

Broads Authority
Planning Committee

Minutes of the meeting held on 16 July 2010

Present:

Mrs C Sheridan – in the Chair

Mrs S Blane	Dr J S Johnson (after item 11/8(2))
Mr N Dixon	Mr A S Mallett
Mr C Gould	Mr J Sharpe
Dr J M Gray	

In Attendance:

Mrs S A Beckett – Administrative Officer
Mrs F Croxen/ Mr S Bell – for the Solicitor
Mr F Bootman – Planning Officer
Mr J Coles – Planning Officer (Compliance and Implementation)
Miss M Hammond – Planning Assistant
Ms A Long – Director of Planning and Strategy
Mr A Scales – Planning Officer (NPS)
Ms C Smith – Head of Development and Regeneration
Ms K Wood – Planning Assistant

Members of the public in attendance who spoke:

BA/2010/ 0048/FUL Compartment 28, Peto's Marsh, Carlton Colville,
Lowestoft

Mr D Merson	Solicitor on behalf of Objector (Steeles Law)
Mr J Halls	BESL on behalf of Environment Agency

BA/2010/0122/FUL 3 Riverside Estate, Brundall

Mrs Coxhead	Applicant
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11/1 Apologies for Absence and Welcome

The Chairman welcomed everyone to the meeting. She introduced members and officers and explained the composition of the Planning Committee.

Apologies for absence were received from Ms J Brociek-Coulton, Mr M C Broom, Mr A Duce, Mr S Dorrington and Mr G W Jermay.

11/2 Declarations of Interest

Members expressed declarations of interest as set out in Appendix 1 to these minutes.

11/3 Minutes

The minutes of the meeting held on 18 June 2010 were confirmed as a correct record and signed by the Chairman.

11/4 Points of Information arising from the Minutes

There were no points of information arising from the Minutes to report.

11/5 To note whether any items have been proposed as matters of urgent business

There were no items of urgent business.

11/6 Chairman's Announcements and Introduction to Public Speaking

(1) The Chairman gave notice of the Fire Regulations.

(2) Public Speaking

The Chairman reminded everyone that the scheme for public speaking was in operation for consideration of planning applications, details of which were contained in the Code of Conduct for Members and Officers. Those who wished to speak were requested to come up to the public speaking desk at the beginning of the presentation of the relevant application.

11/7 Requests to Defer Applications Included in this Agenda

No formal requests for deferrals of items had been received.

11/8 Applications for Planning Permission

The Committee considered applications submitted under the Town and Country Planning Act 1990, as well as matters of enforcement (also having regard to Human Rights), and reached decisions as set out in Appendix 2 to these minutes on the blue pages. Acting under its delegated powers the Committee authorised the immediate implementation of the decisions.

The following minutes relate to further matters of information, or detailed matters of policy not already covered in the officers' reports, and which were given additional attention.

(1) **BA/2010/0048/FUL Compartment 28 Peto's Marsh, Carlton Colville, Lowestoft**

Flood defence work including the construction of new setback floodbank and the excavation of new soke dykes material sourcing
Applicant: Environment Agency

The Planning Officer explained that the application was for the second phase of flood defence works in Compartment 28, the bulk of which to the west of the current site had been completed in 2006. Some members of the Committee had had the benefit of a site inspection on 13 July 2010, a note of which was circulated. The Planning Officer explained that the original plans involved the strengthening of the existing banks by the river and dyke but, unfortunately, the applicant had not been able to reach agreement with the landowners of Peto's Marsh and therefore the present application, involving a set back bank to form a crosswall at the southern end of Peto's Marsh, was before members. The scheme had been devised to complete the flood defence improvements to enhance protection of land in Compartment 28 as well as provide additional protection for the two areas of SSSI. He emphasised that the scheme would provide protection for 480 hectares to the south of the crosswall. The area of Peto's Marsh to the north covered some 80 hectares.

The Planning Officer drew attention to the access arrangements and the need to provide a suitable gradient over the new bank to Peto's Marsh to the north. He explained that this area to the immediate north of the proposed crosswall was the subject of concern for the landowner as it was considered to be the only hardened area appropriate for use as a marshalling area for agricultural machinery using the site.

The Planning Officer reported that, since the report had been written, further representations had been received from the solicitors for the objectors covering legal matters and the issue of mediation. He drew attention to the comments from the RSPB concerned about the loss of the grazing marsh and the need to seek more sustainable solutions to flood risk management.

In particular he drew attention to the correspondence received from the representatives of the landowners of Peto's Marsh covering legal issues, an Environmental Impact Assessment, landscape impact, the impact on access rights, impact on drainage, and on the existing agricultural use as a result of the proposed access design. There had been concerns about the accuracy of the plans submitted in relation to the access route and the landowners' representative had provided members with an amended plan, which had been circulated.

The Planning Officer commented that the possibility of "mediation" had been explored in detail but it was concluded that it was not appropriate to follow this route, given that neither party appeared to be committed to signing up to this in the form required for a realistic prospect of

success. He also explained that a new application had been received from FGA Associates on behalf of the landowners of Peto's Marsh for flood defence works up to Oulton dyke and this would be submitted to the Planning Committee for determination in due course. He emphasised that this was a separate application.

In concluding the assessment of the application and in response to some of the objections, the Planning Officer referred to the Screening Opinion in relation to an Environmental Impact Assessment (EIA). It had been concluded that this was not required in this case. The level of detail submitted with the application covered many of the issues and factors that would be required in an EIA. In addition, from the other consultations received, there was no suggestion that the level of detail was insufficient. The scheme would complete the flood defence improvements already carried out and provide enhanced protection of agricultural land and the nature conservation interests. It would not enhance the protection of Peto's Marsh, but neither would it diminish the flood defences or affect the existing. It would also not prevent continued agricultural use of Peto's Marsh. It was acknowledged that there would be some impact on the landscape, but the majority of this would be short term while the crosswall was being constructed. The scheme was in accordance with policy and the BFAP aims to provide flood defences in a sustainable manner in accordance with the Memorandum of Understanding. It was therefore recommended for approval subject to conditions.

Mr Sharpe, as an employee of the RSPB whose organisation had commented on the application, absented himself from the debate.

Mr Merson, solicitor from Steeles on behalf of the objector, was given the opportunity to address the Committee explaining the concerns of his client in relation to the application, particularly in relation to the access and his client's lawful rights, the ability to carry out farming activities in a viable way and the potential loss of agricultural use. He referred to the RSPB comments which he considered to acknowledge that the building of the crosswall would support the creation of a wash land at Peto's Marsh in detriment to his client's interests. Later he further explained that his client had submitted an application for an alternative scheme which was considered would not cause loss of agricultural land, or interfere with the viable operation of land. He urged the Committee to defer consideration of the current application in order to consider it at the same time as his client's application. He considered that at present the Committee did not have sufficient information to determine the application.

Mr Halls, BESL, was given the opportunity to address the Committee on behalf of the applicant, focussing on the history and background to the current application, and referring to the correspondence with the landowners of Peto's Marsh and resistance from them to enter into any dialogue, despite repeated attempts and a site visit arranged with the

Internal Drainage Board. It was for these reasons that the Environment Agency had prepared the current planning application. He stressed that the scheme as submitted was prepared to complete the flood defence scheme for Compartment 28 and the crosswall would be the most cost effective and sustainable solution. It would not impinge on the Peto's Marsh landowners' rights of way.

The Solicitor advised members that they would need to view the application from a planning perspective. In particular they needed to consider the access requirements and whether the scheme would interfere with the objector's lawful vehicular access. In relation to the concerns over viability of farming on the retained area of Peto's Marsh, this needed to be considered from a planning point of view. This was not a planning consideration. Many of the concerns expressed were land law issues and not planning considerations. She emphasised that although another application was submitted, this did not preclude the present scheme being determined. The application had to be considered on its planning merits. Both applications might be permitted. It would be up to the parties concerned to negotiate.

In answer to members' questions, the Head of Development and Regeneration clarified the process required in assessing the need for an EIA and the regulations under which these operated and explained the detailed criteria and the factors that needed to be weighed in relation to the type of scheme. She emphasised that the same conclusion had been reached for this application as for that in relation to the scheme newly submitted by the landowners of Peto's Marsh. The information submitted with the current scheme included much of the detail which would be required to be submitted within an EIA. She also reinforced the Planning Officer's comments with regard to mediation not being appropriate on the basis of the response from the landowners' agent.

Members gave careful consideration to the application and thanked all those concerned for a comprehensive appraisal. One member was in favour of deferring the current application so that it could be considered at the same time as the application from the landowners of Peto's Marsh. Members were mindful of the submission of another application but in general concluded that the Authority had a statutory duty to the applicant to determine the current application at this juncture. Members recognised that there would be an impact on the marshalling area of Peto's Marsh, but did not consider that this would materially impact on or prejudice the agricultural use of Peto's Marsh in the long term. It was considered that the proposed scheme, subject to conditions, would meet the aims and key tests of the Authority's planning policies and would provide enhanced protection of agricultural land in Compartment 28 as well as the nature conservation interest.

RESOLVED by 4 votes with one abstention

that the application be approved subject to conditions, an order under Section 257 of the Town and Country Planning Act 1990, and an informative as set out in the schedule at Appendix 2 to these minutes as the application is in accordance with the adopted Core Strategy policies and saved policies of the Broads Local Plan, in particular Policy INF5 and represented an appropriate design of development associated with flood defence work in this location.

- (2) **BA BA/2010/0122/FUL 3 Riverside Estate Brundall**
Erection of riverside chalet for holiday occupation on site of former chalet
Applicant: Mr John Coxhead

The Planning Assistant reminded members of the policy issues involved with the application and the question of abandonment which had been given careful consideration at the previous meeting on 21 May 2010 (as detailed in Minute 9/8(3)). It was appreciated that there had been a chalet on the site in 1999 but there had not been one since 2004 and therefore the proposal was considered as if it were a new residential unit. The application was in flood risk zone 3b, where there was a presumption against new development and subject to PPS25 and the Authority's Supplementary Planning Document on Flood Risk and Development. The recommendation was for refusal as detailed in the report.

Mrs Coxhead, the applicant, was given the opportunity to read a statement in support of the application from her agent. This referred to Policy BRU1 and the established use of the area as well as correspondence with the Environment Agency and submission of a detailed Flood Risk Assessment, very similar to other riverside plots in the vicinity which had been accepted by them and for which planning permission had been granted within the last few years. No objections had been received from the Broads Society and the parish council was supportive; it was the only vacant site in an existing line of riverside holiday chalets, and therefore the Committee was urged to approve the application.

Mr Proctor, the Local District ward member, had submitted a statement in support of the application, copies of which members had received and noted. He urged the Committee to consider the wider picture and approve the application as it was considered to have considerable merit, would complement and enhance the area, benefit the local economy and that the risks of flooding could be mitigated.

Members considered the proposal in detail. Some members considered that the application had considerable merits and that leaving the plot vacant would be out of keeping with the area. They considered that a wider perspective should be taken and that, on balance, and in the

interests of the local economy, the flood defence arguments could be overcome and the application approved, subject to appropriate conditions. Other members took the opposite view and were mindful of the advice provided on abandonment and the associated policies in relation to development in the functional flood plain and the advice from the Environment Agency.

Mr Mallett proposed, seconded by Mr Dixon, that the application be approved for a riverside chalet for holiday occupation subject to appropriate conditions. On being put to the vote this was lost by 2 votes to 4 against.

Dr Gray proposed, seconded by Mr Sharpe, that the officers' recommendation be accepted and the application be refused.

RESOLVED by 4 votes to 2 against

that the application be refused. The proposed new holiday chalet is considered to be contrary to saved Policies H2, H6, BRU1 and INF1 of the Broads Local Plan (1997), Policies CS18 and CS20 of the adopted Core Strategy (2007), Planning Policy Statement 25: Development and Flood Risk and the Authority's adopted Development and Flood Risk Supplementary Planning Document.

(3) **BA/2010/ BA/2010/0089/FUL Riverbank Upstream Of Falcon Sluice, River Waveney, Ditchingham**

Installation of replacement angling platforms to include disabled access Platforms

Applicant: Mr Stephen Lane, Environment Agency

The Planning Officer explained that the application had been deferred from the previous meeting in order to enable full consultations to take place with all appropriate parishes. It was noted that the application site was in Ditchingham. The Planning Assistant explained that the Authority had worked closely with the Environment Agency prior to the present application being submitted. The application had been brought before committee in view of the wider public interest as the materials to be used were recycled plastic which had been the subject of considerable debate.

Since the report had been written, comments had been received from Ditchingham Parish Council in support of the application.

Concern had been raised about signing to the facilities and this would be covered as a condition. Precise materials to be used were still the subject of negotiation. It was proposed that a temporary permission for five years be granted to allow monitoring of the materials over time.

Members welcomed the application to improve and provide additional facilities in this area and replace existing dilapidated facilities, thus

meeting the demand for a popular well established recreational activity in this area. Members also welcomed the opportunity the scheme afforded to trial a number of new materials.

Mr Sharpe proposed, seconded by Mr Mallett and it was

RESOLVED unanimously

that the application be approved for a temporary period of 5 years in order to assess the durability and appropriateness of the materials being used subject to conditions including one relating to signage, as set out in the schedule at Appendix 2 to these minutes, as the proposal is considered to be in accordance with the saved Broads Local Plan Policies C7, TR26, B11, TR21, TR19, and INF12 and the adopted Core Strategy Policies CS1, CS11 and CS17.

(4) **BA/2010/0192/FUL Land adj to Inkhous Cottages, Barsham Hill, Barsham with Shipmeadow**

Retrospective application for the retention of a summerhouse and decking and the installation of a hot tub

Applicant: Mr Stuart Fram

The Planning Assistant advised that since writing the report the Parish Council had withdrawn its objection. Had there not been an objection, officers would have dealt with the application under delegated powers.

Members considered that the proposals were acceptable and were content with the officer's recommendation.

RESOLVED unanimously

that the application be approved subject to conditions as set out in the schedule at Appendix 2 to these minutes as the proposal is considered to be in accordance with saved Policies B11 and H11 of the Broads Local Plan (1997) and Policy CS1 of the adopted Core Strategy (2007).

The Committee considered item 11/11 at this point to enable members of the public to hear the debate.

11/9 Consultation Documents: Update and Proposed Responses

The Committee received a report together with a schedule of consultation documents received by the Authority since the previous Planning Committee meeting in May 2010 together with the nature of the response made or proposed. These related to:

- Breckland Local Development Framework – Site Specific Policies and Proposals Preferred Options Consultation
- Norfolk County Council Minerals and Waste Core Strategy and Development Management Policies DPD – see Minute 11/10.

11/10 Norfolk Minerals and Waste Local Development Framework: Core Strategy and Minerals and Waste Development Management Policies Development Plan Document (DPD): Publication of Pre-submission Document

The Committee received a detailed report on the current consultation document for Norfolk County Council's Minerals and Waste Core Strategy and Development Management Plan (DPD) Pre-Submission Document, together with supporting documentation evidence. Members noted the implications of the documents for the Broads area and considered that the DPD was sound subject to two caveats.

Members acknowledged the importance of future capacity /growth development at Whitlingham (Whitlingham Waste Water Treatment Works) but also considered that it was vitally important that the Broads Authority should be included in the forward planning of the site and consultation of the proposed Local Liaison Group. The proximity of the Whitlingham site and the importance to the Authority of issues relevant to growth in its operational capacity and development (landscape impact, water quality, flood risk, nature conservation and wider amenity issues) made it imperative that it be an active participant in the processes relating to its future development.

With regard to Appropriate Assessment, it was considered that there was insufficient information to determine an outcome or potential impact for the Broadland SPA and Ramsar, Breydon Water SPA and Ramsar and Great Yarmouth North Denes SPA. Therefore it was considered that these remaining uncertain impacts should be determined and published under an Appropriate Assessment of the Minerals and Waste Site Allocations DPD.

RESOLVED

that the Authority advises Norfolk County Council that there are no objections to the soundness of the Plan, provided that the caveats relating to Core Strategy Policy CS12 concerning Whitlingham Water Treatment Works and the Appropriate Assessment relating to Natura 2000 sites, as set out in the report, are met.

11/11 Enforcement of Planning Control: Enforcement Items for Consideration

The Committee received reports relating to three cases of enforcement items for consideration at Thorpe Island, Thorpe St Andrew, Norwich.

(1) Use of Former Hearts Cruisers Office as Residential Bungalow without Planning Permission, Thorpe island

The Committee noted the history of the case as already reported to Committee and that an Enforcement Notice had been served for the cessation of the unauthorised use of the former Hearts Cruisers Office

as a residential bungalow since it did not have the benefit of planning permission and as agreed by Committee.

It was noted that following correspondence with the agent for the applicant, and full and detailed investigation and consideration by the Authority's Solicitor, it was concluded that the property had been used for residential purposes in excess of four years and therefore the use was immune from enforcement action. It was noted that, although the use was immune, it did not automatically benefit from having a planning permission. The owner had been advised to apply for a Certificate of Lawful Existing Use or Development (CLEUD) which would preserve the immunity, but he had declined.

Members expressed disappointment, particularly given the policy presumptions against development in this location.

RESOLVED unanimously

that the report be noted and the Enforcement Notice be withdrawn.

(2) **Use of Former Mooring Basin for Mooring Vessels, Thorpe Island**

The Committee received and noted a full report on the use of the former mooring basin at Thorpe Island for the unauthorised mooring of vessels, summarising the history of the site and reminding members of the various reports to Committee since March 2008, the planning application that had been withdrawn and Counsel's Opinion.

It was noted that the landowner had begun to move vessels into the former mooring basin, the pattern, ownership and duration of stay varying. Given legal opinion, the use was unauthorised. The landowner had indicated his intention to develop a mooring facility in this location but did not wish to submit a planning application or Certificate of Lawfulness of Proposed Use or Development (CLOPUD) or a Certificate of Lawfulness of Existing Use or Development (CLEUD). He had indicated that he would continue to move vessels in and around the mooring basin until an Enforcement Notice was served and would then appeal.

It was clarified that, although the use of enforcement action was not considered ideal, the site was not one where planning permission was likely to be granted for a new mooring facility as it would be contrary to Broads Local Plan and Core Strategy Policies. Members were mindful that the action needed to be expedient, that the Authority's policies needed to be upheld and its intentions were clear. It was unfortunate that any such action was required.

RESOLVED unanimously

that the authority be delegated to the Director of Planning and Strategy to take enforcement action as required and subject to legal advice.

(3) **Unauthorised Operational Development of Land on the North East Corner of Thorpe Island**

The Committee received a report concerning the unauthorised operational development of land on the north east corner of Thorpe Island, opposite the Rush Cutters Public House, Thorpe St Andrew. This comprised a barge with wooden structure of such a weight that it no longer functioned as a vessel. There was no planning permission for the operational development of the land and any such development would be contrary to saved Broads Local Plan policies and adopted Core Strategy policies as well as PPS25 Development and Flood Risk. It was not in an area where residential development was likely to be acceptable, being outside the development boundary and particularly as it was immediately adjacent to the railway line.

Members considered it expedient to take enforcement action to require the structure's removal.

RESOLVED unanimously

- (i) that a Stop Notice is served on the owners of the land requiring them to stop the unauthorised development and an Enforcement Notice is served requiring that the unauthorised development is taken down, and that a compliance period be given of two months from the date that the Notice takes effect; and
- (ii) that authority is given for direct action to be taken if the owner does not comply and to prosecute and claim costs.

11/12 Enforcement Update

The Committee received an updated report on enforcement matters already referred to Committee. Members congratulated staff on their efforts in moving matters forward and taking the necessary action.

RESOLVED

that the report be noted.

11/13 Appeals to the Secretary of State: Update

The Committee received a table showing the position regarding appeals against the Authority since January 2010 as set out in Appendix 1 to the report.

RESOLVED

that the report be noted.

11/14 Decisions Made by Officers under Delegated Powers

The Committee received a schedule of decisions made by officers under delegated powers from 8 June 2010 to 5 July 2010.

RESOLVED

that the report be noted.

11/15 Date of Next Meeting

It was noted that the next meeting of the Planning Committee would be held on Friday 13 August 2010 at 10.00am at Dragonfly House, 2 Gilders Way, Norwich.

The meeting concluded at 13.00 pm

CHAIRMAN

Code of Conduct for Members

Declaration of Interests

Committee: Planning Committee

Date: 16 July 2010

Name	Agenda Item/Minute No(s)	Nature of Interest (Please describe the nature of the interest)	Please tick here if the interest is a Prejudicial interest √
N Dixon	All	General – as they affect Norfolk County Council	
A S Mallett	General 11/3 minutes	Regurgitation of previous interests declared	√
	11/8 (1)	Member of Navigation Committee. Did not take part in the debate when this was considered.	
	11/8(2)	Applicant's agent known personally to me	
	11/12(1)	Member of Norwich Frostbite Sailing Club (If item discussed will absent self from meeting)	√

Decisions on Planning Applications considered by the Planning Committee on 16 July 2010

District / Ref No / Parish	Situation	Applicant	Proposal
BA/2010/0048/FUL	Compartment 28, Peto's Marsh, Carlton Colville	Environment Agency	Flood defence work including the construction of new setback floodbank and the excavation of new soke dykes for material sourcing
<p>Decision by 4 votes to 1 abstention</p> <p>Approve subject to the following conditions:</p> <ul style="list-style-type: none"> • standard time limit condition; • amended plan (access); • landscape/planting; • archaeological investigation; • temporary footpath closure/signage; • site access/delivery route; • notice to Highway Authority before works commence; • hours of working; • phasing of works to flood banks; and • agricultural access to be maintained. <p>In addition, an Order be prepared under Section 257 of the 1990 Town and Country Planning Act to deliver a length of public footpath to the new line on the cross wall as shown on the plan WNCPET/400/002/0 as it is necessary to do so in order to enable development to be carried out.</p> <p>The following informative be specified on the decision notice of the planning application:</p> <ul style="list-style-type: none"> • The permission shall be granted in the context of the Memorandum of Understanding between the Broads Authority and the Environment Agency on 25 April 2003. • Works may need separate consents under the Water Resources Act and Land Drainage by-Laws for flood defence consent. <p>Reasons for Decision</p> <p>The application is considered to meet the requirements of the Broads Local Plan and Core Strategy DPD policies, in particular Policy INF5 (Broadland Flood Alleviation Strategy) and would not materially conflict with other policies in the Plan and Strategy. The proposal is considered to represent an appropriate design of development associated with flood defence work in this location.</p>			

District / Ref No / Parish	Situation	Applicant	Proposal
BA/2010/0122/FUL Brundall	3 Riverside Estate	Mr John Coxhead	Erection of riverside chalet for holiday occupation on site of former chalet
<p>Decision by 4 votes to 2</p> <p>that the application be refused as the proposed new holiday chalet is considered to be contrary to saved Policies H2, H6, BRU1 and INF1 of the Broads Local Plan (1997), Policies CS18 and CS20 of the adopted Core Strategy (2007), Planning Policy Statement 25: Development and Flood Risk and the Authority's adopted Development and Flood Risk Supplementary Planning Document.</p>			

District / Ref No / Parish	Situation	Applicant	Proposal
BA/2010/0089/FUL Ditchingham	Riverbank Upstream of Falcon Sluice, River Waveney	Mr Stephen Lane, Environment Agency	Installation of replacement angling platforms to include disabled access Fishing Platforms
<p>Decision unanimous</p> <p>Approved subject to the following conditions:</p> <ul style="list-style-type: none"> • for a temporary period of five years; • in accordance with plans; • submission of details identifying precise specification and colour of recycled plastic material; and • signage. <p>Reason for Decision</p> <p>The proposals are considered to be in accordance with development plan Policies, C7, TR26, B11, TR21, TR19 and INF12 of the Broads Local Plan and CS1, CS11 and CS17 of the Core Strategy.</p>			

District / Ref No / Parish	Situation	Applicant	Proposal
BA/2010/0192/FUL Barsham and Shipmeadow	Land adjacent to 3 Ink House Cottages, Barsham Hill, Barsham	Mr Stuart Fram	Retrospective application for the retention of a summerhouse and decking, and the installation of a hot tub.
<p>Decision unanimous</p> <p>Approved subject to conditions:</p> <ul style="list-style-type: none"> • time limit; • in accordance with plans; • staining and treatment to be agreed; • no overnight accommodation; and • not to be used as a separate residential unit. <p>Reason for decision</p> <p>The proposal is considered to be in accordance with saved Policies B11 and H11 of the Broads Local Plan (1997) and Policy CS1 of the adopted Core Strategy (1997)</p>			