

Application reference: 21/1837/PS192

Date application received	Date made valid	Target report date	8 Week date
20.05.2021	20.05.2021	15.07.2021	15.07.2021

Site:

Land Rear Of, 33 Petersham Road, Richmond,

Proposal:

Construction of rear extension projecting 4 metres from the rear of the existing dwelling. Rooflights to side roof slopes. New Windows on side elevations.

Status: Pending Consideration (If status = HOLD please check that all is OK before you proceed any further with this application)

APPLICANT NAME

Mrs N Gale
10 Avenue Champaubert
Paris
75015
France

AGENT NAME

Mr Timothy Godsmark
Unit 9, Shoreditch Town Hall
380 Old Street
London
EC1V 9LT
United Kingdom

DC Site Notice: printed on and posted on and due to expire on

Consultations:

Internal/External:

Consultee

Expiry Date

Neighbours:

The Bridge Workspace, 7B Parkshot, Richmond, TW9 2RD -

History: Development Management, Appeals, Building Control, Enforcements:

Development Management

Status: REF

Date: 08/10/2018

Application: 18/1153/FUL

Demolition of existing single storey boathouse and erection of a new single storey building plus mezzanine for use as a flexible riverside exhibition space (use class D1) to the rear of 33 Petersham Road.

Development Management

Status: WDN

Date: 22/06/2018

Application: 18/1960/OUT

Demolition of the existing single storey boathouse and erection of a new single storey building plus mezzanine for use as a D1 flexible riverside exhibition space (use class D1) at Land rear of 33 Petersham Road

Development Management

Status: GTD

Date: 02/09/2020

Application: 20/1677/ES191

Confirm use of boathouse and its curtilage in C3 Use

Development Management

Status: REF

Date: 15/04/2021

Application: 21/0308/FUL

Demolition of a C3 residential boathouse and construction of a dwelling

Development Management

Status: PCO

Date:

Application: 21/1837/PS192

Construction of rear extension projecting 4 metres from the rear of the existing dwelling. Rooflights to side roof slopes. New Windows on side

elevations.

Appeal

Validation Date: 23.04.2019

Demolition of existing single storey boathouse and erection of a new single storey building plus mezzanine for use as a flexible riverside exhibition space (use class D1) to the rear of 33 Petersham Road.

Reference: 19/0065/AP/REF

Application Number	21/1837/PS192
Address	Boathouse Land Rear Of 33 Petersham Road, Richmond
Proposal	Construction of rear extension projecting 4 metres from the rear of the existing dwelling. Rooflights to side roof slopes. New Windows on side elevations.
Contact Officer	Jack Davies

1. Introduction

The Town and Country Planning (General Permitted Development) Order 2015 (as amended) applies to all land in England and Wales, other than land which is the subject of a special development order, and specifies various classes of development which may be undertaken without the permission of the local planning authority. Such development, referred to as "permitted development", is deemed to have planning permission by the Order, and does not require an application for planning permission to be submitted to the Council.

The applicant has submitted an application for a Certificate of Lawful Development (Proposed). In assessing this application, the Council is making a determination of law as to whether or not the proposed development complies with the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Issues such as the policies contained in the Council's adopted Richmond Local Plan (2018) are not to be taken into consideration as the decision is based on fact and not on policy grounds.

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

The application relates to a property at the rear of No.33 Richmond Road fronting the towpath which runs adjacent to the River Thames. The property was formerly connected to No.33 however has been since subdivided. The site is currently occupied by a boathouse, which was initially constructed to be an incidental development to the dwellinghouse.

3. PROPOSAL AND ANY RELEVANT PLANNING HISTORY

Construction of rear extension projecting 4 metres from the rear of the existing dwelling. Rooflights to side roof slopes. New Windows on side elevations.

- **02/0792** - Proposed Boathouse. **Granted**
- **05/1989/COU** - Change of use of boathouse to 'organic juice/coffee bar'. **Refused**

Reasons:

The development, by reason of its siting on a pedestrian towpath and the absence of a suitable alternative means of access, would have inadequate access and servicing arrangements and would be detrimental to pedestrian safety. The proposal is therefore contrary to policies TRN2 and TRN7 of the Adopted Unitary Development Plan: First Review 2005

The development, by reason of the loss of the boathouse and this riverside function and facility, and the introduction of an inappropriate use that is not functionally related to the river or Metropolitan Open Land, would fail to conserve or enhance the nature, character and use of the Thames Policy Area and Metropolitan Open Land, and be contrary to policies ENV1, 26, 28 and 31 of the Adopted Unitary Development Plan: First Review 2005, Supplementary Planning Guidance 'Thames Landscape Strategy', and policy 4C.18 of the Adopted Mayor of London - London Plan 2004.

- **06/1890/COU** - Change of use from boathouse to organic juice bar (A1). **Refused**

Reasons

The development, by reason of the loss of the boathouse and this riverside function and facility, and the introduction of an inappropriate use that is not functionally related to the river or Metropolitan Open Land, would fail to conserve or enhance the nature, character and use of the Thames Policy Area and Metropolitan Open Land, and be contrary to policies ENV1, 26, 28 and 31 of the Adopted Unitary Development Plan: First Review 2005, Supplementary Planning Guidance 'Thames Landscape Strategy', and policy 4C.18 of the Adopted Mayor of London - London Plan 2004.

- **17/1997/FUL** - Demolition of the existing single storey boathouse and erection of a new single storey building plus mezzanine for use as a D1 flexible riverside exhibition space. **Withdrawn**
- **18/1153/FUL** - Demolition of existing single storey boathouse and erection of a new single storey /building plus mezzanine for use as a flexible riverside exhibition space (use class D1) to the rear of 33 Petersham Road. **Refused**

Reasons

Principal: The development would result in the unjustified loss of a river related use and introduce an inappropriate use within Metropolitan Open Land and the Thames Policy Area and by reason of the footprint and scale of the built development, would be harmful to the open character of the Metropolitan

Open Land and the riverside setting. The applicant has failed to justify an exception to policy and therefore the development conflicts with the aims and objectives of section 13 of the NPPF (2018), policy 7.17 of the London Plan (2016) and policies LP 13 and LP 18 of the Local Plan (2018).

Trees: The development, by reason of the inappropriate loss of trees forming an important group and characteristic feature within the local and wider area and in the absence of sufficient information to justify the potential harm to other off-site trees, would represent a development harmful to the character and appearance of the conservation area in general and would have a detrimental impact on the long term preservation of the other off-site trees. The development is thereby contrary to the aims and objectives of the NPPF and Local Plan, particularly policy LP 1, LP 3 and 16 of the Local Plan (2018).

Design: The development, by reason of its scale, mass, bulk and footprint, would represent an unsympathetic, incongruous and dominant form of the development that would harm the open character and appearance of the conservation area, Metropolitan Open Land and River Thames. The development is thereby contrary to the aims and objectives of the NPPF and Local Plan, particularly policies LP 1, LP 3, LP 13 and LP 18 of the Local Plan (2018) and the Richmond and Richmond Hill Village Planning Guidance.

Flooding: In the absence of a satisfactory Flood Risk Assessment, the applicant has failed to adequately demonstrate that the development would not cause risk to life and property from flooding, provide Flood Plain compensation and does not increase flood risk either on or off the site. The development is thereby contrary to the aims and objectives of the NPPF, Strategic Flood Risk Assessment and policy LP 21 of the Local Plan (2018).

Sustainability: In the absence of an Energy Report to demonstrate that the development would achieve a 35% reduction in carbon dioxide emissions over the target emission rate based on Part L of the 2013 Building Regulations and meet BREEAM 'Excellent'; and in the absence of a completed Sustainable Construction Checklist, the development would fail to mitigate the impact on the environment and would not promote sustainable development. The development is thereby contrary to the aims and objectives of the NPPF and the Local Plan, particularly policy LP 22 of the Local Plan (2018) and the Sustainable Construction Checklist Supplementary Planning Document.

- **18/1960/OUT** - Demolition of the existing single storey boathouse and erection of a new single storey building plus mezzanine for use as a D1 flexible riverside exhibition space (use class D1) at Land rear of 33 Petersham Road. **Withdrawn**
- The boathouse was previously within the residential curtilage of the dwellinghouse at 33 Petersham Road. A lawful development certificate seeking confirmation of the use of the boathouse and its curtilage as C3 was submitted and granted in 2020 (reference 20/1677/ES191). The LPA progressed the application on the understanding that the Certificate would confirm the use as an incidental boathouse to the dwellinghouse at 33 following from the statutory declaration received in support of the application which stated that the boathouse had always been used as it was permitted by the original planning permission. The certificate granted however is for the 'boathouse formerly connected to 33 Petersham Road' and was to 'confirm use of boathouse and its curtilage in C3 use'.
- **21/0308/FUL** - Construction of rear extension projecting 4 metres from the rear of the existing dwelling. Rooflights to side roof slopes. New Windows on side elevations. **Refused**

4. CONSULTATIONS CARRIED OUT

This is an application for a Certificate of Lawful Development (Proposed), which is a request to the Council to confirm that the development as specified does not require an application for planning permission to be submitted to the Council. In assessing this application, the Council is making a determination of law, and as such it is not considered to be necessary to undertake a public consultation.

Notwithstanding this 1 x objection was received which was opposed to the development due to impact on MOL and the CA.

5. AMENDMENTS

None.

6. EXPLANATION OF RECOMMENDATION

The application has been submitted to be assessed against Schedule 2, Part 1 of the Town and Country (General Permitted Development) Order 2015 (as amended), which relates to "Development within the curtilage of a dwellinghouse". The applicant has provided justification stating that:

1. *It was confirmed that the building fell into the C3 Use Class by a certificate of*

lawfulness dated 2nd September 2021.

2. The building was constructed with a kitchen and shower room in 2002.

3. The building and its curtilage were legally separated from 33 Petersham Road in 2006.

4. The building thereby became a standalone dwelling (see Essex Water Co. v Secretary of State for the Environment 1989) as the building became a separate planning unit (see Church Commissioners v Secretary of State for the Environment 1995) and as such has permitted development rights.

It is not agreed that the property became a standalone dwellinghouse once separated from No.33 Petersham Road.

Application 02/0792 granted planning permission for a “proposed boathouse” at 33 Petersham Road, on land that formed the garden to that property. The applicant states that the building was constructed with a kitchen and shower room in 2002 although none is shown on the approved drawings. The decision notice did not specifically condition that the use be incidental or ancillary to no. 33 although the description of development is ‘boathouse’ and the following conditions were included at the request of the Environment Agency:

NS02U – A 150mm gap shall be provided under the main door in order to allow for the free ingress and egress of flood water.

NS03U – Two apertures, in accordance with details to be submitted to and approved in writing by the Local Planning Authority, shall be provided in each of the long sides of the boathouse up to the flood defence level of 6.02m AOD(N), which shall be at least 1m wide with any grilles with vertical bars only at 100m centres, in order to allow for the free ingress and egress of flood water.

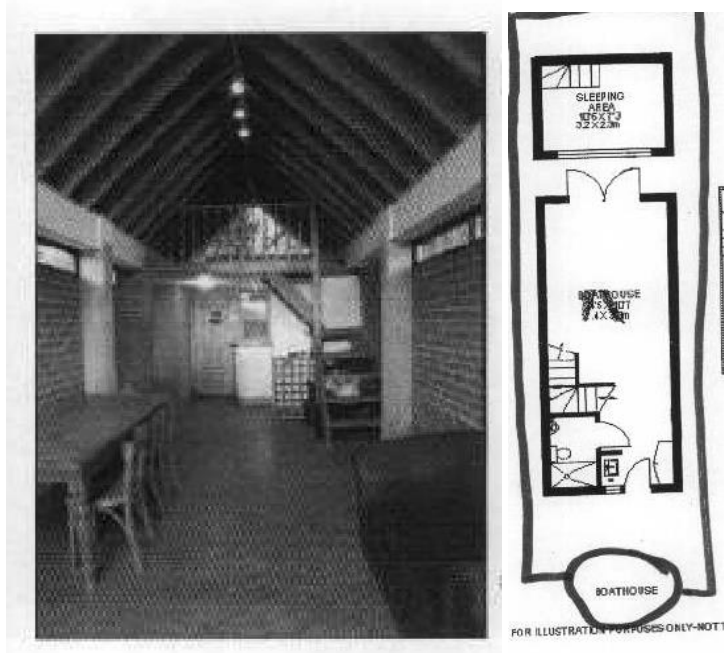
This is pertinent as for a building to rank as an independent dwelling it must have the capability of supporting normal living arrangements. The requirements secured by condition would present a significant constraint upon the boathouse being habitable.

The 05/1989/COU application for “Change of use of boathouse to ‘organic juice/coffee bar’ included a supporting letter wherein the applicant explained that “Unfortunately the boathouse because of its positioning, the use of it as such to store a boat, turned out to be almost impossible... basically the boathouse has hardly been in use.... Internally there is already a wash room linked to the main house, with a pump operating system for waste disposal. But the existing WC will be just for stuff only.” The representations received indicated that a septic tank had been installed in the boathouse grounds. It is apparent therefore that bathroom facilities had been installed by that time. One further third-party representation also referred to the boathouse containing a kitchen, being used for residential use, and storing two cars.

The officers report for application 05/1989/COU noted that the host property at 33 Petersham Road was at that time classified as a House of Multiple Occupation, although there had been several enforcement investigations into its use as a single family dwelling. It also noted that the works secured by the conditions above related to flood water had not been carried out and “in May 2004 the EA request the enforcement investigate. The applicant was referred back to the EA for guidance, and to date no changes have taken place.” The officers report also notes the representation stating that bathroom and kitchen facilities had been installed and that this was a matter for enforcement.

Subsequently the property at 33 Petersham Road was sold in April 2006 and separated in ownership from the boathouse.

Subsequent to that, the 06/1890/COU application for “Change of use from boathouse to ‘organic juice bar’ was submitted and included a supporting letter wherein the agent stated that “This building obtained a change of use in 2002 to a boathouse and is currently still used for this purpose.” Third party representations again note the presence of a shower and WC, and opined that the water and electric services are taken from the residential supply. The representation includes floor plan details from sales particulars dated January 2006 which annotate the boathouse as containing shower, toilet, sink, small kitchen area and stairs up to a mezzanine annotated as a ‘sleeping area’. A photograph is also provided of the boathouse interior which corresponds with floorplan in the sales particulars. It also shows a dining table and sofa.



The officers report for 06/1890/COU confirms that the land was separated from 33 and repeated again the points with respect to the earlier flooding conditions. It also notes that the submitted plans for the earlier application showed that a kitchen and shower room had been installed. It continues, “Although, the applicant has converted the boathouse into residential accommodation, this is not lawful and an enforcement investigation will follow”. The recommendation within the officers report was for refusal and that “2/ That ENFORCEMENT INVESTIGATION is taken to establish whether the internal works (to create washroom kitchen) have affected the functional use of the boathouse, if a change of use has occurred and inf all conditions attached to the boathouse planning permission has been complied with.”

Two enforcement investigations were opened. 04/00230/EN investigated noncompliance with the conditions for holes in the front and sides of the boathouse. A site visit confirmed that this was the case. The investigation was closed after it was decided that it would not be expedient to enforce.

06/0435/EN investigated an unauthorised change of use. Site inspections were carried out in 2007 and March 2009. A PCN was also issued. The site inspections revealed no sign of residential use. The PCN confirmed the lawful use was being operated. The enforcement investigation was subsequently closed on the basis that there was no breach of planning control and enforcement officer confirmed this in a letter dated 31 March 2009. Recognising that the boathouse was not within a residential curtilage, the enforcement officer opined that the use was considered to fall under Sui Generis.

Correspondence from the boathouse owner associated with the enforcement investigation dated 21.07.2007 noted that the electricity supply to the boathouse had been cut off and stated, “It is only common sense that a property/garage or indeed a boathouse cannot be habitable if there is no electricity. There is also a meter in the boathouse which reads only 25 units since I moved out of the property. This is a clear indication and proof that no one has ever lived on this site.” The correspondence indicates that a new electricity connection and meter had been installed and that, at the time, a car was housed in the boathouse. The correspondence also states that there was no heating making it impossible to remain in the boathouse.

Application 17/1997/FUL was submitted in May 2017 for “Demolition of the existing single storey boathouse and erection of a new single storey building plus mezzanine for use as a D1 flexible riverside exhibition space.” Within the application documents the existing use is described as “boathouse”. The application was withdrawn.

Application 18/1153/FUL was then submitted in 2018 for “Demolition of existing single storey boathouse and erection of a new single storey building plus mezzanine for use as a flexible riverside exhibition space (use class D1) to the rear of 33 Petersham Road.” This was refused and dismissed at appeal. Again, the application documents describe the existing use as “boathouse”. The applicants appeal statement says “at present the boathouse is not in use an appears to have been disused for many years.” In the conclusion the description is of “a derelict existing building which has no viability in its current use”. The Inspectors appeal decision described the site in the following terms: “The existing boathouse is a small building with a simple appearance and whilst it may be redundant, it did not appear derelict.... even though the appellant has said it has not been used as a boathouse for some time, its form and function complement its riverside location.”

From the history above and notably from the conclusions of the enforcement investigation and applicants own statements in response to that investigation and the subsequent planning applications it is clear that the boathouse constructed in a residential garden as a boathouse in incidental use to the C3 property, has not been used as an independent dwellinghouse.

In 2020 application 20/1677/ES191 was submitted. The description of existing use on the application form was "The boathouse was built as part of 33 Petersham Road, a dwellinghouse. It therefore falls into the same use class". Under the grounds of the application it states, "The application is to establish that the existing use has not changed since the construction of the boathouse. When constructed the building formed part of a dwelling and was therefore C3."

The statutory declaration submitted with the application stated, "I confirm that the property has always been used for its use permitted by planning permission reference 02/0792 dated 22nd October 2002 and no other use has been established since then."

Supporting correspondence with the application from the agent states, "the building does not, to my knowledge, have a separate address but the demise was legally separated in 2006 and the Land Registry is using the address: Land adjoining 33 Petersham Road, Richmond". The supporting justification further states that 02/0792 did not specify a use class and as it was constructed as a building incidental to the enjoyment of the dwellinghouse it would fall into the C3 use class as would, for instance, a detached garage. The demise was subsequently separated but in the absence of an application for change of use the boathouse falls into a C3 use.

The lawful development certificate was subsequently granted for "confirm use of boathouse and its curtilage in C3 use." The Officers Report explains, "A Statutory Declaration was submitted with the application which states that the property has not deviated in use since planning permission 02/0792 was implemented. It is clear that the boathouse was implemented with the purpose of being ancillary to the C3 use of No. 33 Petersham Road. The subsequent subdivision of the boathouse and the land surrounding from No.33 casts doubt that the use of the boathouse continued to be in C3 use, however the submission of the Statutory Declaration is considered sufficient evidence to establish that on the balance of probability the boathouse and its curtilage has remained in ancillary C3 use since the permission was implemented in 2002."

It was thus agreed under application 20/1677/ES191 that the land had a C3 use. The LPA consider the C3 use as an adjunct to the normal residential use of 33 Petersham Road, which was the position when it was initially permitted, as it was constructed incidental to the dwelling house at No.33 Petersham Road. Although ownership may have been separated, land ownership in itself is not determinative. The planning history indicates that the boathouse has always and remains in use for an incidental purpose for a resident. It was not agreed under this application that the building was considered to be an independent dwellinghouse when there is no evidence showing that it has ever existed as such. The applicant cites caselaw which demonstrates that separate buildings may have an independent use of one another on the same site. This is accepted, but it does not lawfully demonstrate that, 'on the balance of probability', the existing structure on site is a dwellinghouse. The building was approved as a 'boathouse' originally and there has been no evidence submitted to demonstrate that the property has been in use as a dwelling house for a continuous period of 4 years prior to the submission of this application.

As noted above, for a building to rank as an independent dwelling it must have the capability of supporting normal living arrangements. The information available in the planning history indicates that the boathouse has no heating and has no independent address. No postcode is given for the property. Although the flooding conditions were not complied with, the floor level, positioning in flood zone 3B and relationship with the tidal Thames raises the question as to whether the boathouse could realistically be habitable. Within the supporting material for application 21/0308/FUL the planning statement cites that demolition of the existing structure is considered necessary because the boathouse was not intended to form a habitable structure and it is not viable to use it as such and use of the existing NIA of 22sqm is insufficient for an independent dwellinghouse. No other evidence has been provided to support the applicants case, for example Council tax records.

Within an application for a Certificate of Lawful Development, the onus is firmly on the applicant to demonstrate their case. S192 (2) of the Town and Country Planning Act 1990 specifies that, "(2)If, on an application under this section, the local planning authority *are provided with information satisfying them* that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and *in any other case they shall refuse the application.*" It is not considered that sufficient evidence has been presented to demonstrate that the use as a non-commercial residents "Boathouse" forms an independent dwelling which benefits from permitted development rights under Schedule 2, Part 1 of the GPDO which specifically relates to "Development within the curtilage of a dwellinghouse" and the application is thus refused.

Notwithstanding the above and for the purposes of clarity only in the event of any appeal and any alternative judgement being made regarding the status of the boathouse as a dwellinghouse, the LPA further consider that the scheme **is not** considered to be permitted development under the provisions of the GPDO.

The original plans for the boathouse approved under application 02/0792 illustrate that the south-western part of the boathouse is excavated, and floor level lies below ground level. Survey drawings submitted with application 17/1997/FUL shows the ground level to the immediate rear of the boathouse to be +5.60, the presence of a 1.3m retaining wall, and then adjacent to this a spot level of +6.91. This is also shown in the supporting photographs submitted with the application.

The existing plans submitted with this application do not illustrate the subterranean development existing. Neither do they clarify what excavation would, or would not, be required for the extension proposed. No internal sections are provided. From the planning history it is apparent that any extension of the depth proposed which maintains existing internal floor levels would require excavation.

The borough has an Article 4 direction restricting permitted development rights under Class A. This states:

“Development entailing the extension of private dwelling-houses otherwise permitted by Class A of the Second Schedule to the GPDO 2015 consisting of the formation of basements light-wells rooms cellars or any other type of usable space or space complementing other useable space beneath a private dwellinghouse or below ordinary ground level in proximity to a private dwelling-house.”

The applicant has failed to demonstrate that the proposed extension would not result in the development of space below ordinary ground level and would thus benefit from permitted development rights under Class A. The onus is on the applicant to demonstrate that the development would be lawful. The LPAs concerns in this regard have previously been communicated in the Officer Report to refused application 21/0308/FUL.

Furthermore the applicant has not satisfactorily demonstrated which elevation would constitute the ‘principal’ elevation. It is noted that the boathouse as existing has doors on both the south-western and north-eastern elevation providing access both from the towpath and north-east. The photograph provided at page 20 of the D&A to application 18/1153/FUL shows a gate within the boundary treatment to the adjacent public open space. As such, either elevation could form the principal elevation. The property address provides no direction and no postcode is given. As a ‘boathouse’ it could be considered that the principal pedestrian entrance would have been to the north-east given the original arrangement with access from the rear garden of no. 33 Petersham Road. In that case, the rear elevation would comprise the elevation giving access of boats to the river.

As a further aside, although the existing boathouse is understood to contain a mezzanine level this is not clarified on the submitted plans and internal floor levels have not been supplied. Proposed rooflights are illustrated which are not annotated to be obscure glazed and non-opening and in the absence of sufficient information the LPA is unable to confirm compliance with the conditions for upper floor windows in a wall or roofslope.

Moreover, the extension includes an enlargement of the roof. The proposed extension includes rooflights, windows in the northern elevation and what appear to be windows in the gable end. As stated above, the existing boathouse is understood to contain a mezzanine level. This has not been clarified on the plans and the LPA are not satisfied that the application, had it been considered eligible for consideration against the GPDO, should not be assessed against Part 1, Class B. As the site is within a Conservation Area, it would not be able to benefit from permitted development rights under Class B.

7. RECOMMENDATION

REFUSE Certificate

Recommendation:

The determination of this application falls within the scope of Officer delegated powers - ~~(YES)~~ / NO

I therefore recommend the following:

- 1. REFUSAL
- 2. PERMISSION

3. FORWARD TO COMMITTEE

This application is CIL liable YES* NO
(*If yes, complete CIL tab in Uniform)

This application requires a Legal Agreement YES* NO
(*If yes, complete Development Condition Monitoring in Uniform)

This application has representations online (which are not on the file) YES NO

This application has representations on file YES NO

Case Officer (Initials): DAV

Dated: 07.07.2021

I agree the recommendation: 

Team Leader/~~Head of Development Management/Principal Planner~~

Dated:14.07.2021.....