

Broads Authority
Planning Committee

Minutes of the meeting held on 23 June 2017

Present:

Sir Peter Dixon – in the Chair

Mr M Barnard
Prof J Burgess
Mr W A Dickson

Ms Gail Harris
Mr P Rice
Mr H Thirtle

In Attendance:

Mrs S A Beckett – Administrative Officer (Governance)
Mr S Bell – for Solicitor
Ms A Long – Director of Planning and Resources
Ms C Smith – Head of Planning

Members of the Public in attendance who spoke: None

13/1 Apologies for Absence and Welcome

The Chairman welcomed everyone to the meeting. Apologies were received from Mr V Thomson.

13/2 Declarations of Interest

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

13/3 Chairman's Announcements and Introduction to Public Speaking

(1) Director of Planning and Resources: Andrea Long

The Chairman wished members to note with much regret that this would be Andrea Long's last Planning Committee meeting with the Authority as she would be leaving us for pastures very new. He commented that she had been a fantastic support to him as Chairman and to the Planning department as well as to the Authority in general. It would be hard to ask for more. He wished her the very best of luck for her future.

The Committee endorsed the Chairman's comments.

(2) The Openness of Local Government Bodies Regulations

The Chairman gave notice that the Authority would be recording this meeting following the decision by the full Authority on 27 January to

record all its public meetings on a trial basis. The copyright remained with the Authority and the recording was a means of increasing transparency and openness as well as to help with the accuracy of the minutes. The minutes would be as a matter of record. If a member of the public wished to have access to the recording they should contact the Monitoring Officer.

- (3) **Introduction to Public Speaking** The Chairman reminded everyone that the scheme for public speaking was in operation for consideration of planning applications, details of which were contained in the Code of Conduct for members and officers. (This did not apply to Enforcement Matters.)

13/4 Minutes: 26 May 2017

The minutes of the meeting held on 26 May 2017 were agreed as a correct record and signed by the Chairman.

13/5 Points of Information Arising from the Minutes

There were no further points of information to report.

13/6 To note whether any items have been proposed as matters of urgent business

The Chairman commented that Members would be aware of a recent blog post made by Mr James Knight making accusations against the Committee and Authority staff in relation to Thorpe Island and Policy TSA2. Therefore, he had asked the Director of Planning and Resources to investigate the factual accuracy of the Blog and to obtain legal opinion. The resulting report had been circulated to all members and he proposed to take this at Agenda Item 9 in relation to the Enforcement Update as it needed to be a matter of public record. Members had also received a further email from Mr Knight.

The Committee concurred.

13/7 Requests to Defer Applications and /or Vary the Order of the Agenda

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

13/8 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' report, and which were given additional attention.

- (1) **BA/2017/0078/FUL Tipperary Cottage, Thimble Hill, Wayford Road, Smallburgh** Single storey dwelling house to be used as an annexe to the existing dwelling house on the site.
Applicant: Mr Neil Cousins

The Head of Planning provided a brief presentation of the application proposing the development of a dwelling house in the form of a 2 bedroomed bungalow to be used as an annexe sited in the curtilage of Tipperary Cottage towards the rear of the site. The annexe to the existing dwelling house on site was intended to accommodate a relative.

The Head of Planning explained that the application proposed a new form of residential accommodation in the form of a detached annexe. However, the definition of an annexe in planning terms was not precise and could result in a level of ambiguity as to where a proposal ceased to be an annexe and could in fact be an independent form of residential accommodation. Should members decide to grant planning permission this would require a Section 106 Agreement to ensure that the new unit was used only as an annexe.. Therefore it was recommended that members undertake a site visit in order to fully appreciate the relationship between the existing and the proposed units within the local context before determining the application.

Paul Rice proposed that the officer's recommendation be accepted. The Chairman put this to the vote and it was

RESOLVED unanimously

that the Committee undertake a site visit on Thursday 6 July 2017 in order to fully appreciate the relationship between the existing and the proposed building within the local context prior to determination of the application at the next scheduled meeting. (Apologies from Sir Peter Dixon)

13/9 Enforcement Update

The Committee received an updated report on enforcement matters already referred to Committee. The Head of Planning provided further information on the following :

Thorpe Island: (Western end formerly known as Jenners Basin) The new landowners had made good progress on the removal of the unauthorised vessels and in complying with the injunction and all that had been required had been completed to the officers' reasonable satisfaction. It was therefore

proposed to remove this item from the Enforcement Update Schedule and to provide the Committee with any further updates in 3 – 4 months' time.

Members accepted the proposal to delete Thorpe Island from the schedule as compliance had been achieved, welcomed the successful progress made after such a considerable time and commended all who had been involved in the process.

As stated in Minute 13/6 above, the Chairman referred to the piece that had been posted on social media in Mr Knight's Blog in association with Thorpe Island and amended Policy TSA2 in the Broads Local Plan. He thanked the Solicitor and the Director of Planning and Resources for providing such a prompt note in response and proposed that this be noted. He proposed that the issues raised were not matters for discussion by the Planning Committee and they were more appropriate for consideration by the Monitoring Officer and should be treated as an Authority matter.

Members concurred with the approach proposed by the Chairman and agreed:

- (i) to note the response to Mr Knight's Blog at Appendix 2 to these minutes and
- (ii) that the matter concerning the Blog be referred to the Monitoring Officer and the Authority.

Former Marina Keys, Great Yarmouth Untidy land and buildings

There had been correspondence with the owners explaining why some of the works the Authority had requested had not been done and queried whether some of the buildings might be demolished. The Authority's officers were in dialogue with Great Yarmouth Borough Council. Members welcomed the progress.

RESOLVED

that the Enforcement Update report be noted.

13/10 Broads Local Plan: Preferred Options

The Committee received a report introducing the latest topic to inform the publication version of the Local Plan set out as the June 2017 Bite Size piece.

This included policies on Soils with particular reference to Peat, a key matter for the Broads, given its abundance in the area and as it provided so much to ecosystem services. The policy had been developed in discussion with the Authority's Ecologist with the aim of protecting this as much as possible so that development did not have a disproportionate impact on that resource. This would be taken through to the publication version of the Local Plan

Members welcomed and strongly endorsed the proposed policy. The capacity for carbon capture was very significant with regards to climate change and in

relation to responding to government on the high risk flood risk strategy. It was hoped that this could be taken further.

It was noted that the survey on soils had been undertaken a few years ago and conditions could well have changed. It was therefore suggested that there be an examination of whether the current survey still had significant relevance and the potential for undertaking further survey work be examined and costed.

RESOLVED

that the proposed revised policies within the June Bite Size Piece on Soils for the Broads Local Plan be endorsed.

13/11 Customer Satisfaction

The Committee received a report which provided the results of the recently undertaken Customer Satisfaction Survey and the Agent's Forum in order to gauge how the Authority's planning service was performing in the eyes of its clients. Both of these showed a high level of satisfaction with the planning service, which was to be welcomed and commended. Members requested that the results be included within the Chief Executive's Briefing note and placed on the website as well as specifically drawing attention to it at the next Broads Authority meeting.

RESOLVED

that the report be noted

13/12 Appeals to Secretary of State

The Committee received a report on the current appeals against the Authority's decisions since April 2017 as well as a presentation providing an analysis of appeal decisions over the last three years.

Members had received notification of the decision received in connection with Violet Cottage at Irstead where the appeal had been allowed and the Head of Planning had provided members with a history of the site and an analysis of the Inspector's decision in relation to the Authority's policies.

The Head of Planning also provided an analysis of appeal decisions by the Inspectorate in relation to the Authority's policies over the last three years: 2014-2015, 2015-2106 and 2016- 2017. Three of the appeals allowed had been Committee decisions where the Officers had originally recommended approval. There was one other case where further information had been provided at the appeal stage which if provided earlier would have resulted in the application being approved. It was also worth noting that some of the Inspector's decisions within this period had come a considerable time after the the original decision had been made by the Authority.

Over the last year there appeared to be a definite change in approach from the Planning Inspectorate. This had also been experienced by other Local Planning Authorities including National Parks where there had been some unexpected decisions.

The Authority's policies had included a presumption against new residential development in that part of a village outside the development boundary, such areas being treated in policy terms as countryside. However, it appeared that the Inspectors were now taking a more pragmatic stance and examining whether proposed development, although outside the development boundary but "not in the countryside" (ie within or adjacent to a village) would cause "harm".

It was noted that the Broads Local Plan set out a local hierarchy of settlements and identified service villages where there was a more distinct level of development. The Authority would not necessarily wish to promote development where there were no services but it was recognised that there could be gaps. Members considered that the Authority did not necessarily need to change its policies but concluded that it should take a more pragmatic approach, examine the context of the proposed development, taking a character based approach, consider carefully the materials and design (as previously agreed and considered at its last meeting, Minute 12/12), consider whether there was an issue of harm, be less reliant on "evidence/justification not demonstrated", and be less purist.

Members were mindful that the Authority had an elongated boundary and did not have whole settlements within it, unlike within the boundaries of other National Park areas. It was therefore important for the Authority to communicate with its neighbouring District authorities to ensure consistency. This could be achieved through the duty to cooperate and other bodies such as the Greater Norwich Development Partnership.

Members welcomed the report and the benefits gained from the analysis in establishing a more pragmatic, character based approach in its decision making on planning applications.

RESOLVED

- (i) that the report be noted, reinforcing the requirement to take a pragmatic approach in interpreting policies always aiming to achieve a high standard of design in a protected area (*as agreed at the previous meeting*).
- (ii) that officers investigate further, the experiences of the other National Parks as well as those of the Authority's neighbouring authorities and ensure there is consistency with those neighbouring authorities where appropriate.

13/13 Decisions Made by Officers under Delegated Powers

The Committee received a schedule of decisions made by officers under delegated powers from 12 May 2017 to 8 June 2017.

RESOLVED

that the report be noted.

13/14 Date of Next Meeting

The next meeting of the Planning Committee would be held on Friday 21 July 2017 starting at 10.00 am at Yare House, 62- 64 Thorpe Road, Norwich.

The meeting concluded at 11.55 am

CHAIRMAN

Code of Conduct for Members

Declaration of Interests

Committee: **Planning Committee**

Date of Meeting: 23 June 2017

Name	Agenda/ Minute No(s)	Nature of Interest (Please describe the nature of the interest)
Paul Rice		Chairman of Broads Society



Jenner's Basin, Thorpe Island – Planning Policy Draft TSA2
Clarification of position for Members

Members may be aware of a recent Broads Blog from James Knight dated 17.06.17

<http://www.thebroadsblog.co.uk/2017/06/thorpe-island-planning-policy-update.html>

The article relates to Thorpe Island and proposed draft Policy TSA2, currently the subject of focussed consultation prior to reconsideration by Members later this year. It also relates to the discussion at the last Planning Committee (26 May 2017) when Members first considered draft TSA2. It makes a number of allegations including that Members were misled by Officers. This is not the first time James Knights has stated publicly that Officers have misled Members and the Chairman of the Committee has therefore asked Officers to provide a response.

This note is that response and has been put together by Officers and it has been approved by Steven Bell from Nplaw.

1. River frontage Mooring:

James Knights alleges that the Proposed Policy TSA2 is an attempt to ban mooring along the river, re-writes history and that there is a long established mooring right along the river bank.

In fact, there is no planning permission for mooring here. Any mooring use that did exist (in conjunction with the basin) has been abandoned. That point has been proven through the courts. There may have been riverside mooring in the 1960s and 1970s but there has not been anything above an occasional use since 1985 (when the Section 52 was signed). For an established use to be in place then it would need to be proved that there was continuous mooring for a period of 10 years. Aerial photos presented to the 2 public inquiries by the BA taken in 1999, 2003, 2006 show no mooring on the river frontage. Photographs supplied to both inquiries by an objector living opposite show no boats moored in 1985, 1986 and 2003. The same objector bought his house in 1985 and in his witness statement he said there had been virtually no mooring between 1998 and 2006. In fact he could only recall Puma (now sunk in the basin) being moored near the entrance of the basin in 1989 shortly before it was moved into the basin. Boats only started mooring along the river after 2011 (when Mr Wood was actively advertising mooring in the basin as he reacted to being served with an Enforcement Notice). There were no boats mooring on the river frontage when the Enforcement Notice was served in 2011 (or they would have been included within it).

If mooring were to take place here then it would need the benefit of planning permission (and the permission of the landowner for it to be implemented).

The area is still covered by the Injunction (See Appendix A) granted in June 2016, which prevents residential mooring. The draft policy is not preventing a use that is currently lawful and does not impinge any riparian rights. It should be noted that riparian rights are not planning permissions and do not confer any planning rights.

2. Appropriateness of mooring in this location.

James Knight alleges that Officers have wrongly attributed statements to the Inspectors in respect of the impact of mooring on the river on adjacent residents and that the 2012 Inspector's decision cannot be used to support any planning policy and to do so would result in maladministration.

In, 2012 Inspector (Wharton) talked about mooring in the basin being “harmful to both the character and appearance of the conservation area and to residential amenity in the locality” Para 58 of his report refers. However he goes on to say “some form of mooring facility as long as no harm is caused to the character and appearance of this part of the island or to the living conditions of nearby residents” – this indicates that he had concerns about the amenity of the residents opposite.

The 2014 Inspector (Grainger) says in his decision at para 50 “boats moored on the river bank would be more prominent than ones in the basin and would reduce any effect the others had”. Again an implied concern from the Inspector, that the boats on the river would have the greater impact on the amenity of the residents opposite.

The 2012 Inquiry did touch directly on the impact of the boats moored on the river on the amenity of the residents because the local residents raised it in their verbal evidence. The Inspector did agree that the impact of the river mooring would be greater than the basin because it was closer. However he did say it was out of his jurisdiction as the boats moored there by the time of the hearing, were not included in the Enforcement Notice (served in 2011) because they weren't there in 2011. (para 58)

The Broads Authority has discretion to base its planning policies on whatever it sees fit and can give weight to an inspector's decision if it so wishes even if that decision was quashed. In this case the 2012 Inspector's decision was quashed only on a technical point relating to the enforcement notice not the rationale behind the decision or the Inspector's reasoning. The 2nd Inspector also agrees with the reasoning in para 59 of his report. No maladministration point here and the BA is within its rights to assign as much weight as it considers appropriate to that Inspector's reasoning.

The BA does however need to ensure that its planning policies are consistent with any injunctions that may be in force on the land covered by the policy.

3. Historical Established Use

James Knight argues that there is a long established mooring use here and that it is “unarguable”.

This point is factually and legally incorrect. There is no established mooring use here. Evidence provided to both Inquiries by a local resident together with aerial photos was

accepted by the Inspector and proves that there was no continuous mooring taking place between 1988 and 2006 and the mooring use was abandoned together with the use of the basin. No lawful mooring use currently exists, no planning permission exists and the Injunction preventing residential mooring is still in effect.

4. Access

James Knight refers to anyone mooring on the riverbank being able to easily access the mainland via the bridge.

The bridge does provide an access and this was discussed at the Planning Committee meeting however this would only be with the landowner's permission. Without landowner permission to use the bridge then the riverside moorings could only be accessed by boat. The northern riverbank is characterised by private gardens and the only public access would be at River Green.

5. Draft Policy TSA2

James Knight alleges that the Inspector's decision had no powers to dictate planning policy for the riverbank and that a policy could be created to allow for mooring here.

The policy for the basin needs to reflect the Inspector's decision (as upheld by High Court and Court of Appeal) and is a material consideration of significant weight – this also applies to the Injunction which also covers the riverbank (see above).

A policy to create mooring here could only survive Public Examination if there was a realistic prospect of the use coming forward and that would require landowner consent and support. The purpose of the current focussed consultation is to elicit the views of the community and landowners and the responses received will be reviewed in that light. However it should be noted the Injunction is still in place.

6. Mooring on Northern side of the river

James Knight alleges that the mooring on the northern side of the riverbank is comparable to the mooring on the Thorpe Island side.

Mooring on the northern riverbank over a period of time is evidenced by photos submitted to the inquiry and corroborated by local people. Mooring is associated with the domestic dwellings where the landowners moor their own boat at the end of their garden. This doesn't require planning permission.

Mooring on the other side of the river was not associated with a domestic dwelling, was being run as a commercial business and did require planning permission which it didn't have. In addition there is now a live injunction on this area. Norwich City Council were interested in trespass mooring over their land where someone was receiving a financial gain by using their land rather than domestic use. It is unclear whether James Knight is advocating that he would like the BA/Norwich City Council/Crown Estate to pursue all those who moor their boats at the end of their garden?

Summary:

- a) There is no lawful mooring use here. There may have been in the 1960s and 1970s but certainly not since 1985 (over 30 years) .That use is abandoned but if someone wants to challenge that then they could submit a Certificate of Lawfulness application with evidence to suggest otherwise. The land is covered by a live injunction. Planning permission and landowner consent would be required before a mooring use could happen here. The Injunction would also have to be lifted.
- b) Norwich City Council were interested in someone receiving a financial gain through permitting trespass moorings over their land.
- c) There is no lawfully established mooring use here. Riparian rights are enjoyed by the owners. But no rights to moor exist without their permission.
- d) Inspector's reports (quashed or otherwise) can be afforded as much as much weight as the LPA sees fit in terms of policy development. The Inspector's decision was quashed on the technical point relating to the enforcement notice. His reasoning was not attacked by the challenge. The 2012 Inspector's reasoning was given weight by the 2014 Inspector and in turn by the Courts.
- e) The right to navigate is not impeded by this policy. It would be incorrect for anyone to say otherwise.

Other points to note:

- 1. The new landowners are not close personal friends of any BA Officer or Member
- 2. None of the key objectors were known to the BA officers or members prior to the unauthorised mooring use taking place
- 3. No BA officer or Member has been in receipt of any monies/bungs from any of the objectors and/or the new landowners.
- 4. The BA position has been upheld by 2 Inspectors, High Court and the Appeal Court.
- 5. There are no personal agendas from officers in respect of this case – it is simply a case of responding to complaints of unauthorised development and following it through.
- 6. James Knight's brother Bill Knight appeared at the 2012 Public Inquiry as a witness on behalf of Roger Wood. He was appointed in 2002 by the previous landowners as their agent and he acted for them and facilitated the sale to Roger Wood, when Mr Wood bought the eastern end of the island in 2004 and the basin in 2007. He also provided professional advice on the planning status of the basin when Roger Wood purchased the basin in 2007. Bill Knight acted for Roger Wood in respect of the recent sale (March 2017) and contributed to the now withdrawn planning application submitted in October 2016.
- 7. The Broads Authority has been represented by Steven Bell (nplaw) and William Upton (Counsel) throughout this matter. They both act for the Broads Authority and

not individuals within the Broads Authority. If there were concerns Steven Bell/William Upton (in acting in the best interests of the Broads Authority) would have raised those with the Monitoring Officer (at the time Victoria McNeill of nplaw).

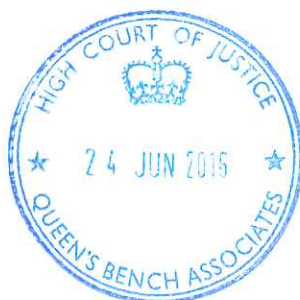
CLAIM NO: HQ 16X00618

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

IN THE MATTER OF
SECTION 187B OF THE TOWN AND COUNTRY PLANNING ACT 1990

BEFORE MR JUSTICE MITTING
On 16th June 2016

B E T W E E N:-



BROADS AUTHORITY

Claimant

-and-

(1) ROGER WOOD
(2) CAYENNE MARINE LIMITED

Defendants

ORDER

UPON HEARING Mr William Upton for the Claimant and Mr Ned Westaway for the Defendants

IT IS ORDERED THAT

1. There shall be an injunction in the form attached to this Order;
2. The Defendants shall pay two-thirds of the Claimant's costs, to be subject to detailed assessment if not agreed.

Dated 16th June 2016

CLAIM NO: HQ 16X00618

IN THE HIGH COURT OF JUSTICE
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-and-

- (1) **ROGER WOOD**
- (2) **CAYENNE MARINE LIMITED**

Defendants

INJUNCTION ORDER

PENAL NOTICE

**TO THE DEFENDANTS AND
ANYONE SERVED WITH A COPY OF THIS INJUNCTION ORDER**

**IF YOU DISOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF COURT
AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING
WHICH HELPS OR PERMITS THE DEFENDANTS OR ANYONE SERVED WITH A
COPY OF THIS ORDER OR EACH OF THEM TO BREACH THE TERMS OF THIS
ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE
IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.**

WHEREAS:-

This Order sets out the terms of the injunction restraining the use of the Land at the western end of Thorpe Island, Norwich NR7 0TH as defined in this Order and referred to in the Interim Order of the High Court dated 16th March 2016

IT IS ORDERED THAT:-

In relation to the land and riverbank at the western end of Thorpe Island, Norwich NR7 0TH, and shown as Sites 1 and 2 on the Plan attached to this Order ("the Land") the Defendants whether by themselves or by authorising any other person must:

1. Not permit the mooring of more than 21 vessels at any one time in the basin in Site 1;
2. Not permit the occupation of any vessel as a main residence or for more than 28 days in a year;
3. Within four months, remove all boats and pontoons in the basin in Site 1 and cease the use of the basin for mooring, unless
 - a. within three months, details capable of being consistent with those required by the planning conditions set out in the decision letter of the Planning Inspector dated 20 October 2014 are submitted as part of a planning application to the Broads Authority.
4. Not move any vessels moored in Site 1 to Site 2 unless they are moored in Site 2 for no more than four days;
5. Remove all the sunken vessels in the basin in Site 1 by 31 December 2016;
6. Remove the green container on Site 1 within four months unless a planning application is made under and in accordance with paragraph 3, and, in the event that such an application is made, must remove it within one month following final determination of the planning application.

Interpretation of this Order

1. In this Order the words "the Land" means the Sites 1 and 2, as shown on the Plan attached to this Order.
2. Site 1 is hatched red on the Plan attached to this Order
3. Site 2 is cross-hatched black on the Plan attached to this Order
4. In this Order, where there is more than one Defendant, (unless otherwise stated) references to "the Defendant" means both or all of them.
5. A requirement to serve on "the Defendant" means on each of them. However, the Order is effective against any Defendant on whom it served.
6. An Order requiring "the Defendant" to do or not to do anything applies to all Defendants.

7. In this Order “final determination” includes the final determination of any appeal and/or statutory challenge.

