significant weight to the harm by reason of inappropriateness.

Effect on openness

18. Looking panoramically, I observed a large number of boats of varying sizes moored along the banks of the River Thames, which suggests boat moorings do form part of the wider character of the area. I walked a considerable section of the towpath in both directions of the appeal sites, and in so doing I observed a distinct character change. The area to the east, at the point where the towpath can be accessed from Cherry Orchard Gardens, the character is typically suburban. Houses adorn the southern side of the towpath, and because of their size the boats along the river here appeared to be pleasure crafts only and connected to their associated dwellings opposite, although I do not know this for certain. The banking contained formalised steps leading to various sized decking areas.
19. At the point in which the built form fronting Cherry Orchard Gardens ends and where it adjoins the Molesey Reservoirs, the character of the riverbank becomes distinctly rural. The riverbank is open in character though interspersed with shrub planting. It is largely uncluttered with vessels, and those moorings that do exist are somewhat spaced out and the mooring areas are less formalised. I did not find that the feeling of rurality was disrupted by the reservoir boundary wall on the other side of the towpath.
20. I accept the thrust of the argument that, as Appeals C, D and E are moored against a formalised section of the riverbank, known as The Old Wharf, the presence of boats would be expected in this location. However, I find this is true only insofar as they are not permanent residences, which in my mind take on a very different appearance.
21. Take Appeal D for instance. Here, the appellant has enclosed his section of The Old Wharf adjoining his moorings. The enclosed land includes various paraphernalia comprising what appeared to be storage wrapped in tarpaulin, a hand truck, a bicycle, and several planters. The area in front of Appeal C was not too dissimilar. While Appeal E has not enclosed the land adjacent to its moorings, I did observe areas of storage on The Old Wharf. None of the above I would expect to see associated with boats which are only temporarily moored here.
22. Contrast the above with the evidence advanced by the Environment Agency (EA) on the previous use of The Old Wharf, which no party disputed at the Hearing. Here, the EA states that it was previously used as a coal wharf for the transportation of fuel to power machinery at the Molesey Reservoirs which housed a steam powered pumping station. Thus, in its heyday and even when surplus to requirements, boats would have come and gone on a regular occurrence, with the wharf itself remaining open and uncluttered.
23. I am thus persuaded that the previous use of The Old Wharf bears little resemblance to the current uses of Appeals C, D and E. Accordingly, the presence of the permanent residential moorings for Appeals C, D and E, taken with its enclosure and domestication of the wharf within private defensible spaces has undoubtedly eroded openness of the Green Belt.

24. Appeals A and B are moored against a naturalised section of the river and a short distance away from Appeals C, D and E. At the Hearing and in respect to Appeal B, Mr & Mrs Casey were at pains to point out that there is no domestic paraphernalia on the stretch of the bank adjacent to their boat. I have no reason to specifically dispute this assertion, albeit that I could not verify this as the land in question is largely hidden from view from the towpath by shrub planting.
25. However, the appellants have physically enclosed the land at the point in which access to it would have been possible. This, and the presence of the boat in this naturalised section of the river where ordinarily, it would have been free of any structures or boats, is sufficient for me to find harm to openness of the Green Belt. I draw the same conclusions for similar reasons for Appeal A.
26. The appellants assert that little difference exists visually between the appeals, and those boats which are permitted under other legislation to be moored along the riverbank for a 24-hour period, particularly if the temporary moorings are in constant use. While there may be some truth in respect to the vessels itself, the enclosures and domestication of the riverbank associated with the permanent moorings persuades me that the differences are significant. In any event, I heard little evidence that such temporary moorings would be constant, and that there would be periods of time when the riverbank would be open.
27. Appeals A to E by reason of their permanence, enclosure of the land, and the presence of domestic paraphernalia and storage have eroded and thus harmed the openness of the Green Belt. They would not accord with Local Plan policy DM17 or with the relevant parts of the Framework, details of which I have discussed above.

Any other harm

a) Flood risk

28. I am informed that each appeal site lies within Flood Zone 3B, the highest category for flood risk. The EA states that the riverbank here is subject to an annual probability of flooding of between 5% to 20% every year. Core Strategy⁸ policy CS26 states the Council will seek to reduce flood risk and that development must be located in appropriate areas and which accommodate flood resistance and resilience measures. In line with the Framework, the policy requires the submissions of a sequential followed by an exception test and a flood risk assessment where new development is proposed in these areas. None of the above has been undertaken by any appellant.
29. The appellants' say firstly that the appeals are water-compatible uses and accordingly are exempt from a flood risk assessment, and secondly, the appellants and indeed other river users and dwellers would know what to do in the event of a flood. I have no doubt that the latter is true; but I find that this is somewhat missing the point. While flooding concerns in respect to the boats themselves are less of an issue largely because they float, I find that understanding the effect of flooding on the riverbank and towpath, and whether and what specific mitigation measures may be necessary and appropriate for evacuation, are critical to the determination of the appeals.

⁸ Elmbridge Core Strategy July 2011

30. I have no obvious reason to disagree with the evidence of the EA and the Council that a flood risk assessment would be required even for water-compatible development for the reasons outlined above. That the appellants have not advanced evidence in this manner means that I cannot conclude with any degree of certainty that flood risk matters are adequately known and understood. Thus, the appeals must be judged as being harmful in this regard.
31. Therefore, I conclude that Appeals A to E do not comply with Core Strategy policy CS26, details of which I have given above. It would also not accord with the relevant parts of the Framework. I also find conflict against Local Plan policy DM13, which the Council does not cite in its reason for refusal, but which requires riverside development and uses to be protected against flood risk.

b) Ecology

32. The parties informed me that while each appeal site is not located in an area designated for ecology, the River Thames is a designated Site of Nature Conservation Interest; and the Molesey Reservoirs are Sites of Special Scientific Interest.
33. The appellants' ecology report, which was submitted as part of the appeals in an attempt to overcome the associated reason for refusal, identifies that the area for each appeal site contains little ecological value, and thus no mitigation is required. The Council does not dispute these findings and I likewise have no reason to disagree. The parties dispute the extent to which the ecology report should have surveyed, with the appellants arguing that because of the findings of the immediate area, there is no requirement or need to survey the effect on the surrounding designated areas. I disagree.
34. Core Strategy policies CS12 and CS15, and Local Plan policies DM5 and DM21 collectively require the conservation and enhancement of biodiversity by protecting and seeking to improve all sites designated for their biodiversity importance, woodland management and habitats and wildlife. In particular, Local Plan policy DM21 also states that development affecting locally designated sites of biodiversity importance or sites falling outside these that support national priority habitats or priority species will not be permitted.
35. Without undertaking such survey information of the wider area, it cannot be known whether there would be any such effect on the designated sites. Indeed, it does not follow that the absence of any ecological effect in the immediacy of the appeal sites means no wider effects are possible, and I heard little evidence to persuade me otherwise.
36. Again, I cannot conclude with any degree of certainty that the permanent presence of Appeals A to E would not affect biodiversity within the nearby designated sites and accordingly, whether mitigation is necessary and deliverable. I am left with little option but to take a precautionary approach and find Appeals A to E would not accord with Core Strategy Policies CS12 and CS15 and Local Plan policies DM5 and DM21, details of which I have given above. I also find conflict against Local Plan policy DM13, which the Council does not cite in its reason for refusal, but which requires riverside development and uses to protect ecology.

c) Character and appearance

37. I have discussed above my findings on the character of the area. I accept that boat moorings, taken by themselves, would not generally appear out of place. However, because this part of the river is rural in character, I do not find it unreasonable for users of the towpath to expect this section of the river to be open, and visually free of structures.
38. The presence of the boats and the enclosure of the riverbank in respect to all appeals, taken with the general domestication of the land in relation to Appeals C, D and E are sufficient for me to find that the character and appearance of the area has been harmed by the appeal proposals.
39. They would therefore not accord with Local Plan policies DM2 and DM13. Collectively, these policies require proposals to achieve high quality design which demonstrates environmental awareness and an understanding of local character, and to reflect and respect the riverside outlook and location and to retain land free of development.
40. The Council is now also relying on Local Plan⁹ policy DM22 to support its reason for refusal for all appeals in this regard. However, this policy relates only to recreational use of the waterways and does not specifically set character and appearance as a matter on which the uses would need to be judged against. Accordingly, I do not find it relevant to the determination of the appeals in this regard.

d) Access and amenity space

41. The Council also cites loss of amenity space as an objectionable matter. Here, the Council opines that the presence of Appeals A to E have restricted access to the river, to the detriment to users' reasonable enjoyment of the river. Undoubtedly this has occurred, as access from The Old Wharf and elements of the naturalised bank now find themselves enclosed.
42. However, I am not persuaded that there has been a significant detrimental effect in this regard, as there remained considerable areas of access. Moreover, I am not wholly persuaded that, in relation to Appeals A and B, the areas now occupied by the boats and their moorings would have been readily accessible anyway having regard to the screening and planting in those areas, some of which and according to Mr & Mrs Casey, were removed to facilitate the moorings. Therefore, while I accept harm has occurred in this matter, I am not persuaded that it is of significant level to justify a dismissal of the appeals on this matter alone.
43. Accordingly, I do not find that Appeals A to E have, individually and collectively, significantly harmed loss of amenity space and access to the river for the identified purposes. The proposals accord with Local Plan policies DM20 and DM22. These require open spaces to be protected and not to be built on, to retain facilities which contribute to the enjoyment of and access to the river, and for development not to result in the loss of facilities and public access that contribute to the river enjoyment.

⁹ Elmbridge Development Management Plan April 2015

e) The principle of the proposal

44. Local Plan policy DM13 permits development and uses by or at the riverside subject to six criteria. The appellant states that none within this policy or Core Strategy policy CS12, which is broadly consistent, prohibit the mooring of boats and indeed it would comply with criterion (d) in respect to protecting and promoting the history and heritage landscape. I concur.
45. However, I find that the policy must be read as a whole. The general thrust of the policy is not to be prohibitive to new development but to ensure the overall character and appearance is maintained. Of particular note is wording contained within criterion (a) which requires a strip of land to be retained free of development to maintain the open character of the riverside. I do not find that this means the towpath, and as such the use of land for storage and/or enclosure of the respective elements of the riverside bank by the appellants conflicts with this element of the policy alone.
46. Given that criteria (c) and (d) also require the protection of biodiversity and against flood risk, I conclude that that the appeal proposals do not comply with Local Plan policy DM13 taken as a whole. It would also not comply with Core Strategy policy CS12. In so doing, I find nothing in the policy persuades me that its purpose is restricted only to the character and environments of the four areas cited in preamble paragraph 6.63 as the appellant suggests.
47. I do not find that Local Plan policy DM22 is particularly relevant in this regard. I acknowledge criterion (e) of the policy which states that the Council will permit further permanent moorings or houseboats provided they protect the appearance of the riverside and do not add to river congestion. However, the policy clearly relates to recreational use of the waterways only, and I am not satisfied on the evidence before me that it should be applied as justification for permanent residential moorings. In any event, criterion (e) is predicated on character and appearance being maintained, and I have already found above that it would not.
48. In summary, while I have found that the appeal proposals accord with the Local Plan in respect to access and amenity, they conflict in respect to flooding, ecology, character and appearance and on matters of principle. This is sufficient for me to find the existence of any other harm taken as a whole, alongside harm by way of inappropriateness and erosion of openness for the purposes of assessment of the Green Belt.

Other considerations

49. The parties agree that the Council cannot demonstrate a five-year supply of housing, albeit that the Council's latest figure, which was uncontested by the appellants, was not too far short. The Council also accepted at the Hearing that it was not currently meeting its affordable housing provision against identified need, although it could not quantify the deficit. The provision of permanent residential boats would contribute to addressing both needs, albeit marginally, and I have afforded some weight to these benefits in this regard.
50. The Council admitted at the Hearing that neither the policies relied upon for the appeals, nor any within the development plan, concern permanent residential moorings. Thus, there was no evidence before me of an understanding of need

and no provisions made for sites to address it. Given that the Council has a substantial waterfront edge and where the wider area is evidently popular for boat moorings, I am surprised that this is the case, and I can sympathise with the appellants' assertion that the Council has repeatedly failed to address this.

51. On a more positive note, I am told that the Council is now currently undertaking a needs assessment. However, this is not currently in the public domain and so there is no evidence before me on the level of demand for permanent residential moorings and whether this would be addressed or met through a future development plan examination process or by some other means, and the timescales for doing so.
52. Part of the Council's case on the unsuitability of the appeals in this location is that allocated sites for permanent residential moorings are generally served by local infrastructure such as parking, electricity, and waste and recycling points; none of which are evident here. However, without such a strategy or plan in place identifying allocated sites, or policy which sets out the criteria where permanent residential moorings may or may not be acceptable, the appellants are rather stranded in a sort of no-man's land; with the possibility of not being allowed to remain here but with no idea of other suitable sites to go to. I agree that this is somewhat of an unsatisfactory position for the appellants to find themselves in.
53. It is not for me in these appeals to determine the suitability of this part of the riverbank for permanent residential purposes. While I can understand that The Old Wharf lends itself to be considered a suitable site because of its very existence, I accept that there may be a number of other reasons why it may not be suitable, and to make such a declaration here would undermine the Council's due process.
54. I have, as such, given serious consideration to the use of temporary permissions for all appeals. This would allow the appellants to remain while the Council completes its assessment of need and to set out a mitigation solution if applicable and required. However, it is the absence of a flood risk assessment for the appeals, taken with the unknown effects on ecology over a wider area, which ultimately leads me to conclude that I cannot entertain this. This is because, even for a temporary period, I have insufficient evidence before me as to whether the appeal sites are manageable in the event of flooding, or whether there are harmful effects to the designated ecological sites. Without such evidence and appropriate mitigation, a temporary consent is not justified.
55. Appeal E, in the case of Mr Gjika, has an infant who resides with him and his partner. The appellant states that the child currently attends a local nursery and is not far from advancement to reception or foundation year at primary school, and I take from this that having a fixed base is important to the process of applying for such places. The appellant informed me that, in the event that I was to dismiss his appeal, he would have nowhere to go and would, in effect, be homeless. While the Council stated that other legislation exists to manage such a situation, especially a family with a child, it could not set out definitively what would or very likely happen and particularly, the speed in which a homeless family with a young child could be found alternative accommodation. I have taken this into account in the paragraphs below.

Whether very special circumstances exist

56. As I have alluded to above, the Framework is clear in that the Green Belt must be protected for its openness and permanence, which is my starting point. The fact the 'very special circumstances' must exist to permit development in the Green Belt is evidence that proposals must navigate a very high bar to succeed.
57. Because the appellant for Appeal A is not currently residing on the boat, there would be no issue concerning him needing to find alternative accommodation, and any inconvenience is largely restricted to locating an alternative mooring spot. I do not find this amounts to the 'very special circumstances' necessary to outweigh Green Belt harm I have identified.
58. In respect to Appeals B, C and D, I acknowledge the length of time that Messrs. Kastrati and Cross have been present on their respective boats, albeit that they have changed locations. I heard from Mr Cross that he also runs a local business which has its base on the boat. However, neither they nor Mr & Mrs Casey, who stated they were part of a local church group, demonstrated a particular local long-standing connection with the area, and I find no obvious reason to suggest that remaining here is essential to their needs and established connections.
59. I accept that dismissal of such appeals could result in the appellants for Appeals B, C and D needing to find alternative accommodation. However, none expressed in evidence before me any obvious difficulty should this occur or that it would lead directly to homelessness.
60. Accordingly, for Appeals B, C and D I do not find that the other considerations I have identified above amount to the 'very special circumstances' which are necessary for me to outweigh the significant harm I must attach to inappropriateness, loss of openness, and any other harm. I repeat again, I am unable to consider a temporary consent because I have little evidence of the flood risk and wider ecology effects that may occur.
61. As the other considerations are not capable of outweighing the harm by reason of inappropriateness, loss of openness and any other harm to the Green Belt, Appeals A to D do not comply with Local Plan policy DM17 or with the development plan as a whole, and the relevant parts of the Framework, details of which I have set out above. The Framework's paragraph 11(d)(i) applies as Green Belt forms part of footnote 7 and directs refusal of the appeals.
62. In respect to Appeal E, my conclusions would have followed those of Appeals A to D had the welfare of a child not had to be taken into additional consideration. Paragraph 028 of the Guidance¹⁰ provides advice under the heading as whether children's best interests be taken into account when determining planning applications.
63. It states that a decision maker needs to consider whether children's best interests are relevant to any planning issue under consideration and the approach needs to be proportionate. It goes on to state that the decision maker needs to consider the case before them and need to be mindful that the best interests of a particular child will not always outweigh other considerations

¹⁰ Planning Practice Guidance reference 21b-028-20150901

including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.

64. I read into this that the welfare of a child need not necessarily outweigh the negative effects on the environment. However, the Guidance is somewhat predicated on the fact that alternative measures may exist to address the needs. Because the Council, perhaps understandably at the Hearing, could not confidently state how the family would be managed in the event Appeal E was dismissed, I cannot be certain that the family would have alternative accommodation to go to. This, ultimately, could undermine the child's welfare.
65. The harm I have identified by way of inappropriateness, loss of openness and any other harm remain valid for Appeal E. However, the welfare of the child is a primary concern and I find that on this matter alone and for the reasons I have set out above, 'very special circumstances' exists which is sufficient for me to outweigh the significant harm I must attach to the Green Belt.
66. I do not find this should be a permanent consent, because significant harm occurs on the matters discussed above. Therefore, I am content to find that Appeal E should thus succeed only for a temporary period, which would allow further time for the Council to complete its policy due process and/or for the family to find alternative accommodation. At the Hearing, I asked the parties whether granting a temporary consent was an option open to me, and my decision to do so will accordingly not come as a surprise to them. Subject to that, I find that Appeal E accords with Local Plan policy DM17 and the relevant parts of the Framework, again the details of which I have discussed above.

Other Matters

67. I note the concerns raised by third parties in respect to noise and anti-social behaviour, fire risks from use of barbecues etc, and the effect on parking stress levels on nearby streets. None have been substantiated in evidence before me and the Council has not raised any specific objection on these grounds. Accordingly, I do not find that harm has been adequately demonstrated sufficient for me to find against the appeals on these matters.
68. I do not accept that my decision for the appeals sets a precedent as each scheme is assessed, either at application stage or appeal, on its merits. The effect of the proposal on local property values is not a planning matter and has had no bearing on my decision.

Conditions

69. This conditions section relates only to Appeal E. I have considered the conditions advanced by the Council and the appellant, who rather disappointingly were unable to reach common ground on their applicability and wording, against paragraph 57 of the Framework, and I have made amendments to comply with those criteria. I am satisfied that the wording of the conditions deals with the Council's concerns over securing such details are implemented and in a timely manner.
70. Because of my findings on inappropriateness, openness, and any other harm to the Green Belt from Appeal E, I find that the consent should be both temporary

and restricted to a personal consent for the appellant and his immediate family, allowing time for the family to find alternative accommodation or an appropriate and suitable location. This period would also allow the Council time to complete its ongoing work in respect to addressing permanent residential need for boats. I find it reasonable to restrict the temporary consent to two years. The three-to-five years as suggested by the appellant is unjustifiably long in my judgement, but in any event, the appellant will have the means to seek permission from the Council to amend this condition should it be deemed necessary.

71. I concur with the parties that conditions in respect of retaining the extant landscaping as well as the requirement of details in respect of cycle storage, external lighting and means of enclosure are necessary in the interests of visual amenity. Conditions in respect of requiring details of the refuse and recycle and foul waste and water management are necessary to ensure there would be no harmful effects on the local environment. Contrary to the appellant's assertion, I find that a flood risk assessment condition is necessary to ensure, even for a temporary period, the risks of flooding and mitigation have been adequately assessed and understood.
72. I do not share the Council's view on the need for an ecological assessment given the temporary nature of the consent and its findings on the value of the immediate area. While I accept that the effect on the wider area is unknown, I have no obvious reason to find that it would likely be of the severity to outweigh the welfare of a child, and it would need to be. Because this is a temporary consent, I do not consider a new landscaping plan is necessary.

Conclusion

73. These have been very difficult cases to determine. My decision for each appeal directly affects the lives of the appellants, and the absence of policy on permanent residential moorings has placed a heavy burden on my thoughts. However, Green Belt policy is about keeping land permanently open and is deliberately protective against development. Proposals need to navigate a very high bar and thus amount to 'very special circumstances' if they are to succeed.
74. I find that Appeals A to D do not amount to the 'very special circumstances' necessary to outweigh the significant harm I attach to inappropriateness in the Green Belt, loss of openness and the other harm I have identified. Because of the welfare of a child arises, Appeal E does.
75. Therefore, I find that Appeal E succeeds subject to the conditions I set out in the Schedule of Conditions below. Appeals A, B, C and D are dismissed.

R W Allen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the submitted Site Plan and Block Plan.
- 2) The development hereby permitted shall be occupied only by Mr E. Gjika; Ms L Avdulaj and any resident dependent.
- 3) The development hereby permitted shall be limited to a period of two years from the date of this decision. At the end of that period or when the moorings cease to be occupied by those occupants listed in Condition (2), whichever is the soonest, the boats hereby permitted and all associated paraphernalia including those permitted by Condition (5) shall be removed and the land restored to its former condition within three months of the cessation of use in accordance with a scheme of work that shall first have been submitted to the Local Planning Authority for approval in writing.
- 4) All existing trees, hedges or hedgerows shall be retained. No retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars. Any pruning shall be carried out in accordance with British Standard 3998: 2010 (tree work) and in accordance with any approved supplied arboricultural information. If any retained tree, hedge, or hedgerow is removed, uprooted, or destroyed or dies, another tree, hedge or hedgerow of similar size and species shall be planted at the same place, in the next available planting season or sooner, with a timetable for implementation.
- 5) Within three months of the date of the decision, details of the cycle storage, any external lighting and means of enclosure shall be submitted to the Local Planning Authority for approval in writing. The approved details shall be implemented within one month following the date of approval and shall thereafter be retained through the duration of the development.
- 6) Within three months of the date of the decision, a refuse and recycling management plan shall be submitted to the Local Planning Authority for approval in writing. The plan shall be implemented in accordance with the approved details.
- 7) Within three months of the date of the decision, details of foul waste and water management shall be submitted to the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the approved details.
- 8) Within three months of the date of the decision, a flood risk assessment to include details of full resilience and mitigation measures for the lifetime of the development, taking into account climate change, and shall include a personal flood plan and a safe access/egress route, shall be submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with those approved details.

APPEARANCES

FOR THE APPELLANTS:

Mrs A. Heine	Consultant
Mr P. Powlesland	Garden Court Chambers
Mr J. Casey	Appellant
Mrs J. Casey	Appellant
Mr P. Thatcher	Appellant
Dr S. Elmamoun	Appellant
Mr S. Cross	Appellant
Mr E. Gjika	Appellant
Mr F. Kastrati	Appellant
Mr R. Walden	Interested Party for the Appellant
Mr K. Hatzipapas	Interested Party for the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs J. Margetts	Planning Officer
Dr A. Bowes	Cornerstone Barristers
Mrs P. Yorath	Environment Agency
Mr N. McKie-Smith	Environment Agency
Mrs V. James	Environment Agency

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal Court Decisions: Alison Hook vs Secretary of State for Housing, Communities and Local Government and Surrey Heath Borough Council [2020] EWCA Civ 486