

Broads Authority

Planning Committee

Minutes of the meeting held on 21 August 2015

Present:

Dr J M Gray – in the Chair

Miss S Blane
Prof J Burgess
Mr N Dixon
Ms G Harris
Mrs L Hemsall

Mr G W Jerny
Mr P Rice
Mr V Thomson
Mr J Timewell

In Attendance:

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

Members of the Public in attendance who spoke:

**BA/2015/0205/ FUL Herbert Woods Boatyard, Broads Haven,
Bridge Road, Potter Heigham**

Mr M Whitaker The Applicant

Enforcement Matter: Thorpe Island

Mr Thomas Foreman Thorpe St Andrew Town Council
Mr Jeremy Clarke Resident Thorpe St Andrew
Mrs Sofroniou Resident of Thorpe St Andrew
Mr Roger Wood Landowner, Thorpe Island

2/1 Apologies for Absence and Welcome

The Chairman welcomed everyone to the meeting particularly members of the public.

Apologies were received from Mr M Barnard.

2/2 Declarations of Interest

The Chairman declared a general interest on behalf of all members in relation to Application BA/2015/0205/FUL as the applicant was a Member of the Broads Authority. Members indicated that they had no other declarations of pecuniary interests other than those already registered and as set out in Appendix 1.

2/3 Minutes: 24 July 2015

The minutes of the meeting held on 24 July 2015 were agreed as a correct record and signed by the Chairman.

2/4 Points of Information Arising from the Minutes

None reported.

2/5 To note whether any items have been proposed as matters of urgent business

No items had been proposed as matters of urgent business.

2/6 Chairman's Announcements and Introduction to Public Speaking

(1) Site Visit for Generation Park Application – Proposed for 2 October 2015

Norwich City Planning Committee agreed to the date for the site visit in principle and will confirm agreement at their next meeting on 3 September 2015.

(2) 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 revised Code of Conduct for members and officers.

No member of the public indicated that they intended to record or film the proceedings.

2/7 Requests to Defer Applications and /or Vary the Order of the Agenda

There were no requests to defer applications or vary the order of the agenda.

2/8 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/2015/0205/FUL Herbert Woods Boatyard, Broads Haven, Bridge Road, Potter Heigham,**
Re-configuration of part of existing mooring basin measuring approximately 30, x 60m
Applicant: Mr Michael Whitaker

The Planning Officer explained that the application was before the Committee as the applicant was a member of the Broads Authority. He provided a detailed presentation of the proposals to remove a narrow spit of land between two existing mooring basin elements, formerly the site of wet boatsheds, on the well-established, commercial boatyard of Herbert Woods at Potter Heigham. The aim was to provide a more practical use of this section of the boatyard. The scheme would not result in an increase in moorings or a loss of existing moorings but would provide a more efficient use of the basin.

The Planning Officer referred to the consultation responses received. He explained that originally Historic England had concerns over the need to survey and document the excavated material and therefore an archaeological condition had been recommended. However, since the report had been written further consultation had been received from Historic Buildings at Norfolk County Council and Natural England stating they had no objections. Historic England was content with their conclusions. In addition, the Parish Council had no objections and was supportive as the proposal would tidy up the area.

Having provided a detailed assessment against the Authority's policies, particularly Policies CS1 and the criterion of DP16 for the reconfiguration of basins and therefore taking account of the main issues relating to impact on landscape character, protected habitats and species and the SSSI, and navigation, the Planning Officer concluded that there would be no significant adverse impacts and the application could be recommended for approval subject to conditions without an archaeological condition.

Having been satisfied by the applicant on the areas for the disposal of the spoil from the works, Members considered that the application was acceptable.

Prof Burgess proposed, seconded by Miss Blane and it was

RESOLVED unanimously

that the application be approved subject to conditions as outlined within the report with the deletion of an archaeological condition. The proposal was 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 NPPF (2012), a material consideration in the determination of the application.

2/9 Thorpe Island – Report on High Court Judgement

The Chairman explained that it was not usual to make provision for public speaking on enforcement matters - often it is necessary to protect the anonymity of complainants. However, given the high level of public interest in the case for Thorpe Island (as well as the previous public involvement at the Public Inquiry and Hearing) and the seriousness of the issues involved relating to a Conservation area in an area equivalent to a National Park, the Broads Authority proposed to allow it in this case. In making this exception, however, the Broads Authority required that any comments made should be in respect of the proposals for the way forward or future intentions for the site and not a rerun of the history and issues which had already been determined by the Inspector and upheld in the High Court. The procedure for public speaking would be in the usual format allowing 5 minutes for each of the parties.

The Committee was provided with a detailed presentation and report by the Head of Planning relating to the recent High Court challenge to a decision made by the Planning Inspectorate concerning the long standing enforcement matter at Thorpe Island. Letters were also received from LSR Solicitors and Planning Consultants on behalf of Mr Clarke and Mr Cooper, Leathes Prior Solicitors on behalf of Mr Roger Wood and Dr Rodney Furze, Architect who had originally drawn up sketch details for proposals in the 1960s and 1970s for the site.

Members noted that the High Court had dismissed all of the challenges and upheld the decision of the Planning Inspectorate. The report and presentation provided the background to the matter setting out the timeline for the planning history of the site from the 1960s to March 2010, the enforcement issues from November 2011 to the present day and provided an explanation of the High Court decision and its implications.

Members noted that the Judge's decision stated that the 1960s permissions were for a comprehensive development and not stand alone components and that there was no existing planning permission, the basin had been designed for a commercial use integral to the original comprehensive scheme and was not stand alone; and the current private mooring was not the same as commercial use. Therefore planning permission would be required. (The decision concluded that the Planning Inspector had not erred in law, was not wrong in restricting the number of boats and that the Planning Inspector's decision was not irrational.)

Members noted that further breaches had continued resulting in repeated complaints from local residents, the Town Council as well as interest shown by the local MP about the additional activities taking place. Boats including houseboats, continued to be brought on site together with other structures such as decking and vehicles. Members noted the breaches covered by the original Enforcement Notice, breaches which were within the area but not covered by the Enforcement Notice and breaches which were entirely outside

the area and the scope of the Enforcement Notice (being in the main river adjoining Thorpe Island).

Members noted that these breaches were having an adverse impact on the area and were contrary to development plan policies, particularly adopted Core strategy 2007 Policies CS1, CS4, CS5 and CS24 and adopted DM Policies (2011) DP2, DP4, DP5, DP16, DP25 and DP28

Members were provided with the details of the potential options for taking matters forward, taking account of the advantages and disadvantages of each. These included:

- (i) Taking no action;
- (ii) Seeking to negotiate a mutually acceptable solution with the landowner;
- (iii) Serving further Enforcement Notices in respect of the new breaches;
- (iv) Prosecuting the landowner for non-compliance with the Enforcement Notice;
- (v) Applying to the High Court for an Injunction.

The Head of Planning emphasised that not all of the options were mutually exclusive and it was open to members to consider a combination of the approaches if they so wished. However, in conclusion, the Head of Planning recommended the pursuit of an Injunction in respect of all breaches on the basis that it would be wide ranging, potentially quick, could satisfy the expectation from local residents and would be demonstrating that the Authority was upholding planning law and that it was serious in wishing to resolve the issues and remedy the breaches in a Conservation Area within a special area. The Head of Planning explained that the landowner had a right to appeal the High Court decision to the Court of Appeal which was required to be lodged by Thursday 27 August. If this was the case then any decision made today may need to be held in abeyance.

Mr Foreman, on behalf of Thorpe St Andrew Town Council explained that the Town Council was seriously concerned about the state and continued deterioration of Thorpe Island, part of a Conservation Area in an area with national park status. The Council therefore advocated the Compulsory Purchase of Thorpe Island as the most cost effective way forward in the public interest for the future. He explained that the Town Council would endorse the recommendation of the Planning Officers. Further breaches, enforcement notices and negotiations would result in further delays, and all previous attempts to remedy the breaches had been disregarded. It was considered that the Injunction route would be the most conclusive way to protect the area. There was concern that boats within the basin could then move to the river and therefore a cohesive approach was required. He requested that a proactive role be taken and advocated the use of an Injunction, and that other matters should be explored further.

Mr Jeremy Clarke on behalf of Thorpe St Andrew residents, also supported and welcomed the Officer's recommendation citing the letter from Linda

Russell, Solicitor and Planning Consultant on his behalf. The amenity of residents had been disrupted and violated and the situation continued to worsen. The Authority had followed due process and incurred costs. He personally had incurred legal fees to see that due processes were followed. The site did not have planning permission and the Authority had a window of opportunity to adopt "no development". He urged the Authority to take out an Injunction and follow this up with direct action.

Mrs Sofroniou supported Mr Clarke's statement. She explained that she had lived opposite the site since 1997 and what had been a haven for wildlife was now becoming an eyesore. The landowner had no respect for the planning laws and residents were in fear of what would take place next. Legal challenges had been employed by the landowner to continue with illegal actions. Therefore action was required to protect our heritage and pressure applied in order to protect the area for future generations.

Mr Wood, the landowner commented that originally the Authority had been in favour of a marina but appeared to have changed its mind. The original scheme, which included a marina with an associated clubhouse had been designed by an architect who still lived in Norwich and whose letter had been provided to the Committee. He stated that the people of Norwich needed and deserved a marina for their boats as evidenced from the newspapers. He was of the view that planning permission existed and that this covered the mooring of private boats. In answer to members' questions he explained that the original plans were similar to that which had been granted permission for a scheme in Brundall. He had challenged the decisions for which he had been granted 12 and also 25 moorings as he considered that these numbers were not sufficient to make his business viable and pay the rates.

Members were mindful that the Authority was charged with the protection of the Broads as a special area and its duty and responsibility was to uphold planning law and that it was best practise to negotiate. However, there was uncertainty as to the landowner's true aspirations given that he had not implemented the planning permission he had been granted by the Inspector under two separate decisions, or confidence that he would conform to the requirements of those decisions. Further Enforcement Notices could result in further delays. Therefore Members were in favour of an Injunction to cover all the breaches indicated as well as to protect the river frontage. A member also advocated that the landowner be given the opportunity to regularise some of the activities by submitting a well-constructed, detailed and thorough planning application in accordance with polices. It was noted that this opportunity had already been afforded to the landowner.

A member commented that having heard the views of the Town Council and the Local Residents, the Authority had a responsibility as a Local Planning Authority to uphold the planning legislation and the need to be aware of the local residents' needs and their amenity. The landowner had used the legal process to pursue his own objectives and in doing so had damaged the landscape, and the amenities as well as damaging the Conservation area which was part of the special landscape of the Broads, an area with

equivalent national park status. It was unlicensed development. No planning permission existed and therefore it was considered that the Authority must support the planning legislation and the decision of the courts and to protect the amenity of the residents. In supporting the recommendation, members emphasised that it was not a course being taken lightly. It represented a failure on the part of the system not of the Authority's making. The Authority had dealt with matters in accordance with the correct procedures. It was considered that there was no alternative if the Authority was to uphold the planning law, the rights of the people who lived and enjoyed the area and the credibility of the Authority.

Members noted that an Injunction could not guarantee compliance, although there could be heavy penalties for not doing so. It would be open to the Authority to consider direct action and seek to recover costs.

Members were advised that the timing of seeking/serving of an Injunction would depend on the submission of a challenge by the landowner of the High Court decision to the Court of Appeal and its acceptance. It would also be mindful that there was time in the existing Enforcement Notice for compliance. Therefore an Injunction would be subject to legal advice.

Mr Rice proposed, seconded by Mr Jermany and it was

RESOLVED unanimously

to authorise the initiation of a Planning Injunction in relation to Thorpe Island and the adjoining area as highlighted in the report subject to legal advice.

2/10 Circular 28/83: Publication by Local Authorities of Information about the Handling of Planning Applications for the quarter ending 31 March 2015

The Committee received the report with set out the development control statistics for the quarter ending 30 June 2015. It was noted the Authority was dealing with applications within Government targets and officers were to be commended.

RESOLVED

that the report be noted.

2/11 Enforcement Update

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

RESOLVED

that the report be noted.

2/12 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 March 2015. Since the schedule had been drawn up, a further appeal had been submitted in relation to Silver Dawn although this had not yet been validated by the Planning Inspectorate. It would be up to the Inspectorate to determine whether an appeal was dealt with by a Hearing. It was the duty of Broads Authority officers to defend any decision made by the Authority.

RESOLVED

that the report be noted.

2/13 Decisions Made by Officers under Delegated Powers

The Committee received a schedule of decisions made by officers under delegated powers 13 July to 10 August 2015.

RESOLVED

that the report be noted.

2/14 Date of Next Meeting

The next meeting of the Planning Committee would be held on Friday 11 September 2015 starting at 10.00 am at Yare House, 62- 64 Thorpe Road, Norwich,

The meeting concluded at 12.05 pm.

CHAIRMAN

Code of Conduct for Members

Declaration of Interests

Committee: Planning 21 August 2015

Name	Agenda/ Minute No(s)	Nature of Interest (Please describe the nature of the interest)
All Members	2/8(1)	Application BA/2015/0205/FUL As applicant a member of the Broads Authority
Paul Rice	2/8 and 2/8(11)	Application in my Ward as Parish Councillor and District Councillor – details already in front of Parish. Enforcement: Ferry Inn - involved in mediation
George Jermany		Toll Payer
Lana Hemsall	2/9	Apart from being lobbied generally, also been lobbied by Thorpe St Andrew Town Council