

Application for Determination

- Parish:** Burgh St Peter/Wheatacre
- Reference:** BA/2016/0088/COND **Target date** 2 May 2016
- Location:** Waveney Inn and River Centre, Staithe Road, Burgh St Peter
- Proposal:** Change of fenestration, variation of condition 2, and removal of conditions 4 and 7 of permission BA/2015/0360/FUL
- Applicant:** Mr James Knight, Waveney River Centre
- Recommendation:** Approve subject to conditions
- Reason for referral to Committee** Applicant is a Member of the Navigation Committee

1 Description of Site and Proposals

- 1.1 Waveney Inn and River Centre is an established complex of visitor, recreation and boatyard facilities located in a relatively isolated position on the River Waveney at Burgh St Peter. Vehicular access is via largely single track roads off the A143 and the nearest villages of Burgh St Peter, Wheatacre and Aldeby are small settlements with no significant services. The whole area has a strong rural character.
- 1.2 Facilities within the site include a public house with restaurant, convenience shop, swimming pool, cafe, camping and touring caravan pitches, glamping pods, play area, launderette, self-catering apartments, lodges, workshop, and private and visitor moorings.
- 1.3 At the January 2016 Planning Committee meeting, Members resolved to grant planning permission for an extension to the existing restaurant (BA/2015/0360/FUL). This was to be sited to the rear of the existing building in an undeveloped area adjacent to a service yard. It measured 7.5 metres by 15 metres in footprint, adding approximately 50% more floorspace to the existing provision and doubling the number of covers which could be served. The pre-commencement conditions have been discharged and development has commenced on site. The permission was subject to eight conditions, of which three (conditions 2, 4 and 7) are relevant to this Section 73 application.
- 1.4 This application pursuant to section 73 Town and Country Planning Act 1990, as amended, seeks to vary one and remove two of the eight conditions as below. On an application under section 73, a local planning authority shall

consider only the question of the conditions subject to which planning permission should be granted, and (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

- 1.5 Paragraph 206 of the National Planning Policy Framework sets out the six 'tests' all planning conditions must meet. Paragraph 206 states: "Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects". Guidance is given on the 'tests' in the Planning Practice Guidance.
- 1.6 This application seeks to vary condition 2 of the permission to apply to amended plans. Condition 2 states:

The development hereby permitted shall be carried out in accordance with the submitted plans (drawing number WRCRXb, OS Sitemap and Covering Statement received by the Local Planning Authority on 29 October 2015, emails from applicant of 9 December 2015 (11:02 and 14:44), amended drawing WRCRXa received by the Local Planning Authority on 14 December 2015 and drawing number 961-03/100 received by the Local Planning Authority on 11 January 2016.

The application proposes that plan WRCRXai replaces plan WRCRXa, and plan WRCRXbi replaces plan WRCRXb. These amended plans propose the provision of bi-fold doors across the northeast elevation, where a single personnel door and window was approved. The proposed bi-fold doors have already been installed and the application is retrospective in this respect. The approved door was to provide an emergency exit with level access through the existing service yard. The proposed doors would open to a new patio area enclosed by raised bed planting and 1.8 metre high close board fencing. This 8 by 8.5 metre patio is proposed to be used as additional outdoor seating to the pub and restaurant.

- 1.7 The application also proposes removing conditions 4 and 7 and the applicant's justification is set out below:

Condition	Reason for proposed removal
4. Prior to the first use of the development hereby permitted the existing passing bays on Burgh Road (indicated on drawing number 961-03/100 received by the Local Planning Authority on 11 January 2016) shall be signed with approved passing bay signs, the number and	This condition should be removed as it is unnecessary, unreasonable, not relevant to the development and unenforceable: a) the consultation response from highways indicates that the development is unlikely to result in a severe residual traffic impact, and indeed concedes that it would

<p>exact locations to be agreed in writing by the Local Planning Authority in consultation with the Highway Authority.</p>	<p>probably contribute to a reduction in traffic leaving the site. Therefore such a condition is not necessary and places an unreasonable financial burden on the applicant;</p> <p>b) the condition relates to a different planning application (BA/2015/0251/FUL) for which traffic impact analysis was carried out and agreed with the highways authority. It is not reasonable to apply this condition to a completely different and unrelated application;</p> <p>c) the co-operation of a third party (the highways authority) is required in order to discharge the condition and there is no mechanism in place to ensure this. Therefore, it could become impossible for the applicant to discharge the condition for reasons beyond its control, making the condition unenforceable.</p>
<p>7. The use of the extension hereby permitted shall be limited to those types of uses specified within Classes A3 (food and drink) and A4 (drinking establishment) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any Order revoking, amending or re-enacting that Order) and no other use shall take place unless planning permission has first been granted by the Local Planning Authority.</p>	<p>This condition should be removed as it is unnecessary, unreasonable and unenforceable.</p> <p>a) as confirmed by Officers, there is no such restriction on the existing pub/restaurant;</p> <p>b) the condition does not relate to the development proposed, which is described as an extension of the existing restaurant (without separate access or facilities) - it makes no sense for the extension to have different planning restrictions to the remainder;</p> <p>c) it will create confusion and uncertainty for the applicant, and may have unintended consequences for the viability of the business.</p> <p>d) the condition is in any event unnecessary, as there is no prospect of the business transforming itself from a holiday destination into a wedding & function venue.</p>

2 Site History

07/06/0479 Extension of existing caravan site with 8no private units and new sewerage treatment plant - Approved subject to conditions and Section 106 agreement

BA/2010/0392/FUL Proposed demolition of existing outbuildings and replacement with new build 5 unit bed and breakfast accommodation - Approved subject to conditions (not implemented and expired in March 2014).

BA/2013/0310/FUL Proposed six camping pods - Approved subject to conditions.

BA/2013/0329/FUL New entrances, external cladding and window alterations - Approved subject to conditions

BA/2013/0405/CU Conversion of existing shop to luxury apartment with re-location of shop to unused part of pub - Approved subject to conditions

BA/2015/0236/COND Variation of Condition 2 of BA/2013/0329/FUL to amend approved drawings - 'New entrances, external cladding and window alterations'. Retrospective. - Approved subject to conditions

BA/2015/0243/NONMAT Non Material Amendment to pp BA/2013/0405/CU for minor differences to the external appearance from that approved. Retrospective – Approved

BA/2015/0251/FUL Change of use of marina from leisure to mixed leisure & residential, residential moorings not to exceed a total of 10. Part retrospective – Approved subject to conditions

BA/2015/0360/FUL – Restaurant Extension - Approved subject to conditions

BA/2015/0371/FUL - Replace barn with administration centre – Approved subject to conditions

BA/2016/0064/COND - Removal of conditions 1: temporary consent, 3: residential mooring limit, 5: mooring management plan, 6: passing bay signs, 8: vessel size limit and 10: mooring details of permission BA/2015/0251/FUL - Approved subject to conditions.

3 Consultation

Burgh St Peter/Wheatacre Parish Council:

Condition 2 - Approved plans - Councillors consider the patio would be a useful addition to the restaurant extension and make use of an area with limited potential. However, the patio could be used to increase the capacity of the restaurant further.

Condition 4 - Highways - Councillors consider this to be a technical/legal matter between the applicant and the Broads Authority and have no comment except that they expect the passing bay signs to be provided and installed as soon as possible as this is a highway safety matter.

Condition 7 - Use Class - Councillors consider to be a technical/legal matter between the applicant and the Broads Authority and have no comment.

Broads Society - No objections.

District Member - No response.

Highways Authority – In terms of the variation of Condition 2 the Highway Authority have no comment. In relation to the removal of condition 4 and 7, I consider the Highway Authority response to the application, together with the planning committee report, clearly set out and define the reasons for the conditions. However, in relation to condition 4, I would add, that in consideration of the planning application, the Highway Authority response is considered a pragmatic one, and whilst acknowledging that the proposals may give rise to an increase in vehicle movements, it could not consider that the residual effect from the proposals were severe in terms of its definition under the NPPF. Whilst additional availability of eating spaces may well mean clients will stay on site longer and vehicle movements will be dispersed over a longer time period, clients not staying on the site will still need to leave via the highway network. The Local Planning Authority will note that I considered the Application BA/2015/0251/FUL as a material consideration in this respect, which appears to have been accepted. Given the recent application for removal of conditions in respect of that application, I still retain this view.

In terms of condition 4, I consider this to be a Grampian Condition, irrespective of various methods that can be used to discharge it.

With respect to condition 7, it is quite clear that use of the facilities over and above that of a restaurant, for such occasions as weddings and conferences would give rise to increase in traffic movements on the highway network.

As you will be aware the County Council as Highway Authority has continued to raise concerns in relation to the continued development of the Waveney River Centre and the suitability of the highway network serving the site and local area.

I consider that the conditions are necessary and relevant to the development permitted, is precise, reasonable and enforceable and in respect of them being relevant to planning, along with the other criteria, your Authority will have satisfied themselves that the requirements of Para. 206 are met. Accordingly, whilst the Highway Authority would not recommend the removal of the condition I am of the opinion that given the nature of the application and supporting documentation, it is for your Authority to consider the grounds relating to the reasoning for the request to remove the condition and make a decision accordingly.

4 Representations

4.1 None received.

5 Policies

5.1 The following Policies have been assessed for consistency with the National Planning Policy Framework ([NPPF](#)) and have been found to be consistent and can therefore be afforded full weight in the consideration and determination of this application.

[Core Strategy Adopted September 2007 pdf](#)
[DEVELOPMENTPLANDOCUMENT](#)

CS1 – Landscape
CS16 - Access and Transportation
DP4 - Design
DP11 - Access on Land

5.2 The following Policies have been assessed for consistency with the NPPF and have found to lack full consistency with the NPPF and therefore those aspects of the NPPF may need to be given some weight in the consideration and determination of this application.

DP28 - Amenity

6 Assessment

6.1 In terms of assessment and having regard to the wording of Section 73 of the 1990 Act (at paragraph 1.4 above) it is considered appropriate to address each of the conditions which are proposed to be varied or removed from the permission in turn and an individual decision in respect of each of those conditions is required (Members may not reconsider the principle of the grant of planning permission nor consider the remaining five conditions subject to which permission was granted in January 2016).

6.2 In considering each of the three conditions subject of this application, Members should have in mind the requirement that each of them satisfies, to the full extent, the six tests set out in Paragraph 206 of the NPPF (see paragraph 1.5 above).

6.3 Members are also entitled to have regard to and consider the fact that each of the three conditions subject of the Section 73 application were attached to a grant of planning permission issued as recently as January 2016. They are entitled to asked themselves whether there has been any material change of planning circumstances in the interim (*i.e.* between the date of grant when it was considered reasonable and necessary to impose each of the three conditions and the date of today's Committee meeting).

- 6.4 In the opinion of your Officers, it is considered that since the granting of the January 2016 permission there has been no change in the circumstances of the site, other than the granting of permission for an administration centre and the issuing of a second permission for ten residential moorings, subject to revised conditions, and there has been no change in planning policy or guidance.
- 6.5 Applying these principles to each of the three conditions the subject of the Section 73 application and also bearing in mind particularly paragraphs 1.6 (as to condition 2) and 1.7 (as to conditions 4 and 7) above (which set out the present wording of each of three conditions and puts forward the applicant's justification for varying or removing each of them:

Condition 2 - Amended plans

- 6.6 In design terms, the inclusion of bi-fold doors is considered appropriate to the overall appearance of the approved extension and the use of raised bed planting and close board fencing to enclose the patio area is not inappropriate in this service area to the rear of the building.
- 6.7 This patio area will further increase the seating capacity of the extension, albeit only when the weather allows. Approximately 23 metres to the northwest, on higher ground on the opposite side of Staithe Road, there is a two storey dwelling. The approved extension was not considered to have any unacceptable impact on the amenity of the occupiers of this dwelling, partly due to the absence of any outside seating and subject to the retention of the roadside hedge which screens direct views (condition 8) from this dwelling and the road. As with the extension itself, the patio area would not be directly visible from this dwelling but it is considered noise and activity associated with the use of this space may adversely affect amenity, particularly on clement summer evenings. A condition which allows this area to be used 08:00 to 22:00 each day is considered reasonable and necessary to mitigate any unacceptable impacts on amenity (the existing restaurant operates 08:00 to 00:00). Requiring any external lighting to be directed downwards is also considered reasonable and necessary to mitigate any adverse impacts on the neighbouring dwelling and manage light pollution. Subject to these conditions, which are additional to those applied on the existing permission and are considered to satisfy the six tests, the proposed amended plans are considered acceptable in accordance with Policies DP4 and DP28.

Condition 4 – Highways

- 6.8 This condition is identical in effect to a condition applied originally on the permission for ten residential moorings on this site (BA/2015/0251/FUL). At the 1 April 2016 Planning Committee meeting, Members resolved to retain this condition on an application which sought its removal (BA/2016/0064/COND). The condition requires agreement on and provision of signage to passing bays prior to the first use of the development.

- 6.9 The condition was applied to the permission for the restaurant extension on the advice of the Highway Authority as this development would also attract greater traffic to the site, although it was noted that the extension would retain existing customers on site who might otherwise leave if the original restaurant was full at peak times and distribute the movements of other customers who may visit and leave when they find the restaurant to be full.
- 6.10 The applicant considers the condition unnecessary as the Highway Authority did not consider the approved extension would result in a severe residual traffic impact (in accordance with paragraph 32 of the National Planning Policy Framework), however the Highway Authority did consider it necessary to apply this condition to mitigate the impacts of the additional traffic. The current proposal to also provide a patio seating area further increases the capacity of the extension and thus likely traffic movements.
- 6.11 The applicant considers the requirement to place an unreasonable financial burden on him, however no further information has been submitted in this respect and it is not known what the cost of providing the necessary signage would be nor how this relates to the cost and viability of the approved development (on which construction has commenced). In the absence of any detailed information, it cannot be assessed whether any financial burden is unreasonable, but given the scale of the development and its potential to generate additional income, this is considered unlikely.
- 6.12 As the condition is identical in effect to that applied to the permission for the residential moorings, the applicant considers it unreasonable to apply this condition to a different and unrelated permission. The Highway Authority took the application for the residential mooring into account as a material consideration in their recommendation on the application for the restaurant extension, recognising that that development may not be implemented but also the individual and cumulative effects of the two developments. As both developments would increase traffic movements, applying the condition to both permissions means that whichever is implemented first would provide the passing bay signage and thus the highways mitigation for the first development and subsequent one, should that also be implemented. This is considered reasonable and the condition is directly related to the impacts of the restaurant extension.
- 6.13 The applicant considers this condition unenforceable because it requires the co-operation of the Highways Authority to discharge it. What the condition requires is for the Local Planning Authority to agree the number and location of the signs in consultation with the Highways Authority. As the Highways Authority are the statutory consultee for highways matters and have the expertise to advise on the acceptability of any proposal for highway safety signs, it is necessary and reasonable to require their consultation to discharge this condition
- 6.14 This condition is a 'Grampian condition' meaning that it prohibits the use of the development until the passing bays have been signed with approved

signage. Such conditions should not be used where there are no realistic prospects of the required action being performed within the time limit imposed by the permission. In this case, the Highways Authority, whose consultation on the signage numbers and locations is required to discharge the condition, recommended this particular condition and it is understood to be a condition they recommend regularly.

- 6.15 The applicant considers the condition unenforceable as there is no mechanism in place to ensure the Highways Authority cooperate in discharging it and their consent is required to carry out the work. The Planning Practice Guidance states "Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition)...". The Highways Authority consider this to be a Grampian condition with various methods to discharge it.
- 6.16 The Highways Authority and officers are satisfied that the condition satisfies the six tests, in particular the test of necessity as the condition provides the mitigation required to manage the additional traffic movements resulting from the original and amended proposal. It is therefore considered necessary to retain this condition in accordance with Policies CS16 and DP11.

Condition 7 – Use

- 6.17 This condition was applied to manage the use of the extension in the interests of proper planning and in response to concerns raised by both the Parish Council and Highway Authority about the potential use of the venue by large groups, such as weddings and conferences, which would increase the pressure on the local road network. The condition does not explicitly prevent such events, but regular use may trigger a material change of use which would require planning permission. Furthermore, under current permitted development rights, A3 and A4 uses can change to A1 (retail), A2 (financial and professional services), a state funded school for one academic year or a temporary flexible A1, A2 or B1 (business) use without planning permission.
- 6.18 The applicant considers the condition unnecessary, unreasonable and unenforceable because there is no such condition on the existing pub/restaurant and there is no sense in the extension having different planning restrictions. Whilst it may be the case the existing building is not subject to a planning condition stipulating the use, it is a fact that the use class is A3/A4 and the application was proposed as an extension to the existing building. The applicant suggests the extension is integral to the existing pub/restaurant, however internally it is separated from the existing space by the layout of the bar and toilets and the amended proposal increases the external accessibility.

- 6.19 The Highway Authority note that they have continued to raise concerns in relation to the continued development of the site and the suitability of the highway network serving the site and local area. Whilst it is appreciated the applicant says there is no prospect of the business changing from a holiday destination to a wedding and function venue, alternative or separate uses operated by the applicant or any future owner/operator have the potential to attract greater traffic movements than the approved development. The applicant cites the consideration Members gave to the viability of the Waveney Inn in the approval of ten residential moorings on the site (BA/2015/0251/FUL) and how preventing the use of the extension for small functions and weddings outside the main holiday season would result in a loss of bookings or the holding of those events in the existing restaurant. It has not been demonstrated how the existing condition would affect the viability of the pub/restaurant (the capacity of which would more than double as a result of the amended proposal) or wider business, nor how this might outweigh the significant highway considerations.
- 6.20 It is also not apparent how the condition would have unintended consequences for the viability of the development nor what confusion and uncertainty it creates for the applicant, if anything it gives all parties certainty over how the approved development can and should be used.
- 6.21 A condition ensuring the additional capacity is used as an extension to the existing pub/restaurant and remains in pub/restaurant use is considered to satisfy the six tests and be the most appropriate mechanism to manage use of the venue in the interests of highway safety. The Highway Authority are also satisfied it passes the six tests and do not recommend its removal. Should the application be approved it is considered necessary to retain this condition and amend it to also include the proposed patio area, in accordance with Policies CS16 and DP11.

Other conditions

- 6.22 Should this application be approved, it shall be necessary to re-state the existing conditions not amended by the proposal (conditions 1, 3, 5, 6 and 8) but amend these, as appropriate, to reflect the fact development has commenced and the pre-commencement conditions have been discharged. Two additional conditions are also necessary to manage the use and lighting of the additional patio area which is proposed as new development in this application and section 73 allows for the application of new conditions as necessary.

7 Conclusion

- 7.1 The application proposes amending condition 2 as detailed at paragraph 1.6 above and removing conditions 4 and 7 to remove the requirement for highways mitigation and management of the use of the approved extension. Whilst the amendments to the fenestration and creation of a patio area are considered acceptable (former condition 2), the removal of conditions 4 and 7 is not considered appropriate, for the reasons set out in this report. Accordingly and, in accordance with section 73 (2)(a) of the Town and Country

Planning Act 1990 (as amended), planning permission should be granted subject to conditions differing from those to which planning permission was previously granted (namely by the variation of former condition 2 but with all the other seven conditions being replicated in the new grant of planning permission (being amended as appropriate) and two additional conditions as explained at paragraph 5.22 above.

8 Recommendation

8.1 Approve subject to conditions:

- (i) Commencement by 12 January 2019 (three years from date of original permission)
- (ii) In accordance with amended plans
- (iii) Archaeological investigation
- (iv) Signage to passing bays
- (v) Deposition of spoil
- (vi) Materials to match existing building
- (vii) Extension and patio to be used for A3 (food and drink) and A4 (drinking establishment) uses only
- (viii) Retain roadside hedge at minimum height of 1.2 metres
- (ix) Patio to be used 08:00 to 22:00 only
- (x) All external lighting to be directed downwards

9 Reason for recommendation

- 9.1 The proposal is considered acceptable in accordance with Policies CS1 and CS16 of the adopted Core Strategy (2007), Policies DP4, DP11 and DP28 of the adopted Development Management Policies DPD (2011) and the National Planning Policy Framework (2012) which is also a material consideration in the determination of the application.

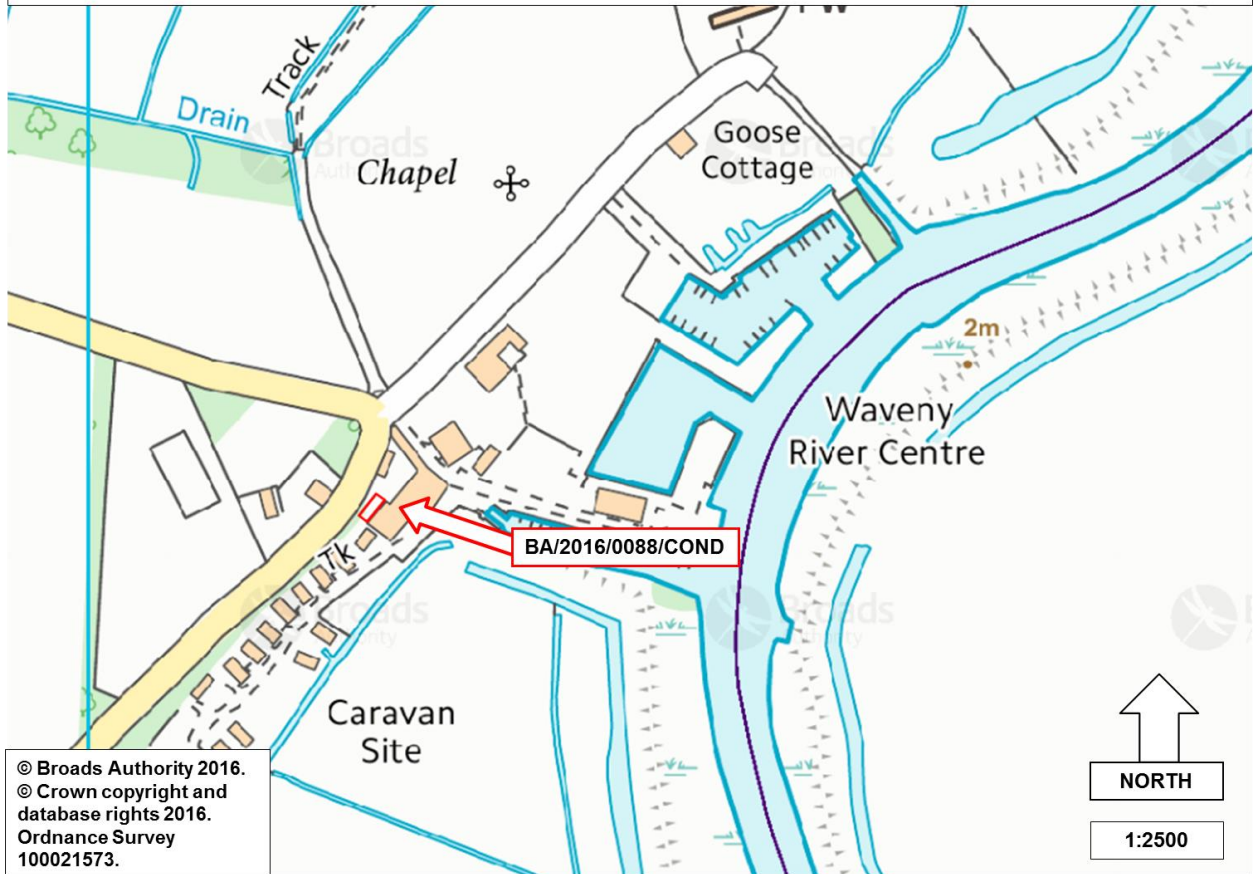
Background papers: Planning file BA/2016/0088/COND

Author: Maria Hammond
Date of report: 20 April 2016

List of Appendices: APPENDIX 1 – Site Plan

APPENDIX 1

BA/2016/0088/COND Change of fenestration, variation of condition 2, and removal of conditions 4 and 7 of permission BA/2015/0360/FUL.



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