



Neutral Citation Number: [2016] EWHC 843 (Admin)

Case No: CO/3344/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 April 2016

Before:

Lord Justice Lindblom
Mr Justice Teare
Mr Justice Holroyde

Between:

The Environment Agency

Appellant

- and -

(1) Mr Christopher Gibbs
(2) Mr Glen Parker

Respondents

Mr David Perry Q.C. and Mr Richard Evans (instructed by **the Environment Agency**) for
the **Appellant**

Mr Michael Magee (instructed by **Direct Access**) for the **Respondents**

Hearing date: 8 March 2016

Judgment Approved by the court
for handing down

Lord Justice Lindblom:

Introduction

1. In this appeal we must consider whether each of two “houseboats”, both moored in the Hartford Marina on the River Great Ouse in Huntingdon, was properly found by the Crown Court not to be a “vessel” within the definition provided by article 2 of the Environment Agency (Inland Waterways) Order 2010 (“the Inland Waterways Order”).
2. The appeal before us is an appeal by way of case stated under section 28 of the Senior Courts Act 1981. The appellant is the Environment Agency, the respondents Christopher Gibbs and Glen Parker. Mr Gibbs and Mr Parker each owns and occupies one of the two “houseboats”. The decision under challenge was made on 10 April 2015 by Mr Recorder Fields and two lay justices sitting in the Crown Court at Peterborough. The Crown Court allowed Mr Gibbs’ and Mr Parker’s appeals against their convictions by the magistrates of offences of keeping an unregistered vessel on a waterway, contrary to articles 4(1) and 18(1)(a) of the Inland Waterways Order.

The issue in the appeal

3. The basis of the Crown Court’s decision was that neither “houseboat” was a “vessel” for the purpose of the Inland Waterways Order. In paragraph 19 of the case stated “[the] question for the opinion of the High Court is whether the Crown Court was right to conclude on [the facts stated] that the structures in question were not vessels for the purposes of the [Inland Waterways Order]”.
4. The Environment Agency contends that the structures were “vessels” within the statutory definition. It emphasizes the object of the Inland Waterways Order, as a legislative instrument, to regulate certain activities on certain waterways, and the deliberately broad, though not exhaustive, definition of a “vessel” in article 2. It urges us to accept that, in the particular factual context with which we are concerned, a “houseboat” is manifestly a “vessel” within that definition, and thus properly the subject of regulation in the public interest.
5. Mr Gibbs and Mr Parker contend that their “houseboats” are not, as a matter of fact, “vessels” within the statutory definition, and that the Environment Agency has overstated its regulatory remit in maintaining that they are.

The legislative scheme

6. The Environment Agency is the navigation authority for certain waterways in England, including those listed in Schedule 1 to the Anglian Water Authority Act 1977, as modified by article 28 of, and Schedule 1 to, the Inland Waterways Order. Its statutory responsibilities include the duty to maintain navigable channels in those waterways.
7. The Inland Waterways Order came into force on 6 April 2010. It was made under sections 3 and 5 of the Transport and Works Act 1992. It provides for a system of

registration to govern the use of inland waterways, which is the responsibility of the Environment Agency as navigation authority.

8. Part 1 contains various preliminary provisions. These include article 2, “Interpretation”, which sets out a number of definitions. A “vessel” is defined in article 2 in this way:

““vessel” includes every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant and machinery, or to be propelled or moved, on, in or by water ...”.

A “commercial vessel” is defined as meaning “any vessel that is kept or used for any commercial purpose not being a non-charging vessel, and in this definition “non-charging vessel” means a vessel in respect of which neither the owner nor any operator receives any form of payment from any person for or in connection with any voyage or excursion other than as a contribution to the direct expense of operating the vessel during that voyage or excursion”. A ““master” in relation to a vessel” is defined as “the person for the time being (whether lawfully or not) having command or charge of the vessel”. The word “on”, as it relates to a vessel on the waterways, is defined to include a vessel “in or upon the waterways, whether or not the vessel is floating”. The “waterways” are as described in article 3(2).

9. Part 2, under the heading “Registration of vessels”, contains articles 4 to 10. Article 4 provides:

“(1) An owner or master of a vessel must not keep, let for hire or use the vessel on the waterways unless –
(a) the vessel is registered with the Agency under article 5; and
(b) any requirement imposed by the Agency under article 8 when registering the vessel is complied with.
(2) Paragraph (1) does not apply in relation to a vessel if the vessel is exempted from its provisions by the Agency in accordance with paragraph (3).
(3) The Agency may exempt any vessel or class of vessel from the provisions of paragraph (1) if, having regard to all the circumstances, it considers that the application of those requirement is not justified in the interests of the regulation of the waterways.”

Under article 7 registration may be refused or revoked if the Environment Agency is not satisfied that the vessel is insured, or that it has not been “constructed and equipped” in accordance with specifications prescribed for the safety of a vessel under article 12. Article 8 provides for the Environment Agency the power to make it a requirement of the registration of a vessel under article 5, among other things, that “the use of the vessel on the waterways is limited to the use specified to the category for which it is registered” (article 8(2)(a)), and that “any change in ownership of the vessel is notified to the Agency by the transferor” (article 8(2)(b)).

10. Part 3, under the heading “Further regulation of vessels”, contains articles 11 to 17. Article 11, “Insurance”, requires the “owner or master” of a vessel “not [to] keep, let for hire or use the vessel on the waterways unless there is in force in relation to the vessel a policy of insurance complying with the requirement of Schedule 3” (article 11(1)).

Schedule 3 contains various provisions for “Insurance Policies as to Vessels”. Paragraph 3 of that schedule provides that an insurance policy for a vessel is not required to cover liability in various respects, including “in respect of goods carried on or in the vessel to which the policy relates, or any vessel drawn or propelled by such vessel” (paragraph 3(c)). Article 12, “Construction and equipment standards”, provides that the Environment Agency “may impose in relation to vessels such reasonable standards and specifications relating to construction and equipment” for one or more of three specified purposes, namely, “(a) securing the safety of persons or property”, “(b) the prevention of damage or injury to persons or property” and “(c) the prevention of noise or pollution” (article 12(1)). An owner or master of a vessel to which any standard or specification imposed under article 12(1) “must not keep, let for hire or use the vessel on the waterways otherwise than in accordance with that standard or specification” (article 12(4)). Article 14, “Inspection of vessels”, provides that the owner or master of a vessel on the waterways “must provide reasonable facilities for the inspection of the vessel by any person exercising powers of entry pursuant to sections 169 or 172 of the Water Resources Act 1991 for the purpose of ascertaining whether any requirement under or by virtue of this Order is being complied with” (article 14(1)). Article 15, “Additional requirements for commercial vessels”, provides that the Environment Agency “may from time to time determine to impose additional requirements in relation to commercial vessels on the waterways for the purposes of safety or amenity or the proper regulation of navigation” (article 15(1)). Article 16 provides for the “Removal of unregistered vessels”. Article 17 provides the “Power to require information, etc”, exercisable by an officer of the Environment Agency, requiring, among other things, that the owner or master of any vessel on the waterways “must give the officer such information as is available to that person respecting the construction and equipment of the vessel and its compliance with the requirements of Article 12” (article 17(1)(c)).

11. Part 4, under the heading “Provisions as to offences”, contains articles 18 to 21. Article 18, “Offences”, provides:

“(1) Any person who contravenes or attempts to contravene or knowingly allows contravention of –
 (a) the requirements of article 4(1) (requirements for registration);
 (b) the terms of any exemption granted under article 4(3) (requirement for registration) ...
 ...
is guilty of an offence.
 ...
(4) Any person guilty of an offence under this article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

Level 3 on the standard scale is a fine up to a maximum of £1,000.

The proceedings before the magistrates and in the Crown Court

12. On 15 May 2014 an officer of the Environment Agency went to Hartford Marina and saw Mr Gibbs’ and Mr Parker’s “houseboats” moored in it. Neither “houseboat” was registered under the provisions of the Inland Waterways Order. On 21 May 2014 the Environment Agency wrote to Mr Gibbs and Mr Parker giving each of them 14 days in

which to comply with the registration requirements. Neither did so. On 30 September 2014 each was summonsed to answer the allegation that on or about 15 May 2014 he, “as owner or master of a vessel, namely a houseboat ... did keep or use the said vessel on a waterway, namely the River Great Ouse at Hartford Marina, Huntingdon ... when it was not registered with the Environment Agency ...”, contrary to articles 4(1) and 18(1)(a) of the Inland Waterways Order. Mr Gibbs’ summons referred to his “houseboat” by its number, G140092, Mr Parker’s by its name, “The African Queen”.

13. Both appeared before the Huntingdon Magistrates’ Court on 14 January 2015. Having been convicted after trial, each was fined and ordered to pay the Environment Agency’s costs. On appeal against those convictions to the Crown Court they both relied on two grounds, the first being that Hartford Marina was not a waterway for which the Environment Agency was responsible as navigation authority, and secondly that the “houseboat” in question was not a vessel under the Inland Waterways Order. When the appeals came before the Crown Court on 10 April 2015, the parties agreed that the second ground could be heard as a preliminary issue. The Crown Court proceeded to do that.
14. In the case stated for this court the Crown Court has recorded the following findings of fact:

“8. The facts of the case were not in dispute and the only live evidence in the appeal was that of Mr Paul Bullen called on behalf of the then appellants. Photographs were exhibited and referred to in evidence. ... The following facts were found: –

- (a) On the 15th May 2014 each of the then appellants resided in structures which floated in the Hartford Marina, Huntingdon.
- (b) Paul Bullen was a marine surveyor who had worked at Hartford Marina for approximately twenty years and was very familiar with all that went on there.
- (c) The marina had previously been a gravel pit which was subsequently developed into a marina by a private company, Marina Development Ltd. A cut was made from the marina to give access to the River Great Ouse.
- (d) Mr Bullen had surveyed structures similar to those in question and had detailed knowledge of how they were assembled. He knew the two structures in question.
- (e) The parts used to build the structures are brought to the site by road where they are then assembled.
- (f) The structures are constructed whilst attached to a pontoon with a crane being used to lift component parts into place.
- (g) The living quarters of the structure are built upon a raft made of separate blocks consisting of polystyrene (for buoyancy) and concrete (for strength).
- (h) Once the blocks intended to form the raft arrive on site they are placed in the water and bolted together; individually they are unstable but once bolted together are more stable. Once the living quarters have been lifted into place the structure is then towed into its intended position in the marina. It is necessary to use a workboat, a powered vessel, to tow the structure into position; a second boat or pontoon is also used in this towing process as, without it, the structure would be unstable.
- (i) The corners of the raft have round brackets through which poles are put which are then driven into the bed of the marina to hold the structure in place. The

structure is able to move up and down on the poles with changes in water level but not from their intended position. Chains and sea anchors are used to hold the structure in its eventual place and these also aid stability.

- (j) The structures are connected to mains electricity, sewage and water. Council tax is paid in respect of each of them.
- (k) The structures do not have a keel or ballast and there is no space for them to be fitted. They have no means of propulsion.
- (l) In theory, the structures are capable of being moved but it would be difficult to do so as two boats would be needed to guide and support and to provide the necessary stability to the structure. In his twenty years at the marina, Mr Bullen had never known one of these structures to be moved from its position. The possibility of any such structure being moved was therefore theoretical rather than a real possibility.”

15. The Crown Court’s reasoning and its decision on the preliminary issue were:

- “13. Whilst the definition of “vessel” in the [Inland Waterways Order] was wide and did not purport to be exhaustive it was also circular in that the object which attracted the terms of the order still had to be capable of being properly described as a vessel.
- 14. In the absence of an exhaustive definition, then, applying [*Brutus v Cozens* [1973] A.C. 854], words were to be given their ordinary and natural meaning.
- 15. Although the [Environment Agency] relied heavily on the authority of [*Tristmire Ltd. v Mew and another* [2012] 1 W.L.R. 852] its argument ... essentially that “if something was not a house then it must be a vessel” did not bear scrutiny and was the equivalent of saying that if something was not a dog then it must be a cat.
- 16. [*Thomas W. Ward Ltd. v Waugh* 1934 J.C. 13] could be distinguished[.] “The Tiger” had been constructed as a ship and although it was being dismantled it continued to be properly described as a ship.
- 17. There was no evidence that the structures had ever been used to transport to carry anyone or anything by water.
- 18. For these reasons the appeal was allowed.”

Was the Crown Court right to conclude on the facts it found that each of the structures in question was not a “vessel” for the purpose of the Inland Waterways Order?

- 16. Mr David Perry Q.C., for the Environment Agency, submitted that the definition of a “vessel” in article 2 of the Inland Waterways Order is plainly intended to ensure that every possible description of vessel is brought within the reach of the registration provisions, irrespective of whether the vessel in question is or is not capable of propulsion or navigation. It also includes anything that has been constructed or used to carry persons or items “on, in or by water”. Relevant case law suggests that not every floating structure is a vessel (see, for example, *The Craighall* [1910] P. 207, in which the Court of Appeal held that a landing-stage was not a vessel within the Rules of the Supreme Court 1883). But a houseboat is a type of vessel, no matter how permanent a structure it might be (see *Tristmire v Mew* and *Chelsea Yacht and Boat Co. Ltd. v Pope* [2000] 1 W.L.R. 1941). The fact that a vessel is not capable of navigation does not prevent it from being a “vessel” within the definition in article 2 (see *Ward v Waugh*,

where the High Court of Justiciary held that a warship, H.M.S. Tiger, which was being broken up and was no longer capable of navigation, fell within the definition of a vessel in the Merchant Shipping Act 1894). Mr Perry also submitted that, as a matter of ordinary language, a houseboat, though used for the purpose of residential accommodation, remains a boat, and a boat is a vessel (see *Chelsea Yacht and Boat Co. Ltd.*). These houseboats float. They rise and fall as the water level changes. And they are capable of being moved from one mooring to another.

17. Mr Perry drew our attention to section 3 of the Anglian Water Authority Act 1977, which provides that “unless the subject or context otherwise requires ... ‘vessel’ includes any ship, lighter, heel barge, boat, raft, pontoon, tug, hovercraft of any kind howsoever navigated, propelled, moved and any seaplane on the surface of the water”. He also referred to the Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963 – considered by the Court of Appeal in *Tristmire v Mew* – section 3 of which defines a “houseboat” as a kind of “vessel”.
18. In the light of the authorities and statutory provisions to which he referred, Mr Perry contended that the two “houseboats” in these proceedings must, on the facts, be regarded as falling within the definition of a “vessel” in article 2 of the Inland Waterways Order, and are therefore registerable. There is, he submitted, no reason in principle or in practice, nor any justification in the jurisprudence, for excluding “houseboats” of this description from the requirements entailed in registration. It is clearly in the public interest that they should be subject to the Environment Agency’s powers to regulate the use of vessels on the waterways.
19. For Mr Gibbs and Mr Parker, Mr Michael Magee submitted that, although Parliament could have widened the range of structures requiring registration under the Inland Waterways Order, only vessels as defined in article 2 had been included. The court should apply a meaning to the concept of a “vessel” in this provision that accords with the natural and ordinary meaning of the word, that is to say a “boat” or “craft”. If that sense is given to the word “vessel” in the definition, these “houseboats” are clearly not vessels. They are not boats, or any other form of craft. The court can gain little assistance from the authorities relied upon by Mr Perry, because they relate to different statutory contexts. However, it emerges from the case law that the essential quality of a vessel is that it is capable of navigation while carrying people or cargo.
20. Mr Magee pointed to the several definitions in article 2 of the Inland Waterways Order that cast light on the meaning of a “vessel” in this statutory context – “vessel”, “commercial vessel” and “master” – which, taken together, demonstrate that a “vessel” must be capable of navigation on the waterway, and capable of carrying passengers or cargo over water. As is clear from the Crown Court’s findings of fact, the “houseboats” in these proceedings do not have those attributes. They are permanent structures, not intended to transport anybody or anything over the water. They are floating houses, held in place by poles, chains and anchors; they are not vessels.
21. Finally, Mr Magee submitted, given that these are static structures, they do not pose any risk of causing injury, damage or pollution, as might a boat or other craft. There is no need for structures of this kind to be subject to a regulatory regime designed to prevent such harm.

22. I cannot accept the argument very ably presented to us by Mr Perry. In my view Mr Magee's submissions are essentially correct.
23. The question we are asked is, of course, specific to the facts found by the Crown Court, specific to "the structures in question", and specific to the definition of a "vessel" in article 2 of the Inland Waterways Order. We are not asked the general question "Is a houseboat a vessel?" – a question to which many might instinctively give the answer "Yes". Our analysis must focus on the particular facts as they were before the Crown Court, as summarized for us in the case stated, and the particular statutory definition to be applied to those facts.
24. With that in mind, I think Mr Magee was right to submit that the court gains only limited assistance from definitions of a "vessel" to be found in other statutory codes and corresponding case law, in which the facts and circumstances were, in each instance, somewhat different from those before us. But the authorities are helpful to the extent that they provide a general understanding of what a vessel may be, and, more particularly, what it is not.
25. We must begin by establishing what is meant by the definition of a "vessel" in article 2 of the Inland Waterways Order. This is a self-contained definition, framed for the particular statutory context to which it belongs. It does not incorporate, depend upon or refer to any other statutory definition of a "vessel". In my view, its meaning is to be ascertained by a straightforward, conventional construction of the words it contains, viewed in their own statutory context, including the other definitions in article 2, and the substantive provisions relating to registration, regulation and offences in Parts 2, 3 and 4.
26. The definition is doubly inclusive. First, it includes "every description of vessel with or without means of propulsion of any kind". Secondly, it includes "anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on, in or by water".
27. The first of those two inclusive clauses is partly circular in its reference to "every description of vessel", and partly informative in that it embraces both vessels with and vessels without "means of propulsion". It is the second inclusive clause, however, that illuminates the essential meaning of a "vessel" in this statutory scheme, namely that it is something "constructed or used" either to "carry" people or things or to be "propelled or moved", across or through the water.
28. I think one can properly apply here the "ejusdem generis" principle of statutory construction – described in Bennion on Statutory Interpretation (6th edition), section 379, as "a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character". The second inclusive clause in the definition tells one what the draftsman had in mind as being a vessel. A vessel is anything that is "constructed or used" for either of the two purposes specified. Thus the words "every description of vessel ..." in the first inclusive clause, though deliberately wide in their scope, are nevertheless restricted by implication to mean something that is "constructed or used" for either of those two purposes.

29. The definition contains no other words synonymous with the word “vessel”, such as “boat” or “craft”. But this being so, it seems to me that one should apply to the word “vessel” its relevant natural and ordinary meaning. According to the Shorter Oxford English Dictionary (6th edition) that is “A ship or boat, now [usually] one of larger size; a craft”, the illustrative examples being “fishing vessel, merchant vessel, naval vessel, sailing vessel, etc.”. I do not think it is necessary to resort to dictionary definitions of “ship”, “boat” or “craft”.
30. To my mind the concept of a “vessel” as something “constructed or used” either to “carry” people or things or to be “propelled or moved” across or through the water is consistent with the other definitions in article 2: in particular, with the definition of a “commercial vessel” as a vessel “kept or used for any commercial purpose” (not being a “non-charging vessel”), which may be used for a “voyage or excursion”, and the definition of “master” as the person “having command or charge” of the vessel. It also sits well with the tenor and content of the regime for registration, regulation and offences in Parts 2, 3 and 4.
31. That understanding of the concept of a vessel in this particular statutory context is not displaced by provisions in other legislation defining a “vessel” in different terms, including section 3 of the Anglian Water Authority Act 1977. Nor can I see anything in the authorities to suggest that this would be an incongruous understanding of the essential characteristics of a vessel (see, for example, Lord Hershell’s consideration of whether the gas float in *Wells v The Owner of the Gas Float Whitton No.2* [1897] A.C. 337 was “constructed for the purpose of being navigated or of conveying cargo or passengers” (p.343); Roche J.’s consideration of whether the pontoon in *Merchants’ Marine Insurance Company v North of England P. & I. Association* (1926) 25 Lloyd’s List Law Reports 446, had the “ability for navigation” (p.447); the court’s reference in *Ward v Waugh* to the attribute of capability of “navigation”, which was found still to be present in the warship that was being broken up (see the judgment of Lord Clyde at p.17, and the judgment of Lord Blackburn at p.18); Atkinson J.’s description of a vessel in *Polpen Shipping Company v Commercial Union Assurance Company* (1943) 74 Lloyd’s List Law Reports 157 as “any hollow structure intended to be used in navigation ... upon the seas or other waters”, which a flying-boat was not (pp.160 and 161); Sheen J.’s observation in *Steedman v Schofield* [1992] 2 L.R. 163 that a vessel was a “hollow receptacle for carrying goods and people”, capable of “being used as a means of transportation on water”, which was not an attribute of the jetski in that case (p.166); and the quality of “buoyancy” identified by Lord Phillips C.J. as a characteristic of the jetski in *R. v Goodwin* [2006] 1 W.L.R. 546, which made it impossible to conclude that the jetski there was not a vessel (paragraphs 15 to 17)).
32. Inherent in the definition of a “vessel” in article 2 of the Inland Waterways Order is that the question of what is or is not a “vessel” in any particular case must necessarily always be a question of fact and degree. That is inevitable. However a “vessel” was defined for the purposes of the statutory scheme, questions of fact and judgment would arise in every case. In most cases, no doubt, it will be absolutely clear whether something is or is not a “vessel” within the definition. Sometimes that will not be so.
33. On the facts here, I think the Crown Court was perfectly entitled to find, and indeed right to find, that neither of the two “houseboats” in question was a “vessel” within the definition in article 2. The salient facts, in my view, are the construction of the “living

quarters” on top of the raft made of polystyrene and concrete blocks (paragraph 8(e) to (i)), the absence of “keel or ballast” and “means of propulsion” (paragraph 8(k)), and the evident instability of the whole structure once assembled, its lack of navigability and the awkwardness of moving it from one place to another (paragraph 8(h), (i) and (l)). As Mr Magee submitted, these two “houseboats” are actually floating houses. They were constructed, and are used, as homes on water, not to “carry” people or things or to be “propelled or moved” across the water. On a realistic view of the facts in this case, they are not “vessels” for the purposes of the Inland Waterways Order.

Conclusion

34. For those reasons, I would answer the question asked of us in the case stated in the affirmative, and would therefore dismiss this appeal.

Mr Justice Teare:

37. I gratefully adopt Lindblom L.J.’s account of the background and facts giving rise to this case stated. In short the question at issue is whether the two houseboats in question are within the definition of “vessel” to be found in article 2 of the Environment Agency (Inland Waterways) Order 2010. If they are then their “owner or master” must not keep, let for hire or use the houseboat on the waterways in question unless the houseboat is registered with the Environment Agency; see article 4 of the Order. Contravention of article 4 is a criminal offence and a person guilty of such an offence is liable on summary conviction to fine; see article 18 of the order.
38. The principal aim of the Environment Agency is to protect or enhance the environment in the public interest. The object of the Order and of the requirement to register vessels is to enable the Agency to discharge its function with regard to the waterways covered by the Order. Thus the Agency may make it a requirement of the registration of a vessel that the use of the vessel is limited to the use specified in the category for which it is registered; see article 8(2)(a) of the Order. In addition the owner or master must not keep let for hire or use the vessel on the waterways unless there is force in relation to the vessel a policy of insurance complying with certain requirements; see article 11(1) of the Order. Further, the Agency may impose in relation to vessels reasonable standards and specifications relating to construction and equipment for securing the safety of person or property and the prevention of noise or pollution; see article 12(1) of the Order. That is the context in which the question at issue has arisen.
39. The two houseboats in question are structures consisting of accommodation or living quarters placed on a raft. The corners of the raft have round brackets through which poles are put which are driven into the bed of the marina to hold the structure in place. The structure is further held in place by chains and sea anchors. The houseboats are “moored” in this way alongside a pontoon in a marina made out of a disused gravel pit which has access to the River Great Ouse.
40. The definition of vessel in article 2 is in these terms:

““vessel” includes every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved on in or by water”

41. Other statutes have used different definitions of vessel. In particular the Merchant Shipping Act 1995 (and its predecessors) have defined a ship as including “every description of vessel used in navigation” (see section 313). The context of that definition is of course different from the context of the definition which this court must construe. Care must therefore be taken when considering what assistance, if any, decisions of the courts in other contexts can give when construing the meaning of definition of vessel in the Inland Waterways Order. Having said that, where the definition in question includes “every description of vessel” previous cases concerning a definition which also includes that expression can at least assist in understanding the ordinary and natural meaning of “vessel”.
42. Ever since Dr Lushington decided in 1843 that a raft of timber was neither a ship nor a sea-going vessel (see *Raft of Timber* (1843) 2 Wm. Rob. 251) the Admiralty and Commercial Courts have been grappling with the question “what is a vessel?” The authorities are helpfully noted in *Admiralty Jurisdiction and Practice* 4th ed. by Meeson and Kimble at paragraphs 2.5 – 2.28. They are also discussed in the *Law and Practice of Admiralty Matters* by Derrington and Turner at paragraphs 2.62-2.71. In (2013) LMCLQ 50 Simon Rainey QC reviewed the authorities in an endeavour to answer the question “What is a ship under the 1952 Arrest Convention?”. A definition of a vessel proved surprisingly elusive until Sheen J. proffered a definition in *Steedman v Scofield* [1992] 2 Lloyd’s Reports 163. That case involved a collision between a jet ski and a speedboat. The defendant sought to have the claim struck out as time-barred under section 8 of the Maritime Conventions Act 1911. The time limit under that section related to any claim against a “vessel”. Section 10 of the 1911 Act provided that it was to be construed as one with the Merchant Shipping Acts. Section 742 of the Merchant Shipping Act 1894 provided:

““vessel” includes any ship or boat, or any other description of vessel used in navigation: ship includes every description of vessel used in navigation not propelled by oars...”

43. Sheen J. said at p.166 that:

“A vessel is usually a hollow receptacle for carrying goods or people. In common parlance “vessel” is a word used to refer to craft larger than rowing boats and it includes every description of watercraft used or capable of being used as a means of transportation on water.”

44. The reference to a hollow receptacle reflects an earlier observation by Sheen J. in the same case at p.165 as to the concept of a boat:

“A boat conveys the concept of a structure, whether it be made of wood steel or fibreglass, which by reason of its concave shape provides buoyancy for the carriage of persons or goods. Thus a

lifeboat differs from a liferaft in that the boat derives its buoyancy from its shape, whereas a raft obtains its buoyancy from some method of utilising air receptacles.”

45. Sheen J.’s approach to the meaning of vessel was followed by the Court of Appeal in *R. v Goodwin* [2006] 1 W.L.R. 546 (another case involving a jet ski) at paragraphs 15-17. Lord Phillips considered that the structure of the jet ski in question in that case, which had a concave hull thereby creating buoyancy, was such that it was not possible to conclude that it was not a vessel.
46. The houseboats in the present case did not have a concave hull. The “living quarters” were positioned upon a “raft made of separate blocks consisting of polystyrene (for buoyancy) and concrete (for strength).” However, I do not understand Sheen J. to have said that it was essential that in order to be a vessel a craft must have a concave shape. That was the “usual” form of vessel but in common parlance “vessel” includes “every description of watercraft used or capable of being used as a means of transportation on water.” A raft is a form of watercraft and therefore could, following Sheen J.’s understanding of a vessel, be regarded as a vessel if it was used or was capable of being used as a means of transportation of water.
47. Mr Magee, on behalf of Mr Gibbs and Mr Parker, submitted that “the essence of a vessel is its ability to navigate over water whilst carrying people or loads.” Sheen J. did not mention that ability in terms but for watercraft to be able to transport goods or people on water the craft must have the ability to navigate (or to be navigated) over water. The ability to navigate (or to be navigated) is therefore inherent in Sheen J.’s understanding of a vessel. This is reflected in his understanding of the phrase “used in navigation” as conveying “the concept of transporting persons or property by water to an intended destination” (see p.166).
48. In support of his submission Mr Magee relied upon *Wells v The Owners of the Gas Float Whitton No.2* [1987] A.C. 337 in which the House of Lords held that a gas float, shaped like a boat, but neither intended nor fitted to be navigated, and moored in tidal waters to give light to vessels was not a ship or vessel and so was not the subject of a claim for salvage within the Admiralty jurisdiction. Lord Herschell said at p.343:

“It was not constructed for the purpose of being navigated or of conveying cargo or passengers. It was, in truth, a lighted buoy or beacon.”
49. Lord Herschell compared the gas float with rafts of timber and said at p.345:

“But here again it must be remembered that rafts are frequently so constructed as to be in a sense navigated: they are capable of being and are steered. They often have crews resident on board; they are used for the transport, from place to place, by water, of the timber of which they consist, and sometimes timber is laced upon them.”
50. Lord Watson said at p.348:

“But [the gas float] appears to me to be wholly unfit for the purpose of being navigated as a vessel, and that it never was used, or intended to be used, for any such purpose.”

51. Since reference was made in the *Gas Float Whitton* to the definition of ship or vessel in the Merchant Shipping Act as “every description of vessel *used in navigation*” (emphasis added) care must be taken when drawing conclusions from this case as to the ordinary and natural meaning of “vessel”. Nevertheless Mr. Magee was right to point out that Lord Macnaughten said at pp.348-9:

“.....this gas float, though fashioned in the form of a ship and capable of being moved on the face of the water, is not a “ship or vessel” in the sense in which the Merchant Shipping Act uses those terms, *or indeed in any fair sense of the words.*” (emphasis added)

52. Mr Magee also relied upon the decision of the Court of Appeal in *The Craighall* [1910] P. 207. In that case the question was whether a wooden landing stage on the river Mersey, some 795 feet long and 80 feet broad, which moved up and down with the tide and slightly in a northerly or southerly direction due to the slack in its mooring chains, was a “vessel” for the purposes of the Rules of Supreme Court which required the owners of vessels in an action for damage by collision to file preliminary acts (as the CPR still do, see CPR Part 61.4 and PD 61 paragraph 4.5). The Court of Appeal held that the landing stage was not a vessel. Fletcher Moulton L.J. said at p.212:

“It is a huge floating structure intended to be a permanent structure and stationary, except in one respect, namely, that, for the convenience of passengers, it has the power of rising and falling with the water. Otherwise it absolutely fixed. It has none of the characteristics of a vessel.....”

53. Unfortunately, Fletcher Moulton L.J. did not identify what in his opinion were the characteristics of a vessel but it is to be inferred that he thought that the fact that the landing stage was stationary, and by inference incapable of navigation, showed that it was not a vessel.
54. *Merchants’ Marine Insurance Company v North of England P. & I. Association* (1926) 25 Lloyd’s List Law Reports 446 concerned a crane pontoon. A steamer had collided with it and it sustained damage. The P. & I. Club in which the steamer was entered said that under its rules the owner of the steamer could only recover from it one-fourth of its liability to the owners of the crane pontoon. That contention depended upon whether the crane pontoon was a “ship or vessel” within the meaning of the Club’s rules. Roche J., at first instance described the point as “a short, but by no means an exceedingly easy, point”. The pontoon was “in the shape of a ship or vessel” and was fitted out “for being moored and for being inhabited or manned by a staff which is called the crew: but although it is moved from time to time in order that it may operate elsewhere in the lifting of heavy objects ... that movement is the exception in its career and not the rule.” Roche J. concluded at p.447 that the crane pontoon was not a vessel.

“Whatever other qualities are attached to a ship or vessel, the adaptability for navigation and its user for that purpose, is in my judgment one of the most essential elements. ”

55. Roche J. noted the evidence in the case that the crane pontoon could be moved from its position but said (of some interest to the present case) at p.448:

“That position may be moved from time to time just as a hulk or a house-boat may be moved, but the qualities of navigation are insufficiently present in this object to lead me to the conclusion that it is a ship or vessel.”

56. That decision was affirmed in the Court of Appeal; see (1926) 26 Lloyd’s List Law Reports 201. Bankes L.J. examined the structure of the crane pontoon (no motive power, not capable of being steered, no rudder), its ability to be moved (so unseaworthy that it could only be moved short distances and only when the weather is favourable) and its history (moved 5 or 6 times since 1914). He concluded that it was more accurately described as a floating platform than as a ship or vessel (see p.202). Scrutton L.J. adopted (unusually) “the not very courageous position” of saying that he was not convinced that the judge was wrong. He did not feel able to give a definition vessel and suggested that the judge, like the man who had been asked to define an elephant, had said that he could not define a ship or vessel but he knew that the thing before him was not a ship or vessel. The only assistance Scrutton L.J. was able to give was that the answer to the question as and when it came up for decision was to examine the facts (see p.203).

“It may depend on the use being made for the time of the particular object: it may have been a ship which ceased to become a ship by its use: it may depend upon the stationariness and mobility - the extent to which the object remains stationary and the extent to which it moves, and it may depend upon the purposes for which the object is used: it may depend upon its adaptability and navigability, and further than that I do not feel able to go.”

57. In *Polpen Shipping Company v Commercial Union Assurance Company* (1943) 74 Lloyd’s List Law Reports 157 the question arose whether a flying boat which had been involved in a collision with a motor vessel in Falmouth harbour was “a ship or vessel” within the meaning of the motor vessel’s hull and machinery policy. The flying boat had a “hull constructed on the usual boat lines with bulkheads, frames, stringers and shell-plating of light alloy”. It was “designed to take off from and alight on the water only.” Atkinson J. reviewed *The Gas Float Whitton* and *Merchants’ Marine Insurance Company v North of England P. & I. Association* and concluded that the flying boat was not a ship or vessel. He said this at p.160-161:

“I do not want to attempt a definition, but I think that a ship or vessel does involve two ideas, and if I had to define them I should say a vessel was any hollow structure intended to be used in navigation, that is, intended to do its real work upon the seas or other waters, and which is capable of free and ordered movement from one place to another. The ability of a flying boat to navigate

is merely incidental to the work for which it is really intended. Its real work is to fly-that is its real work and what it is built for-and its ability to float and navigate short distances is merely incidental to its real work, and to my mind that is where the real difference lies. A ship or vessel must be something which is intended to do its real work upon the waters, and it has got to be capable of free and ordered movement.”

58. These authorities and others were reviewed by the Court of Appeal in *Perks v Clark* [2001] 2 Lloyd’s Reports 431. In that case the question was whether a jack up drilling rig was a ship for the purposes of a taxing statute. There was no definition of ship in the statute. The drilling rig was capable of and was used for navigation. It moved between Rotterdam and locations in the North Sea. A submission was made, derived from *Polpen Shipping v Commercial Union*, that the real work of the drilling rig was its stationary drilling function and that its mobility was purely incidental to that function. Having referred to the definition of ship in the Merchant Shipping Act and having reviewed the authorities, Carnwath L.J. said at paragraph 42:

“Those examples show that, so long as navigation is a significant part of the function of the structure in question, the mere fact that it is incidental to some more specialised function, such as dredging or the provision of accommodation, does not take it outside the definition. There may be an issue of degree as to the significance of the navigation on the facts of a particular case, but that, as the observations of Lord Justice Scrutton show, is a question for the fact-finding tribunal. Those examples also show that navigation does not necessarily connote anything more than “movement across water”; the function of conveying persons and cargo from place to place (in the Judge’s words) is not an essential characteristic.”

59. In that case the Commissioners had found that the rig was a ship and the Court of Appeal held that there had been no error or law in that decision.
60. The approach of Carnwath L.J. was noted by the Court of Appeal in *R. v Goodwin* (a jet-ski case) when considering the meaning of “used in navigation” in the definition of ship in the Merchant Shipping Act. Lord Phillips said at paragraph 27:

“...we have come to the conclusion that for a vessel to be “used in navigation” under the Merchant Shipping Acts it is not a necessary requirement that it should be used in transporting persons or property by water to an intended destination, although this may well have been what navigation usually involved when the early Merchant Shipping Acts were enacted.”

61. However, Lord Phillips also concluded, at paragraph 33:

“that those authorities which confine “vessel used in navigation” to vessels which are used to make ordered progression over the water from one place to another are correctly decided.”

62. The requirement that a vessel has a navigational function can arise, as it did in *R. v Goodwin*, from the definition in the Merchant Shipping Act that a vessel must be “used in navigation”. But it also arises from the ordinary and natural meaning of vessel, as is clear from *The Craighall, Merchants’ Marine Insurance Company v North of England P. & I. Association* and *Polpen Shipping v Commercial Union* in which cases there was no definition of ship or vessel.
63. The two recent decisions of the Court of Appeal, *Perks v Clark* and *R. v Goodwin*, suggest that Mr Magee's submission that “the essence of a vessel is its ability to navigate over water whilst carrying people or loads” is correct in one sense but not in another. It is correct in the sense that in order for an object to be a “vessel” a significant part of its function must be navigation, that is, the ability to make ordered progression over the water from one place to another. It is not correct in suggesting that the object must be used for the carriage of persons or goods. Similarly, Sheen J.’s definition of a vessel, “every description of watercraft used or capable of being used as a means of transportation on water”, is correct in that it implies an ability to navigate. But it is too narrow if it is limited to vessels used for the carriage of goods or persons.
64. The definition of vessel in the Waterways Order
- “includes every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved on in or by water”.
65. The first part of the definition makes clear that it includes vessels which do not have their own means of propulsion. I doubt that this is an extension of the ordinary meaning of vessel; see *The Mac* (1882) L.R. 7 P.D. 126, *The Mudlark* [1911] P.116 and *The Harlow* [1922] P. 175 where barges were held to be ships or vessels. The second part of the definition makes clear that “anything” constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved on in or by water is a vessel. Thus a craft need not derive its buoyancy from its concave shape in order to be a vessel but may derive its buoyancy in some other way. This is consistent with the ordinary meaning of vessel as described by Sheen J., namely, “every description of watercraft” used or capable of being used as a means of transportation on water. The reference in the statutory definition to anything constructed or used “to carry plant or machinery” may go further (for example it might include a crane barge) and the reference to anything constructed or used “to be propelled or moved on water” may also go further (for example it might include all forms of jet-skis). But such matters do not arise for decision in this case.
66. The question for decision in this case is whether the houseboats of Mr Gibbs and Mr Parker are vessels within the definition of vessel in the Waterways Order. In my judgment they are not vessels within that definition. The houseboats are comprised of (i) a raft made of blocks of polystyrene (for buoyancy) and of concrete (for strength) and (ii) living quarters placed on the raft. The corners of the raft have round brackets through which poles are put which are driven into the bed of the marina to hold the structure in place. The structure is further held in place by chains and sea anchors. Whilst the structures are capable of being moved, for example to another site in the marina, by

removing the poles, chains and sea anchors and by towing the structure by a workboat, with another boat or pontoon assisting to provide stability, such capability (described in the case stated as theoretical rather than practical) cannot fairly be described as a significant part of the function of the houseboats. Their function is to remain fixed in one position connected to mains electricity, sewage and water so as to provide accommodation for their owners and family.

67. It is true that the houseboats were constructed and are used to support the weight of the living quarters, of the furniture placed in the living quarters and of those persons who live in them but that does not amount to the houseboats “being constructed or used to carry persons or goods on or by water”. An observer of the houseboats in the marina would not describe them as structures designed for the carriage of goods or persons but as structures designed for people to live in. In this connection it is to be noted that in *Dependable Marine Co. Ltd. v Customs and Excise Commissioners* [1965] 1 Lloyd’s Reports 550 Roskill J. said (in a case involving a “skicraft”, where the *Gas Float Whitton, Merchants’ Marine Insurance Company v North of England P. & I. and Polpen Shipping v Commercial Union* were reviewed), as quoted by Sheen J. in *Steedman v Scofield*, that an ability to carry passengers or goods conveyed something different from the mere physical ability of a craft to support a passenger. Sheen J. appears to have quoted from the report in the Solicitors’ Journal. The relevant passage in the Lloyd’s Report at p.555 reads: “The phrase ‘to carry human beings’ is, to my mind, different from mere ability to support the weight of passengers.” But the sense of Roskill J.’s observation is the same in both reports.
68. Mr Perry Q.C., on behalf of the Environment Agency, submitted that the houseboats were vessels because the living quarters rested on rafts and that rafts were vessels. He said the rafts did not cease to be vessels because living quarters had been constructed on them (just as in *Thomas Ward v Waugh* (1934) JC 13 H.M.S. Tiger remained a vessel notwithstanding that much of her weaponry and machinery had been removed in the course of demolition so that she could no longer be used in navigation). I accept that some rafts can be vessels. Thus in *Gas Float Whitton* Lord Herschell referred to rafts which are “so constructed as to be in a sense navigated: they are capable of being and are steered. They often have crews resident on board; they are used for the transport, from place to place, by water, of the timber of which they consist, and sometimes timber is placed upon them.” But the rafts on which the living quarters have been placed in this case are very different. Their real work was not to be navigated and to be used for transport but to provide a stationary platform on which living quarters could be erected and supported. Navigation was not a significant part of their function. I am unable to accept that the rafts in this case were vessels.
69. Mr Perry further submitted that the houseboats were capable of being navigated. I accept that they were capable of being moved. But the houseboats had no keel and, I infer, no rudder. Any movement would only be over short distances and in favourable weather conditions. Great care would need to be exercised to ensure that during the movement the structure remained stable. So far as their history is concerned a local surveyor who had worked at the marina for twenty years had never known one of these structures to be moved from its position. Consideration of these matters enables me to conclude, as such matters enabled Bankes L.J. to conclude in the case of the crane pontoon, that such limited ability as the houseboats had to be moved or to be “navigated” across the marina was not such as to render them vessels. Navigation was not, in Carnwath L.J.’s phrase in

the case of the drilling rig, a significant part of the function of the houseboats. To paraphrase the comment of Roche J. in the case of the crane pontoon when he made reference to a houseboat, the houseboat may be moved “but the qualities of navigation are insufficiently present in this object to lead me to the conclusion that it is a ship or vessel.” The houseboats in this case are to be contrasted with the motor yacht used as a holiday home in *R v Carrick District Council (The Winnie Rig)* [1998] 2 Lloyd's Rep. 675.

70. Mr Perry emphasised that the definition in the Order was non-exclusive and therefore should be given a wide meaning. He submitted that a construction of the Order which results in the houseboats in question not being “vessels” impedes the ability of the Environment Agency to fulfil its statutory aim of regulating waterways in the public interest. Its income from registration fees would be reduced. Further, inspectors would have to consider in each case the precise attributes of the craft in question, how it was affixed to the river bed, the extent to which it could navigate and so forth. The regulation scheme would become fact dependent. Instead the definition, being non-exclusive, should be given a wide meaning based upon common sense. Mr Perry submitted that as a matter of common sense these houseboats would be, and should be, regarded as vessels.
71. In support of his submission he relied upon the decision of the Court of Appeal in *Chelsea Yacht and Boat Co. v Pope* [2000] 1 W.L.R. 1941. That case concerned the question whether the letting of a houseboat was “a tenancy under which a dwelling house is let”. The Court of Appeal decided that the houseboat was a chattel and therefore incapable of being the subject of a tenancy. This decision was based upon the degree to which the houseboat was annexed to the land. Tuckey L.J. said that common sense supported his conclusion. But the question in that case was a different question from that which arises in the present case and so I do not consider that the decision assists the court. Mr Perry also relied upon the decision of the Court of Appeal in *Mew and Just v Tristmire Ltd.* [2011] EWCA 912 which was another case in which it was held that a houseboat had not become annexed to the land such that it was a dwelling house so as to make the defendant an assured tenant. For the same reason I do not consider that this case assists the court.
72. I do not consider that “common sense” enables one to conclude that the houseboats in the present case are vessels. Whenever the courts have had to consider whether a particular construction was a vessel they have had to consider the particular characteristics of the structure in question and to what extent they coincided with the characteristics of a vessel. Mr Perry has submitted that such an approach will impede the Environment Agency in fulfilling its statutory aim and is inappropriate in the context of the Waterways Order. However, the draftsman has used the concept of a vessel, albeit widely defined, to identify the structures which must be registered. Having done so it is inevitable that when a question arises as to whether a particular construction is a vessel it will be necessary to examine the particular characteristics of the structure in question. Had the structures to be registered been defined as “floating objects” the reach of the Waterways Order would have been wider and perhaps simpler to operate but that definition was not used.
73. Statutes and statutory instruments must be given a purposive construction, that is, one which gives effect to the aim or purpose of the statute or statutory instrument. However, the registration scheme in the Waterways Order is directed at structures which are a

“vessel” in the ordinary meaning of that word or in the extended meaning (if such it is) of the statutory definition. I do not consider that the meaning of vessel in either sense can be extended so as to include the houseboats in this case.

74. For these reasons I agree that the houseboats in this case were not vessels within the meaning of the Waterways Order.

Mr Justice Holroyde:

75. I gratefully adopt the summary of the facts, and the analysis of the legislative scheme, given in the judgment of Lindblom L.J..
76. The question raised by the Case Stated is, rightly, specific: was the Crown Court correct to conclude on the facts recited that the houseboats were not vessels for the purposes of the Environment Agency (Inland Waterways) Order 2010 (SI 2010 No 699)? The court is not here endeavouring to answer a wider question such as “is a houseboat a vessel?” It is concerned only with the meaning of the word “vessel” in the specific context of the 2010 Order (hereafter, “the Order”).
77. I summarise the submissions which were made to the court. I can do so briefly because the submissions have been referred to in detail in the judgments of Lindblom L.J. and Teare J..
78. Mr Perry Q.C. submitted on behalf of the Environment Agency that these houseboats were plainly vessels in the ordinary meaning of the word and that the Crown Court was wrong in its conclusion. He pointed to the facts that the houseboats float; they were assembled in the water, when the living quarters were attached to a floating raft; they were towed into position, and there attached by the use of a sea anchor, four posts and connections to services; and they could be moved again. On any view, he argued, they were vessels when they were floated into position; and since they could be freed from their attachments and moved again, it could not be said that they had ceased to be a vessel merely because they are now static. He submitted that the scheme of the Order, which is intended to promote the public interest, would be rendered complex and uncertain if a decision had to be made on a case by case basis as to whether any particular house boat was a vessel.
79. Mr Magee on behalf of Messrs Gibbs and Parker submitted that in order to come within the Order the “vessel” must be capable of being navigated over water, and must be capable of carrying passengers or cargo over water. He argued that the houseboats which are under consideration here are in reality floating houses, intended to be permanently held in their places, and accordingly fall outside the terms of the Order. He further submitted that such a conclusion was consistent with the purpose and structure of the Order as a whole.
80. The terms in which the question is posed in the Case Stated make it necessary for the court to focus on the definition of a “vessel” contained in article 2 of the Order:

“ “vessel” includes every description of vessel with or without means of propulsion of any kind and includes anything

constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on, in or by water.”

81. In order to determine whether a houseboat such as those owned by Mr Gibbs and Mr Parker comes within that definition, it is in my view necessary to begin by considering the ordinary meaning of the word “vessel”. From that starting point, it is then necessary to consider the extent (if any) to which the terms of article 2 extend or restrict that ordinary meaning.
82. To my mind, the word “vessel” in its ordinary use means a ship, boat or craft designed or used to carry persons and/or goods across water. The word connotes not merely something which floats, or something which floats and upon which persons and/or goods may be supported: it connotes something which is designed or used to convey persons and/or goods across water, and for that reason is capable of being directed to its intended destination.
83. That understanding of the ordinary meaning of the word fits well, in my view, with the definition which article 2 gives for the purposes of the Order. In particular, it seems to me clear that the definition in Article 2 does require that a “vessel” is capable of being navigated – that is to say, capable of directed movement across water. The reference to the carrying of persons or goods etc, and the reference to being propelled or moved do not make sense if the “vessel” cannot be directed. I therefore accept Mr Magee’s submission that – whatever may be the position in other statutory contexts – a vessel within the meaning of the Order must be navigable.
84. The ordinary meaning also fits well with the other provisions of the Order (to which Lindblom L.J. has referred), and with the purpose of the Order, which is stated (in the Explanatory Note) to be the making of provision –

“for a new uniform registration system to govern use of the main inland waterways in respect of which the Environment Agency is the navigation authority.”
85. The ordinary meaning of the word is in my view clarified and explained, but not to any significant degree extended, by the terms of article 2. The words “includes every description of vessel with or without means of propulsion of any kind” make clear that something which can fairly be described as a vessel is a vessel for the purposes of the Order even though it has no means of propulsion. The words which follow “and includes” make clear that something which can fairly be described as a vessel is a vessel for the purposes of the Order regardless of its form or structure, provided it is (a) constructed or used to carry persons or goods, etc, or (b) constructed or used to be propelled or moved on, in or by water.
86. I accept Mr Perry’s submission that article 2 gives a non-exhaustive definition, in the sense that it does not purport to identify with precision every type of vessel. I cannot however accept that the clauses beginning with the words “includes ... and includes ...” are to be read in isolation and divorced from the ordinary meaning of the word “vessel”. If the starting point of the ordinary meaning of the word is ignored, and the clause beginning with the words “and includes ...” is read in isolation, it could be said to mean that anything capable of floating which was used as an ad hoc vehicle for the conveyance

of goods across water would be included within the definition, however far removed it might be from anything which might ordinarily be described as a vessel. But I cannot accept that a plastic bathtub or builders' skip used in such a way could come within this statutory definition: they could not possibly be described as "vessels" in the ordinary meaning of the word.

87. The court was referred to a number of cases. I turn to consider whether any of these dictates a different approach to the definition of "vessel" contained in the Order. It is important to bear in mind that none of the cases was concerned with the Order: they were concerned with the use of the word "vessel" in other statutory contexts.
88. In *Steedman v Scofield* [1992] 2 Lloyd's Rep. 163 at p166, Sheen J. said:
- "A vessel is usually a hollow receptacle for carrying goods or people. In common parlance 'vessel' is a word used to refer to craft larger than rowing boats and it includes every description of watercraft used or capable of being used as a means of transportation on water."
89. As Teare J. has pointed out, the ability to navigate or to be navigated is implicit in the reference in that definition to the transportation of persons or goods. Thus understood, I respectfully agree with Sheen J.'s definition of the ordinary meaning of "vessel".
90. Several of the cases which the court was invited to consider were decided under the Merchant Shipping Acts. It is important to note that in those Acts the definition of "vessel" requires that the vessel be "used in navigation". That is not a requirement of the definition in the Order with which we are concerned. In *R. v Goodwin* [2006] 1 W.L.R. 546 the Court of Appeal held (at paragraph 27) that
- "... for a vessel to be 'used in navigation' under the Merchant Shipping Acts it is not a necessary requirement that it should be used in transporting persons or property by water to an intended destination, although this may well have been what navigation usually involved when the early Merchant Shipping Acts were enacted."
91. That decision illustrates the point that the precise statutory context needs to be considered with care, since the definition in a particular statute or statutory instrument may import a meaning other than the ordinary meaning of "vessel". I do not however think that it casts any doubt on Sheen J.'s definition of the ordinary meaning of the word when considered without reference to a particular statutory context. Nor do I think it casts any doubt on my understanding of the meaning of the word in article 2 of the Order.
92. I believe that the view which I have expressed as to the ordinary meaning of the word "vessel" is consistent not only with what was said by Sheen J., but also with the decisions in other cases to which we were referred.
93. In *Wells v Owners of Gas Float Whitton no. 2* [1897] A.C. 337 the issue was whether a gas float was a ship or vessel. The gas float was 50' long, 20' broad, with a hull similar to that of a ship or boat. It was made of iron and had no oars, mast or rudder. It was not

manned. There was evidence that it could not be used for navigation and that it was “next to impossible to tow it”. The High Court, Court of Appeal and House of Lords all held that it was not a ship or vessel. Lord Herschell said (at p.343)

“It was not constructed for the purpose of being navigated or of conveying cargo or passengers. It was, in truth, a lighted buoy or beacon.”

Lord Watson said (at p.348)

“It is used for purposes connected with navigation in the same sense as a lighthouse, or as a buoy, whether used as a beacon or for mooring a ship; but it appears to me to be wholly unfit for the purpose of being navigated as a vessel, and that it never was used, or intended to be used, for any such purpose.”

Lord Macnaghten said (at p.348)

“I agree in thinking that this gas float, though fashioned in the form of a ship and capable of being moved on the face of the water, is not a ‘ship or vessel’ in the sense in which the Merchant Shipping act uses those terms, or indeed in any fair sense of the word.”

94. That case was followed by the Court of Appeal in *The Craighall* [1910] P. 207, in which an issue arose as to whether a collision between a ship and a landing stage was a “collision between vessels” for the purposes of the Admiralty Court Rules. The landing stage, on the Birkenhead side of the River Mersey, was 795’ long and 80’ broad, and comprised a cattle stage, a luggage stage and a passenger stage. The evidence showed that it was a permanent fixture, and only free to move up or down with the tide and slightly in a northerly or southerly direction due to the slack of the chains by which it was attached. The court concluded that it was not a vessel. Fletcher Moulton L.J. at p.212 expressed himself in these terms:

“To my mind it is clear beyond all question that this landing stage is not a vessel. It is a huge floating structure intended to be a permanent structure and stationary, except in one respect, namely that, for the convenience of passengers, it has the power of rising or falling with the water. Otherwise it is absolutely fixed. It has none of the characteristics of a vessel and, quite apart from any authority, I am of opinion that it could not possibly be included within the term ‘vessel’.”

It may be noted that the learned Lord Justice did not identify in the course of his judgment what were “the characteristics of a vessel”. It is however implicit in his words that the features of the landing stage which he identified – namely, that it was a permanent, fixed and essentially stationary structure – were features which were not the characteristics of a vessel.

95. Mr Perry drew to our attention the decision in *Thomas W. Ward v Waugh* 1934 JC 13, in which it was held that H.M.S. Tiger was a “vessel” for the purposes of the Oil in Navigable Waters Act 1922 (which defined the word in terms similar to the definition in the Merchant Shipping Act 1894) even though she was in the course of being broken up, and the breaking-up had reached the stage that the ship, though still afloat, could no longer be navigated. But H.M.S. Tiger clearly was a vessel when constructed and used, and I understand the basis of the court’s decision to have been that she had not yet been so far broken up as to have lost that character. I therefore accept Mr Magee’s submission that the present case can readily be distinguished on its facts.
96. We were referred to two cases in which issues arose as to whether a houseboat was part of the land so as to give rise to a tenancy: *Chelsea Yacht and Boat Co. v Pope* [2000] 1 W.L.R. 1941, and *Mew v Tristmire Ltd.* [2011] EWCA 912. I do not find them helpful on the issue we have to resolve: the conclusions of the Court of Appeal, that neither of the houseboats which were considered in those cases was sufficiently affixed to the land to be capable of being a dwelling house for the purposes of the law of landlord and tenant, do not mean that the houseboats with which we are concerned must be a vessel for the purposes of the Order.
97. Brief reference was made, in the course of argument, to the definition of burglary in section 9 of the Theft Act 1968. That section refers to entry into a “building or part of a building”; and the section imposes a longer maximum sentence where the offence is committed “in respect of a building or part of a building which is a dwelling”. Section 9(4) then provides –
- “References in subsections (1) and (2) above to a building, and the reference in subsection (3) above to a building which is a dwelling, shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.”
- That provision is commonly understood to apply to houseboats generally. Given the need to consider the meaning of the word “vessel” in its statutory context, that may well be a correct understanding. The point however does not call for decision in this case, and was not fully argued. I therefore prefer to leave it to be decided if and when a relevant issue arises in the context of the law relating to burglary.
98. I conclude that there is nothing in the cases which were brought to our attention which requires the court to define “vessel” for the purposes of the Order in any way other than the natural meaning of the word as clarified and explained by the terms of article 2.
99. In my judgment, and broadly accepting the submissions made by Mr Magee, these houseboats are not vessels either in the ordinary meaning of the word or within the meaning of article 2 of the Order. Attractively though they were presented, I am unable to accept Mr Perry’s submissions. Certainly these houseboats float; but as is clear from *The Craighall* and other cases, the fact that something floats is not in itself sufficient to bring it within the ordinary meaning of “vessel”. Equally clearly, the houseboats bear the weight of the persons who live on board, and of their goods and chattels; but that too is insufficient: see *Dependable Marine Co. Ltd. v Customs and Excise Commissioners*

[1965] 1 Lloyd's Reports 550 at p.555. What is important, in my view, is that these houseboats cannot be said to be either designed or used to carry persons or goods across water. Nor can it be said that they have been constructed or used to be propelled or moved on water to an extent which brings them within the ordinary meaning of the word "vessel". True it is that the accommodation was lifted onto the raft whilst the raft was in the water, and the whole was then towed across the water to the place at which it was to be established. But after that initial manoeuvring across water to get them to their stations, the houseboats were intended to be used, and have only been used, as fixed structures secured to the land and capable of moving only to the limited extent that they rise and fall on their supporting poles. The evidence of Mr Bullen plainly showed that any more substantial movement of such a houseboat, once it had been established in its position, was theoretical rather than a real possibility. Moreover, the evidence as to instability, though not going so far as to say the houseboats could not be moved, certainly suggested that any movement would necessarily be a slow and careful affair, attended by risks. In any event, whilst I accept that the houseboats could in the future be freed from their present moorings and moved to another station, any such movement would be no more than a relocation of a static structure; and even if the owners remained on board during the movement it would be artificial to say that the houseboat was a vessel navigating across water in order to convey them and their goods.

100. Nor can I accept Mr Perry's arguments based on the public interest in having a simple system of registration. The draftsman chose to refer to a "vessel" rather than using any other form of words: the Order might, for example, have made a specific reference to "houseboats" or "floating structures", but it does not do so. Once it is accepted – as it must be – that the ability to float is not in itself sufficient to characterise a waterborne structure as a vessel, it seems to me inescapable that questions of fact and degree will arise in determining whether or not a particular houseboat is a vessel within the meaning of the Order. In very many cases it will be obvious whether or not a particular floating structure is a vessel. Where it is not obvious, I accept that the Environment Agency will have to give specific consideration to the nature of each particular houseboat. Nonetheless, a purposive construction of the Order does not in my view require the court to adopt a definition of "vessel" which will include these houseboats.
101. The Case Stated does not identify with complete clarity the basis on which it was concluded that the houseboats were not vessels. It is however sufficiently clear that the court did not accept that they could be described as vessels within the ordinary meaning of the word, and concluded that they were not capable of being vessels within the statutory definition. They were entitled to reach that conclusion, and in my view were correct to do so. It follows that in my judgment, the question posed in the Case Stated should be answered in the affirmative, and this appeal should accordingly be dismissed.