

## **Application for Determination**

<b>Parish</b>	Carlton Colville		
<b>Reference</b>	BA/2013/0188/FUL	<b>Target date</b>	03.10.2013
<b>Location</b>	River Bank, adjacent to Peto's Marsh, Carlton Colville, Lowestoft		
<b>Proposal</b>	Retrospective application for the erection of two mooring posts including installation of sign		
<b>Applicant</b>	Waveney River Centre (2003) Ltd		
<b>Recommendation</b>	Approve subject to conditions		
<b>Reason referred to Committee</b>	Applicant is a member of the Navigation Committee		

### **1 Description of Site and Proposals**

- 1.1 The application site is a small cut in the bank of the River Waveney, by Peto's Marsh in Carlton Colville and is a fairly remote and rural location. On the opposite bank sits Waveney Inn and River Centre in Burgh St Peter. Waveney Inn and River Centre is a holiday complex consisting of a boatyard, holiday accommodation, camping and caravan park, public house and associated facilities. Holiday-hire boats and private boats moor up at the centre as well as day boats and the site operates a hire fleet.
- 1.2 A public footpath which connects to the Angles Way (450m upstream) runs up to the river's edge on the bank opposite the Waveney River Centre. Historically, a passenger ferry service brought people from this footpath across the river onto the bank where the Waveney River Centre is located. The ferry operated from the early 20<sup>th</sup> Century until 1950 when the ferry service ceased.
- 1.3 The applicant has started to run a ferry service once more (which has been running since summer 2012) and this application seeks retrospective permission for the installation of two mooring posts within the existing cut by the bank opposite the Waveney River Centre, adjacent to Peto's Marsh. The mooring posts are used to secure the ferry and allow passengers to safely disembark onto the public footpath on Peto's Marsh and stop the ferry from being moved by the tides or wind by creating a 'pen'. The posts are constructed from timber, protrude from the water by approximately 2.2m (depending on the tide), and are spaced approximately 3.3m apart. A

small sign (approximately 297mm by 210mm), used to notify people of the number to call the operator of the ferry, sits on top of one of the posts.

- 1.4 It is important to note that this application is for the operational development comprising the installation of the two posts and sign only and does not relate to the running of the ferry which is not considered to be development.

## 2 **Site History**

In 2012 an application was submitted for the installation of two mooring posts. The application was **withdrawn** (BA/2012/0041/FUL).

## 3 **Consultation**

Broads Society - Response awaited.

Carlton Parish Council - Response awaited

Burgh St Peter Parish Council - Response awaited.

District Member - Response awaited.

Suffolk County Council - Response awaited.

Suffolk Wildlife Trust - Response awaited.

Norfolk and Suffolk Boating Association - Response awaited.

Note: The application proposal is two mooring posts measuring approximately 2.2m above MHWL and which do not significantly affect the use or enjoyment of the whole or any part of the navigation area. It is assessed as being in accordance with development plan policies, does not materially conflict with any policy, plan, strategy or procedure of the Authority. It has not, therefore, been referred to the Navigation Committee.

## 4 **Representation**

1 letter of support covering:

- The wider community and visitor benefits of aiding the ferry service (Full letter at Appendix 2)

1 letter of objection from adjacent landowner covering:

- The application is misconceived and flawed
- The application does not provide the correct certificate concerning the ownership of the application site
- The application lacks the requisite information to allow an informed decision to be made

- The development has no prospect of implementation even if granted (Full letter at Appendix 3)

## 5 Policies

- 5.1 The following Policies have been assessed for consistency with the National Planning Policy Framework (NPPF) and have been found to be consistent and can therefore be afforded full weight in the consideration and determination of this application.

**Core Strategy (CS) (2007)** [Core Strategy \(Adopted Sept 2007\).pdf](#)

CS1- Protection of Environmental and Cultural Assets

**Development Management Plan DPD (DMP) (2011)**

[DMP DPD - Adoption version.pdf](#)

DP1- Natural Environment

DP2- Landscape and Trees

DP4- Design

DP10- Advertisements and Signs

DP11- Access on Land

DP27- Visitor and Community Facilities and Services

- 5.2 The following Policies have been assessed for consistency with the NPPF [NPPF](#) and have been found to lack full consistency with the NPPF and therefore those aspects of the NPPF may need to be given some weight in the consideration and determination of this application.

**Development Management Plan DPD (DMP) (2011)**

DP28- Amenity

- 5.3 The following Policies have been assessed for consistency with the NPPF which has been found to be silent on these matters. Paragraph 14 of the NPPF requires that planning permission be granted unless the adverse effects would outweigh the benefits.

**Development Management Plan DPD (DMP) (2011)**

DP12- Access on Water

DP16- Moorings

- 5.4 Material Planning Consideration  
**National Planning Policy Framework (NPPF) (2012)**  
[NPPF](#)

## 6 Assessment

- 6.1 The main issues to consider in the determination of this application are the principle of the development, impact on the character of the area, and impact on navigation.

- 6.2 Firstly it is important to explain that this application is for the operational development of the erection of the mooring posts and sign only. Although the installation of the mooring posts helps facilitate the use of the ferry service, the operation of the ferry itself does not constitute development. Although this assessment will cover the benefits of the operation of the ferry it will not assess the impact of the ferry itself as this is not required as planning permission is not needed for this aspect.
- 6.3 In terms of the principle of the development, it is considered that the installation of the mooring posts facilitates the development of a ferry service and therefore directly helps improve visitor and local access across the Broads. It also helps create links to the Waveney River Centre which will improve the availability of facilities to visitor and residents. The provision of the ferry itself also improves the 'offer' of the Waveney River Centre itself. The proposal is considered to be in accordance with Development Management Policies, particularly DP11 (b), which is fully consistent with the objectives of the NPPF, and is therefore supported in principle.
- 6.4 Given the scale of the mooring posts and the fact that they are read against tall reeds, the impact on the wider landscape is considered to be negligible. The development is therefore considered to be consistent with Development Management Policies, particularly CS1 and DP2; which are fully consistent with the objectives of the NPPF.
- 6.5 Mooring posts and other riverside structures are characteristic of this stretch of the river due to the existence of the Waveney River Centre which is a popular location for boaters to stop. It is therefore considered that the two mooring posts do not look out of place at this site. In addition, timber is a traditional material used for waterside infrastructure and weathers well within the natural environment. The development is therefore considered to be visually appropriate and is in accordance with the Development Management Policies, particularly DP4, which is fully consistent with the objectives of the NPPF.
- 6.6 The sign is small in scale, meaning a minimal visual impact, and is necessary to advise people of the number to call the ferry. The installation of the sign is therefore considered reasonable. Given the scale of the sign it is not considered that it offers a distraction from land or water users and therefore it is not considered to adversely impact on public safety. The sign is therefore considered to be appropriate and is in accordance with the Development Management Policies, particularly DP10, which is fully consistent with the objectives of the NPPF.
- 6.7 The posts have been installed just within an existing cut and not within the main navigational channel. It is therefore considered that there will be no adverse impacts on navigational safety, in accordance with the Development Management Policies, particularly DP12. It is noted that the NPPF is silent on access to the water due to the policy being specific to the Broads environment, but given the general support in the NPPF for

development which supports the rural economy and improve access it is considered that the objectives of DP12 can be afforded some weight in the decision as they are consistent with the NPPF.

- 6.8 Given the remote location of the mooring posts and given the Angles Way already exists across the agricultural land it crosses, it is not considered that there is an adverse impact on neighbouring amenity. This is in accordance with Development Management Policies, particularly DP28, which has been found to lack full consistency with the NPPF due to the level of detail in the policy. However, given that regard to amenity is a general objective of the NPPF the policy can be given weight in this decision.
- 6.9 The installation of the posts would have disturbed a small part of the river bed, however, the river bed, which is often disturbed by boats, or routine dredging, is not considered to provide a habitat of great quality at this location. It is also necessary to be mindful of the limited scale of the development which comprises the installation of 2 posts. It is therefore not considered that the installation of the posts has impacted on Protected Species or habitats of quality or importance. The development is therefore considered to be in accordance with the Development Management Policies, particularly DP1, which is fully consistent with the objectives of the NPPF.
- 6.10 In terms of the letter of support, the wider community and visitor benefits of permitting the mooring posts are acknowledged and supported.
- 6.11 In terms of the letter of the objection, the comments regarding the objection mainly make reference to the fact that the application has not included the operation of the ferry. Officers are satisfied that this element does not require planning permission. It is also considered that the application itself is adequate and proportionate relative to the scale and nature of the development.
- 6.12 The letter of objection also refers to the impact of the use on the surrounding land. The application states that the ferry is popular, used up to 10-15 times per day in good weather, usage is significantly less in the winter months, although no figures are given for passenger numbers. Clearly the use of the ferry will result in additional use of the footpath that it accesses. However, this is a formal Public Right of Way which connects to the Angles Way (a well promoted long distance footpath) and it is not considered that the level of use which is likely to be generated by a small ferry running from the Waveney River Centre is likely to have a significant impact on the surrounding land, particularly given the status of the existing footpath.

## **7 Conclusion**

- 7.1 The installation of the mooring posts and sign is considered to aid improved access across the Broads and improve an existing visitor facility which is

welcomed. The impact on the surrounding landscape is considered negligible and the posts are considered in character with the waterside infrastructure which exists within the immediate vicinity. It is not considered that the proposal will have an adverse impact on navigational safety or neighbouring amenity.

## **8 Recommendation**

8.1 Approve subject to the following conditions:

- Time limit
- In accordance with plans

## **9 Reasons for Recommendation**

9.1 In the opinion of the Local Planning Authority the development is acceptable in respect of Planning Policy and in particular in accordance with National Planning Policy Framework and policies CS1 of the Core Strategy (2007) and DP1, DP2, DP4, DP10, DP11, DP12, DP16, DP27 and DP28 of the Development Management Policies DPD (2011).

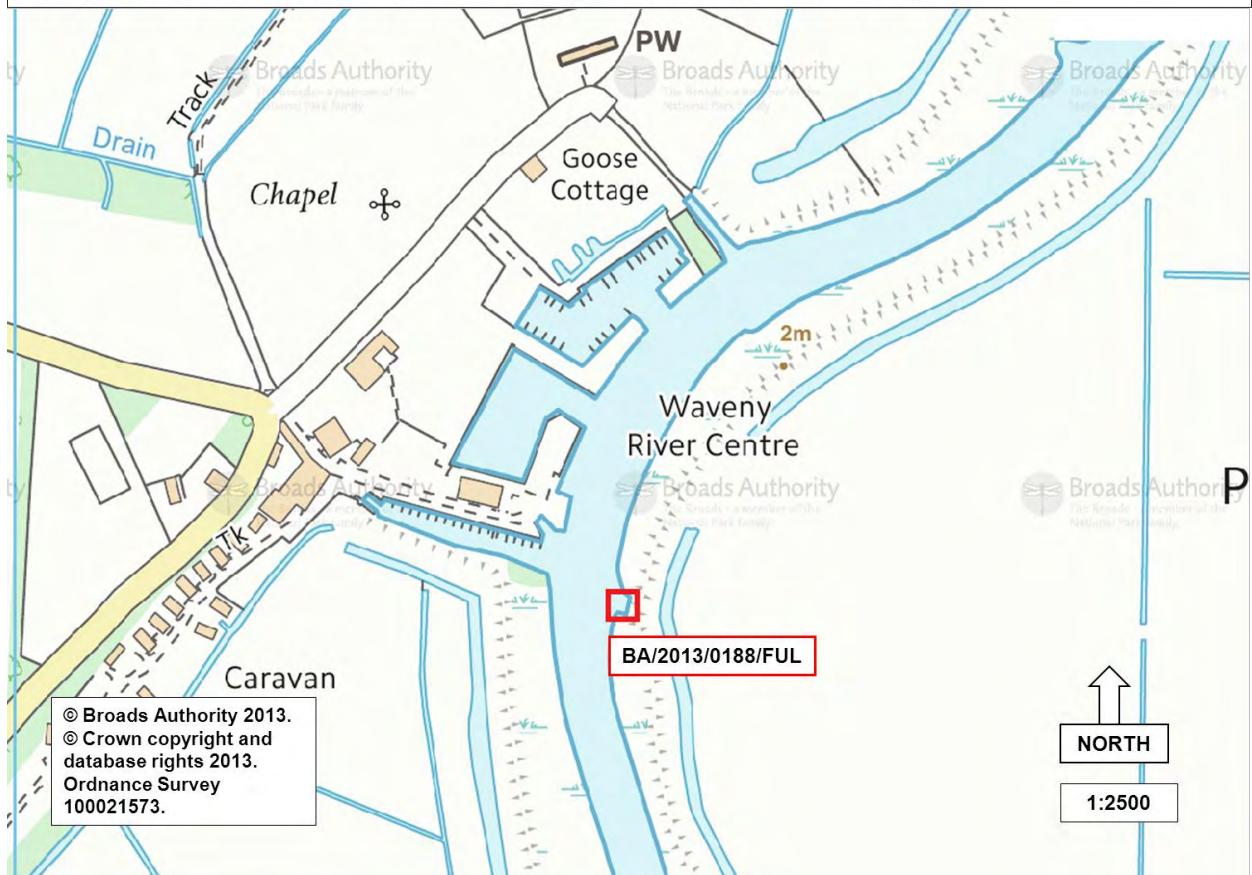
List of Appendices: Appendix 1: Site Location Plan  
Appendix 2: Letter of Support  
Appendix 3: Letter of Objection

Background papers: Application File: BA/2013/0188FUL and BA/2012/0041/FUL and BA/2013/0188/FUL

Author: Kayleigh Wood  
Date of Report: 22 August 2013

APPENDIX 1

BA/2013/0188/FUL - River Bank, Adjacent To Peto's Marsh, Carlton Colville  
Retrospective application for the erection of two mooring posts including installation of sign





**Richard Bacon, M.P.**

MEMBER OF PARLIAMENT FOR SOUTH NORFOLK

APPENDIX 2 *AL*

*BA/2013/0188/FUL*

House of Commons  
London SW1A 0AA

Private Secretary  
Tel 01379 643728 or 642769  
Fax 01379 642220

12 6 JUL 2013

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Dr John Packham  
Chief Executive  
Broads Authority  
Yare House,  
62-64 Thorpe Road,  
NORWICH NR1 1RY

15 July 2013

*Dear Dr Packham*

**APPLICATION BA/2013/0188/FUL – INSTALLATION OF MOORING POSTS**

I am writing in respect of the above application, to install two mooring posts for the ferry service across the River Waveney.

The ferry service across the River Waveney has a long history. In the 19th and early 20th centuries, the ferry provided an important means for south Norfolk villagers to walk or cycle to Lowestoft's fish market, reducing a 17 mile journey to just five miles.

The ferry service was re-launched last year and I was delighted to take a trip on the ferry across the river. Today, the ferry service links the Waveney River Centre on the northern bank of the River Waveney with Suffolk and bringing the village of Oulton Broad, including its railway services to Norwich and Lowestoft, within walking distance. The ferry also allows foot passengers to reach Carlton Marshes nature reserve, as well as the 77 mile Angle's Way .

I am pleased that a service with such a proud heritage is once again serving the people of Norfolk and Suffolk . I believe that the ferry service is of great value to the area and to the tourist trade, and this measure, which will help improve the quality of the service offered by the ferry, has my full support.

I would be very grateful if you could ensure that the above application receives the most serious consideration when it is either determined by officers or comes before the Broads Authority's members.

I look forward to hearing from you.

*Yours sincerely*



Our Ref : 54512-2-1

Your Ref : BA/2013/0188/FUL

**Strictly Private and Confidential**

Head of Development and Regeneration  
Broads Authority  
Dragonfly House  
2 Gilders Way  
Norwich  
Norfolk NR3 1UB

By email and post

**For the attention of Ms Kayleigh Wood**

22 August 2013

Dear Ms Wood

**Installation of 2 mooring posts**

**Waveney Inn and River Centre, Staithe Road, Burgh St Peter, Beccles NR34 0BT**  
**Application submitted by Waveney River Centre (2003 Ltd)**

**1. Background**

- 1.1. We are instructed by U and Partners (East Anglia) Limited, the occupier and tenant farmer of agricultural land at Peto's Marsh, Carlton Colville, Lowestoft. This land lies on the eastern (Suffolk) bank of the River Waveney across the river from the Waveney Inn and River Centre and forms an integral and necessary part of this proposal to "restore" the River Waveney ferry.
- 1.2. We write in respect of application Ref: BA/2013/0188/FUL which we note is a retrospective application following the implementation of the operational development referred to and the earlier withdrawal of application Ref: BA/2012/0041/FUL which we understand was, following our representations, withdrawn. This unauthorised development was subsequently permitted to continue for what is now a year, while the Authority permitted the applicant to "assess the viability of the service".
- 1.3. Our client takes exception to the application submitted by the Waveney River Centre (2003) which we take to be the Waveney River Centre (2003) Limited and we are instructed to set out and detail our client's concerns and objection in respect thereof.
- 1.4. In short our client says the application has not been lawfully made, in that it:
  - 1.4.1. is misconceived and flawed;
  - 1.4.2. does not provide the correct certificate concerning the ownership of the application site;
  - 1.4.3. lacks the requisite information to allow an informed decision to be made; and
  - 1.4.4. has no prospect of implementation even if granted.

**53 New Broad Street London EC2M 1BB.**Tel: 020 7421 1720, Fax: 020 7421 1749, DX: 564 London City, SRA No. 00388194, Web: [www.steeleslaw.co.uk](http://www.steeleslaw.co.uk)**Principals:** Richard Bailey, Oliver Brabbins, Stephen Drake+ (Managing), Michael Fahy, Katy Kidd, Nigel Lubbock\*, James Tarling, Lorna Townsend**Associates:** David Merson, Amanda Owens, Jean Parkinson**Legal Directors:** Karen Bacon**Consultants:** Cheryl Edmonds, Anna Rabin

\* Public Notary + FMA &amp; CEDR Trained Mediator

## 2. The Application is misconceived and flawed

- 2.1. The application is formulated on the basis of operational development alone.
  - 2.1.1. The application is submitted in respect of the “Installation of 2 mooring posts” in the riverbed said to form a ‘pen’ into which the ferryman can navigate and secure the vessel, without the risk of being carried up or downstream by wind or tide.
  - 2.1.2. The proposal is to be facilitated by a ‘drop down’ ramp on the ferry to facilitate the embarkation and disembarkation of passengers onto the Suffolk bank of the river.
  - 2.1.3. The proposal envisages an ‘on demand’ telephone service and to charge all passengers a fee.
- 2.2. There is however no mention in the application of any use development despite the use of the riverbed for the mooring of a ferry and the use of the Suffolk bank of the river for a ferry landing point. No permission is sought for the use of any area of land, and the red line covers the 2 mooring posts alone.
- 2.3. Clearly the use of the riverbed and the banks for the mooring of a ferry can, and in this case we say does, amount to development requiring planning permission – see Thames Heliport PLC v Tower Hamlets London Borough Council (1997) 74 P&CR 164, [1997] JPL 448, [1996] JPL 526.
- 2.4. There is also no doubt that the use of the Suffolk bank of the river for a ferry landing point, given the lawful agricultural use by my client, amounts to a material change of use requiring planning permission and which does not benefit from the grant of planning permission by way of any Permitted Development rights.
- 2.5. Any permission granted for such use by virtue of the Lowestoft & Burgh St Peter Ferry and Roads Act of 1857 (“the 1857 Act”) (to which the Applicant refers) has, on the basis of the Applicant’s own assertions in the Design and Access Statement, long since been abandoned in planning terms and therefore is no longer of any assistance to the Applicant – see Hartley v Minister of Housing and Local Government [1970] 2 WLR 1; SSETR v Hughes (2000) 80 P & CR 397 and Pioneer Aggregates v Secretary of State for the Environment [1985] AC 132. Furthermore, the 1857 Act only permits the Commissioners to run a ferry, and does not allow for a private commercial service.
- 2.6. Furthermore, the public right of navigation does not include the right to land persons on the foreshore or banks unless the person purporting to do so is the owner of the foreshore or bank or has the owner’s permission – see e.g. Ball v Herbert (1789) 3 Term Rep. 253. None of these conditions apply here.
- 2.7. Accordingly, the application is misconceived. The proposal is incapable of implementation without the necessary change of use consent and the consent of my client.

## 3. The Application does not provide the correct certificate concerning the ownership of the application site

- 3.1. The Application form is submitted in respect of an unidentified application site and is identified on the Council’s application review schedule as Waveney Inn and River

Centre, Staithe Road, Burgh St Peter, Beccles. This is clearly not the case and makes an independent search of the Council's planning application website without the Application reference number nigh on impossible.

- 3.2. Far from simply being an application to install 2 mooring posts, the Applicant asserts that the proposal amounts to a scheme to restore the Burgh St. Peter to Carlton Marshes pedestrian ferry service 'enshrined' in the 1857 Act.
  - 3.3. However the Applicant does not establish an entitlement under the 1857 Act to operate a ferry service and any power to now levy a toll (fares) for the use of the ferry services is specifically excluded by the terms of the 1857 Act.
  - 3.4. The provisions of the Town & Country Planning (Development Management procedure) Order 2010 apply to the Application and in particular the procedural requirements in Articles 6, 7, 11 and 12 thereof.
  - 3.5. The Applicant has filed Certificate D in respect of the 'Ownership' question. This is patently wrong.
  - 3.6. Our client has not been given notice despite the Applicant clearly appreciating its interests and seeking to overcome its objections – see Design and Access Statement where the Applicant acknowledges that "*The landowner will not permit a replacement landing stage to be constructed so that ...*". Indeed the Applicant acting by its Director, Mr James Knight, wrote to our client's farm manager in September 2011 seeking to engage on the proposal "*for our mutual benefit*".
  - 3.7. It would be insufficient for the Applicant to assert that reasonable steps have been taken to ascertain the identity of interested parties.
  - 3.8. Given the information publicly available on the Broads Authority website and its Navigation Committee reports, and the approach to our client reasonable steps cannot be said to have been undertaken. Under section 65(5) of the Town and Country Planning Act 1990, read in conjunction with Articles 11 and 12 of the 2010 Order, the local planning authority must not entertain an application for planning permission unless the relevant certificates concerning the ownership of the application site have been completed.
  - 3.9. The Applicant has also certified that none of the land to which the proposal relates is or is part of an agricultural holding. This is patently incorrect and our client's farming interest at Compartment 28, Peto's Marsh, Carlton Colville, Lowestoft is well known to not only the Applicant but also the Broads Authority – see e.g. R (U and Partners (East Anglia) Limited) v The Broads Authority and the Environment Agency [2011] EWHC 1824 (Admin), Env. L.M. 2011, Jul 1-2, (2011) 155 Sol Jo (no 29) 27-29, [2011] 16(1) JR 253, J.P.L. 2011, 12, 1583-1596.
  - 3.10. The Applicant has not demonstrated that it has the necessary landowners' consent to land persons on the foreshore or banks.
  - 3.11. Accordingly, the Broads Authority must not entertain the application.
4. **The Application lacks the requisite information to allow an informed decision to be made**

- 4.1. The proposal involves not only operational development within the river bed of the River Waveney in respect of the "Installation of 2 mooring posts" but also use of the riverbed for the mooring of a ferry and the use of the Suffolk bank of the river for a ferry landing point.
- 4.2. No information is provided in respect of the impact or effect that the proposal will or may have on the local environment in terms of the riverbed or bank or on the public footpaths or indeed our client's land. Given the sensitive nature of the local environment it is critical that the Broads Authority is able to fully assess the potential impacts of the proposed intensification of use and access to this locality before any determination of the application.
- 4.3. This is particularly significant given that the proposal is said to be a year round ferry service but there is no information provided on the numbers involved. We do know that this is intended to be significant as it is said that it can justify the introduction of a commercial operation with "*sufficient demand from their (the Applicant's) own customers, as well as from walkers exploring the Carlton Marshes nature reserve*" and the '*on demand*' nature of the telephone service proposed.
- 4.4. Despite the applicant's year long assessment, the information on usage is scant to say the least. There is no assessment of the impact of the proposal on the locality and the applicant preys in aid cyclists who will be encouraged to cycle on a footpath to get to and from the ferry landing point. Furthermore, any increase in numbers of users will have a detrimental impact on the embankment wall on which the footpath sits placing an enhanced maintenance obligation on our clients due to the Environment Agency's policy of longer maintaining flood defence walls in the area. No assessment has been made of this impact.

**5. The Application if granted has no prospect of implementation even if granted**

- 5.1. The application is deficient for the reasons set out above and, if granted, planning permission that decision would be open to legitimate challenge in the High Court.
- 5.2. In addition, our client objects to the proposal and will not permit access to, or over, its land in order to accommodate this proposal. Furthermore, our client will take all necessary steps to protect its interests in its land and agricultural operation.
- 5.3. That being the case and taken together there is no prospect of any planning permission, if granted, being permitted to be implemented and accordingly the Broads Authority is invited to refuse the application on the basis of the principles set out in British Railways Board v Secretary of State for the Environment and another (1993) The Times 29<sup>th</sup> October.

**6. Conclusions**

- 6.1. The application as it currently stands is clearly deficient and incapable of determination at this time. This was the position in respect of the earlier withdrawn application (Ref: BA/2012/0041/FUL).
- 6.2. The Broads Authority is not in a position to determine the Application and the deficiencies need to, and can only, be remedied by way of the submission of a fresh and compliant application.

7. **Next steps**

- 7.1. Our client's position is reserved pending receipt by the Authority of any consultation response not presently available on the Authority's website and in this respect we note that the public consultation expiry date is now shown on the Authority's website to be 5<sup>th</sup> September 2013.
- 7.2. Given the connection between Mr James Knight and the Authority we anticipate that any consideration and determination of this application will be carried out in a public forum by the Authority's Planning Committee. Please confirm that that is the case.
- 7.3. Our client would also wish to take advantage of the opportunity to make oral submission to the Planning Committee whenever it is to meet. We understand from the Broads Authority's Planning Committee Leaflet that this is acceptable. Please therefore accept this correspondence as our formal request to do so and confirm that we will be permitted to address the Planning Committee. In addition, please confirm that you will notify the Chairman of the Planning Committee of this request in advance of the relevant meeting

8. We await hearing from you as a matter of urgency.

Yours sincerely

**Steeles Law**  
**for Steeles (Law) LLP**

Cc. Aart Kerkhof – U and Partners (East Anglia) Limited (by e-mail)