

Application for Determination

Parish	Thorpe St Andrew
Reference	BA/2009/0175/FUL Target date 12 October 2009
Location	Former mooring basin, Thorpe Island, Thorpe St Andrew
Proposal	Installation of replacement quay heading and 5 pontoons to mooring basin, to re-instate private mooring facilities for private leisure craft
Applicant	Mr Geoff Yell
Recommendation	Defer determination

1 Background

- 1.1 In July 2009 a planning application was submitted for development at Thorpe Island, comprising works to an existing dilapidated mooring basin to facilitate its use for the mooring of around 30 private vessels.
- 1.2 A report was prepared for the 6 November 2009 meeting of the Planning Committee. This outlined the history of the site and contained an assessment of the proposal against development plan policies, recommending a refusal of planning permission on grounds, inter alia, of conflict with adopted Local Plan Policy TSA2 which does not permit development other than within the existing boatyard at the eastern end of Thorpe Island and seeks to protect its undeveloped character.
- 1.3 At that 6 November meeting a request was received from the agent for the applicant to defer consideration of the application. He stated that there were matters in the report that he wished to have the opportunity to address in full prior to determination.
- 1.4 Members agreed the request and consideration of the application was deferred.

2 Update

- 2.1 The basis of the 6 November report was that the existing mooring basin is in a dilapidated state and the proposed works and consequent use would effectively be a new use, rather than a resumption of a previous permitted use. As can be seen from the site history set out in that report, there has been no evidence of a planning permission for the basin and its construction was

therefore treated as established rather than the subject of an express consent.

- 2.2 It was noted that there has been previous correspondence between former owners of the site and the Broads Authority as Local Planning Authority on the status of the basin and that a Certificate of Lawful Use application was submitted in 1997, but withdrawn before it was determined.
- 2.3 Following the 6 November meeting the agent for the applicant has provided details of a planning permission for the construction of the mooring basin, issued in 1967 (reference BF8095). The planning permission pre-dates the formation of the Broads Authority, the management of the Broads by the Joint Local Authorities Committee and the creation of Broadland District Council in 1974; it was issued by Norfolk County Council on behalf of the Blofield and Flegg Rural District Council. The accompanying plans show various proposed developments associated with the mooring basin, including the wet and dry boatsheds which were constructed in the late 1960's (and removed in the early 1970's), and other facilities such as toilet block and clubhouse which were not constructed. A number of other permissions from the 1960's have also been provided.
- 2.4 Officers are currently investigating the permissions to ascertain what was permitted, what has been implemented and, crucially, the status of the permissions and development.

3 The Legal Issues

- 3.1 The starting point for the assessment of the submitted planning application is the status of the existing site and whether the proposed structures and use constitute a new or resumed use. The starting point, therefore, is the validity of the 1960's planning permission and whether or not it is valid or whether the development which it permitted is or is not considered to be abandoned.
- 3.2 'Abandonment' in planning is a legal construct and there is a large volume of case law pertaining. In general terms, it is harder to abandon an 'express consent' – ie where planning permission has been granted – than it is to abandon a 'deemed consent' – ie an established use – and the former is described by the Courts to be 'a hardy creature'. It may be a 'hardy creature', however, it is not immortal and when assessing 'abandonment' the four main tests are:
 - (i) the physical condition of the development;
 - (ii) the time lapsed since previous use;
 - (iii) any intervening use; and
 - (iv) the intention of the owner regarding the development.
- 3.3 It is necessary to have regard to all relevant circumstances. Although intention is relevant, case law has said that it is not decisive, because at the end of the day the test must be the view taken by a reasonable man with knowledge of all the relevant circumstances.

- 3.4 The question of whether or not a permission has been abandoned is a legal question and relates to the facts of the matter, rather than a planning judgement.

4 The Implications of BF8095

- 4.1 A full investigation into the 1967 permission BF8095 is underway, but a without prejudice conjecture might suggest that were it to be agreed that the development authorised by the 1967 permission BF8095 has not been abandoned, planning permission would not be required for the resumption of the use; potentially the structures associated with the use – namely the quayheading – might similarly be capable of reconstruction without planning permission.
- 4.2 On this basis, the planning application might be superfluous.

5 Next Steps

- 5.1 It is considered that it is currently inappropriate to determine this planning application, pending the outcome of investigations. Depending on the outcome of the investigations, to do so might render the Authority subject to challenge given the on-going investigations.
- 5.2 Officers are investigating the 1967 planning permission and assembling information pertaining to the site and its history
- 5.3 This will be the subject of legal scrutiny in due course and it may be appropriate to instruct Counsel. It is probable that the agent for the applicant will seek his own legal advice.
- 5.4 Officers are aware of the public interest in this case and Members' disposition to resolve the situation; it is also noted that the applicant is keen for an outcome as soon as possible. A further report will be brought before Members in due course.

6 Recommendations

- (i) That determination of the application be deferred pending the outcome of investigations into the status of the 1960s planning permissions, particularly BF8095.
- (ii) The instruction of Counsel if Officers and legal advisors to the Broads Authority consider appropriate.

Background papers: Application file BA/2009/0175/FUL

Author: Cally Smith
Date of Report: 17 November 2009

List of Appendices: Site Location Plan

BA/2009/0175/FUL - Cayenne Marina, Thorpe Island, Thorpe St Andrew
Renewal of quay heading to basin and installation of 5 mooring pontoons to existing concrete and steel piles

