

**Planning Committee**

**AGENDA**

**Friday 21 August 2015**

**10.00am**

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|--|--------|
| 1. <b>To receive apologies for absence and introductions</b>   |        |
| 2. <b>To receive declarations of interest</b>  |        |
| 3. <b>To receive and confirm the minutes of the previous meeting held on 24 July 2015 (herewith)</b> | 3 – 11 |
| 4. <b>Points of information arising from the minutes</b>   |        |
| 5. <b>To note whether any items have been proposed as matters of urgent business</b>                 |        |

**MATTERS FOR DECISION**

6. **Chairman's Announcements and Introduction to Public Speaking**  
Please note that public speaking is in operation in accordance with the Authority's Code of Conduct for Planning Committee. Those who wish to speak are requested to come up to the public speaking desk at the beginning of the presentation of the relevant application
7. **Request to defer applications included in this agenda and/or to vary the order of the Agenda**  
To consider any requests from ward members, officers or applicants to defer an application included in this agenda, or to vary the order in which applications are considered to save unnecessary waiting by members of the public attending
8. **To consider applications for planning permission including matters for consideration of enforcement of planning control:**

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9.	<b>Thorpe Island: Report on High Court Judgement</b> Report by Head of Planning (herewith)	21 – 34

#### MATTERS FOR INFORMATION

10.	<b>Circular 28/83: Publication by Local Authorities of Information about the Handling of Planning Applications Quarter ending 30 June 2015</b> Report by Head of Planning (herewith)	35 – 38
11.	<b>Enforcement Update</b> Report by Head of Planning (herewith)	39 – 42
12.	<b>Appeals to the Secretary of State Update</b> Report by Administrative Officer (herewith)	43 – 44
13.	<b>Decisions made by Officers under Delegated Powers</b> Report by Director of Planning and Resources (herewith)	45 – 47
14.	<b>To note the date of the next meeting – Friday 11 September 2015 at 10.00am at Yare House, 62-64 Thorpe Road, Norwich</b>	

**Broads Authority**  
**Planning Committee**

Minutes of the meeting held on 24 July 2015

**Present:**

Mr M Barnard	Mrs L Hempsall
Prof J Burgess	Mr G W Jermany
Mr N Dixon	Mr P Rice
Dr J M Gray	Mr J Timewell
Ms G Harris	Mr V Thomson

**In Attendance:**

Mrs S A Beckett – Administrative Officer (Governance)  
Mr B Hogg – Historic Environment Manager  
Mr P Ionta – Solicitor and Monitoring Officer  
Ms A Long – Director of Planning and Resources  
Ms C Smith – Head of Planning

**1/1 Appointment of Chairman**

The Director of Planning and Resources welcomed everyone to the meeting. She invited nominations for the appointment of a Chairman for the next year.

Jacque Burgess proposed, seconded by George Jermany, the nomination of Murray Gray. There being no other nominations, it was

RESOLVED

that Dr Murray Gray be appointed as Chairman of the Planning Committee.

Dr Gray thanked members for his appointment explaining that this could only be until March 2016, when his term of office with the Authority came to an end.

**Dr J M Gray in the Chair**

**1/2 Appointment of Vice Chairman**

The Chairman invited nominations for the appointment of a Vice-chairman for the forthcoming year.

Paul Rice proposed, seconded by Mike Barnard, the nomination of Lana Hempsall. There being no other nominations, it was

RESOLVED

that Mrs Hempsall be appointed as Vice-Chairman of the Planning Committee for the forthcoming year 2015/16.

**1/3 Apologies for Absence and Welcome to new Members**

Apologies were received from Miss S Blane.

The Chairman welcomed the new members of the Authority to the Committee Gail Harris, Paul Rice and Vic Thomson.

On behalf of all members, the Chairman expressed thanks to Peter Warner for his time on the Committee.

**1/4 Declarations of Interest**

Members indicated that they had no other declarations of pecuniary interests other than those already registered and as set out at Appendix 1.

**1/5 Minutes: 26 June 2015**

The minutes of the meeting held on 26 June 2015 were agreed as a correct record and signed by the Chairman.

**1/6 Points of Information Arising from the Minutes**

None reported.

**1/7 To note whether any items have been proposed as matters of urgent business**

No items had been proposed as matters of urgent business.

**1/8 Chairman's Announcements and Introduction to Public Speaking**

**Public Speaking**

The Chairman commented that as there were no applications for determination and no members of the public present, there would be no need for the scheme for public speaking. No one indicated that they intended to record or film the proceedings.

**1/9 Requests to Defer Applications and /or Vary the Order of the Agenda**

No requests had been received.

## 1/10 Applications for Planning Permission

The Committee considered the following report relating to a major application due to be submitted under the Town and Country Planning Act 1990. Acting under its delegated powers the Committee authorised the immediate implementation of the decision.

(1) **BA/2015/0225/FUL Utilities Site between Cremorne Lane, Hardy Road and the River Wensum**

Generation Park – a mixed use generation Project

Applicant: NPH (Norwich) LLP

The Committee received a report concerning the expected application relating to the Utilities site formerly containing the gas power station. The Director of Planning and Resources explained that this was a hybrid application falling within the administrative Planning Authority areas of Norwich City Council and the Broads Authority with a small length of proposed access road in South Norfolk.

The application was due to be submitted by 1 August and it was proposed that a Joint Site Visit be undertaken with Norwich City Council with the prospective date of 2 October 2015. The City Council would be considering this matter at its meeting on 6 August 2015. The aim would be for both Planning Committees to consider the application at a special meeting in November with 26 or 27 November being the most likely dates.

The Director of Planning and Resources provided an outline of the proposed procedures for dealing with the application based on the model adopted for an application at Norwich Airport dealt with by Broadland District and Norwich City Councils. The Authority's Planning Committee would receive a briefing on the application, particularly those elements which came within the Broads Authority's jurisdiction, prior to the Site Visit, at the 11 September Planning Committee meeting. It was anticipated that the Special meeting would be held at City Hall, given the availability of more appropriate facilities and accessibility. It was proposed that the two Committees would be convened at the same time, receive identical reports presented by the Case officers Mark Brown (NCity) and Alison Macnab (BA). Each of the Committees would then take it in turn to debate the respective elements within their jurisdiction and make their decision. The precise details would still need to be decided.

Members considered that the procedures outlined would be acceptable. They particularly welcomed the opportunity of being provided with a briefing on the respective areas of jurisdiction and a site visit in order to gain a clear appreciation of the issues on which they were required to make a decision. The Chairman emphasised that it was important that as many members as possible attended the site visit as well as the decision making meeting.

RESOLVED

- (i) that a joint site visit to view the proposals for the Generation Park at the Utilities site be held with Norwich City Council and this be held on Friday 2 October 2015 (subject to their agreement)
- (ii) that the proposed procedures for joint consideration of the application with Norwich City Council be accepted in principle for further detailed confirmation.

**1/11 Enforcement of Planning Control: Item for Consideration: Positioning of Static Caravan in the grounds of Cross Keys Public House, Dilham**

The Committee received a report relating to the unauthorised positioning of a static caravan in the grounds of the Public House at the Cross Keys Public House in Dilham following receipt of a number of complaints. The caravan was being used for domestic storage. This was considered to be a material change of use of the land from car park to standing of a caravan. Planning Contravention Notices had been served in October 2014 and again in February 2015 and a number of site visits followed by letters had been sent to the landowner informing of the breach of planning control. Despite these attempts to engage with the landowner the caravan had remained on site. Members noted that the standing of the static caravan was contrary to development Policies DP4 and DP28 and that enforcement action was recommended with a period of compliance of two months.

The Head of Planning reported that since the writing of the report officers had had a number of discussions with the landowner who had indicated that there was a strong possibility that the static caravan would be removed in December and therefore instead of two months compliance, officers were recommending a longer period of six months. Although this was disappointing, it was considered beneficial to have a negotiated solution.

Members had concerns over the length of time the matter had already taken and therefore considered that a three month compliance period would be more appropriate as this would be in accordance with the proposed date the landowner had suggested.

RESOLVED

- (i) that authorisation is granted for the serving of an Enforcement Notice seeking removal of the Static Caravan with a compliance period of three months; and
- (ii) that authorisation be granted for prosecution (in consultation with the solicitor) in the event that the Enforcement Notice is not complied with.

## **1/12 Broads Local Plan Local Development Scheme – Version 2**

The Committee received a report relating to the timetable for the production of the Local Plan including the anticipated dates for undertaking and completing the tasks required in its production. This provided an update on that which had been received in 2014 and as version 2, reflected the slippage incurred. This was due to the requirement for an Objectively Assessed Housing Need (OAN) and also for practicalities to align at least the first consultation stages of the Local Plan and Broads Plan given that there would inevitably be some crossover of content. Members noted the complex processes involved in assessing the OAN which was being undertaken using consultants (ORS) in association with other Districts. Discussions as to apportionment would be required with those Districts as part of the Duty to Cooperate.

The Director of Planning and Resources reported that as part of the Planning Committee's training programme, it was intended that there would be some Policy focussed training to cover this issue together with Duty to Cooperate and Examination in Public procedures following a Planning Committee meeting in the Autumn (scheduled for 9 October 2015).

RESOLVED

that the Authority adopt Version 2 of the Local Development Scheme .

## **1/13 Duty to Cooperate Member Forum**

The Committee received a report on the most recent Duty to Cooperate Member Forum meeting held on 9 July 2015 and considered the recommendations from that meeting.

RESOLVED

that the Authority endorse the recommendations from the Duty to Cooperate Forum as follows:

- The Framework to be called Norfolk Strategic Framework
- Norwich City Council to host and employ the Project Manager and Assistant for a fixed term contract to drive the production of the Norfolk Strategic Framework
- That the Scope of the Framework be accepted.

## **1/14 Brundall Neighbourhood Plan: Proposed Comments on Pre-Submission Consultation Response**

The Committee received a report relating to the Brundall Neighbourhood Plan which set out the proposed Broads Authority comments on the Pre-Submission Consultation Document. Members welcomed the report and proposed comments.

RESOLVED

that the proposed pre-submission consultation response on the Brundall Area Neighbourhood Plan be endorsed and submitted.

#### **1/15 Oulton Broad Conservation Area Re-Appraisal**

The Committee received a report which provided members with the feedback from the Consultation exercise relating to the Oulton Broads Conservation Area Re-Appraisal. This came within the Authority's programme for review of current Conservation Areas as part of its statutory duties.

The Oulton Broad Conservation Area consultation draft was discussed at the Broads Authority Planning Committee on 25 April 2014. At this meeting Members agreed the draft appraisal and to carry out a consultation exercise. Members of the Authority's Heritage Asset Review group also considered the draft re-appraisal on two occasions.

The Committee noted that a thorough consultation had taken place particularly relating to the additional area proposed for inclusion at the south eastern area of Oulton Broad. Although initially objections had been received in relation to this extended area, following further explanation and understanding of the requirements for Conservation Areas, feedback was very supportive, particularly from the Friends of Nicholas Everitt Park.

The Committee considered that the area identified by the boundary map including the extension and described in the appraisal and management plan of Oulton Broad was worthy of Conservation Area designation following a detailed assessment, public and stakeholder consultation. Therefore the Committee agreed that the Conservation Area as proposed be adopted by the Authority.

RESOLVED to RECOMMEND to the Authority

that the appraisal and management plan for the Oulton Broad Conservation Area, for that part of the Area within the Broads Authority executive area, be formally adopted by the Broads Authority.

#### **1/16 Heritage Asset Review Group (HARG) Membership**

The Committee received a report on the role of the Heritage Asset Review Group and the need to appoint new members in light of the recent changes to membership of the Authority and that of the Planning Committee.

A meeting of the Heritage Asset Review Group would follow on from the Planning Committee meeting on 21 August 2015.



RESOLVED

that the membership of the Heritage Asset Review Group be comprised of the following: Dr J M Gray (Chairman of Planning Committee), Mrs L Hemsall (Vice-Chairman of Planning Committee), Mr M Barnard, Miss S Blane and Prof J Burgess.

#### **1/17 Enforcement Update**

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

The Head of Planning reported further on the following:

**Former Jenners Basin at Thorpe Island.** The case had been considered in the High Court on Tuesday 19 May 2015. The Judge had yet to issue his decision although it was expected shortly. Members would be informed by email as soon as this was received and a report would be submitted to a subsequent meeting.

**J B Boat Sales, 106 Lower Street, Horning.** Members of the Committee had been shown the amended scheme for a building which had been approved at the last meeting. The date for remedial works to be carried out had been extended to 8 October 2015.

**Land at Newlands Caravan Park, Geldeston.** Compliance had been achieved and therefore this would be deleted from the schedule for the next meeting.

RESOLVED

that the report be noted.

#### **1/18 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 March 2015.

RESOLVED

that the report be noted.

#### **1/19 Decisions Made by Officers under Delegated Powers**

The Committee received a schedule of decisions made by officers under delegated powers from 15 June to 13 July 2015.

RESOLVED

that the report be noted.

**1/20 Date of Next Meeting**

The next meeting of the Planning Committee would be held on Friday 21 August 2015 at Yare House, 62- 64 Thorpe Road, Norwich. This would be followed by a meeting of the Members' Heritage Asset Review Group.

The meeting concluded at 11.15 am

CHAIRMAN

## Code of Conduct for Members

## Declaration of Interests

Committee: Planning 24 July 2015

Name	Agenda/ Minute No(s)	Nature of Interest (Please describe the nature of the interest)
Paul Rice	1/17	Re Enforcement Update: Ferry Inn – as involved in negotiation and mediation
George Jermany	General	Toll Payer
Jacquie Burgess	1/10	Emeritus Professor, UEA but no involvement with the prospective application
Mike Barnard	1/15	Local Councillor Meeting with Residents

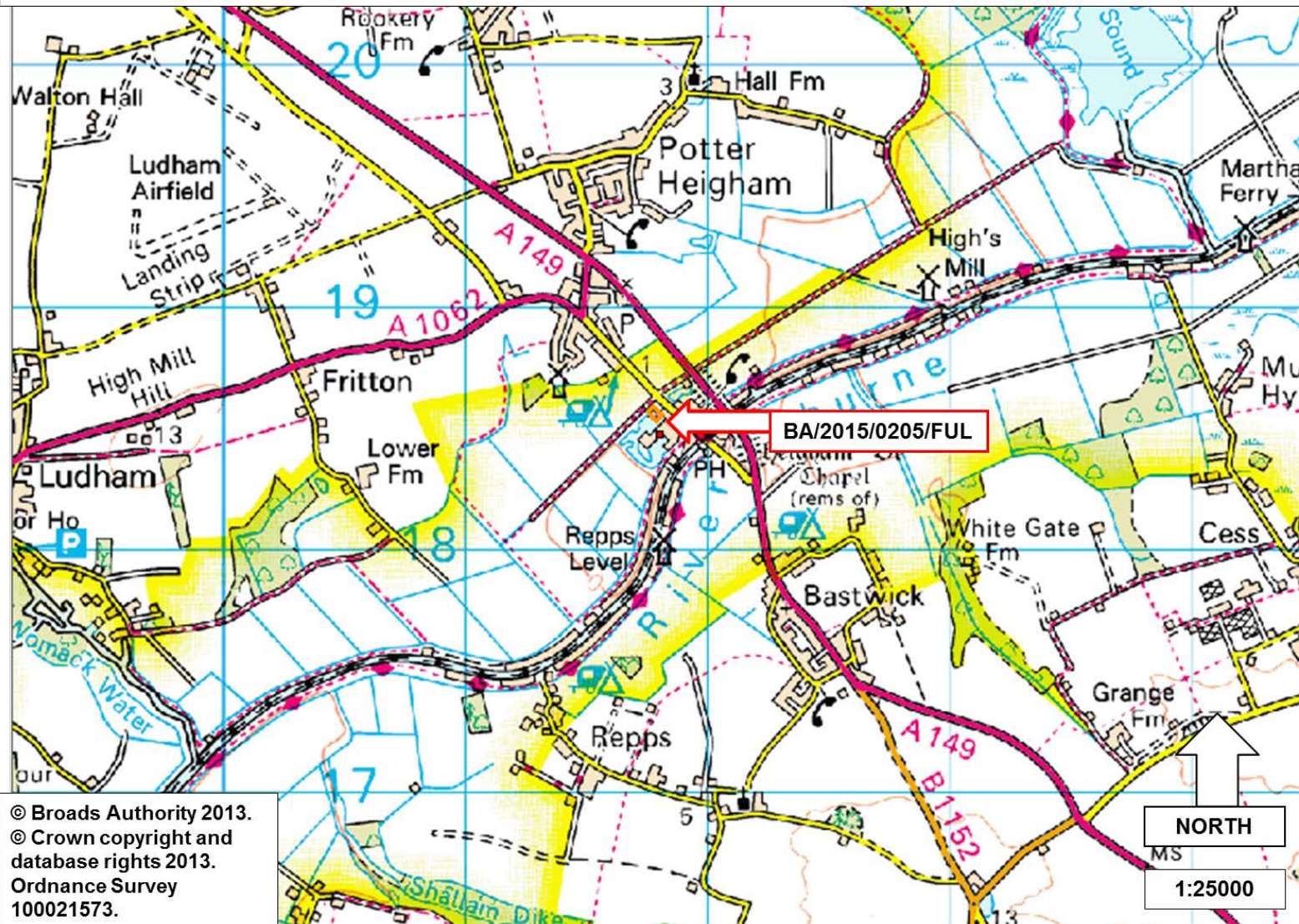
**Reference**

BA/2015/0205/FUL

**Location**

Herbert Woods Boatyard, Broads Haven, Bridge Road,  
Potter Heigham

BA/2015/0205/FUL - Broads Haven, Bridge Road, Potter Heigham, NR29 5JD - Reconfiguration of part of existing mooring basin measuring approximately 30m x 60m.



## **Application for Determination**

<b>Parish</b>	Potter Heigham		
<b>Reference</b>	BA/2015/0205/FUL	<b>Target date</b>	26 August 2015
<b>Location</b>	Herbert Woods Boatyard, Broads Haven, Bridge Road, Potter Heigham,		
<b>Proposal</b>	Reconfiguration of part of existing mooring basin measuring approximately 30m x 60m.		
<b>Applicant</b>	Mr Michael Whitaker		
<b>Recommendation</b>	Approve subject to conditions		
<b>Reason for referral to Committee</b>	Applicant is Member of the Broads Authority		

### **1 Description of Site and Proposals**

- 1.1 The Herbert Woods site is a large boatyard situated at the heart of the Potter Heigham Staithe settlement, covering a site area of approximately 5.8 hectares. The site lies adjacent to the River Thurne and is situated to the west of the large surface car park owned and operated by Lathams (QD Stores).
- 1.2 The site incorporates a significant boat hire business, holiday cottages, a number of large boatsheds, and a boat sales business.
- 1.3 To the west of the site is an SSSI. Parts of the site and surrounding area are covered by the UK Biodiversity Action Plan, although it is noted that the application site is not covered by this.
- 1.4 This application concerns an area at the north of the site, this section of the mooring basin historically had three wet sheds, bisected by narrow spits of land. Having viewed historic aerial photographs the wet shed adjacent to the car park was demolished prior to 2010, this area is shown on the plans as being 'Boat Brokerage Moorings'.
- 1.5 The remaining two wet sheds have been demolished in the last 12 months, currently this section of the site comprises two smaller sections of the mooring basin, separated by a narrow spit of land which is overgrown and in a generally poor state.

- 1.6 It is proposed to carry out excavation works involving the removal of the narrow spit of land between the two sections to create a single area for mooring, along with the removal of a section of the spit of land between the development area and the Boat Brokerage Moorings, with six new finger jetties on either side of the enlarged basin, and replacement quay heading and staging.

## **2 Site History**

There are numerous applications for this site, the relevant ones being:  
In 1994 planning permission was granted for the relocation of a wet boatshed and demolition of two others (planning ref BA/1994/2421/HISTAP) although these works were not carried out under this permission.

In 1994 planning permission was refused for the demolition and removal of 3 wet boatsheds and erection of 20 holiday units (planning ref BA/1994/2395/HISTAP).

## **3 Consultation**

Potter Heigham Parish Council - No objection.

NSBA - No objection.

Historic England - No objection in terms of impact on Grade II\* Listed and designated scheduled monument Potter Heigham Bridge. Concern raised in relation to quality of excavated material, following information provided by planning agent and BA Ecology officer it is considered that a Planning Condition relating to archaeological finds is acceptable in this case.

Environment Agency - No objection. Flood defence consent not required. Flood risk will not be increased elsewhere as a result of spoil disposal on site.

Navigation - No objection. The usual provisions about agreeing specifications and need for a navigation works licence will apply.

Ecology - No objection. The area of development and the surrounding bankside is heavily dominated by quay heading. Therefore it is extremely unlikely that water voles will be present behind the broken quay heading due to the lack of bankside vegetation required for feeding. The proposed land section to be removed from the mooring basin does not appear to be peat soil. The overlying vegetation is dominated by rough grassland.

Navigation Committee – This application has not been referred to the Navigation Committee as it is not considered to meet the criteria for referral in that it lies outside of the main navigation area and would not affect the use or enjoyment of the navigation area.

#### **4 Representations**

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 (2007)

[Core Strategy Adopted September 2007 pdf](#)

CS1 - Protection of Environmental and Cultural Assets

CS3 - The Navigation

CS4 - Creation of New Resources

CS17 - Safe Recreational Access

CS20 - Development within the Environment Agency's flood risk zones

CS23 - Waterside Employment Sites and Services

Development Management (2011)

[DEVELOPMENTPLANDOCUMENT](#)

DP1 - The Natural Environment

DP2 - Landscape and Trees

DP4 - Design

DP11 - Access on Land

DP27 - Visitor and Community Facilities and Services

DP29 - Development on Sites with a High Probability of Flooding

- 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.

Development Management Plan DPD (2011)

DP20 - Development on Waterside Sites in Commercial Use, inc Boatyards

- 5.3 The following Policies have been assessed for consistency with the NPPF which has been found to be silent on these matters. Paragraph 14 of the NPPF requires that planning permission be granted unless the adverse effects would outweigh the benefits.

Development Management Plan DPD (2011)

DP12 - Access on Water

DP13 - Bank Protection

DP16 - Moorings



## **6 Assessment**

- 6.1 The proposal is for the removal of a narrow spit of land between two existing mooring basin elements, the principle of such a development is considered acceptable by virtue of its location within a large and well established commercial boatyard, the historic and continuing use of this section of site, and the existence of the two existing basin elements. The removal of the spit of land in essence makes for a more practical use of this section of the boatyard basin providing an increased functionality of the existing moorings. It is noted that the proposed reconfiguration would not result in any increase in moorings.

- 6.2 Policy DP16 of the Development Plan Document stipulates requirements for reconfigured mooring basins, each element of which will be considered in turn:

- 6.3 Criterion (a) requires that they would be located where they would not have a negative impact on navigation (for example in an off-river basin or within a boatyard).

It is the case that the reconfigured basin is within an established boatyard and therefore would not impact on navigation;

- 6.4 Criterion (b) requires that the proposed development would not have an adverse effect on landscape character or protected habitats or species and would meet the requirements of the Water Framework Directive.

It is the case that the existing landscape in this area is flat and there would be no perceptible change to this when viewed from the surrounding area. Given the limited scope of the works there will be no impact on protected species or habitats and no objection was raised by the BA Ecologist.

- 6.5 Criterion (c) requires that there is provision for an adequate and appropriate range of services and ancillary facilities, or adequate access to local facilities in the vicinity.

It is the case that the development site is within an existing boatyard providing adequate and appropriate range of services.

- 5.6 Criterion (d) requires that the proposed development would not prejudice the current or future use of adjoining land or buildings; and Criterion (e) requires that the proposed development would not adversely affect the amenity of adjoining residents.

It is the case that the siting of the development area within an established boatyard, and the limited scope of the works would ensure there would be no impact on adjoining land or buildings, or the amenity of residents.

- 6.7 Criterion (f) requires that the proposed development should not result in the loss of moorings available for visitor/short stay use.

It is the case that there would be no loss of existing moorings.

- 6.8 Criterion (g) requires that the proposed development should not have an adverse effect on European habitats or species and meet the requirements of the Water Framework Directive.

It is the case that there is sufficient distance between the SSSI and development site, and no objection has been raised by the BA Ecologist in relation to protected habitats or species.

- 6.9 Criterion (h) requires provision of new visitor (short stay) moorings at not less than 10% of total new moorings provided with a minimum provision of two.

It is the case that there is no increase from the existing provision of moorings and as such it is not considered suitable to require provision for visitor moorings above that which exists on site at present.

- 6.10 Criterion (i) requires that adequate provision is made for car parking, waste and sewage disposal and the prevention of pollution.

It is the case that there is no increase in mooring berths, and current parking provision is for approximately 200 vehicles which is considered adequate for the site. The existing on site waste and sewerage facilities would adequately provide for the additional moorings.

- 6.11 Criterion (j) requires that Provide for the installation of pump-out facilities (where on mains sewer) unless there are adequate alternative facilities in the vicinity; and Criterion (k) requires that Provide an appropriate range of services and ancillary features, unless there is access to local facilities within walking distance.

It is the case that, as outlined under criterion (c) above, the mooring basin sits within a large established boatyard, as well as being within walking distance of Potter Heigham, it is therefore considered that there is an adequate and appropriate range of services and ancillary facilities within the area.

- 6.12 The material to be excavated is described within the planning statement as 'comprised chiefly of made ground built up from dredgings'. Further to this the BA Ecologist stated that 'The proposed land section to be removed from the mooring basin does not appear to be peat soil'. Following discussions with Historic England a planning condition to ensure historical artefacts would be recorded and where appropriate maintained was agreed as the most fitting means of ensuring that any potential finds of archaeological are dealt with appropriately. It is therefore considered that the proposed development would not be detrimental in terms of heritage assets with archaeological interest.

- 6.13 The excavated material will be dried on site prior to being spread on land within the curtilage of the boatyard and within the applicant's ownership, the areas for this being detailed in the submitted Flood Risk Assessment. Having reviewed these areas the proposed disposal is considered acceptable in terms of the appearance of the site, and the EA have raised no objection in terms of flood risk.
- 6.14 The proposed quay heading is predominantly replacement of existing elements, the new elements, along with the finger jetties and staging are considered to be in keeping with the overall appearance of the boatyard and would not be detrimental to the appearance of the surrounding area.

## **7 Conclusion**

- 7.1 The proposed excavation works and provision of finger jetties, quay heading, and staging would not result in unacceptable impact on landscape character, protected habitats or species, and navigation, consequently the application is considered to be acceptable with regard to Policies CS1, CS3, and CS20 of the Core Strategy, and Policy DP1, DP2, DP16, and DP29 of the Development Plan Document.

## **8 Recommendation**

- 8.1 Approve, subject to conditions:
- (i) Standard time limit.
  - (ii) In accordance with approved plan.
  - (iii) Archaeology

## **9 Reason for recommendation**

- 9.1 The proposal is considered to be in accordance with Policies CS1, CS3, and CS20 of the Core Strategy (2007), Policies DP1, DP2, DP16 and DP29 of the Development Plan Document (2011), and the National Planning Policy Framework (2012) which is a material consideration in the determination of this application.

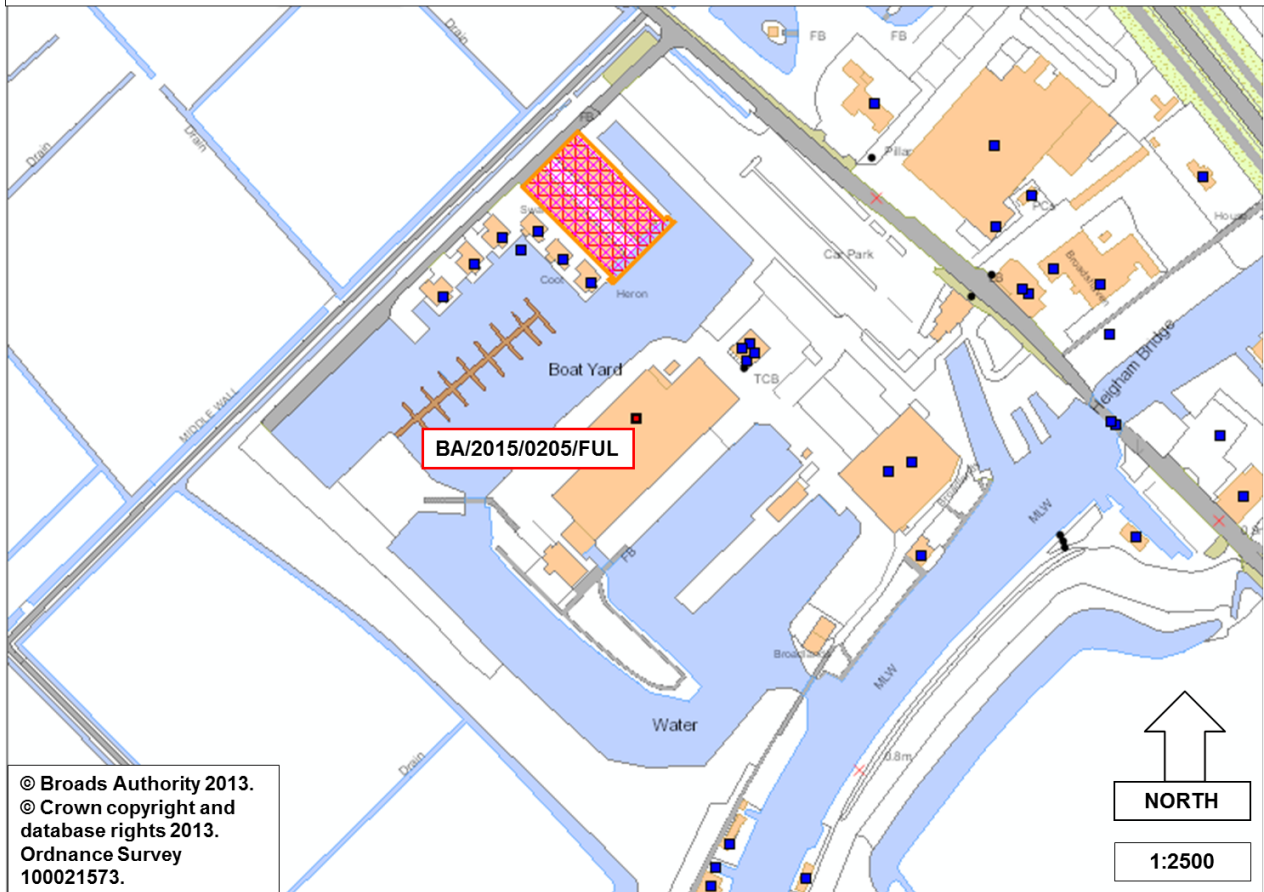
Background papers: Application File BA/2015/0205/FUL

Author: Nigel Catherall  
Date of Report: 5 August 2015

List of Appendices: APPENDIX 1 – Location Plan

## APPENDIX 1

BA/2015/0205/FUL - Broads Haven, Bridge Road, Potter Heigham, NR29 5JD - Reconfiguration of part of existing mooring basin measuring approximately 30m x 60m.



**Thorpe Island: Report on High Court Judgement**  
Report by Head of Planning

<b>Summary:</b>	Members will be aware of a long standing enforcement matter at Thorpe Island; this case has been the subject of a recent High Court challenge to a decision made by the Planning Inspectorate. The High Court dismissed all of the challenges and upheld the decision of the Planning Inspectorate. Members will need to consider the options for taking the matter forward and these are set out in the report.
<b>Recommendation:</b>	That Members consider the enforcement options available to the Authority along with the recommended use of a Planning injunction.

## **1 Introduction**

- 1.1 Members will be aware of a long standing enforcement case at Thorpe Island in Thorpe St Andrew, Norwich. This matter relates to an Enforcement Notice which was served in November 2011 and which has been the subject of one planning inquiry (the decision on which was successfully challenged in the High Court as a result of an error made by the Planning Inspector) and one planning hearing (following the success of the first High Court challenge). The challenge to the Inspector's decision in respect of the second decision has recently been heard in the High Court. In his decision handed down on 6 August 2015 Justice Lindblom dismissed all of the challenges to the Planning Inspector's decision following the planning hearing and upheld that decision.
- 1.2 The purpose of this report is to outline for Members the background to the matter, explain the decision, its implications and set out the options following the decision of the High Court.

## **2 Background and Enforcement History**

- 2.1 In the mid 1960's various planning permissions were granted at the Jenners boatyard in Thorpe St Andrew. These included permission for the construction of a mooring basin, wet and dry boatsheds and other development on Thorpe Island to support a hire boat facility. The basin was dug and the wet boatshed constructed, but then the business went into administration and in the early 1970's the wet boatshed was demolished and the site closed. No further activities took place. In the mid 1980's planning permission was granted for development on an adjacent site at Thorpe Hall and a section 52 agreement was entered into limiting any mooring on the Island to private mooring only. No activities took place on the site and over

time it became 'abandoned' in planning terms. In 2006 the site was purchased by the current landowner.

- 2.2 The current landowner and his agent were advised that the previous permissions and use had been abandoned and that any resumption of the use would require planning permission. Moreover, they were advised that the current planning policies did not support such a use and that planning permission would, therefore, be unlikely to be granted. The key issues in this case were the impact upon the character of the conservation area and impact upon the amenity of adjoining neighbours. A planning application was submitted in March 2008 for the repair of quayheading to facilitate a mooring use, but the application was refused on the grounds of lack of information. A repeat application was submitted in July 2009, but was withdrawn in March 2010 prior to determination.
- 2.3 Around 2009 an unauthorised mooring use commenced in the basin and over the subsequent years an increasing number of boats were moored on the site. There were other unauthorised activities including the construction of jetties/pontoons, the unauthorised standing of vehicle engines and the unauthorised standing of a container. The site has been the subject of considerable local interest and numerous complaints from local residents about the use and appearance of the site.
- 2.4 Following Member agreement, on 7 November 2011 Enforcement Notices were served in respect of the unauthorised uses, including the mooring of vessels. The Enforcement Notice required the landowner:
- (a) to cease the use of the basin for the mooring of boats and remove the boats from the basin; and
  - (b) to remove all the jetties and to restore the land to its condition as prior to the development; and
  - (c) to remove the motor engines and to restore the land to its condition as prior to the development
  - (d) to remove the green metal storage container and to restore the land to its condition as prior to the development

### **3 The Appeals and Challenges**

- 3.1 In December 2011 the landowner appealed against the Enforcement Notice and the appeal was heard at Public Inquiry on 1 and 2 May 2012. As well as hearing from the Broads Authority and the appellant the Inspector also heard evidence from local residents as "interested third parties". It should be noted that the motor engines referred to in (c) above have been removed but that the green metal storage container remains in situ (with the later addition of solar panels on the roof). This was despite an assurance given by the appellant to the first Planning Inspector during his site visit that this would be removed.

- 3.2 On 15 June 2012 the appeal decision was received. The decision was a split decision - ie part was allowed and part was not. The Inspector agreed with the Broads Authority and concluded that the mooring of vessels is development for which planning permission is required, that the use of the mooring basin had been abandoned, that the unauthorised operation which was taking place did have a significant and adverse effect on the character and appearance of the Conservation Area and on the visual amenity of the area and did have a detrimental effect on the living conditions of the neighbours.
- 3.3 The Inspector did decide, however, that this was a mooring basin and some limited and controlled use of it for mooring would not be unacceptable. He allowed for up to 12 boats to be moored but with no residential use. The permission he granted was subject to strict conditions and the landowner was required to provide schemes dealing with landscaping, ecological enhancement, waste and refuse and access, parking and treatment of the bridge. These were to be provided within 3 months and if the LPA do not agree it within 11 months an appeal should be made to the Secretary of State.
- 3.4 On 16 July 2012 the landowner issued a challenge to the appeal decision in the High Court. This was on two grounds – firstly that the permission issued (in effect) by the Inspector was unlawful and secondly that the Inspector had erred in law. Both challenges were technical legal challenges against the decision of the Planning Inspectorate.
- 3.5 In April 2013 the Planning Inspectorate reviewed the decision, agreed that it was flawed – as the inspector had gone beyond his powers in this case - and agreed for it to be formally quashed. On 24 June 2013 the High Court quashed the decision, by way of a Consent Order and remitted the appeal back to the Planning Inspectorate for redetermination.
- 3.6 On 8 July 2014 the re-heard appeal was considered at an Informal Hearing. Local residents again participated in the proceedings and attended with their legal and planning representatives. The Inspector identified three main matters for consideration:
- (i) Whether the mooring that is taking place in the basin constitutes development requiring planning permission;
  - (ii) If permission is required, whether the various permissions granted from 1967 onwards should be construed as granting it; and
  - (iii) If not, and it therefore becomes necessary to consider the planning merits of the development, the main issues would be the effects, if any, on the character and appearance of the Thorpe St Andrew Conservation Area; the setting of nearby listed buildings; and the living conditions of local residents
- 3.7 On 20 October 2014 the decision on the re-heard appeal was received. Again, the decision was a split decision - ie part was allowed and part was not. Again, the Inspector agreed with the Broads Authority and concluded the following:

- (i) that the mooring of vessels is development for which planning permission is required (point (i) above);
- (ii) that the various permissions granted in the 1960's did not authorise the existing use and, separately, the use of the mooring basin had been abandoned (point (ii) above); and
- (iii) that the unauthorised operation which was taking place did have a significant and adverse effect on the character and appearance of the Conservation Area and on the visual amenity of the area and did have a detrimental effect on the living conditions of the neighbours (point (iii) above).

3.8 Again, however, the Inspector did decide that this was a mooring basin and some limited and controlled use of it for mooring would not be unacceptable. In this case he allowed for up to 25 vessels, but imposed strict conditions on these in including that they should all be tolled, capable of moving under their own propulsion and that there should be no residential mooring. Conditions were also imposed, as in the first decision, requiring the landowner to submit schemes dealing with landscaping, ecological enhancement, waste and refuse and access, parking and treatment of the bridge. These were to be provided within 3 months, otherwise the permission would lapse.

3.9 On 28 November 2014 the landowner issued a challenge to the appeal decision in the High Court. The challenge was submitted by the landowner himself, rather than by legal advisers, so there was some initial confusion around the grounds of the challenge, but effectively the challenges were as previously – that is, firstly that the permission issued (in effect) by the Inspector was unlawful and secondly that the Inspector had erred in law.

3.10 On 19 May 2015 the matter was considered in the High Court at a hearing before Justice Lindblom. Both the Planning Inspectorate and the Local Planning Authority attended and gave evidence.

#### **4 The High Court Decision**

4.1 In considering the decision made by the Inspector, the Court had three issues to decide:

- (1) Whether the Inspector erred in law in his conclusions on the ground (c) appeal (ground 1) – ie that there has not been a breach of planning control;
- (2) Whether the Inspector was wrong to limit the mooring use of the basin to 25 vessels (ground 2); and
- (3) Whether the Inspector's decision was irrational (ground 3).

4.2 Details of the decision on these three points are set out below, but in summary, the Court concluded:

- (1) That the Inspector had not erred in law in his conclusions on the ground (c) appeal;



- (2) The Inspector was entitled to restrict the number of vessels using the mooring basin when he was considering the planning merits of the scheme; and
- (3) That there was nothing irrational in the Inspector's conclusions here. They were both logical and in the circumstances entirely reasonable.

Did the Inspector err in law in his conclusions on the ground (c) appeal?

- 4.3 The basis of the ground (c) appeal by the appellant was that, firstly, the various planning permissions issued in the 1960's (see 2.1 above) granted planning permission for the construction of the mooring basin and its use for any type of mooring, and that secondly the Section 52 Agreement in 1985 (see 2.1 above) in any case also authorised the use for private moorings. It was also argued by the appellant that the planning permissions issued in the 1960's had not been abandoned.
- 4.4 Justice Lindblom approached these matters as follows. In considering the decision of the Inspector, he first of all reviewed the approach taken by the Inspector to the historic permissions. He noted that the Inspector had considered all of the various permissions, the supporting documentation and plans and the sequence of the development of the site, referring to the latter two sets of information as 'extrinsic evidence'. With reference to case law, he concluded that the Inspector was entitled to consider this extrinsic evidence and supported the approach taken by the Inspector, stating "... in my view, he adopted the right approach to the construction of a grant of full planning permission. His interpretation of the relevant permission was, I think, accurate" (para 39) and "... an entirely legitimate exercise of the kind envisaged in the relevant case law..." (para 45). It is worth noting here that the conclusion reached by the Inspector, on consideration of the historic permissions and the extrinsic evidence, was that the basin was not a stand-alone facility, but part of the wider scheme.
- 4.5 Subsequent to the consideration of all the historic information, the Inspector had then also considered the purpose for which the basin had been designed, as this would have a bearing on its lawful use. The conclusion reached by the Inspector on this was that the lawful use of the basin – ie the purpose for which it had been designed – was not for private moorings (the current use), but to provide a facility that was an integral part of the commercial boatyard – ie hire boat or commercial moorings. Justice Lindblom agreed with this conclusion, and commenting on the way in which this had been reached, stated "... There are five salient findings in the Inspector's consideration of the relevant permissions ... Those five findings make perfectly good sense, and, in my view, they are beyond criticism in these proceedings ..." (paras 54 and 55).
- 4.6 This is an important part of this judgement because Justice Lindblom is in effect stating that the current use is not that which was previously permitted and could not therefore benefit from any planning permission which had been issued as part of the previous scheme.

- 4.7 It is also worth noting that the conclusion that the basin formed part of a larger scheme reinforces that reached in respect of the historic permission. This is important, inherently and cumulatively, because it leads to the arguments around abandonment and whether the continued existence of the basin as a remnant of the former more comprehensive development benefits from a planning permission in its own right.
- 4.8 In considering how the Inspector had approached the issue of abandonment, Justice Lindblom noted that the consequence of the conclusion around the purpose for which the basin had been designed (and the material differences between a commercial and a private use) meant that the current use could not be authorised even if the permission had not been abandoned, because the current use is materially different from the permitted use; he further notes that the Inspector explicitly and deliberately referenced this within his decision. He concludes by noting that the Inspector's decision "... did not rest on the concept of abandonment in planning law" and that he was able to determine the ground (c) appeal without resolving this matter because, in effect, it had been superseded by other events.
- 4.9 Justice Lindblom also deals with the matter of the S52 Agreement, which has been a central tenet of the appellant's case. The S52 Agreement, signed in connection with the redevelopment of the site to the north of the river in 1985, limited the use of the site to private moorings only and the appellant has consistently argued that this effectively permits private moorings. This is dealt with definitively in the judgement. At para 65, it is explained that after the relevant planning permission(s) for the commercial boatyard had been issued and implemented, two supervening events occurred – firstly the commercial boatyard physically ceased to exist when Jenners went into administration and the site was vacated and, secondly, any vestige commercial use legally ceased when the S52 Agreement was signed which prevented any commercial mooring. Given that the lawful mooring accruing from the historic permissions were commercial moorings associated only with the commercial use, the cessation of that commercial use (physically and legally) signalled the end of those moorings. The current private mooring use is in any case materially different to the earlier commercial use and would therefore need a separate planning permission. Attention is drawn to the Inspector decision that "... the section 52 agreement did not itself, and could not, have the effect of granting planning permission for a private mooring use " (para 66).
- 4.10 Overall, on the question of whether the Inspector erred in law, Justice Lindblom concludes "There is no error of law in the path the inspector took to that conclusion and his consequent decision on the ground (c) appeal" (para 68).

#### The restriction of the mooring use

- 4.11 The second ground of challenge was a largely technical one, and it was related to the first ground. The second challenge said, in effect, that the Inspector erred in law in concluding that there was no planning permission (i.e. the ground 1 challenge) and there was instead a planning permission which was unrestricted. If there was an unrestricted planning permission,

then clearly the Inspector cannot issue a permission with a restriction – i.e. the restriction to 25 boats.

- 4.12 It is useful to remember at this point that when considering an appeal against an Enforcement Notice, as the Inspector was doing, one of the things that an Inspector will usually do is consider whether planning permission should be granted for the unauthorised development – this is the standard ground (a) appeal. Clearly, he will not do this if he concludes that there is already a permission.
- 4.13 In this case, the Inspector concluded that there was no extant planning permission and then went on to grant a permission for up to 25 boats. Justice Lindblom states that “ ... He was right to conclude that the material change of use at which the enforcement notice was directed was indeed a material change of use without the benefit of planning permission and, in particular, that it was not permitted by the planning permissions granted for the construction of the basin. It was therefore necessary for him to consider Mr Wood’s appeal on ground (a)” (para 72 and 73). He is satisfied that the Inspector was wholly entitled to consider the planning merits and decide whether or not a planning permission should be granted.
- 4.14 Overall, on the question of whether the Inspector was correct to restrict the mooring use in the permission he granted, Justice Lindblom is satisfied that the Inspector’s exercise of his planning judgement “ ... cannot be criticised or undone in these proceedings” (para 74) and he dismisses this challenge.

#### Irrationality

- 4.15 The third ground of challenge relates to the way in which the Inspector treated the s52 Agreement, with the appellant arguing that the purpose of this was to prevent commercial moorings but allow private moorings. The Inspector treated the S52 Agreement as part of the evidence that the use overall had been abandoned and the appellant argues that this was irrational.
- 4.16 Justice Lindblom dismisses this argument as “untenable” (para 77), agreeing with the Inspector’s conclusion that the agreement was “intended to ensure the permanent cessation of all commercial activity on the appeal site ..”, which it effectively did. He concludes that “I see nothing irrational in the Inspector’s conclusions here. They were, in my view, both logical and in the circumstances entirely reasonable”. He dismisses this challenge.

### **5 The Effect of the High Court Decision**

- 5.1 The decision by the High Court to dismiss the challenges means that the decision of the Planning Inspectorate is upheld.
- 5.2 The decision of the Planning Inspector was to uphold the Enforcement Notice in part, but to amend it to allow the mooring of up to 25 vessels, subject to compliance with certain conditions. These conditions included the requirement for the submission of information including details of layout, landscaping, ecological enhancements and a number of other matters within 3

months of the date of the decision (ie 20 October 2014). To ensure that this information was submitted, the Inspector added a further condition as follows:

20. The mooring use hereby permitted shall cease and all boats and pontoons shall be removed from the basin within 3 months of the failure to meet any one of the following requirements:

- (i) the submission of details in compliance with conditions nos. 3, 4, 6, 9 and 11;
- (ii) if within 11 months of the date of this decision the Local Planning Authority refuse to approve any of the submitted details relating to conditions 3, 4, 6, 9 and 11 or fail to give a decision within the prescribed period, an appeal shall be made to the Secretary of State and accepted as valid;
- (iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details relating to conditions 3, 4, 6, 9 and 11 shall have been approved.

The effect of condition 20 was such that if the information was not submitted within the three months, or if it was not acceptable and therefore not approved by the LPA within 11 months and if no appeal had been submitted in respect of the LPA's refusal to approve, then the permission would lapse.

- 5.3 The landowner did not submit any of the information required within the three month period. This means that, in accordance with condition 20 of the appeal decision, the permission for up to 25 vessels which was granted by the Inspector has lapsed. There is nothing in the recent judgment that extends or can extend the period for compliance. All of the development in the basin is therefore unauthorised.
- 5.4 Members may also recall that the landowner did submit an application to the Broads Authority to vary 19 of the 20 conditions. This Broads Authority declined to validate this application (on legal advice because of the outstanding High Court Challenge) and the landowner subsequently appealed to the Planning Inspectorate against non-determination. The Planning Inspectorate declined to validate the application as the matter was to be dealt through the High Court challenge
- 5.5 It is the case that the Enforcement Notice, and hence the appeal decision, related only to the basin, however there are matters within the appeal decision which are pertinent to the remainder of the site. The Inspector determined in the appeal decision that the use of land (including land which was covered by water) for private mooring did constitute a material change of use for which planning permission is required (para 36) and this is relevant to activities outwith the ambit of the Enforcement Notice.

## **6 Current Situation on Site**

- 6.1 It is worth noting that since the initial Enforcement Notice was served in November 2011 and during the process of the various appeals and challenges, the landowner has continued to undertake further development on

the site. No planning applications have been submitted to cover any of this additional development and therefore it is unauthorised. Some of this is within the area covered by the 2011 Enforcement Notice (although not covered by it) and some is on other parts of the site. The Broads Authority has continued to receive regular complaints from local residents about this additional development throughout the duration of this case. No action to date has been taken in respect of these additional breaches pending the outcome of the Enforcement Case relating to the basin.

- 6.2 The most significant of these further breaches is the clearance of the riverbank on the Yare frontage adjacent to the opening to the basin, works and repairs to the dilapidated quayheading to facilitate mooring. These works commenced in early August 2012 and whilst the number of boats moored along the riverbank in this location varies, overall it has been increasing and residential mooring has also been taking place. There has also been the creation of rudimentary decked areas on the adjacent land, which is used to store domestic paraphernalia or create an outdoor sitting area. The landowner has indicated his intention to continue these works in order to 'improve safety' and provide more spaces for mooring. These particular breaches are within the area covered by the original Enforcement Notice, but is not covered by it. There is no planning permission for mooring in this location.
- 6.3 At the western end of the site, land is being used for the parking of vehicles, (including a converted ambulance) some of which are being used for residential purposes. There are also a number of tents which appear to be permanently occupied, although it is anticipated that this use is likely to be seasonal. Various structures have also been erected in this area in connection with the habitation use, including storage sheds and decked areas. These particular breaches are within the area covered by the original Enforcement Notice, but are not specifically covered by it.
- 6.4 There have been repeated complaints from local residents, and interest shown by the local MP and the Town Council about these additional activities and an expectation that further action will be taken by the Broads Authority. When considering if and what further action might be appropriate, it will be necessary to consider how to address these further breaches.
- 6.5 For clarity, it is useful at this point to identify which breaches are covered by the original Enforcement Notice, which are within the area but not covered and which are entirely outwith the Enforcement Notice and this is as follows:

a	Covered by Enforcement Notice	<ul style="list-style-type: none"> <li>• Mooring of boats in the basin</li> <li>• Retention of pontoons and jetties in the basin</li> <li>• Standing of green metal storage container</li> </ul>
b	Within area of Enforcement Notice, but not covered by it	<ul style="list-style-type: none"> <li>• Mooring of houseboats in the basin</li> <li>• Operational development to replace remnant quayheading</li> </ul>

		<ul style="list-style-type: none"> <li>• Construction and use of various decked areas and other structures associated with mooring berths</li> <li>• Use of land for standing of vehicles and other structures, including for residential purposes</li> <li>• Horsiculture (intermittent)</li> </ul>
c	Outside Enforcement Notice area and scope	<ul style="list-style-type: none"> <li>• Mooring of boats along the river frontage</li> <li>• Operational development to replace remnant quayheading</li> <li>• Construction and use of various decked areas and other structures associated with mooring use</li> </ul>

## 7 Potential Options for Further Action (if required)

7.1 The LPA has a number of options in how it approaches securing compliance with the Enforcement Notice, as upheld by both the Inspector and the High Court. It will also need to decide whether simply to enforce the requirements of the Enforcement Notice, or to address also the additional breaches.

7.2 It should be noted at the outset that the appellant has the right to appeal the High Court decision and that he has indicated informally that he plans to do so. This appeal would need to be submitted within 21 days of the date of the High Court Judgment (ie by 27 August 2015) and if such a challenge is submitted then this may well preclude the Broads Authority from being able to take further action in respect of this site pending the outcome of that specific appeal.

7.3 Were the LPA to be in a position to take further action, the approaches it could take are set out in some detail below. For clarity, the report indicates to which set of breaches (ie covered by the original Enforcement Notice etc as set out at 6.5 above) they potentially apply. In summary these approaches include

- (i) Take no action;
- (ii) Seek to negotiate a mutually acceptable solution with the landowner;
- (iii) Serve further Enforcement Notices in respect of the new breaches;
- (iv) Prosecute the landowner for non-compliance with the Enforcement Notice;
- (v) Apply to the High Court for an Injunction.

7.4 It is noted that the LPA could use a combination of the listed approaches.

### Take no action

7.5 Whilst this is technically an option, given the resources that the LPA and local residents have so far committed to this process, plus the expectation from residents and others that the Authority will uphold and defend its planning decisions, plus, most importantly, the need to protect the area from

unacceptable development, this is not a preferred option. Were the Authority to not enforce following the High Court decision, it would be open to significant local criticism and reputational damage.

- 7.6 It is noted that the LPA could decide to take no action on any or all of the breaches – ie those covered by the original Enforcement Notice, those within area of Enforcement Notice, but not covered by it and/or those outside the Enforcement Notice area and scope.

#### Negotiation with the landowner

- 7.7 Government advice, and best practice in enforcement, is to seek to negotiate and mediate a mutually acceptable compromise and to avoid, where possible, recourse to formal action. In this case, unfortunately, the landowner has consistently refused to engage constructively with the LPA and has, instead, sought to challenge every decision. He has also made it clear through his challenges to decisions which have given him firstly 12 boats and then up to 25, that what he seeks here in effect is an unrestricted permission. He has also undertaken further development in breach of planning controls (see 6.2 and 6.3 above) and indicated that he intends to challenge the decision of the High Court in the Court of Appeal. Given this context, the realistic prospect of constructive engagement is likely to be limited.. This approach is also likely to be unpopular with local residents.
- 7.8 Nonetheless, this is an approach which could be taken. Were Members minded to negotiate, the decision of the second Inspector to grant permission for up to 25 boats (albeit heavily conditioned) would be a strong material consideration and Members might seek to encourage the submission of a formal application framed in the terms of the Inspector's decision. If successful, this would achieve a negotiated solution, however, based on previous experience, there is a strong risk that this approach would be likely to result in more delay in achieving a resolution on site.
- 7.9 As at 7.6 above, the LPA could decide to negotiate with the landowner on any or all of the breaches. There may be an issue of consistency, however, around negotiating on the matters covered by the Enforcement Notice given that this has been upheld by the High Court.

#### Further Enforcement Notices

- 7.10 It is the case that the LPA could serve further Enforcement Notices in respect of the new breaches itemised in the table at 6.5 above. Section 172 (1) of the Town and Country Planning Act 1990 provides that an LPA may issue an Enforcement Notice where it appears to them that (a) there has been a breach of planning control and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. In this case, it is clear that there has been a breach. With respect to (b), as detailed above, the breaches are having an adverse impact on the area and are contrary to development plan policies, particularly adopted Core Strategy (2007) Policies CS1, CS4, CS5 and CS24 and

adopted Development Management (2011) Policies DP2, DP4, DP5, DP16, DP25 and DP28. It would be expedient to issue further Enforcement Notices.

- 7.11 Given the history here, however, it is likely that appeals would be lodged against these and compliance would then be suspended pending the outcome of those appeals – in effect perpetuating the current situation for local residents. The breaches would then continue for that period. Based on the previous history of this landowner in circumstances where compliance is suspended (for example, whilst pending the outcome of the legal challenge), it is also difficult to have confidence that there would be no further new breaches. On this basis, it is not considered that the serving of further Enforcement Notices in respect of the new breaches would be likely to achieve timely compliance; moreover, the service of further Enforcement Notices would not protect against new breaches.

#### Prosecution for non-compliance with the Enforcement Notice

- 7.12 There is an option to prosecute the landowner for non-compliance with the Enforcement Notice. Non-compliance with an Enforcement Notice is a criminal offence under s179(2) of the Town and Country Planning Act 1990 and the landowner would suffer the consequence of this; in addition he would be likely to receive a fine. It is also an offence under s179(5) of the same Act for a person who has control of or an interest in the land to which an enforcement notice relates (who is not the owner) to carry on any activity which is required by the notice to cease or to cause or permit such an activity to be carried on, so a penalty would also apply to the owners of the boats which are unlawfully moored.
- 7.13 These matters can be heard in the Magistrates' Court and in the Crown Court. The penalty in both these circumstances is a fine of up to £20,000 if the matter is disposed of in the Magistrates' Court to an unlimited fine if the matter is disposed of in the Crown Court. In considering the level of the fine the court is obliged to have regard to the financial benefit which has accrued or which appears likely to accrue to the defendant in consequence of the offence though will also need to take account of the defendant's means.
- 7.14 Whilst prosecution is an option, it would only apply to the matters covered by the Enforcement Notice. It should also be noted that a successful prosecution would still not actually achieve compliance and the LPA would need to pursue the landowner further to achieve this.
- 7.15 Prosecution can sometimes be a useful tool to prompt compliance, although it is rarely a swift remedy as the Court processes can be slow. Given the history here, it is also likely that the landowner would be unlikely to assist the process possibly, introducing the maximum delay, and the unacceptable situation on site would persist for the period of the process.
- 7.16 It should be noted that the LPA could only prosecute in respect of those matters where there has been non-compliance with the original Enforcement Notice. This remedy could not be used in respect of those breaches within



area of Enforcement Notice, but not covered by it and those outside the Enforcement Notice area and scope.

### Injunction

- 7.17 Finally, there is an option to pursue an injunction. Section 187B of the Town and Country Planning Act 1990 provides for an LPA to use an Injunction to restrain breaches of planning control. This may be used for any actual or apprehended breach of planning control and may be used whether or not other means of enforcement have been used and/or failed. The guidance on Injunctions is clear, however, that this should be a remedy of last resort.
- 7.18 In applying to the Court for an Injunction, the LPA will need to demonstrate why this is “necessary or expedient”. It is noted that the tests of “necessary or expedient” applies to the Injunction, not the breach. In this case, the LPA could argue that the test of necessity is met by the fact that the breach is having an adverse impact locally and that previous remedies – ie the earlier Enforcement Notices – have been disregarded and that there is no confidence that further Enforcement Notices would be complied with. In respect of the test of expediency, this requires consideration of the advantages and disadvantages of taking one or other or none of the available steps. As stated above, it is not appropriate in this case to take no action; similarly the probability of success of further Enforcement Notices on this site is doubted. It is acknowledged that there would be a cost associated with an application for an Injunction, but the LPA could argue that this could be justified taking into account the benefit of protecting from harm, both existing and apprehended, and area which is designated as of National Park status and of protecting local amenity.
- 7.19 Members should be aware that the Planning Committee previously considered the expediency of Injunctive action at the meeting on 1 March 2013 when they considered a report on the further development which had taken place on the site since the first decision of the Planning Inspectorate and pending the hearing on the first High Court challenge. They had at this time unanimously resolved to authorise injunctive action, however the rate of new unauthorised development then slowed, so this action was not taken. Subsequent to this, the first decision of the Planning Inspectorate was quashed and the appeal heard for the second time; action was suspended whilst this process was underway.
- 7.20 It should also be noted that the use of an Injunction can sometimes be a useful tool to prompt negotiation, as well as prompt compliance.
- 7.21 It should be noted that it is understood that a number of the vessels in the former mooring basin are being used for residential purposes. Clearly, if any Injunction were to require to cessation of this use these persons would, potentially (if the residential use is taking place), need either to relocate to an authorised residential mooring or find alternative accommodation. The impact on these persons would, therefore, potentially be severe and the LPA would need to consider this, whilst noting that any such use (if it is taking place) is without planning permission and the landowner is aware of this. The LPA has

no duty to provide alternative residential moorings for persons who are required to move from unauthorised moorings.

- 7.22 It is noted that the LPA could use an Injunction to address all of the breaches identified above – ie those covered by the original Enforcement Notice, those within area of Enforcement Notice, but not covered by it and those outside the Enforcement Notice area and scope. It can also be used to prevent further breaches (an apprehended breach) and this is one of its strengths.

## **8 Conclusion and Recommendation**

- 8.1 This is a clear and useful Judgement from the High Court, and one which builds on the previous decisions of the Planning Inspectorate in respect of the legal position, which has been consistently disputed by the landowner. Members will need to consider the decision carefully as well as what the LPA is seeking to achieve in deciding how to take this matter forward. There are number of options, and each has its own benefits and disadvantages
- 8.2 Members could take a collaborative approach and seek to negotiate a solution comparable to that which either Inspector was prepared to allow – ie a scheme of up to 12 or 25 boats, subject to careful conditioning. This approach is likely to prolong the situation on site whilst an application is being processed and a permission implemented; it would also need careful monitoring post-implementation. There may be some support for this approach.
- 8.3 In terms, however, of bringing the matter to a swift conclusion, the injunctive route is likely to be the most successful. It can be argued, given the history here, that this action is necessary and expedient; an Injunction has the added advantage of covering existing breaches and preventing any future (apprehended) breaches. This would be the recommendation to Planning Committee.

Background papers: Case file and High Court decision

Author of report: Cally Smith  
Date of report: 12 August 2015

Appendices: Nil

**Circular 28/83 Publication by Local Authorities of Information  
about the Handling of Planning Application  
for the quarter ending 30 June 2015**  
Report by Head of Planning

**Summary:** This report sets out the development control statistics for the quarter ending 30 June 2015.

**Recommendation:** That the report be noted.

## 1 Development Control Statistics

1.1 The development control statistics for the quarter ending 30 June 2015 are summarised in the table below.

Table 1:

Total number of applications determined	27						
Number of delegated decisions	22(81%)						
Type of decision	Numbers granted				Numbers refused		
	26(96%)				1(4%)		
Speed of decision	Under 8 wks	8-13 wks	13-16 wks	16-26 wks	26-52 wks	Over 52 wks	Agreed Extension
	25 (93%)	1 (4%)	0 (0%)	1 (4%)	0 (0%)	0 (0%)	0 (0%)
Numbers of Enforcement Notices	0(PCN)						
Consultations received from Neighbouring Authorities	15						

Table 2: National Performance Indicators

	BV 109      The percentage of planning applications determined in line with development control targets to determine planning applications.			
National Target	60% of Large Scale Major* applications in 13 weeks	60% of Small Scale Major* applications in 13 weeks	65% of Minor* applications in 8 weeks	80% of other applications in 8 weeks
	<i>*Large Scale Majors refers to any application for development where the site area is over 10000m<sup>2</sup></i>	<i>*Small Scale Majors refers to any application for development where the site area is over 1000m<sup>2</sup> but under 9999m<sup>2</sup></i>	<i>*Minor refers to any application for development where the site area is under 1000m<sup>2</sup> (not including Household/ Listed Buildings/Changes of Use etc)</i>	<i>Other refer to all other applications types</i>
Actual	1 application received. 1 determined in 13 weeks (100%)	0 applications received. 0 determined in 13 weeks (N/A)	22 applications received. 21 determined in 8 weeks (95%)	4 applications received. 3 determined in 8 weeks (75%)

Background Papers: Development Control Statistics provided by Broads Authority using CAPS/Uniform Electronic Planning System.

Author: Asa Coulstock  
Date of Report: 10 August 2015

Appendices: APPENDIX 1 - PS1 Returns  
APPENDIX 2 - PS2 Returns

## APPENDIX 1

### PS1 returns:

1.1	On hand at beginning of quarter	24
1.2	Received during quarter	26
1.4	Withdrawn, called in or turned away during quarter	5
1.4	On hand at end of quarter	18
2.	Number of planning applications determined during quarter	27
3.	Number of delegated decisions	22
4.	Number of statutory Environmental Statements received with planning applications	0
5.1	Number of deemed permissions granted by the authority under regulation 3 of the Town and Country Planning General Regulations 1992	0
5.2	Number of deemed permissions granted by the authority under regulation 4 of the Town and Country Planning General Regulations 1992	0
6.1	Number of determinations applications received	0
6.2	Number of decisions taken to intervene on determinations applications	0
7.1	Number of enforcement notices issued	0
7.2	Number of stop notices served	0
7.3	Number of temporary stop notices served	0
7.4	Number of planning contravention notices served	0
7.5	Number of breach of conditions notices served	0
7.6	Number of enforcement injunctions granted by High Court or County Court	0
7.7	Number of injunctive applications raised by High Court or County Court	0

## PS2 Returns

Type of Development	<u>Total Decisions</u>			<u>Total Decisions</u> Time from application to decision						
	Total	Granted	Refused	Not more than 8 wks	More than 8 wks but not more than 13 wks	More than 13 wks and up to 16 wks	More than 16 wks and up to 26 wks	More than 26 wks and up to 52 wks	More than 52 wks	Agreed Extension
<b><u>Large-scale Major</u></b>										
Dwellings	0	0	0	0	0	0	0	0	0	0
Offices/ light industry	0	0	0	0	0	0	0	0	0	0
Heavy industry/storage/warehousing	0	0	0	0	0	0	0	0	0	0
Retail distribution and servicing	0	0	0	0	0	0	0	0	0	0
Gypsy and Traveller Sites	0	0	0	0	0	0	0	0	0	0
All other large-scale major developments	1	1	0	1	0	0	0	0	0	0
<b><u>Small-scale Major</u></b>										
Dwellings	0	0	0	0	0	0	0	0	0	0
Offices/ light industry	0	0	0	0	0	0	0	0	0	0
Heavy industry/storage/warehousing	0	0	0	0	0	0	0	0	0	0
Retail distribution and servicing	0	0	0	0	0	0	0	0	0	0
Gypsy and Traveller Sites	0	0	0	0	0	0	0	0	0	0
All other small-scale major developments	0	0	0	0	0	0	0	0	0	0
<b><u>Minor</u></b>										
Dwellings		0	0	0	0	0	0	0	0	0
Offices/ light industry	0	0	0	0	0	0	0	0	0	0
Heavy industry/storage/warehousing	0	0	0	0	0	0	0	0	0	0
Retail distribution and servicing	0	0	0	0	0	0	0	0	0	0
Gypsy and Traveller Sites	0	0	0	0	0	0	0	0	0	0
All other minor developments	22	21	1	21	1	0	0	0	0	0
<b><u>Others</u></b>										
Minerals	0	0	0	0	0	0	0	0	0	0
Change of use	0	0	0	0	0	0	0	0	0	0
Householder developments	0	0	0	0	0	0	0	0	0	0
Advertisements	1	1	0	1	0	0	0	0	0	0
Listed building consent to alter/extend	3	3	0	2	0	0	1	0	0	0
Listed building consent to demolish	0	0	0	0	0	0	0	0	0	0
Conservation Area Consents	0	0	0	0	0	0	0	0	0	0
Certificates of lawful development	0	0	0	0	0	0	0	0	0	0
Notifications	0	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>27</b>	<b>26</b>	<b>1</b>	<b>25</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Percentage (%)</b>	<b>100%</b>	<b>96%</b>	<b>4%</b>	<b>92%</b>	<b>4%</b>	<b>0%</b>	<b>4%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>

Development Control Statistics provided by Broads Authority using CAPS/Uniform Electronic Planning System.

**Enforcement Update**  
Report by Head of Planning

**Summary:** This table shows the monthly updates on enforcement matters.

**Recommendation:** That the report be noted.

## 1 Introduction

1.1 This table shows the monthly update report on enforcement matters.

Committee Date	Location	Infringement	Action taken and current situation
5 December 2008	"Thorpe Island Marina" West Side of Thorpe Island Norwich (Former Jenners Basin)	Unauthorised development	<ul style="list-style-type: none"> <li>Enforcement Notices served 7 November 2011 on landowner, third party with legal interest and all occupiers. Various compliance dates from 12 December 2011</li> <li>Appeal lodged 6 December 2011</li> <li>Public Inquiry took place on 1 and 2 May 2012</li> <li>Decision received 15 June 2012. Inspector varied and upheld the Enforcement Notice in respect of removal of pontoons, storage container and engines but allowed the mooring of up to 12 boats only, subject to provision and implementation of landscaping and other schemes, strict compliance with conditions and no residential moorings</li> <li>Challenge to decision filed in High Court 12 July 2012</li> <li>High Court date 26 June 2013</li> </ul>

Committee Date	Location	Infringement	Action taken and current situation
			<ul style="list-style-type: none"> <li>• Planning Inspectorate reviewed appeal decision and agreed it was flawed and therefore to be quashed</li> <li>• “Consent Order “has been lodged with the Courts by Inspectorate</li> <li>• Appeal to be reconsidered (see appeals update for latest)</li> <li>• Planning Inspector’s site visit 28 January 2014</li> <li>• Hearing held on 8 July 2014</li> <li>• Awaiting decision from Inspector</li> <li>• Appeal allowed in part and dismissed in part. Inspector determined that the original planning permission had been abandoned, but granted planning permission for 25 vessels, subject to conditions (similar to previous decision above except in terms of vessel numbers)</li> <li>• Planning Contravention Notices issued to investigate outstanding breaches on site</li> <li>• Challenge to the Inspector’s Decision filed in the High Courts on 28 November 2014 (s288 challenge)</li> <li>• Acknowledgment of Service filed 16 December 2014. Court date awaited</li> <li>• Section 73 Application submitted to amend 19 of 20 conditions on the permission granted by the Inspectorate</li> <li>• Appeal submitted to PINS in respect of Section 73 Application for non-determination</li> <li>• Section 288 challenge submitted in February 2015</li> <li>• Court date of 19 May 2015</li> <li>• Awaiting High Court decision</li> <li>• <b>Decision received on 6<sup>th</sup> August – case dismissed on all grounds and costs awarded against the appellant. Inspector’s decision upheld (see report on Agenda)</b></li> <li>•</li> </ul>



Committee Date	Location	Infringement	Action taken and current situation
17 August 2012	The Ferry Inn, Horning	Unauthorised fencing, importation of material and land-raising and the standing of a storage container	<ul style="list-style-type: none"> <li>Enforcement Notice served in respect of trailer on 25 September 2013</li> <li><b>Compliance required by 11 November 2015</b></li> <li><b>Further breaches identified and negotiations underway</b></li> </ul>
8 November 2013	J B Boat Sales, 106 Lower Street, Horning	Unauthorised building of new office not in accordance with approved plans	<ul style="list-style-type: none"> <li>Authority for serving an Enforcement Notice in consultation with the solicitor requiring the removal of a prefabricated building and restoration of site, with a compliance period of three months. Authority to prosecute in the event of non-compliance</li> <li>Enforcement Notice served 19 November 2013</li> <li>Compliance required by 6 April 2014</li> <li>Negotiations underway regarding planning application</li> <li>Compliance not achieved and no application submitted</li> <li>Solicitor instructed to commence Prosecution proceedings</li> <li>Case to be heard in Norwich Magistrates Court on 28 January 2014</li> <li>Case adjourned to 25 February 2015</li> <li>Planning application received 13 February 2015 and adjournment to be requested for Hearing</li> <li>Revised Scheme submitted and approved</li> <li>Remedial works to be completed by 8 August 2015</li> <li><b>Remedial works to be completed by 8 October 2015</b></li> </ul>
10 October 2014	Wherry Hotel, Bridge Road, Oulton Broad –	Unauthorised installation of refrigeration unit.	<ul style="list-style-type: none"> <li>Authorisation granted for the serving of an Enforcement Notice seeking removal of the refrigeration unit, in consultation with the Solicitor, with a compliance period of three months; and authority be given for prosecution should the enforcement notice not be complied with</li> </ul>

Committee Date	Location	Infringement	Action taken and current situation
			<ul style="list-style-type: none"> <li>• Planning Contravention Notice served</li> <li>• Negotiations underway</li> <li>• Planning Application received</li> <li>• Planning permission granted 12 March 2015. Operator given six months for compliance</li> <li>• <b>Additional period of compliance extended to end of December 2015</b></li> </ul>
5 December 2014	Staithe N Willow	Unauthorised erection of fencing	<ul style="list-style-type: none"> <li>• Compromise solution to seek compliance acceptable subject to the removal of the 2 metre high fence by 31 October 2015</li> <li>• <b>Site to be checked 1 November 2015</b></li> </ul>
24 July 2015	Cross Keys Dilham	Unauthorised siting of a static caravan	<ul style="list-style-type: none"> <li>• Authority given for the serving of an Enforcement Notice seeking removal of the Static Caravan with a compliance period of three months; and</li> <li>• Authority given for prosecution (in consultation with the solicitor) in the event that the Enforcement Notice is not complied with</li> </ul>

## 2 Financial Implications

2.1 Financial implications of pursuing individual cases are reported on a site by site basis.

Background papers: BA Enforcement files

Author: Cally Smith  
Date of report: 3 August 2015

Appendices: Nil

**Appeals to the Secretary of State: Update**  
Report by Administrative Officer

**Summary:** This report sets out the position regarding appeals against the Authority since March 2015.

**Recommendation:** That the report be noted.

**1 Introduction**

- 1.1 The attached table at Appendix 1 shows an update of the position on appeals to the Secretary of State against the Authority since March 2015.

**2 Financial Implications**

- 2.1 There are no financial implications.

Background papers: BA appeal and application files.

Author: Sandra A Beckett  
Date of report 29 July 2015

Appendices: APPENDIX 1 – Schedule of Outstanding Appeals to the Secretary of State since March 2015

## APPENDIX 1

### Schedule of Outstanding Appeals to the Secretary of State since March 2015

<b>Start Date of Appeal</b>	<b>Location</b>	<b>Nature of Appeal/ Description of Development</b>	<b>Decision and Date</b>
3-3-15	<b>App Ref</b> <b>E9505/W/15/3004216</b> <b>BA/2014/0381/FUL</b> <b>BA/2015/0002/REF</b> 104 Lower Street, Horning, NR12 8PF  <b>Mr and Mrs John and June Wright</b>	<b>Appeal against refusal</b> Alteration of existing south west facing window and formation of a double doorway in place of double opening window and formation of access via external stairway to quay head decking area	Delegated Decision on 17 December 2014  Questionnaire and Notification Letters sent by 10-3-15  Statement sent by 7 April 2015  <b>Appeal allowed 22 July 2015</b>
28-05-15	<b>App Ref</b> <b>BA/2015/0002/REF</b>  <b>APP/E9505/W/15/3013 891</b> <b>BA/2014/0281/COND</b> Pampas Lodge Holiday Park The Street, Haddiscoe NR14 6AA  <b>Mr Colin Shirley</b>	<b>Appeal against refusal</b> Variation of Condition 6 of 1998/1645/CU to allow use of caravan pitch for year-round warden's accommodation	Delegated Decision on 3 December 2014  Questionnaire and Notification Letters sent 04-06-15  Statement sent by 02-07-2015
10-06-15	<b>App Ref</b> <b>BA/2015/0002/REF</b>  <b>APP/E9505/W/15/3013 891</b> <b>BA/2014/0281/COND</b> Pampas Lodge Holiday Park The Street, Haddiscoe NR14 6AA  <b>Mr Colin Shirley</b>	<b>Appeal for costs in respect of appeal at Pampas Lodge Holiday Park</b>	Response sent by 02-07-2015

**Decisions made by Officers under Delegated Powers**

Report by Director of Planning and Resources

Agenda Item No. 13

Summary:	This report sets out the delegated decisions made by officers on planning applications from 13 July 2015	to 12 August 2015
Recommendation:	That the report be noted.	

Application	Site	Applicant	Proposal	Decision
<b>Barsham And Shipmeadow PC</b>				
<b>BA/2015/0192/HOUSEH</b>	<b>4 Ink Factory Cottages Barsham Hill Barsham Beccles Suffolk NR34 8HF</b>	<b>Mr David Bircham</b>	<b>Removal of existing garage and erection of replacement garage.</b>	<b>Approved Subject to Conditions</b>
<b>Beccles Town Council</b>				
<b>BA/2014/0420/FUL</b>	<b>48 - 50 Puddingmoor Beccles Suffolk NR34 9PL</b>	<b>Mr William Bent</b>	<b>Demolition of most of existing sub-standard store with residential flat over. Erection of store, shower block to ground floor level with residential flat over.</b>	<b>Approved Subject to Conditions</b>
<b>Brundall Parish Council</b>				
<b>BA/2015/0172/FUL</b>	<b>Swancraft Riverside Estate Brundall Norwich NR13 5PL</b>	<b>Mr Tony Crampton</b>	<b>New mooring basin, quay heading, staging and finger jetties</b>	<b>Approved Subject to Conditions</b>
<b>Ditchingham Parish Council</b>				
<b>BA/2015/0177/FUL</b>	<b>8 Pirnow Street Ditchingham Norfolk NR35 2RU</b>	<b>Mr &amp; Mrs Derek And Sandra Hillyard</b>	<b>New single storey extension and windows replacement to the North East elevation and associated decoration work.</b>	<b>Approved Subject to Conditions</b>
<b>BA/2015/0178/LBC</b>		<b>Mr &amp; Mrs Derek &amp; Sandra Hillyard</b>		<b>Approved Subject to Conditions</b>

Application	Site	Applicant	Proposal	Decision
<b>Fleggburgh Parish Council</b>				
<b>BA/2015/0216/HOUSEH</b>	<b>St Margarets Mill Main Road A1064 Billockby Fleggburgh NR13 3AX</b>	<b>Mr Mark Leathers</b>	<b>Extension to Outbuilding</b>	<b>Approved Subject to Conditions</b>
<b>Horning Parish Council</b>				
<b>BA/2015/0131/FUL</b>	<b>Grebe Island Lower Street Horning Norfolk NR12 8PF</b>	<b>Mr Nigel Foster</b>	<b>Quayheading &amp; Mooring Redesign to Existing Private Moorings</b>	<b>Approved Subject to Conditions</b>
<b>BA/2015/0183/COND</b>	<b>25B The Cabin Bureside Estate Crabbetts Marsh Horning Norwich Norfolk NR12 8JP</b>	<b>Mr Brian Cunningham</b>	<b>Variation of Condition 2 of pp BA/1987/3605/HISTAP to allow holiday occupation of the bungalow all year round.</b>	<b>Approved Subject to Conditions</b>
<b>Hoveton Parish Council</b>				
<b>BA/2015/0195/HOUSEH</b>	<b>Rushmere Horning Road Hoveton Norwich Norfolk NR12 8JW</b>	<b>Mr John Curley</b>	<b>Kitchen/utility extension, alterations to windows and doors, external decking and internal alterations.</b>	<b>Approved Subject to Conditions</b>
<b>Oulton Broad</b>				
<b>BA/2015/0207/FUL</b>	<b>Thatch End 23 Boathouse Lane Oulton Broad Lowestoft Suffolk NR32 3PP</b>	<b>Ms Brenda Lanchester</b>	<b>Raising of building by 750mm. Demolition of flat roofed single storey kitchen. Erection of single storey pitched thatched roofed shower room. Provision of timber decking.</b>	<b>Approved Subject to Conditions</b>
<b>Reedham Parish Council</b>				
<b>BA/2015/0208/HOUSEH</b>	<b>Flint Cottage 34 Riverside Reedham Norwich Norfolk NR13 3TF</b>	<b>Mr Lionel Blanche</b>	<b>Erection of a 3.05m x 3.66m (10'0" x 12'0") summerhouse on top of existing garage. The summerhouse will be installed on day of delivery by Summer Garden Buildings of Rackheath.</b>	<b>Approved Subject to Conditions</b>

Application	Site	Applicant	Proposal	Decision
<b>Woodbastwick Parish Council</b>				
<b>BA/2015/0142/HOUSEH</b>	<b>Sotshole School Hill Ranworth Norwich Norfolk NR13 6HU</b>	<b>Mr And Mrs Davies</b>	<b>Conversion of existing internal garage and erection of timber summer house.</b>	<b>Approved Subject to Conditions</b>
<b>BA/2015/0143/LBC</b>			<b>Conversion of existing internal garage and erection of timber summer house including</b>	<b>Approved Subject to Conditions</b>
<b>Wroxham Parish Council</b>				
<b>BA/2015/0138/HOUSEH</b>	<b>Burewood House Beech Road Wroxham Norwich Norfolk NR12 8TP</b>	<b>Mrs Sarah Davies</b>	<b>Demolish the existing wet shed and construct a new wet shed in the same location.</b>	<b>Approved Subject to Conditions</b>
<b>BA/2015/0153/HOUSEH</b>	<b>Swans Harbour Beech Road Wroxham Norwich Norfolk NR12 8TP</b>	<b>Mr And Mrs D Thwaites</b>	<b>Demolish existing porch to side of dwelling and erect single storey extension plus cart shed to front of dwelling</b>	<b>Approved Subject to Conditions</b>
<b>BA/2015/0201/FUL</b>	<b>Riverside Art And Glass 24 Norwich Road Wroxham Norwich NR12 8RX</b>	<b>Mr Luigi Orsi</b>	<b>Proposed re-cladding of unbuilt extension and formation of external doors and formation of external retail space.</b>	<b>Approved Subject to Conditions</b>