

## **Broads Authority**

### **Planning Committee**

Minutes of the meeting held on 5 February 2016

Present:

Dr J M Gray – in the Chair

Mr M Barnard  
Miss S Blane  
Prof J Burgess  
Mr N Dixon  
Sir Peter Dixon

Ms G Harris  
Mrs L Hemsall  
Mr G W Jermamy  
Mr P Rice  
Mr V Thomson

In Attendance:

Ms N Beal – Planning Policy Officer (Minute 8/10 -8/11)  
Mrs S A Beckett – Administrative Officer (Governance)  
Mr S Bell – for Solicitor and Monitoring Officer  
Mr A Clarke – Senior Waterways and Recreation Officer (Minute 8/8)  
Ms M Hammond – Planning Officer (Minute 8/10 – 8/11)  
Ms A Long – Director of Planning and Resources  
Mr A Scales – Planning Officer (NPS) (Minute 8/8)  
Ms C Smith – Head of Planning

Members of the Public in attendance who spoke:

#### **BA/2015/ 0364/FUL Compartment 37, South side of upton Boat Dyke, Upton with Fishley**

Ms V Pitchers	Upton with Fishley Parish Council
Mr A Hamilton	Eastwood Whelpton Boatyard
Mr K Marsh	BESL
Mr P Mitchelmore	Environment Agency - Applicant
Mr F O'Neill	Local District Member

#### **8/1 Apologies for Absence and Welcome**

The Chairman welcomed everyone to the meeting. He also welcomed Sally Rackham from Nplaw as an observer.

Apologies were received from Mr John Timewell.

#### **8/2 Declarations of Interest**

Members indicated their declarations of interest in addition to those already registered, as set out in Appendix 1 to these minutes.

Mr Jermamy announced that regretfully he had not been selected to stand at the next Local Authority elections in May 2016 and therefore would no longer

be a member of the Broads Authority as from May 2016. Members expressed their sympathy and regret.

With regard to Application BA/2015/0364/FUL, Mrs Hemsall confirmed that she had made representations on behalf of Upton with Fishley Parish Council at the Navigation Committee meeting on 10 December 2015. She explained, however, that all she did was read from a script e-mailed to her which was prepared by the Parish and in no way had she made up her mind. She apologised to BESL if she had given the impression that she had a predetermined view of the application. She considered that she was not predetermined. There were still many questions she wished to ask as a member of the Planning Committee and as yet she had not formed an opinion. She wished to listen to the discussion before making up her mind.

**8/3 Minutes: 8 January 2016**

The minutes of the meeting held on 8 January 2016 were agreed as a correct record and signed by the Chairman of the meeting.

**8/4 Points of Information Arising from the Minutes**

**Minute 7(2) BA/2015/0371/FUL** Waveney Inn and River Centre, Staithe Road, Burgh St Peter

The Director of Planning and Resources reported that the decision on the application had been issued

**8/5 To note whether any items have been proposed as matters of urgent business**

No items had been proposed as matters of urgent business.

**8/6 Chairman's Announcements and Introduction to Public Speaking**

**(1) 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.

**(2)** No member of the public indicated that they intended to record the proceedings.

**8/7 Requests to Defer Applications and /or Vary the Order of the Agenda**

No requests to defer applications or vary the agenda had been received.

## 8/8 Applications for Planning Permission

The Committee considered the following 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 below. 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/2015/0364/FUL Compartment 37 South side of Upton Boat Dyke**

Driving/removal of piling along the southern bank of Upton Dyke, re-grading the dyke edge and the original bank, and crest raise existing bank with the material gained from the old bank

Applicant: Environment Agency

The Planning Officer provided the context and a detailed presentation of the application, which essentially was for the techniques to be used for the removal of piling on the southern bank of Upton Dyke. He emphasised that the principle of the removal of piling had been accepted as part of the planning permission granted in 2008 for the flood defence improvements in the whole of Compartment 37, all of which had now been completed. Permitted development rights had been removed so that the details of the techniques to be used would be submitted to ensure that there would be no adverse impacts and to protect the navigation and environment. Members had had the benefit of a site visit on Friday 29 January 2016, a note of which had been circulated, when it had been possible to examine the width of dyke, the condition of piling and the mooring along the dyke.

The Planning Officer provided an explanation of the different treatment techniques being proposed, relating to the varying ground conditions on the banks of the dyke and which had been used elsewhere in the broads. He also stressed that there were specific safeguards that would be included such as erosion protection as part of the protocol with the Environment Agency relating to piling, and sonar monitoring. The Planning Officer emphasised that there would be no changes to the provision of moorings on the north bank of Upton Dyke or at Upton Parish Staithe

The Planning Officer reported that one additional objection from Richard Hattersley had been received since the report had been written. (This had been circulated for members' information.) He drew attention to the consultation responses that reflected the level of concern about the application. In particular he referred to those from Upton and Fishley Parish Council, the NSBA, the local boatyard, the BHBF and specifically those of the Navigation Committee. He drew

attention to the response from discussions held with BESL to the suggestions from the Navigation Committee as set out in paragraph 7.2 of the report.

It was stressed that the piling was no longer required for flood defences and as there was no one at present prepared to take on its maintenance, BESL considered it should be removed. BESL considered that its removal would be an improvement to safety as if left it would continue to deteriorate and become more of a hazard. They had also commented that they did not consider that the widening of the dyke would make the dyke safer for navigation.

It was clarified that although the Navigation Committee had expressed concern about the removal of piling in 2008, they had not specifically objected to it.

Having provided a detailed assessment, the Planning Officer stated that whilst the concerns raised locally were appreciated, and the uniqueness of Upton Dyke accepted, the principle of piling removal had been established in 2008 as part of the overall proposal for providing sustainable flood defences in this location. Piling was now no longer needed for flood protection. On balance it was considered that the proposed techniques together with the safeguards were suitable based on the ground conditions. He concluded that the application could be recommended for approval subject to detailed planning conditions that would help protect the navigation and other interests. As such the proposal met the key tests of the development plan policy and NPPF advice.

The Senior Waterways and Recreation Officer clarified that with regard to the marking of the channel once piling was removed, this would be the subject of detailed discussions with BESL prior to commencement as part of a planning condition. It would not be appropriate to have floating buoys or permanent markers in this location. With regard to concerns over potential reed encroachment into the dyke, it would be difficult to assess until the works had been undertaken. The protocol with the Environment Agency dealt with erosion, but not specifically reed growth. On the question of life left within the piling, the Authority's assessment was similar to that of BESL. It could be maintained for a few more years, but if it failed it would in itself become a navigation hazard. Costs of replacing would be very expensive.

Ms Ginny Pritchers spoke on behalf of the Parish Council explaining that Upton Dyke was of vital importance to the village for tourism, boating and local businesses, the community and visitors. The Parish Council was very concerned about the BESL proposals in that without a piled edge, visitors would not be able to moor to get to the village facilities. There was also concern that visiting boats could go aground and that the land on the south side of the dyke would become unstable; the reduction in organisations' budgets could make it difficult to enforce

the protocol; comparisons with the River Chet were difficult due to the differing widths and water depths; and the potential of reed infringement in an already very narrow channel. With reference to the condition of the piling, the Parish Council considered that there were still several more years of life available and therefore it was not necessary to remove it at this stage. Ms Pritchers referred to the Authority's three purposes stating that this planning application was pertinent to all three, that the application was one of convenience rather than necessity and questioned whether approval at this time would be a good planning decision.

Mr Andy Hamilton on behalf of objectors and as the new owner of Easton Whelptons boatyard commented that the use of the Dyke was vitally important to his business and with his long experience of sailing in the Broads, he had considerable concerns about the impact of the proposals on the use of the dyke. He had concerns about erosion, the safety of boats and considered that BESL's response to the Navigation Committee's views did not adequately address these concerns. He stressed that a refusal of the application would be the best course of action at this time to enable the applicant the opportunity to find an alternative more sustainable solution. He suggested that BESL should have further discussions with the Navigation Committee.

Mr Paul Mitchelmore Project Manager for the Broadland Flood Alleviation Scheme commented that the focus of the application was the method and techniques to be used for piling removal to ensure that this was suitable for navigation and visual amenity. He explained that the width of the Chet was greater but that there were very similar ground conditions. He explained the differing methods of reed planting and that the technique used would depend on the ground conditions. He stressed that a 50 metre stretch of piling on the southern dyke would remain and therefore there would not be a loss of moorings. He accepted that there were legitimate concerns in relation to peat but BESL had sufficient expertise to deal with these. He clarified that BESL was contracted by the Environment Agency to implement the Broads Flood Alleviation Project until 2021. Responsibility for the works would ultimately be that of the Environment Agency and it was anticipated that the terms of the protocol would be honoured.

Mr Marsh clarified that the piling had originally been installed following the 1953 floods. The banks would have been on level and therefore to build these up and stabilise the banks, piling had been installed as part of the flood defences. These were no longer needed. Mr Mitchelmore considered that the removal of the piles would provide a significant improvement to safety and remove any long term liability for future maintenance. To widen the dyke to enable two-way traffic was considered to increase the likelihood of incidents as well as encourage larger boats and greater speeds and increase erosion of the reeded edge. If the width of the dyke was increased it would also compromise the flood defences installed as part of the 2008 permission.

Mr Frank O'Neill, the Local District Member reiterated the concerns expressed emphasising the importance of the dyke to the local economy, businesses, local people as well as visitors including day sailors and holidaymakers. The 870 metres of semi-rural moorings was massively important to the village and the area. He also expressed concerns about navigation of the narrow dyke especially with strong winds and the potential of becoming grounded in reed beds. He wished to have clarification on who would have responsibility for dealing with reed encroachment into the dyke.

He considered that the Committee should consider deferring the application until it was clearly established that the wishes of the Navigation Committee had been fully investigated and ruled out as an alternative.

Members expressed some sympathy with the views and concerns expressed and gave these detailed consideration. It was essential to consider the risks in the area and that the techniques to be used would be suitable and sustainable in the future. On the basis of the expert advice, the techniques proposed appeared to be fit for purpose. However, Members considered it vitally important that safeguards were in place and assurances that any problems could be managed particularly after 2021. They were mindful that the principle of piling removal had been established as part of the planning permission granted in 2008 for the main flood defence proposals within the Compartment and that this was a material consideration. If it was felt that the decision had been incorrect, this would need to be weighed in association with other material considerations and the Authority's policies.

Members noted that one of the main areas of conflict related to safety of having a soft edge as opposed to a hard edged bank. Members emphasised and reiterated their concerns that if permission was granted they would wish to have further safeguards in place in addition to the erosion monitoring, and mitigation, sonar monitoring and remedial actions if pile driving was unsuccessful, to take account of the impacts of boating behaviour. They considered it would be important to establish who had the responsibilities for dealing with specific matters if required.

The Director of Planning and Resources commented that this could be dealt with by a pre-commencement condition.

One member stated that they did not feel the application went far enough to address the criteria in and conform to Policy CS3. The Authority had a duty to protect the navigation interests and address the particular circumstances of this dyke and should not just be focused on the flood defences. It was hoped that an alternative solution could be found to take account of the special character of the dyke.

Nigel Dixon proposed, seconded by Jacquie Burgess and it was

RESOLVED by 8 votes to 3 against

that the application be approved subject to conditions as outlined within the report including those covering the safeguards with an additional pre-commencement condition covering future management of the navigation area and the bodies responsible, specifically in relation to navigation uses and the environment. The permission to include an Informative specified on the decision notice referring to the Memorandum of Understanding between the Broads Authority and Environment Agency in April 2003.

Subject to conditions, it is considered that the application meets the aims of the adopted Core Strategy Policies CS3, CS4 and CS15 and the Development Management Policies DP13 and DP29 and is consistent with the NPPF advice.

#### **8/9 Enforcement of Planning Control: Horning Ferry Inn**

The Committee received a report concerning non-compliance with Enforcement Notice for the standing of a refrigerated container for storage, and unauthorised development of a portacabin, static caravan, signage and lighting at the Ferry Inn, Ferry Road, Horning. The Head of Planning apologised for the incorrect summary on the report. It was also clarified that the site was not within the Conservation Area.

Members had received updates on the site within the Enforcement Update Schedule since August 2012 in respect of the breaches of planning control. Mr Paul Rice, the Local District Councillor had acted as a mediator previously and at various stages it had been hoped that a solution could be reached, but unfortunately there had been limited progress towards a resolution despite considerable engagement. Unfortunately, the breaches had increased to include a portacabin, static caravan as well as signage and lighting, all of which were deliberate.

Mr Rice provided members with details of some of the negotiations. He reported that on his last visit, a couple of days previously, he could confirm that the lorry, green bus and small touring caravan had been removed. The portacabin and static caravan were still in place. It was understood that the portacabin and the static caravan were to provide a kitchen facility for staff and living accommodation respectively for some of the employees at the Ferry Inn. Members noted the Government's (intention to) introduction of a planning policy to make intentional unauthorised development a material consideration in determining planning applications and appeals.

Members noted that the Horning Ferry Inn provided a vibrant service to the local community, as well as visitors, with a good reputation for food and facilities. The Authority wished to encourage successful businesses.

However, it was considered that such businesses should not be of a low standard or flaunt the planning regulations and standards required. It was disappointing that in this instance the planning regulations had been ignored.

Members were sympathetic towards the tenant landlord in respect of the flooding issues being encountered in this location and the challenges of using the building to the west of the main Ferry Inn. They noted that a Flood Forum had been established, which included the Ferry Inn in association with Ferry Marina and the Environment Agency in order to explore measures to address the local flooding issues. Although members accepted that the refrigerated trailer was currently necessary for the business, there was still a need for planning permission. It was suggested that if an application was submitted, this might be granted on a temporary basis in order to enable appropriate flood alleviation measures to be put in place.

Members expressed concern about the lighting particularly at night. Although recognising that some form of lighting was required for safety reasons, the degree of lighting was considered excessive and inappropriate for the area.

Members considered that further attempts at achieving a negotiated solution should be made, but that authorisation be given to officers to instigate prosecution procedures if agreement cannot be reached, as well as to authorise enforcement action in order to focus those negotiations.

Sholeh Blane proposed, seconded by Vic Thomson

RESOLVED by 10 votes with one abstention (Paul Rice)

- (i) to authorise prosecution proceedings being instigated in respect of the refrigerated trailer, with these being stayed for a period of three months to seek a resolution; and
- (ii) that Enforcement Notices be served in respect of the Portakabin and the static caravan; and
- (iii) that negotiations on other elements including the lighting and other matters of concern take place with the landowner and tenant landlord to include discussions on the overall plans for the site (to seek a holistic solution); and that Mr Paul Rice continue to be included within these negotiations.

## **8/10 Norfolk Strategic Framework Update**

The Committee received a progress report on the Norfolk Strategic Framework particularly the progress on each of the task and finish groups, estimated timescale and group membership. Members noted that the purpose of the Norfolk Strategic Framework was to produce a non-statutory framework involving planning authorities across Norfolk about joint working and to continue to ensure that the Duty to Cooperate was discharged with beneficial cooperation of strategic planning issues across a wide area. Members noted



that in addition to the Steering Group there were Task and finish Groups with responsibility for Housing, Infrastructure and Economics and Delivery. The Authority was represented on the Housing, Infrastructure, and Economic Groups. Although not represented on the Steering Group or the Delivery Group the process was overseen by the Duty to Co-operate where Murray Gray represented the Authority.

It was noted that up to now the Broads Authority had contributed £7,500 towards the production of the NSF, reflecting the smaller proportion of housing provision required from the Authority.

RESOLVED

that the report be noted.

### **8/11 Annual Monitoring Report 2014/15**

The Committee received a report introducing the Annual Monitoring Report for the 2014/15 financial year that assessed the progress of the Broads Local Plan Development Framework/Local Plan including Planning Policy and Development Management and also the work undertaken under the auspices of Duty to Cooperate. It was noted that for the first time the report included completions of development. Although there was a statutory requirement to produce such a report, it was not necessary for this to be submitted to the Secretary of State. Members agreed that the AMR provided useful data for the Authority on the planning processes.

Members welcomed the AMR for 2014/15 and agreed that this be placed on the Future Planning Pages of the Broads Authority's website.

RESOLVED

that the report be noted.

### **8/12 Enforcement Update**

The Committee received an updated report on enforcement matters already referred to Committee.

#### **Thorpe Island**

The Court of Appeal Hearing dismissed Mr Wood's challenge of the High Court decision on 3 February 2016. The Enforcement Notices were therefore now in effect and with which Mr Wood was obliged to comply. A meeting had taken place the previous day with Mr Wood and he had indicated he was considering a planning application for the basin. He was due to inform the Authority by the end of today (5 February 2016). Any application would need to be considered on its merits.

It was noted that there were still other breaches of planning control on Thorpe island outside the basin.

**Staithe N Willow – unauthorised erection of fencing.**

An enforcement notice had been issued in this week beginning 1 February 2016.

**Cross Keys Dilham Unauthorised siting of a static caravan**

Compliance had been achieved and therefore this would be deleted from the schedule.

**Grey's Ices and Confectionary, Norwich Road, Hoveton**

Partial compliance had been achieved.

**Hall Common Farm, Hall Common, Ludham**

Negotiations for a resolution were underway. This involved installing a lattice wooden gate in front of the roller shutter doors.

RESOLVED

that the report be noted.

**8/13 Appeals to Secretary of State Update**

The Committee received a report on the appeals to the Secretary of State against the Authority's decisions since 1 October 2015. It was noted that site visits by the Planning Inspector had been arranged for 15 February 2016 for BA/2015/0003/REF Silverdawn, Horning and 18 February 2016 for River Barn, Surlingham.

RESOLVED

that the report be noted.

**8/14 Decisions Made by Officers under Delegated Powers**

The Committee received a schedule of decisions made by officers under delegated powers from 17 December 2015 to 22 January 2016.

RESOLVED

that the report be noted.

**8/15 Circular 28/83: Publication by Local Authorities of Information about the handling of Planning Applications.**

The Committee received a report setting out the development control statistics for the quarter ending 31 December 2015.

RESOLVED

that the report be noted and officers congratulated on two of the three targets being reached.

**8/16 Date of Next Meeting**

The next meeting of the Planning Committee would be held on Friday 4 March 2016 starting at 10.00 am at Yare House, 62- 64 Thorpe Road, Norwich. The meeting would be followed by a training session majoring on enforcement matters.

**8/17 Public Apology**

Lana Hemsall wished to place on record that she wished to apologise to Cally Smith as Head of Planning for making inappropriate remarks at the December Committee meeting implying that Ms Smith had yelled at her. This was an over exaggerated inappropriate comment as a result of lively discussions in the Chairman's pre-meeting and she would not wish such inappropriate remarks to have a negative impact on the very high standard of professionalism conducted by Ms Smith in her work.

The Head of Planning accepted the apology.

The meeting concluded at 12.55 pm

CHAIRMAN

## Code of Conduct for Members

## Declaration of Interests

Committee: Planning 5 February 2016

Name	Agenda/ Minute No(s)	Nature of Interest (Please describe the nature of the interest)
Peter Dixon	8/8	Member of Navigation Committee, Tollpayer Various Navigation related matters as declared already on the register
Paul Rice	8/9 8/8(1)	Enforcement Issues – Ferry Inn, Horning as involved in mediation Trustee of Broads Society Member of NSBA
Lana Hemsall	8/8	
Jacquie Burgess		Toll Payer
George Jermany	General	Toll Payer