

Planning Committee

08 October 2021

Agenda item number 7.2

BA/2021/0305/CU – Mooring at How Hill, Ludham

Report by Senior Planning Officer

Proposal

Change of use from occasional mooring to private mooring on riverside bank with quay heading.

Applicant

Broads Authority, Yare House, 62-64 Thorpe Road, Norwich, Norfolk, NR1 1RY

Recommendation

Approve, subject to conditions

Reason for referral to committee

Director discretion as Broads Authority is applicant. Proposal is a Departure.

Application target date

7 October 2021

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1. Description of site and proposals

- 1.1. The site is situated on the eastern bank of the River Ant between the village of Irstead to the north and Ludham Bridge to the south. How Hill House itself is a Grade II listed building which sits on elevated ground to the east and to the west is Turf Fen Drainage Mill and open marshes.
- 1.2. The moorings here extend from Toad Hall Cottage at the northern end of the pathway approximately 400m towards the south, with the application site the last mooring at the southern end. The moorings are owned by the Broads Authority and are operated as 24 hour visitor moorings. There is a boatshed measuring approx. 10m by 7m located to the north of the moorings, which is used by the Broads Authority for the Electric Eel boat which runs passenger trips along the dykes behind the How Hill National Nature Reserve.
- 1.3. The mooring the subject of this application is 16.8m in length and is located at the southern end of the stretch of moorings. The proposal seeks retrospective permission to change the mooring from a visitor one to a private one, used in association with the property known as Mill House.
- 1.4. The Local Planning Authority (LPA) has been advised that the application has come about as a result of the Broads Authority being approached in April 2019 by an individual who had recently purchased a residence in close proximity to How Hill, with deeds showing a right to a mooring space for any size of boat in the location where the Broads Authority's current How Hill boatshed sits.
- 1.5. The LPA has been advised that following significant investigation, negotiation and discussions with its solicitor, the Broads Authority offered a compromise to the local resident in the form of a restricted mooring space (private) for a restricted period (99 years) in an alternative location at the end of the visitor moorings. This was agreed in the form of new lease drawn up by a solicitor and signed by both parties.
- 1.6. This application seeks to regularise the situation in terms of planning.

2. Site history

- 2.1. None.

3. Consultations received

Parish Council

- 3.1. Support.

BA Historic Environment Manager

- 3.2. No objections.

4. Representations

4.1. Two received. Summary of comments:

- The proposal is contrary to the Broads Authority Mooring Plan.
- The proposal is contrary to the Local Plan for the Broads.
- Contrary to the Norfolk & Suffolk Broads Act 1988.
- Inaccuracies in the application details.
- The procedure order has not been followed.
- Toll payers will be disadvantaged from not being able to use the mooring.
- The mooring right has not been proven.
- No justification for the application.
- Details of the legal agreement should be disclosed.
- A different location should have been agreed.

5. Policies

5.1. The adopted development plan policies for the area are set out in the [Local Plan for the Broads](#) (adopted 2019).

5.2. The following policies were used in the determination of the application:

- SP14: Mooring provision.
- DM33: Moorings, mooring basins and marinas.
- DM21: Amenity
- DM16: Development & Landscape

6. Assessment

6.1. The main considerations in the determination of this application are the principle of the development and the resulting impact on amenity and the landscape character.

Principle of development

- 6.2. The application seeks to change the use of an existing mooring from public to private for a period of 99 years.
- 6.3. Strategic Policy SP14 of the Local Plan for the Broads does seek to protect existing short term visitor moorings and Policy DM33 reinforces this stance as a lack of moorings can restrict the use and enjoyment of the water and impede the local economy. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that planning

applications should be determined in accordance with the development plan unless there are other material considerations that indicate otherwise.

- 6.4. This proposal is in principle contrary to Policies SP14 and DM33 of the Local Plan for the Broads because it seeks to replace a 16.8m length of visitor mooring with a private mooring for a specific individual. Whilst there is a clear policy presumption against the development in principle, it should be considered what the impacts of allowing this specific proposal would be on the objectives of the policy, whether the proposal is otherwise acceptable and what material considerations may weigh in its favour.
- 6.5. The background to the application is outlined at 1.4 and 1.5 above. The LPA is advised that the evidence submitted was investigated and found to be valid – i.e. the property owner did indeed have a right to moor in the location where the Broads Authority's boatshed is situated. The possibility of a challenge was considered, but it was concluded that the cost would be high and there was a significant risk that the challenge would fail. The boatshed on the land where the historic right to moor is located was built in the late 1980s and is used for the Electric Eel passenger boat. The LPA is advised that the Broads Authority was not aware of this right previously as the deeds were not declared or registered with Land Registry, something which often occurs when dealing with historic paperwork.
- 6.6. How Hill, Toad Hall Cottage and the boatshed are important features for the Broads Authority and, together with the 400m of visitor moorings, form an important set of facilities for Broads users. In order to accommodate the historic mooring in its original location, the Broads Authority would need to demolish the existing boatshed and make good the surrounding quay heading. It would then need either to find an alternative location for the Electric Eel or to construct a replacement boatshed for that use. The most likely location for either of these solutions would be elsewhere on this stretch of land, which is in the applicant's control, and either would result in the loss of a length of the visitor mooring to accommodate the displaced use.
- 6.7. The LPA understands that the agreed compromise solution was that the property owner would instead be offered a section of the visitor mooring for his own private use on a 99 year agreement. This is not transferable. Whilst this would result in the loss of a 16.8m length of mooring, this would in any case be lost if the uses currently undertaken in the existing boatshed had to be relocated, so the outcome would be the same.
- 6.8. The visitor moorings in this location are a well-used and valuable amenity; indeed it is one of the most popular moorings in this area, and any reduction in capacity should be resisted (and planning policy supports this approach) other than in exceptional circumstances. In this case, however, there is a valid historic mooring right enjoyed by a third party which needs to be accommodated. To provide this in its original location (i.e. on the site of the boatshed) would result either in the loss of the boatshed, the uses that it provides and the public benefits which derive from these, or the loss of an equivalent length of moorings to provide space for a replacement boatshed. There

would also be significant costs, both financial and in terms of disturbance, associated with the second option. The alternative is that the third party be provided with a replacement mooring elsewhere at How Hill and this is what is proposed in this application.

- 6.9. On balance, it is considered that the circumstances here are exceptional. Whilst it is recognised that there is a loss of 16.8m of mooring, the public benefits related to the retention of the boatshed in terms of the recreational and education opportunities retained on site, the avoidance of the disturbance which would arise from its demolition and replacement and the environmental and financial costs associated with this, it is considered that these are material considerations which weigh in favour of the proposal.
- 6.10. In conclusion, therefore, whilst it is acknowledged that whilst the application is contrary to the provisions of SP14 and DM33, it is clear that this is an exceptional circumstance and it is not considered on balance that the impacts of the proposal would undermine the objectives of the policy and the scheme can therefore be supported.

Impact upon the landscape and character of the area.

- 6.11. The proposed change of use does not involve any physical development and so there will be no adverse impact on the character of the area. The mooring already exists and is located at the southern end of the large section of moorings spanning approximately 400m. It is tucked in, away from the main river channel and so there will be no adverse impact on navigation..
- 6.12. The proposal is therefore considered to comply with Policy DM33 (a, b, c, d, e, g & h) and Policy DM16 of the Local Plan for the Broads.

Amenity of residential properties

- 6.13. The mooring is not located close to residential properties with the user of the mooring themselves located some 400m away to the east. There will therefore be no adverse impact on the amenity of adjoining residents and the proposal is considered to comply with Policy DM21 and Policy DM33 (j & k) of the Local Plan for the Broads.

Legal issues

- 6.8 The two letters of objection raise issues relating to the deeds, in particular the wording used and whether or not the right to moor should be transferred to future purchasers. These documents have been reviewed by the applicant's legal advisors and were taken into account by the Broads Authority in deciding how to proceed. The contents of the deeds themselves are a civil and legal matter and are not a planning consideration in the determination of this application.

Other issues

- 6.14. The change of use is not considered to result in any adverse impact on biodiversity or the historic environment.

7. Conclusion

- 7.1. Based on the information submitted to support this application for the proposed change of use from a public to a private mooring, although the proposal is contrary to Policies SP14 and DM33 of the Local Plan for the Broads in terms of the principle of development, there are other material considerations to take into account. These circumstances are considered to outweigh the in-principle policy objection and therefore it is recommended that planning permission is approved subject to conditions.

8. Recommendation

- 8.1. Approve subject to the following condition:
- In accordance with the submitted plans.

9. Reason for recommendation

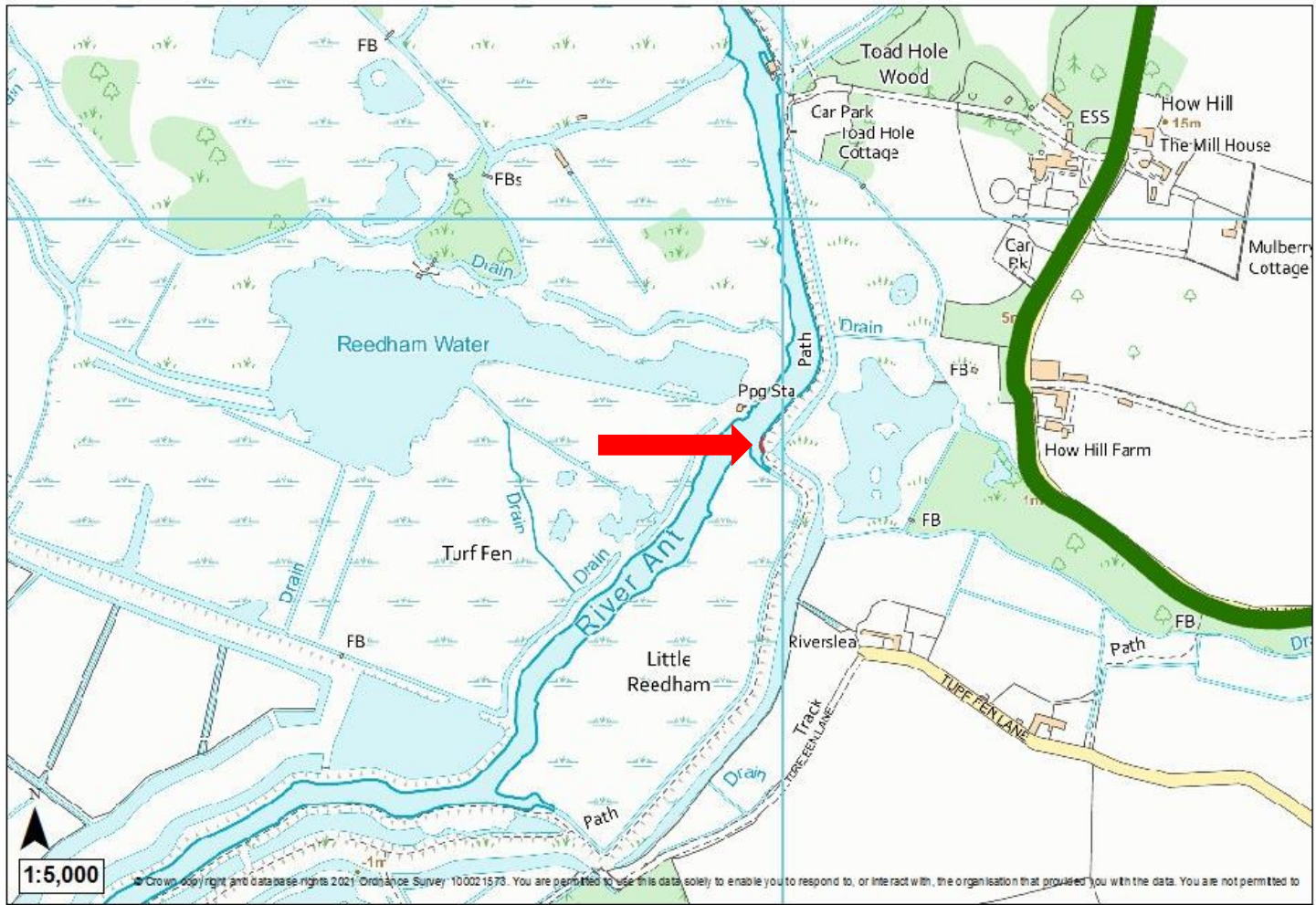
- 9.1. Subject to the conditions outlined above, the application is considered to be in accordance with Policies DM21 and DM16 of the Local Plan for the Broads.

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Date of report: 21 September 2021

Appendix 1 – Location map

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