

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

Summary: This report sets out the position regarding appeals against the Authority since May 2013 and provides a summary of the Decisions on Appeals by the Secretary of State.

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 May 2013. It lists those appeals where decisions have been received in the last month and have yet to be made.

2 Financial Implications

2.1 There are no financial implications.

Background papers: BA appeal and application files

Author: Sandra A Beckett
Date of report 23 October 2014

Appendices: APPENDIX 1 – Schedule of Outstanding Appeals to the Secretary of State since May 2013

APPENDIX 1

Schedule of Outstanding Appeals to the Secretary of State
since May 2013

Start Date of Appeal	Location	Nature of Appeal/ Description of Development	Decision and Date
6-12-11 May 2013	<p>Appeal Ref E9505/C/11/2165163, BA/2011/0006/ENF BA/2010/0040/UNAUP4 The Island, Yarmouth Road, Thorpe St Andrew</p> <p>Mr Roger Wood</p>	<p>Appeal against enforcement concerning unauthorised development of "marina": The construction and installation of two jetties, the erection or standing of a green metal storage container, the use of part of the land for the standing of motor engines and the change of use of the site for the mooring of boats without the grant of planning permission</p>	<p>Committee authorisation 5 December 2008 and subsequent reports to Committee Notification Letter and Questionnaire sent by 20-12-11 Statement sent 03-02-12 Public Inquiry held on 1/2-05-12</p> <p>Decision issued 15 June 2012</p> <p>Decision challenged July 2012 and subsequently conceded by Secretary of State in May 2013</p> <p>Appeal to be re-heard by written representations. Statements submitted by 26-11-13</p> <p>Inspector's Site Visit 28-01-14</p> <p>Hearing 08-7-14</p> <p>Decision 20-10-14 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.</p>



Appeal Decision

Hearing held and site visit made on 8 July 2014

by **Phil Grainger BA(Hons) MRTPI**

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

Decision date: 20 October 2014

Appeal Ref: APP/E9505/C/11/2165163

land at the west side of Thorpe Island, Norwich NR7 0TH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Roger Wood against an enforcement notice issued by The Broads Planning Authority.
- The notice was issued on 7 November 2011.
- The breach of planning control as alleged in the notice is:
 - the construction and installation of two jetties in the approximate position marked with cross A on the plan attached to the notice;*
 - the erection or standing of a green metal storage container in the approximate position marked with cross B on the plan attached to the notice;*
 - the use of part of the land for the standing of motor engines in the approximate position marked with cross C on the plan attached to the notice; and*
 - the change of use of the site for the mooring of boats.*
- The requirements of the notice are:
 - (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;*
 - (c) to remove the motor engines and to restore the land to its condition as prior to the development; and*
 - (d) to remove the green metal storage container and to restore the land to its condition as prior to the development.*
- The period for compliance with each of the requirements is: *(a) 2 weeks; (b) 3 weeks; (c) 1 week; & (d) 2 weeks.*
- The appeal was made on the grounds set out in section 174(2) (a), (c), (d) (f) & (g) of the Town and Country Planning Act 1990 as amended. (See further below.)
- This decision supersedes that issued on 15 June 2012. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.

Summary of Decision: the notice is corrected and, under ground (g), varied. Subject to this the notice is upheld. However, the appeal (a) succeeds in part and planning permission is granted for mooring boats as set out in the formal decision.

Background

1. The earlier decision referred to above was issued following a public inquiry. In reaching my own decision I have had regard to the submissions made to that inquiry, so far as they have been made known to me.
2. The redetermination of the appeal was originally intended to be conducted by the written procedure. However, having considered the further written submissions made (some in response to my own queries) and having visited the site (on 28 January 2014) I concluded that a hearing would be the most appropriate way to resolve some outstanding issues. That hearing took place

on 8 July 2014 when I again visited the site and viewed it from some neighbouring properties.

3. I understand that since the original determination there have been changes in respect of the land around the basin and how it is used. Furthermore, boats are now moored on the river bank as well as in the basin. However, the river is not included within the area covered by the enforcement notice (apparently because no boats were moored there at the time the notice was issued). Moreover, whilst the land around the basin is covered by the notice, only those limited matters set out in the heading are attacked by it, together with the mooring of boats within the basin itself.
4. This reduces the significance of at least some of these changes for the appeal I am dealing with. It will be for the Authority to consider whether in the light of my decision any further action in respect of the river mooring or the on shore activities would be expedient. (For the avoidance of doubt I consider that mooring on the river could give rise to some different considerations that it has not been necessary or appropriate for me to address as part of this appeal.)
5. In addition, the motor engines have been removed. However, there is no dispute that they were formerly on the land and there is no need to exclude them from the notice (or suggestion that this should be done). That said, there seems no reason to consider them further.
6. I also saw that the green container referred to in the notice is a mix of metal and other materials. However, there seems to have been no doubt over which container the notice sought to attack (I saw no other on the land) and so there would be no injustice if I were to delete 'metal' from the description. I intend to do so if necessary.
7. Revised periods for compliance were agreed during the original Inquiry which I intend to impose if necessary. This effectively removes the need for further consideration of the ground (g) appeal. Moreover, the ground (f) appeal was withdrawn at the Inquiry and the appellant confirmed at the hearing that the ground (d) appeal was also withdrawn.
8. Furthermore, there is no dispute under grounds (c) regarding the jetties (which would more properly be described as floating pontoons¹); the container; and, to the extent relevant, the motor engines. Nor is planning permission being sought for the container (or motor engines). Accordingly, what remains to be considered is in effect an appeal under grounds (c) and (a) in respect of the mooring of boats in the basin and a ground (a) appeal regarding the pontoons. This was agreed at the hearing.

Main Issues

9. Having regard to the above, the main matters for consideration are:
 - (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;
 - (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 the nearby listed buildings; and the living conditions of local residents.

¹ This also is something that I am satisfied could be corrected in the Notice without causing any injustice.

Inspector's Reasoning

The ground (c) appeal – has there been a breach of planning control?

10. At the hearing it was agreed that the relevant planning unit is the land included in the enforcement notice, and not, as the appellant had previously argued, the whole of the River Yare. It was also agreed that the basin is a private area of water and that those navigating the River Yare have no right to enter without the owner's consent. The notice that I saw at the entrance to the basin during my January visit supports this conclusion². Taking all this into account I am satisfied that the mooring that is taking place in the basin cannot be regarded as ancillary to the use of the River Yare for navigation purposes. At the hearing the appellant did not seek to dispute this.
11. In addition, the basin itself does not have the nature or character of a waterway or navigation. It does not lead anywhere and boats have no reason to enter it except for the purpose of mooring. Moreover, the boats currently moored in it have not stopped briefly during the course of navigation. Instead the owners of the boats, all apparently private individuals, use the basin as their 'home base'. From there they may venture out onto the river, and further afield, from time to time but the appeal basin is the base that they return to and where the boats are moored for lengthy periods. Notwithstanding the *Kennet and Avon* decision (APP/E3905/C/06/2019638), which was not concerned with a basin, I consider mooring of this sort to be materially different to short term mooring during the course of a single journey or between closely spaced journeys.
12. Some boats are always present in the basin. There were 21 at my visit in January and 22 in July. These figures exclude 3 'houseboats', described by local residents as 'sheds on pontoons', which have arrived since January. I was told by the appellant that these 'boats' are not lived in but are simply being stored there and/or are being worked on. This is disputed by local residents who also consider that some of the other boats are being lived in.
13. I have not had access to any of the boats and it is not clear from the outside that any are lived in, though some could be. I did not, however, consider it necessary to investigate this matter further as my decision does not depend on any boats being in residential use. The notice, if confirmed, would require all boats to be removed, whether they are lived on or not. In addition, if I were to allow the ground (a) appeal and grant planning permission it would be possible to impose a condition regulating or prohibiting such use.
14. Moreover, whether or not any boats are being lived in, mooring in this manner and on this scale means that the basin and its surroundings now have a character that is very different from the semi-natural state that they had acquired. Taking all this into account I conclude that the mooring that is taking place amounts to development that, on its face, constitutes a material change of use.
15. Such a conclusion is supported by the changes that have occurred in the use and character of the land adjoining the moorings which is also covered by the enforcement notice. This land is increasingly used by boat owners for storage and recreational purposes and is acquiring an untidy and residential and/or recreational character. The parking or storage elsewhere on the land of a

² That notice may be relatively recent and it may well be that in the past boaters and others have from time to time entered the basin. However, unless they had previously obtained consent from the owner they would have done so as trespassers.

- digger and a pump out lorry adds to the overall effect. Both of these 'vehicles' are said to be used, or capable of being used, in connection with the moorings, though neither of them seems to have worked for a considerable time.
16. The presence on the site of motor homes that appear to be lived in has also had an effect on its character. There was one such vehicle present at my visit in January and a different one in July. Local residents suggest that at times there have been several more. However, whilst these vehicles add to the concerns of local residents, they are not directly or intrinsically linked to the use of the basin for mooring boats. They are not attacked by the enforcement notice and they can add little if anything to my deliberations. If the Authority consider it expedient to do so, they could commence separate enforcement action in respect of any breach of control that the motor homes represent. Similar comments apply in respect of the horses that are being kept on the site if this is not an agricultural use and problems are arising.
 17. Returning to the mooring which is being attacked by the enforcement notice, there are no 'permitted development' rights to moor boats in the manner that is occurring which amounts to a permanent, not a temporary, use even if some of the boats involved change over time. In addition, no ground (d) appeal is now being pursued. Accordingly whether there has been a breach of control turns on whether the use has planning permission as a result of one or more of the planning permissions that have been granted in respect of the land.
 18. This is at the heart of the matters remaining in dispute between the parties (which seem to have changed somewhat during the consideration of the appeal). Put at its simplest, the appellant considers that the permission granted for the construction of the basin also authorised its use for any type of mooring; that a use permitted in this way cannot be abandoned simply through non-use; and that accordingly the mooring that currently takes place is authorised by that permission. In contrast, the Authority argued initially that the use of the basin had been abandoned. Latterly they have argued that in any event the mooring that currently takes place is materially different to that for which the basin was designed.
 19. Turning to the planning history, this shows that in the late 1960s 4 applications were made that included the site of the basin. All were made by Jenners of Thorpe Ltd, a boat hire firm who were already operating from a site on the north bank of the river and were seeking to expand onto the island opposite which seems then to have been unused. The first application was an outline one, BF7642, which also included redevelopment of land north of the river. It was determined on 4 April 1967 when permission was granted for 'residential and commercial development'. The development envisaged on the appeal site was the construction of a mooring basin; erection of wet and dry boathouses; and erection of clubhouse.
 20. By that date a full application for the formation and construction of a basin had already been submitted (BF8095) and this was approved on the same date as BF7642. Subsequently permission was granted to erect a wet boathouse over most of the basin (BF9478) and, on 26 March 1968, a revised permission for this development was granted (BF9789). Both these were also full applications, not reserved matters submissions pursuant to BF7642. So too were other applications for a clubhouse and a bridge across to the north bank of the river. Although a dry boatshed does appear to have been approved as a reserved matters submission, I conclude that BF7642 was implemented only in part, if at all, and that the basin and wet boatshed were constructed pursuant to separate

- full permissions. Despite this, the evidence suggests that the development envisaged in BF7642 was, in effect, being brought into existence through the later full applications.
21. Not all of the proposed development had taken place when, in the face of changing circumstances, Jenners vacated the site. The basin had been constructed and the wet boatshed erected over most of it. The dry boathouse (but not the slipway to it) had also been built, as had the bridge across to the north bank of the river. However, the clubhouse was never built. Moreover, within a few years of Jenners vacating the island site all the buildings that had been erected on it were demolished leaving only the basin itself and the bridge.
 22. Returning to the permissions referred to earlier, up to the hearing, that for the formation and construction of the basin (BF8095) had, not unreasonably, been the centre of attention. This was an application for operational development, not a change of use. However, what is now s75(3) of the Town and Country Planning Act 1990 indicates that, if no use is specified, a permission for the erection of a building shall be construed as including permission to use it for the purpose for which it was designed³. In this context, 'designed' is generally taken to refer to what the building was intended for, not matters of architectural detailing.
 23. In the case of BF8095 I have found nothing in the limited material that has survived and been made available to me that plainly states how the basin was to be used. Nor does the permission granted impose any conditions restricting the use. Given this, and as BF8095 was a full application not formally linked to BF7642, the appellant considers that the basin could have been used for mooring of any type and that, but for the planning obligation that I deal with later, it still could.
 24. For my part I accept that even if at the time BF8095 was being considered everyone understood that the basin was intended to form part of the overall development envisaged in BF7642 that would be of no significance if the permission granted was clear and unambiguous on its face. I also accept that the basin as it exists is physically capable of and suitable for various types of mooring. Moreover, whilst 'mooring' is a broad term (and indeed not even mentioned in BF8095), I do not consider that this in itself introduces sufficient ambiguity to justify reference to extrinsic material.
 25. That said, cases that have followed *Ashford*⁴ indicate that in respect of full planning permissions like this it is permissible to refer to the plans as well as the decision notice as part of the permission and indeed that this is to be expected. In this case the relevant drawing is no. A770.15A. Reference to it reveals that it includes the following wording: *Jenners Thorpe (Phase 1 Stage 1) Proposed Redevelopment of Yarmouth Road, Thorpe for Jenners of Thorpe Ltd Island Site*.
 26. In my view, although these words make clear that the basin was not intended to be a stand alone facility, they introduce an element of ambiguity and uncertainty as an understanding of the nature of the larger scheme may be needed in order to establish the scope of the permission granted by BF8095. Unfortunately nothing in the documents that I have seen relating to BF8095 sets out what the larger scheme was. In such circumstances I consider that a

³ Although the basin is not a building in the normal meaning of that word, the parties consider that for the purposes of s75(3) it can be regarded as a building and I see no reason to disagree.

⁴ *R v Ashford B C, Ex parte Shepway D C* ([1999] P&CR 12)

- reasonable reader of the permission, together with the drawing, would refer to the factual context of the application.
27. In this case the context is that an outline application (BF7642) which was made by the same applicant and included a basin as well as other works was being considered at the same time and was approved on the same date. The two applications were not formally linked in the way that outline and reserved matters submissions would be. However, that would not have been possible given that BF8095 was submitted before BF7642 was approved and the absence of such a formal linkage is not sufficient to demonstrate that the basin permitted by BF8095 was not that envisaged in BF7642.
28. It might be expected that the relationship between the developments envisaged in BF7642 and BF8095 would have been made clear at the time in some way. However, if it was, no documentary evidence has survived the passage of time or at least none has been found and made available. Even so, I consider that in the specific factual context of BF8095 the logical interpretation of the permission and drawing is that the basin was intended to be an integral part of the commercial boatyard that Jenners were seeking to develop on the island. The fact that further full applications were made later for other elements of the overall scheme envisaged in BF7642 reinforces that conclusion without being essential to it.
29. In any event, reference to drawing no. A770.15A also shows that the basin that exists today is not of the form approved under BF8095. The entrance from the river is not symmetrically positioned and, whilst I have been provided with no detailed measurements, the basin appears to extend appreciably further east than is shown on drawing no. A770.15A. As discussed at the hearing, the basin more closely resembles that shown on one of the plans for BF9789, the amended wet boathouse permission. This plan, drawing no. A770.22F, also includes a note 'length of basin revised'. All this suggests that if the present basin has the benefit of planning permission this could not derive simply from BF8095 but from BF9789 or a combination of the two permissions⁵.
30. Moreover, erection of the boathouse seems to have followed on quite quickly from the construction of the basin and to have been envisaged from the outset. Once it was roofed over the basin would not have had the character of a free-standing all-purpose mooring facility. Whilst 'home base' mooring (or visitor mooring) could take place in such a basin it would be most unusual and arguably unattractive. A covered, or partly covered, basin would be far more characteristic of a boatyard or similar facility.
31. Taking all these matters into account, I conclude that the permission granted for the basin (if it benefits from permission at all) was for a facility that was an integral part of the boatyard or hire boat base that was being developed on the Island site (in conjunction with the land north of the river). The permitted use of such a facility would have been as part of that boatyard use; it would not have been some independent all-purpose mooring use that amounted to a primary use in its own right⁶.
32. There is no dispute that the boatyard use has been abandoned. Even if demolition of the boatsheds did not have that effect, the undertaking made in

⁵ If the basin in its present form is unauthorised by any planning permission, the structure itself would have become immune from action with the passage of time. However, s75(3) would not come into play.

⁶ I do not regard this as inconsistent with the principles established in *I'm Your Man Ltd v SSETR* (1999) 77 P & C R 251. A description may not restrict the manner in which a use is carried out but it may still clarify what the nature of a use is. In any event, in this case no use is mentioned in either the permission or the application.

1985 under the precursor of s106 prohibits use of the island site for commercial purposes including hire of boats. In my view, there is little point in speculating why that agreement was considered necessary. Even if at that time the Local Planning Authority felt that permission for commercial use remained extant they could have been wrong. Moreover, whilst provision now exists for appeals against such undertakings, that was not the case when this one was made. Notwithstanding the arguments put forward by the appellant, I conclude that, at the time it was made, this undertaking was intended to ensure the permanent cessation of all commercial activity on the appeal site.

33. By entering into the undertaking, which would run with the land and be binding on their successors, I consider that the then owners were clearly indicating that the former boatyard use was not merely in abeyance but was being brought to an end. Taken together with the demolition of the former boatyard buildings on the Island I consider that this can properly be regarded as a positive act or acts that made any continuing right derived from the original permission(s) to use the basin for boatyard purposes incapable of implementation. Moreover, if the boatyard use has been abandoned or otherwise 'lost' any mooring use that was incidental or ancillary to that use would have died with it. That the basin has remained physically capable of some sort of mooring use cannot alter this.
34. Furthermore, although the undertaking did not prohibit private mooring, it would not have the effect of authorising such mooring unless permission for this already existed. Mooring of private boats would therefore only be lawful if it were covered by the permissions mentioned earlier. Whatever the then Local Planning Authority may have thought in 1985 I have, for the reasons given above, concluded that that was not the case.
35. I conclude that the use of the basin that was permitted by virtue of BF8095 and BF9789 was specifically for commercial mooring of a hire boat fleet as an integral part of a boatyard operation. Even if that boatyard use had not been abandoned, the private mooring that is currently taking place is materially different in character. Amongst other things, it has given the appeal site (particularly the land adjoining the basin that is included in the notice) a somewhat domesticated character with residential paraphernalia (not all of which involve operational development) that would not be expected with a commercial boatyard.
36. Accordingly I conclude that the use that is taking place does not have planning permission and constitutes a material change of use for which permission is required. Moreover, there is no dispute that the operational development referred to in the noticed required, and does not have, planning permission. The ground (c) appeal therefore fails.

Ground (d)

37. At the hearing the appellant confirmed that a ground (d) appeal was no longer being pursued and no new evidence on this matter was presented. I therefore record simply that I see no grounds for disagreeing with the conclusions of the previous Inspector on this matter (which were not relevant to the quashing of his decision) and that had it remained to be considered the ground (d) appeal would have failed.

Ground (a) – whether planning permission should be granted

38. This ground is being pursued in respect of the mooring use and pontoons only. The appellant said little about the pontoons and came close to accepting that he would have to remove them. However, they remain part of the appeal. The

- main issues for this ground are the visual impact of the development and its effect on the character and appearance of the Thorpe St Andrew Conservation Area, the listed buildings north of the river and the outlook of local residents, together with any other effects on their living conditions.
39. In considering these matters I have had regard to the duty imposed by s66 and s72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving the setting of listed buildings and preserving or enhancing the character or appearance of conservation areas. I have also taken into account the manner in which the courts have indicated this statutory duty should be discharged⁷.
40. Having regard to these matters, and the considerable importance attached to them by local residents, after the hearing I took the unusual step of seeking the views of English Heritage (EH), who had not previously been consulted. The comments I have received from EH are an important material consideration and I have taken them fully into account along with the responses to those comments. However, whilst the EH officer may be generally familiar with the area, his comments appear to have been made without the benefit of visiting it in connection with this appeal. Moreover his comments assume that permission is being sought for more development than is actually the case, for example the container. In addition, it is not clear that he has taken into account the scope for imposing conditions on various matters, such as lighting.
41. Looking then at the character and appearance of the area, the site is at the western end of an island created in the mid-nineteenth century by the formation of the New Cut. This was needed to maintain navigation to Norwich when the railway line to Yarmouth was built as the fixed bridges over the original river course have a very low headroom. In the following 170 years much river traffic will have followed the New Cut and a high proportion of boats passing the appeal site will have been looking for moorings, especially as for long periods there has been at least one boatyard in this area. During my visits I saw considerably more boats that were moored than ones that were moving and, despite EH's comments, I am satisfied that views of this stretch of river will for many years have included a good number of moored boats. Indeed some householders have boats moored at the end of their gardens.
42. As for the island that was formed, this is separated physically and functionally from the countryside to the south by the railway, which is on a low embankment, and the New Cut beyond it. Although that countryside can be seen across the island from elevated positions north of the river, I do not consider that the island forms part of it. Instead it relates more closely, functionally, physically and visually, to the land north of the river.
43. This area is largely built up. Most buildings, which include several listed ones, are in residential use, though there are also some commercial properties. A main road passes through this area. However, many of the buildings between it and the river turn their back to the road so that their main elevations and windows face south across the river to take advantage of the views that their relatively elevated position offers. The appeal site is visible in views from many of the properties, but public views of it are limited.
44. The main features of the island are the mature trees found throughout it, which provide a green setting in many views across the river, and the many boats

⁷ In particular in *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council* [2014] EWCA Civ 137

- moored on its northern edge, particularly at the eastern end. There are also boats and moorings on the other side of the river, again particularly at the end furthest from the appeal site. The boats and moorings at the eastern end are much more prominent in public views than those on the appeal site.
45. The island and the old course of the river adjoining it are part of the Conservation Area. Views of moored boats are therefore a characteristic feature of the Area. Moreover, it is one that I found particularly attractive even at the eastern end of the island where mooring is quite intense (or as the previous Inspector put it 'regimented') and not all the boats or structures are particularly pleasing in themselves. Accordingly I consider that mooring of boats is not intrinsically out of keeping or harmful to the character and appearance of the Conservation Area or the locality generally.
46. I have taken into account that much of the western end of the island had, after the demolition of the boathouses, acquired a relatively natural appearance. However, apart from the trees on it, it is not clear that this contributed significantly to the character of the Conservation Area, especially given the limited public views. In addition, in those views, and those from the overlooking properties, the basin, with its regular form and straight sides must always have appeared as a somewhat artificial feature, even if there were no boats in it. Moreover, the basin, which will remain whatever the outcome of this appeal, is the sort of feature where it would normally be wholly unremarkable to see some boats moored.
47. I share EH's view that if the basin were to be filled with boats it could give the impression of a fixed development covering a significant part of this end of the Island. That would be intrusive in an area that is free of buildings and has a generally open and green appearance, especially given the light colour that is typical of the boats. Indeed, even the present number of boats has had something of this effect.
48. That said, I consider this effect to have been due as much to the manner in which boats are clustered in certain parts of the basin as their total numbers. If they were spread more evenly (though not necessarily regularly) across the basin, as could be achieved through a mooring scheme condition, the effect could be reduced. Views of water between the boats could be retained so that they would not be seen as a single mass. The retention of two pontoons, provided they are appropriately designed and positioned, would not be incompatible with this. Landscaping, including tree planting, could further help to assimilate mooring in the basin, at least in the longer term, as the trees at the other end of the Island already soften the development there. Far from attempting to make the unacceptable less harmful, as local residents suggest, such planting would reflect and reinforce the existing character of the island.
49. I have also taken into account that much of the present concern relates not to the moored boats themselves, but to other activities that are taking place and works that have been carried out. The island has begun to have a rather untidy and unattractive appearance and I can understand the concern of local residents as to what may happen in the future. However, the existing situation has come about in the absence of detailed controls. Granting permission would allow conditions to be imposed regarding those matters that are directly related to mooring. There are limits to what can be achieved in this way, but I am satisfied that it should be possible to achieve a significant improvement.

50. There are also activities that are not directly related to mooring in the basin, including mooring on the river bank and stationing of motor caravans that are lived in. Conditions could not be imposed regarding these matters. However, if they are not lawful, action could be taken against them. On the other hand, if they are lawful they could remain and would provide part of the context for any mooring in the basin. In particular, boats moored on the river bank would be more prominent than ones in the basin and would reduce any effect that the latter had. Whether they are lawful or not I consider that these other activities do not form a basis for dismissing the ground (a) appeal.
51. I conclude that, subject to the imposition of appropriate conditions, the mooring of the present number of boats, or something like it, would not be harmful to the character or appearance of the Conservation Area, but could properly be regarded as preserving it.
52. As for the effect on listed buildings, many of the considerations are the same. The appeal development would have no direct physical effect on the buildings themselves or their grounds. The basin is not even immediately next to the buildings or their curtilages but is separated from them by the river and a strip of land on the south bank that is in the appellant's ownership. That strip is relatively narrow but I established during the hearing that it would be possible to plant trees on it. Doing so would further increase the degree of visual separation between boats moored in the basin and the listed buildings.
53. In any event, there are few public or semi-public views in which the basin forms the foreground to them⁸. That said, many of the buildings were designed to take advantage of views over the river. The land seen in those views, which in many cases will include the basin, can therefore reasonably be regarded as part of their setting. To this extent mooring in the basin has the potential to affect the setting of the listed buildings and their significance as heritage assets. Moreover, if the buildings were to become unattractive to occupy their future could be jeopardised.
54. That said, of the three grade II* listed buildings, views of the appeal site are clearest from Walpole House and even there vegetation screens part of the basin from some positions. The boathouse or garden house, though closer to the basin, is at a lower level. Moreover, whilst there are some views from Thorpe Hall there is less evidence that this building was designed to command views over the river. Indeed views from some of the grade II listed buildings may be clearer than from the II* ones. The grade II buildings are outside EH's remit and so they have not commented on how they may be affected. However, in my decision I have sought to take any effects into account.
55. Nevertheless, whilst views across the river are important to the setting of many of the listed buildings, those views have not remained completely natural. I do not share EH's view that the general character of the land across the river remains essentially similar to that in the eighteenth century and earlier. On the contrary I consider that the construction, in the mid-nineteenth century, of a railway line on an embankment must have had a very considerable impact. Moreover, the line remains operational, albeit now partly screened by trees.
56. In addition, whether or not there were any fixed facilities for boats on or adjacent to this part of the river in the eighteenth century there is certainly such a facility now, ie the appeal basin. This has further changed the views

⁸ For boaters they are on opposite sides of the river. There must be glimpses from the railway line but no one has suggested that this is an overriding objection and I see no reason to do so either.

- from the listed buildings. However, even if this is seen as a harmful, the basin already exists and does not form part of the appeal development. It is immune from action and any effect that it has in itself could not form a justification for resisting this appeal. All that I can take into account is any additional effect arising from the use of the basin for mooring boats and such ancillary activities as are inextricably linked with this.
57. The brief commercial use of the basin has not contributed to my conclusions as this has ceased and could not be resumed. However, even disregarding this, I am satisfied that for many years views of and over this stretch of river will have included some moored boats. Latterly mooring has been most intense at the east end. However, even further west some of the occupiers of the riverside dwellings have boats moored at the end of their gardens.
58. In short, views across the river in this area have continued to evolve since the listed buildings were built and for many years seem to have included numerous moored boats. Not all of these boats are visible from the grade II* listed buildings that are EH's concern, but despite this the use for which planning permission is being sought is one that is very characteristic of the area. Moreover, the mooring would take place in an existing basin where the normal expectation would be to see some moored boats. Taking all this into account, together with the degree of separation between the basin and the listed buildings, I consider that mooring a modest number of boats in the basin would cause no harm to the setting of the buildings, especially if suitable conditions are imposed.
59. This conclusion broadly accords with that of several other professionals. Although EH are a notable exception, that includes the previous Inspector, a chartered architect, whose decision was not challenged on this point. I accept that the listed building argument was not put as forcefully to him and that his decision pre-dated the *Barnwell Manor* case (also that we differ on what might be regarded as a modest number). However, at the hearing the Broads Authority confirmed that they still did not consider that mooring in the basin, as opposed to on the river, harmed the setting of the listed buildings. This reinforces my view that, subject to appropriate conditions, some mooring in the basin need not harm the setting of the listed buildings or otherwise diminish their importance as heritage assets.
60. I have already concluded that there would be no harm to the character or appearance of the Conservation Area or the locality generally. Accordingly, I consider that if suitable conditions can be imposed there would be no conflict with those local policies that deal with heritage asset and visual amenity matters (including Policies B7 and B11 of the Broads Local Plan and Policy C1 of the Broads Core Strategy); the relevant parts of the National Planning Policy Framework (the NPPF); or the statutory duties.
61. Turning to the effect on local residents, insofar as these relate to visual matters many of the same considerations again apply. The relationship between the basin and the dwellings north of the river means that boats moored in it are not overbearing and that overlooking is not a problem. Despite this, the boats and the activities associated with them can be seen from parts of those properties and at present the site is somewhat intrusive and unattractive. However, not all of this is the direct result of mooring, which is all the ground (a) appeal is concerned with, and granting permission would enable conditions to be imposed that should address the worst of those that are.

62. Views from many of the dwellings would still be noticeably different from the situation before the current mooring began and I have no doubt that this would be regretted by their occupiers who had become used to views of an empty (or nearly empty) basin. That said, there is no right to an unspoilt view. Moreover, occupiers of dwellings that overlook a navigable river and basin in a very popular recreational boating area should not be too surprised to see some moored boats.
63. In addition, the distance between the basin and the dwellings is sufficient to avoid any overriding problems of noise or disturbance, especially given the scope for imposing conditions. I have noted that some residents have felt threatened or intimidated by users of the basin. However, whilst that is regrettable, such behaviour is not inevitable and is not in itself sufficient, in my view, to make mooring in the basin unacceptable.
64. A further issue relates to the effect that use of the access to the basin has on those living close to it. The northern end of the bridge is reached by way of a residential cul-de-sac, Thorpe Hall Close, and then a private right of way that runs in front of and close to two blocks of flats and through the grounds of Thorpe Hall. The undertaking sought by the then Local Planning Authority in 1985 seems to have been driven partly by concerns about the effect that traffic generated by a commercial use of the basin could have on occupiers of these properties, which (apart from Thorpe Hall) were then to be built.
65. Even a 'home mooring' use along the lines currently occurring seems likely to give rise to a noticeable flow of traffic on Thorpe Hall Close and, especially, the unadopted continuation of it. However, the level of movements would remain much less than on many residential roads, especially if the number of boats is limited and none of them are used as full-time living accommodation⁹. I do not doubt that the occupiers of the flats, in particular, notice a reduction in privacy and tranquillity, but I am satisfied that the effects are within acceptable limits and that the flats remain pleasant places to live in. Nor do I consider that there are any serious road safety issues. That some vehicles appear to have difficulty negotiating the access without damaging adjoining property is essentially a private legal matter that carries insufficient weight to alter my conclusions however annoying it may be.
66. As for Thorpe Hall the bridge and access lie between the house and its swimming pool and the occupiers have concerns regarding noise, privacy, pollution and anti-social behaviour. However, whilst the access passes close to the swimming pool I did not notice it during my first visit and I do not consider that it is so exposed to view that mooring in the basin need inevitably result in unacceptable levels of intrusion especially if no boats are lived on permanently. In addition, given the size of Thorpe Hall and its grounds, I do not consider that use of the access should seriously harm the quality of the residential environment it provides even allowing for vehicles having to stop whilst the gate is opened and closed. Moreover, improvements to the access, which are the subject of a suggested condition, should help reduce any contamination of the pool. Other concerns such as trespass are more in the nature of private legal matters and carry limited weight for the purposes of this appeal.
67. I conclude therefore as follows. If mooring were allowed to continue local residents would undoubtedly be aware of it. However, provided appropriate

⁹ I have noted that the undertaking did not seek to restrict the number of private boats. However, that was without the benefit of any actual experience of what could occur.

conditions were imposed the effect on their living conditions would not be sufficient to make a modest number of non-residential boats unacceptable. In forming that view I have taken into account that some residents have been led to expect from Policy TSA2 of the 1997 Local Plan (which it is now intended to retain unaltered) that no development, including mooring, would be allowed on the west end of the island.

68. However, TSA2 is now quite elderly and it is necessary to consider how consistent it is with the guidance in the NPPF. The Authority themselves accept that it is not fully compliant and I agree. It is, in respect of the western end of the island, a very restrictive policy. I do not fully share the appellant's view that it is unreasonable to have a policy that is more restrictive than, say, the normal Green Belt one. The area covered by TSA2 is much smaller than any Green Belt and I accept that there may be specific parts of the Broads where any development would be unacceptable. However, I am not convinced, for the reasons already set out, that this applies to this specific development and site.
69. I have concluded that, subject to appropriate conditions, a modest level of mooring would not harm the character or appearance of the Conservation Area or the setting of any listed buildings. In addition, it would not materially harm the living conditions of local residents and would not conflict with any of the general policies dealing with these matters. Taking all this into account, I consider that the conflict with site specific Policy TSA2 alone is not an overriding objection, especially as TSA2 is not fully compliant with the NPPF.

Conditions

70. It will be clear from the above that, although I consider planning permission for the mooring use should be granted, conditions need to be imposed. This was discussed at the hearing during which both the appellant and the Authority produced lists of suggested conditions that went beyond those that the previous Inspector had felt necessary. I also raised several possible conditions myself. In imposing conditions I have had regard to the discussion that took place. In some cases I have altered the suggested conditions in the interests of clarity, enforceability or to reflect current advice.
71. To ensure that the visual impact is acceptable, the number of boats needs to be restricted; only boats that are capable of navigation should be allowed; wrecked or sunken boats should be removed; and mooring should take place only in accordance with an approved scheme. For the same reason and/or to protect the living conditions of local residents conditions are also required regarding the following matters: waste storage/disposal; landscaping; prohibition of residential use; hours of work; improvements to the access and bridge; parking; maintenance of access; external illumination; and fencing.
72. As discussed at the hearing, banning all residential use of the boats, as suggested by the Authority, would preclude overnight stays which I consider is unreasonable in the context of a private 'home mooring' for boats that are designed for sleeping in. I shall therefore impose a condition which would allow for this whilst reflecting local policy.
73. It is not clear whether the suggested condition regarding working hours, which reflected that imposed by the previous Inspector, was intended to cover works to the boats as well as to the site itself. However, in the light of experience it is clear that a restriction on the times at which boats can be repaired or maintained is essential to protect the living conditions of local residents. At the same time any such condition needs to recognise that private boat owners may

have limited opportunity to carry out works during normal working hours and that a total ban on all maintenance at other times may be unreasonable. I have therefore added a condition relating specifically to this matter.

74. The appellant also suggested a condition relating to external storage. There is no need to specify that this could only be of items needed in connection with the permitted use as anything else would be unauthorised, but in the interests of visual amenity I shall impose a condition restricting how and where such storage can take place.
75. In order to avoid possible pollution problems conditions are also required regarding dredging operations and drainage. To comply with local and national guidance a condition relating to ecological matters is also required.
76. In addition the appellant suggested that conditions could be imposed requiring some of the moorings to be available for visitors; for facilities relating to such provision to be provided; and for the provision of cycle storage. All this would be in accordance with local policy. However, the Authority had not sought provision of visitor moorings and I do not consider that this is necessary to make the development acceptable. In view of this and as such provision was opposed by many local residents I shall not impose such conditions.
77. As for cycle storage, I am reluctant to see the site cluttered with any facilities or structures that are not clearly required. I have seen no evidence that any boat owners or others use bicycles to access the site or would be likely to do so if facilities were provided. I shall not therefore impose a condition regarding this matter. It would of course remain open to the appellant to apply to the Authority for permission to make such provision. Any other form of operational development would require permission in its own right and so conditions prohibiting it are not necessary.
78. Finally, it was suggested on behalf of local residents that a condition be imposed requiring the removal of the stanchions that have remained in the basin since the demolition of the boatshed. However, I did not find these particularly intrusive and they are not directly related to the development that is the subject of this appeal. I consider that a condition requiring their removal would not be reasonable or appropriate.

Overall conclusions

79. For the reasons given above I conclude that the appeal should succeed in part only. I will grant conditional planning permission for one part of the matter the subject of the enforcement notice, ie the mooring and pontoons, but I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part. By virtue of s180 of the Act the requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant.

Formal Decision

80. I direct that the notice be corrected by:
 - the deletion of the word 'jetties' in Parts 3, 4, 5(b) and 6(b) and the substitution therefor of the word 'pontoons';
 - the deletion of the word 'metal' in Parts 3, 4, 5(d) and 6(d)
81. I also direct that the notice be varied as follows:
 - the deletion of the figures and words '2 weeks'; '3 weeks'; '1 week'; and '2 weeks' in Parts 6(a), 6(b), 6(c), and 6(d) respectively and the substitution therefor of the words 'one month'; 'six weeks'; 'one month'; and 'one month' respectively.

82. Subject to these corrections and variations the enforcement notice is upheld.
83. However, the ground (a) appeal is allowed insofar as it relates to the use of the site for the mooring of boats and the construction and installation of two pontoons in the approximate position marked with cross A on the plan attached to the notice and planning permission for this development is granted subject to the following conditions:
1. The mooring use hereby permitted shall be restricted to private moorings only and no more than 25 vessels, all of which shall be capable of moving under their own power and shall be in possession of a current navigation toll, shall be moored within the basin at any one time. This permission does not relate to any other mooring or storage use of vessels within the basin or its access channel.
 2. No boat moored in the basin shall be used as a main residence or occupied for more than 28 days in a year.
 3. Within 3 months of the date of this decision, details of the proposed means of waste and refuse storage and disposal, including a timetable for implementation, shall be submitted for the written approval of the Local Planning Authority and the approved means shall thereafter be provided, undertaken and retained in accordance with the approved details.
 4. Within 3 months of the date of this decision a landscaping scheme, including proposals for tree planting and a timetable for implementation, shall be submitted for the written approval of the Local Planning Authority. The scheme shall indicate the species, number and sizes of all new trees and shrubs at the time of their planting. The scheme shall also include details of all existing trees and hedgerows on the land, with details of those to be retained (which shall include details of species and canopy spread) together with measures for their protection. The scheme as approved shall be carried out in accordance with the approved timetable.
 5. If within a period of 5 years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement of it, is removed, uprooted or destroyed or dies or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
 6. Within 3 months of the date of this decision a scheme of ecological enhancements, including a timetable for implementation, shall be submitted for the written approval of the Local Planning Authority. The enhancements shall be carried out in accordance with the approved details and shall be retained in the approved form for the lifetime of the development hereby permitted.
 7. Site maintenance operations shall be carried out only between the hours of 0800 and 1800 on weekdays and between 0900 and 1300 on Saturdays. No such operations shall be carried out outside these hours or at any time on Sundays or Bank or Public Holidays.
 8. No repairs, maintenance or other works to boats that involve the use of power tools or non-powered hammers or saws shall be carried out except between the hours of 0800 and 1800 on weekdays and 0900 and 1300 on Saturdays. No such works to boats shall be carried out outside these hours or at any time on Sundays or Bank or Public Holidays.
 9. Within 3 months of the date of this decision a scheme detailing improvements and works relating to the access, parking and the bridge to the site together with a timetable for their implementation shall be submitted for the written approval of the Local Planning Authority. This scheme of works shall include details of parking for boat owners and service vehicles within the site together with turning arrangements. The parking and turning areas shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved details and shall thereafter be retained in the approved form and used for no other purpose.

10. No vehicles shall be parked on the site except in the areas approved under condition 9.
 11. Within 3 months of the date of this decision details of the proposed layout of the basin, including the treatment of the quay heading, the position and treatment of all mooring bays, and the detailed positioning and design of the pontoons together with a timetable for implementation shall be submitted for the written approval of the Local Planning Authority. The approved details shall be implemented in accordance with the approved timetable and shall thereafter be retained in the approved form.
 12. No boats shall be moored anywhere within the basin or its access channel except in a position approved under condition 11.
 13. Within 6 months of the date of this decision all wrecked and sunken boats shall be removed from the basin including its access channel.
 14. No dredging of the basin shall be commenced until details of the pollution prevention measures to be implemented during any such dredging have been submitted to and approved in writing by the Local Planning Authority. All dredging shall be carried out in full accordance with the approved measures.
 15. No external storage, including but not limited to materials, equipment, plant and machinery, shall take place on the site except in accordance with details, including location and screening, that have first been submitted to and approved in writing by the Local Planning Authority.
 16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking, amending or re-enacting that Order) no gate, fence, wall or other means of enclosure shall be erected within the site of the development hereby permitted or along any part of its boundaries.
 17. No part of the site shall be externally illuminated in any way.
 18. No surface or ground water run-off shall be drained into the river or basin except in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.
 19. Vehicular access across the bridge serving the site shall be retained and kept available at all times for users of the private moorings hereby permitted.
 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.
84. This permission will override the enforcement notice in respect of the mooring and pontoons.

P Grainger
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr T Ivory	of Hawes Percival LLP, Solicitors
Mr P Atkinson	Lanpro Services Limited
Mr R Wood	appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr W Upton	of Counsel
Ms C Smith	Planning Officer, The Broads Authority

INTERESTED PERSONS:

Mr J Pugh-Smith	of Counsel, for Mr Clarke
Mrs S Smith	of LSR Solicitors and Planning Consultants, representing Mr Clarke
Mr J Clarke	Local resident
Dr K Wilkinson	Local resident
Mrs Sofroniou	Local resident
Mr & Mrs Egan	Local residents
Mr & Mrs Warren	Local residents
Dr C Turner	Local resident
Ms M Docherty	Local resident
Ms J Stonehouse	Local resident

DOCUMENTS

- 1 Letters of notification of the hearing, provided by the Broads Authority
- 2 Letter from Dr Turner, and supporting document
- 3 Planning application, permission and plans for wet boathouse (BF9789), submitted by the Broads Authority
- 4 Listing details for the listed buildings north of the river, provided by the Broads Authority
- 5 Conditions suggested by the Broads Authority (a) and the appellant (b)
- 6 Comments from English Heritage (received after the Hearing) and responses

PLANS submitted at the hearing

- 1 Plan showing listed buildings north of river, supplied by the Broads Authority

PHOTOGRAPHS submitted at the hearing

- 1 Aerial photograph showing access to the bridge to the site