

Broads Authority
Planning Committee

Minutes of the meeting held on 11 November 2016

Present:

Sir Peter Dixon – in the Chair

Mr M Barnard
Prof J Burgess
Mr W Dickson

Ms G Harris
Mr H Thirtle
Mr V Thomson

In Attendance:

Ms N Beal – Planning Policy Officer (Minute 5/11 – 5/13)
Mrs S A Beckett – Administrative Officer (Governance)
Ms S Evans – Planning Officer (Compliance and Implementation)
Ms A Long – Director of Planning and Resources
Mr G Papworth – Planning Assistant
Ms C Smith – Head of Planning

5/1 Apologies for Absence and Welcome

The Chairman welcomed everyone to the meeting. Apologies were received from Paul Rice and John Timewell.

5/2 Declarations of Interest

Members indicated their declarations of interest in addition to those already registered, as set out in Appendix 1 to these minutes. The Chairman declared a general interest on behalf of all Members relating to application BA/2016/0330/CU H Helska Leisure Centre, Ferry Marina, Horning as the applicant was related to a member of the Navigation Committee who was a former member of the Authority.

5/3 Chairman's Announcements and Introduction to Public Speaking

The Chairman announced that as no members of the public were in attendance, there would be no need for public speaking.

5/4 Minutes: 14 October 2016

The minutes of the meeting held on 14 October 2016 were agreed as a correct record and signed by the Chairman.

5/5 Points of Information Arising from the Minutes

None to report

5/6 To note whether any items have been proposed as matters of urgent business

No items had been proposed as matters of urgent business.

5/7 Requests to Defer Applications and /or Vary the Order of the Agenda

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

5/8 Applications for Planning Permission

The Committee considered the following application submitted under the Town and Country Planning Act 1990, as well as matters of enforcement (also having regard to Human Rights), and reached decisions as set out below. Acting under its delegated powers the Committee authorised the immediate implementation of the decision.

The following minutes relate to further matters of information, or detailed matters of policy not already covered in the officers' reports, and which were given additional attention.

(1) BA/2016/0330/CU Helska Leisure Centre, Ferry Marina, Ferry Road, Horning

Change of Use of to Office/Reception (Class B1)

Applicant: Mr Len Funnell

The application was before members as the applicant was related to a member of the Navigation Committee who was a former member of the Authority.

The Planning Assistant gave a presentation on the application for the change of use of the swimming pool section of the leisure centre associated with Ferry Marina into an office and reception area. It was understood that the swimming pool use was declining and was no longer viable. Other uses such as the café, small launderette, fish and chip shop and boat sales offices would remain. The use of the office and reception area would all be part of the same business.

Since the report had been written, Horning Parish Council had commented that they were in support of the application.

Having assessed the application particularly for the impact of the change of use of such a visitor facility and the criteria related to Policies DP27 and DP18, the Planning Assistant concluded that although the loss of a visitor facility was regrettable, the continued use associated with the business would still provide local employment and/or support the local tourist industry. There would be no additional traffic, and on the basis that the existing provision for swimming pool facilities within the District already exceeded demand there would not

be sufficient grounds to refuse the application. It was therefore considered that on balance the proposed use was acceptable and recommended for approval.

A member expresses some concern that a recent application (2011) had been granted for an extension of the leisure complex that included new swimming pool changing facilities. However, it was understood that the swimming pool was no longer viable and the applicant wished to limit the liabilities of the business. Members concurred with the Officer's assessment.

RESOLVED unanimously

that the application be approved subject to detailed conditions as outlined within the report. The proposal is considered to be acceptable and in accordance with the development plan particularly Policies DP18, DP27 and DP29 of the Development Management Plan (2011).

5/9 Enforcement of Planning Control: Mooring of Caravan on Floating Pontoon at Plot 9/9A Martham

The Committee received a report concerning the use of a mooring cut at Plot 9A alongside the River Thurne upstream of Potter Heigham for the mooring of a caravan on a floating pontoon which was connected to domestic services and used for residential purposes. Such a use was a breach of planning as the site being a leisure plot could not be used for the use of mooring vessels or the mooring of structures used for residential purposes. Members noted that the term "vessel" as stated in para 1.8 of the report should have read 'caravan'. Members noted that the breach of planning had been ongoing since 2014 and there had been numerous visits from and correspondence with officers. The owner was adamant that the structure was a vessel and had registered it as such and paid a toll in accordance with the regulations under the Broads Act.

It was recognised that the situation was not straight forward. It was noted that the Authority had encountered a similar case which had been the subject of an appeal, and detailed Planning Inspector's decision, with the Inspector concluding that not everything which floats is a boat. Officers were satisfied that the installation of the caravan on floating pontoons constituted development and its use for accommodation constituted a change of use to residential, was therefore unauthorised and in this location contrary to adopted Policies DP22, DP25, DP17, DP2 and DP4.

Members considered that there had been a clear and deliberate breach of planning control and considered that the recommendation before them was consistent with advice from the previous decision referred to above. They considered that it was necessary to take enforcement action in order to protect the local environment. They requested that the previous decision be appended to the Minutes.

RESOLVED unanimously

that an Enforcement Notice be served (in consultation with the Solicitor) requiring the cessation of the residential use and the removal of the caravan on floating pontoons known as “Broad minded” with a period of 3 months for compliance as it was contrary to policy and on the basis of the decision on a previous case (Details of which are attached to this Minute at Appendix 2 - Mr and Mrs Collins BA2010/0043/UNAUP4).

5/10 Enforcement Update

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

With reference to Thorpe Island, it was noted that Counsel’s advice had been sought. A planning application had been received that had now been validated and was currently being processed.

RESOLVED

that the Enforcement Update report be noted.

5/11 Broads Local Plan – Preferred Options Local Plan, Sustainability Appraisal, Habitats Regulation Assessment for consultation

The Committee received a report introducing the Preferred Options version of the Broads Local Plan with the accompanying Sustainability Appraisal and Habitats Regulation Assessment set out as follows:

- Appendix A Preferred Options Local Plan
- Appendix B Sustainability Appraisal
- Appendix C Habitats Regulations Assessment
- Accompanying Draft Policy Maps (25)

The documents were available on line and an additional Section 8 of the Sustainability Appraisal had been sent out separately.

The Preferred Options were all the result of the first round of consultations and Members had considered the majority of the Preferred Options in bite sized pieces between April and October 2016. Members noted that the Preferred Option version of the Local Plan combined the previous development plan policies – core strategy, development management policies and site specifics into one with many of the policies from these being rolled forward with no changes or minor ones as well as incorporating new topics.

The Navigation Committee had been provided with those policies relevant to navigation at its meeting on 27 October 2016 and comments had been invited. The Planning Committee considered and welcomed the comments received and accepted the positive responses provided by the Planning Policy officer.

Members noted that the Habitats Regulations Assessment as required by the Habitats Directive and UK Regulations provided by consultants, Footprint Ecology generally supported the thrust of the Local Plan as being sound and some minor text changes provided had been incorporated.

The Sustainability Appraisal had been prepared in house and was required to examine whether the effects of the specific sites area allocation and policies would give rise to sustainability benefits or dis-benefits. It was therefore designed to ensure that potential environmental effects were given full consideration alongside social and economic issues. The findings of the SA was summarised in the Local Plan and the policies rated well against sustainability criteria. Members noted the three negative impacts which had been specifically identified. However, it was considered that these could be mitigated. One of these – the site at Hedera House, Thurne had been included in the previous Site Specifics document by the Local Plan Inspector. It was considered that the consultation could raise some other issues which might not yet have been identified. A member raised the issue of the further loss of moorings which could be a significant threat through a resulting loss of business to the area. It was agreed to include this point within the Broads Local Plan and Sustainability Assessment.

The Viability Assessment required by the NPPF to assess the financial viability of the new Local Plan was being undertaken by Hamson Barron Smith and the first draft indicated that there were no major concerns or issues. However, some more work was required on a number of areas, some of which would be discussed at the consultation event(s). Once received the Viability Assessment would be sent out for consultation following the publication for consultation of the Broads Local Plan and SA, with a period for responses within the statutory consultation period required. Consultees would be informed that the Viability Assessment would follow.

It was noted that the Public Consultation was intended to take place from 5 December 2016 to 3 February 2017. Members had received notice of the three drop in sessions [scheduled for 15 December, 6 – 8 pm (Horning), Saturday 7 January 2017, 10 – 12.30pm (Oulton) and Thursday 19 January 2017, 6 – 8pm (Loddon/Chedgrave)]. There would be hard copies of the Local Plan and associated documents at various venues in addition to it being advertised in the press and being available from the Authority's website.

A report would be brought back to the Committee following the consultation and the next version would be the Publication version. It was anticipated that the publication version of the Local Plan and supporting documents would be available in April 2017. In the meantime, a series of new sections of the Local Plan would be brought to the Committee for consideration.

The Committee congratulated the Planning Policy Officer on the resulting documents and commended the approach that had been taken to enable consideration of the issues in bite-size pieces. They advocated the use of some illustrations particularly for the front cover of the document.

RECOMMENDED to the full Authority

that the Broads Local Plan and associated documents be approved for public consultation.

5/12 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 April 2016. It was noted that the Planning Inspectorate were dealing with a considerable backlog and therefore decisions on the appeals were taking longer than should be expected.

RESOLVED

that the report be noted.

5/13 Decisions Made by Officers under Delegated Powers

The Committee received a schedule of decisions made by officers under delegated powers from 27 September 2016 to 25 October 2016.

Members were pleased to note that five of the applications dealt with had come from the Monitoring process now in place. With reference to an anticipated potential application at Burghwood Barns, Ormesby St Michael, members requested that this be brought to Committee for consideration.

RESOLVED

that the report be noted.

5/14 Circular 28/83: Publication of Planning Authorities Development Control Statistics for the Quarter ending 30 September 2016.

The Committee received a report that provided the development control statistics for the quarter ending 30 September 2016.

Members considered that it would be useful as a benchmarking exercise to compare the Authority's performance against its neighbouring Districts as well as that of the other National Parks. Officers undertook to provide the information.

RESOLVED

that the report be noted.

5/15 Date of Next Meeting

The next meeting of the Planning Committee would be held on Friday 9 December 2016 starting at 10.00 am at Yare House, 62- 64 Thorpe Road, Norwich.

The meeting concluded at 11.14 am.

CHAIRMAN

Code of Conduct for Members

Declaration of Interests

Committee: **Planning Committee**

Date of Meeting: 11 November 2016

Name	Agenda/ Minute No(s)	Nature of Interest (Please describe the nature of the interest)
All Members	5/8(1) and (2)	Application BA/2016/0330/CU Helska Leisure Centre, Ferry Marina, Horning Applicant related to Navigation Committee member
Jacque Burgess		As previously declared
Bill Dickson	-	-
Haydn Thirtle	-	-
Gail Harris	(minutes)	Director of Whitlingham Charitable Trust
Vic Thomson		Director of Whitlingham Charitable Trust
Peter Dixon	5/8	Application BA/2016/0330/CU – knows the applicant



Appeal Decisions

Site visit made on 24 November 2010

by Nigel Burrows BA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 January 2011

Appeal Refs: APP/E9505/C/10/2134003 & 2134010

Land at Thorpe Island, Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk, NR7 0HE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Peter Collins and Mrs Jane Collins against an enforcement notice issued by The Broads Planning Authority.
- The Broads Authority's reference is BA/2010/0043/UNAUP4.
- The notice was issued on 21 July 2010.
- The breach of planning control as alleged in the notice is 'In the approximate position marked with a cross on the attached plan, and without planning permission, the unauthorised operational development of that land, namely the construction of a two storey structure constructed of wood'.
- The requirements of the notice are:-
 - 1) Remove the unauthorised operational development; and
 - 2) Remove the materials used in the construction of the unauthorised structure off the Land and/or to an area which has planning permission for the storage of such materials; and
 - (3) Restore the mooring cut to a condition fit for the use of mooring vessels.
- The period for compliance with the requirements is 2 months.
- The appeals are proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld

Procedural Matters

1. The appellants have lodged the appeals on ground (c) as indicated above. As the fees required to keep the deemed planning applications alive have not been paid, the planning merits of the development do not fall to be considered. Accordingly, I have taken into account the evidence that has been presented only insofar as it is relevant to my consideration of the specific issue set out within section 174(2) (c) of the Act.

The appeals on ground (c)

2. The onus is on the appellants under this ground of appeal to make out the case that there has not been a breach of planning control. The enforcement notice is directed at operational development, namely the construction of a two storey timber structure on a steel hulled flat bottomed barge about 7m long by 3.5m wide¹. The barge lies in a mooring cut of slightly larger dimensions on the northeast side of Thorpe Island opposite the Rush Cutters public house and near a railway bridge at Thorpe St Andrew.

¹ According to the Broads Authority's calculations

- The appellants' stance is the barge floats and it is capable of navigation; it is therefore a boat and planning permission is not required for the works referred to in the notice.
3. According to the appellants the barge has a rudder, a propeller and an engine room. However, there is no evidence to confirm that it actually has an engine. The appellants have a tug which can be used to move the barge and they also indicate that it can be moved manually, but their plan is to keep the barge on its mooring. The appellants' submissions confirm the two storey timber structure is intended as a 'holiday home'.
 4. The Broads Authority contends the erection of the structure, by virtue of its size and bulk, has rendered the barge incapable of navigation and it is not capable of travelling over water in any meaningful way; whether the structure floats or not, it no longer has the essential characteristics of a boat or a vessel. The Authority considers the erection of the structure amounts to operational development requiring planning permission.
 5. In terms of fact and degree, the works that have been carried out do not appear to have involved the fitting out of a boat or vessel for the purpose of navigation or travelling over water. The works do not appear to include the provision of any means of propulsion or navigation aids and there is a notable absence of the equipment one might expect to find on a boat or vessel intended for navigation. The height and bulk of the structure, which extends across the majority of the barge, has compromised its ability to navigate and its unwieldy nature suggests that it could only be manoeuvred with some difficulty. In effect, the barge has been subsumed beneath a two storey structure intended as a holiday home and which, as the appellants confirm, is intended to stay in situ. Overall, I share the Authority's view that the appeal structure is not a boat or vessel. The fact that the structure is capable of floating and of being moved (as I saw at the site visit) does not imply that it is immune from normal planning controls.
 6. The appellants have drawn my attention to other boats and barges with wooden structures including some at Woodbridge and on the Orwell Estuary, but the planning status of these examples is unclear. In any event, the appeal structure is somewhat unique and, in planning terms, I am not persuaded that it is comparable to boats or vessels elsewhere that have been constructed or kept on tidal moorings or waterways.
 7. The Authority also contends the structure cannot be regarded as a houseboat. As the Authority points out, the Courts² have held that a low rectangular floating platform with a two storey wooden house on it differed so far from what could be called a typical houseboat, as to no longer merit the description 'houseboat'. Reference is also made to an appeal decision relating to a marina in Staffordshire, in which the Inspector observed there is a considerable difference between a boat or a vessel designed for or converted into residential accommodation (where the hull usually forms part of the living space) and a flat pontoon on which a timber holiday chalet had been erected. Similar considerations apply in this case. As I have indicated, the barge has been subsumed beneath a two storey structure intended as a holiday home. To my mind, its appearance is more akin to a dwelling built on a floating platform than a houseboat.
 8. There is no doubt that the appeal structure is capable of floating, but the fact remains that not everything that floats is a boat. Consequently, it is necessary to consider whether it is a 'building' for the purposes of the Town and Country Planning Act 1990.
 9. Section 336(1) of the Act defines 'building' as including any structure or erection, and any part of a building, as so defined (but does not include plant or machinery comprised in a building). It must also be borne in mind that for, planning purposes, water is considered to be 'land'. There is case law concerning the change of use of land covered by water, although in this instance the notice alleges that operational development has taken place. With respect to the question of what is a 'building', the Courts³ have identified three primary factors which should be taken into account,

² *Sussex Investments Ltd v SSE and Spelthorne BC* [1997]

³ Including *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] as subsequently endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000]

namely size, permanence and physical attachment. However, no one factor is decisive.

10. With respect to size, the scale and bulk of the structure has necessitated its construction in situ, as opposed to it being brought on to the site ready made. In terms of permanence, the indications are that it is intended to stay in the cut and there is no evidence to suggest it is likely to move any significant distance. The structure has not yet been fitted out internally but its overall design is indicative of the intention to use it as a dwelling, which reinforces the impression that it has been provided with a prospect of permanence. In terms of physical attachment, there is no evidence of any services connected to the structure but it is attached to the land by ropes and it sits on the mud for extensive periods. The nature of the structure is such that it is able to sit on the land under its own weight for the majority of the time and occasional movement, such as floating on a sufficiently high tide, does not prevent it becoming part of the land.
11. As a matter of fact and degree, I conclude the structure constitutes a 'building' for the purposes of the Act. Consequently, building operations have taken place without the necessary planning permission and therefore a breach of planning control has occurred as alleged in the notice. The appeals on ground (c) fail.
12. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decisions.

Formal Decisions

13. I dismiss the appeals and uphold the enforcement notice.

Nigel Burrows

INSPECTOR