

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

Summary: This report sets out the position regarding appeals against the Authority since December 2011.

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 December 2011. It lists those appeals where decisions have been received in this 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: 6 July 2012

Broads Plan Objectives: None

Appendices: APPENDIX 1 – Schedule of Outstanding Appeals to the Secretary of State since December 2011
APPENDIX 2 (i) Appeal Decision Anchor Cottage, Mill Road, Stokesby
APPENDIX 2 (ii) Appeal Decision Pinetree Cottage, 2 Lower Street, Horning

**Schedule of Outstanding Appeals to the Secretary of State
since December 2012**

Start Date of Appeal	Location	Nature of Appeal/ Description of Development	Decision and Date
2-12-11 30-5-12	Appeal Ref: E9505/ A/11/2165917/NWF BA/2011/0014/REF BA/2011/0091/COND Anchor Cottage, Mill Road, Stokesby Mrs W Martin	Appeal against refusal Proposed removal/variation of condition No:6 (BA/2010/0004/FUL) to allow use of The Old Reading Room as a separate holiday unit and variation of condition 2 to apply to amended plan	Delegated Decision on 10-06-11 Notification Letter and Questionnaire to be sent by 16-12-11 Statement sent 12-1-12 Appeal Allowed Permission granted for revision in plans and conditions varied. (Decision Notice attached APPENDIX 2(i))
6-12-11 15-06-12	Appeal Ref E9505/C/11/2165163, BA/2011/0006/ENF BA/2010/0040/UNAU P4 The Island, Yarmouth Road, Thorpe St Andrew Mr Roger Wood	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 (See Enforcement Update)	Committee authorisation 5 December 2008 and subsequent reports to Committee Public Inquiry held on 1/2/3-05-12 Enforcement Notice corrected and varied – Appeal dismissed in relation to jetties (pontoons), storage container and motor engines and enforcement notice upheld as corrected and varied. Appeal allowed in relation to use of basin for mooring of boats but limited to 12 and subject to conditions.
<p>Conditions include:</p> <ul style="list-style-type: none"> • Landscaping scheme • Ecological enhancement scheme • A scheme for dealing with waste and refuse • A scheme for access, parking and treatment of the bridge <p>These to be provided within 3 months and LPA must agree it within 11 months. If either not met, permission which Inspector has granted will lapse.</p>			

Start Date of Appeal	Location	Nature of Appeal/ Description of Development	Decision and Date
9-01-12	<p>Appeal Ref: E9505/A11/2167180/ NWF BA/2012/001/ BA/2011/0200/FUL</p> <p>Fir Tree Farm, Waxham</p> <p>Mr Robert Dixon</p>	Appeal against refusal for Installation of 11 kw wind turbine on 18 metre galvanised tower.	<p>Delegated Decision on 2-9-11</p> <p>Notification Letter and Questionnaire sent on 20-1-12</p> <p>Statement sent by 20-02-12</p> <p>Site visit to be arranged</p>
3-02-12	<p>Appeal Ref E9505/C12/2167767 BA/2012/0001/ENF 37/38 Crabbetts Marsh, Horning</p> <p>Mr Ivan Sharp</p>	Appeal against enforcement notice for unauthorised development: piling	<p>Committee authorisation to take enforcement action 4-11-11</p> <p>Enforcement Notice served 18-11-11</p> <p>Notification Letter and Questionnaire sent 2-03-12</p> <p>Statement sent by 16-03-12</p> <p>Site visit arranged for 24-07-12</p>
8-02-12 5-07-12	<p>APP/E9505/A/12/217 0219/NWF BA/2011/0365/ Pinetree Cottage, 2 Lower Street, Horning</p> <p>Mr and Mrs L and M Cooper-Smith</p>	Appeal against refusal for erection of detached bungalow	<p>Delegated decision on 23-12-12</p> <p>Notification Letter and Questionnaire sent 21-2-12</p> <p>Statement sent by 21-03-12</p> <p>Site Visit scheduled for 6-6-12</p> <p>Dismissed 5-07-12 (Decision Notice Attached APPENDIX 2(ii))</p>
16-04-12	<p>APP/E9505/A12/2174 341/ BA/2011/0040/COND Appeal Ref.BA/2012/0006/RE F Fairview Park Homes, Wayford Road,</p>	Appeal against refusal of permission for removal of condition 10 of BA/2011/0152/FUL and replacement with 3 recommended conditions contained in Good Practice Guide on	<p>Delegated decision on 22-3-12</p> <p>Notification letters sent by 30-04-12</p> <p>Questionnaire sent on 1-5-12</p>

Start Date of Appeal	Location	Nature of Appeal/ Description of Development	Decision and Date
	Smallburgh, NR12 9LW Fairview Park Homes	Planning for Tourism.	Statement sent by 30-05-12
24-04-12	APP/E9505/A/12/217 4541/NWF BA/2011/0306/FUL Appeal Ref: BA/2012/0007/REF Outbuilding Adjacent To White House Farm Thorpe Road, Haddiscoe Mr & Mrs W Bond	Appeal against Refusal Proposed conversion of existing outbuilding to residential development	Delegated Decision on 16-11-11 Notification Letter sent 3-05-12 Questionnaire sent 3-05-12 Statement sent by 1-06-12
21-06-12	APP/E9505/A/12/217 5137 – 21757401 BA Ref BA/2011/0297/COND (Wayford Hotel) Avocet , Bittern and Coot - Cottage Loke, Wayford Road, Wayford Bridge BA/2011/0298/COND Curlew and Mallard – Cottage Loke, Wayford Road, Wayford Bridge BA Appeal References: BA/2012/0008/REF & BA/2012/0009/REF	Appeal to be dealt with by Public Inquiry: Appeals against Refusal: Variation of Condition of pp/2005/1961 from use of Holiday accommodation to residential Variation of Condition 5 of 2005/1962 to change of use to residential	Delegated Decisions on 7-11-11 Appeal documents received 1-05-12 Request by appellant for Public Inquiry Questionnaire sent 6-07-12 Notification Letters sent by 5-07-12 Statements to be sent by 2-08-12
6-07-12	APP/E9505/A/12/217 7093/NWF BA/2012/0004/OUT Site at Land At Griffin Lane, Griffin Industrial Estate, Thorpe St Andrew, Norwich Lord Neville Anthony Watts	Appeal against Refusal Industrial Unit 200 Square meters plus 4 Storage Containers	Delegated Decision on 17-05-12 Appeal forms received end of May 2012 Notification and Questionnaire to be sent by 20-07-12 Statement to be sent by 17-08-12



Appeal Decision

Site visit made on 15 May 2012

by John G Millard DipArch RIBA FCIArb

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

Decision date: 30 May 2012

Appeal Ref: APP/E9505/A/11/2165917

Anchor Cottage, Mill Road, Stokesby, Great Yarmouth, Norfolk NR29 3EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs W Martin against the decision of The Broads Authority.
 - The application Ref: BA/2011/0091/COND dated 5 April 2011 was refused by notice dated 10 June 2011.
 - The application sought planning permission for conversion of 'The Old Reading Room' annex to Anchor Cottage into holiday-let accommodation by means of renovation and a small extension without complying with a condition attached to planning permission Ref: BA/2010/0004/CU dated 5 March 2010.
 - The condition in dispute is No 6 which states: *The annexe accommodation hereby permitted shall be occupied solely for purposes which are incidental to the use of the property 'Anchor Cottage' as a dwellinghouse and shall not be used as a separate dwellinghouse or holiday accommodation.*
 - The reason given for the condition is: *The close relationship of the proposed accommodation and the existing dwelling is such that two separate dwelling units would not be appropriate in terms of Policy H11 of the adopted Broads Local Plan.*
-

Decision

1. The appeal is allowed and planning permission granted for proposed renovations and extension – resubmission of PP BA/2009/0006/CU at Anchor Cottage, Mill Road, Stokesby, Great Yarmouth, Norfolk NR29 3EY in accordance with the terms of the application Ref: BA/2011/0091/COND dated 5 April 2011 without complying with conditions 2 previously imposed on planning permission Ref: BA/2010/0004/FUL dated 5 March 2010 but subject to the conditions set out in the Schedule of Planning Conditions attached hereto and forming part of this decision.

Preliminary Matters

2. The National Planning Policy Framework (NPPF) was published on 27 March 2012 at which time a number of national Planning Policy Statements and other policy documents, upon which the appellant and/or the Council may have relied, were withdrawn. As my decision on the appeal must be consistent with
-

the NPPF, the parties have been given the opportunity of reviewing their submissions and commenting upon any changes in national policy arising from adoption of the NPPF which they consider to have implications for their cases. In reaching my decision I have taken full account of all such comments received within the allotted time.

3. Whilst not specifically referred to on the application or appeal forms, the proposal also seeks to amend condition 2 of planning permission Ref: BA/2010/0004/CU which required the permitted works to be carried out in accordance with approved plan No 07/08.119/01 Rev D. Various relatively minor changes were introduced during the carrying out of the works and these are illustrated on the submitted plan numbered 07/08.119/03B. The proposal is that, in order to regularise the position, condition 2 be amended to refer to this later plan.

Main Issues

4. Notwithstanding the reason given by the Council for imposing condition 6, I consider the first of the main issues in the appeal to be the effect of removing the condition on highway safety. The second is the effect of its removal on the living condition of the occupiers of both Anchor Cottage and The Old Reading Room, with particular reference to privacy, whilst the third is the effect of amending condition 2 in the manner proposed on the character and appearance of the development and the use of The Old Reading Room as ancillary accommodation to Anchor Cottage.

Reasons

5. The appeal site comprises an irregularly shaped parcel of land on the north side of Mill Road, on the inside of a gentle bend. There are no footways in Mill Road and the site boundary adjoins the 5.5 metre wide carriageway, separated only by an unsurfaced strip of land about 0.5 metres wide. Anchor Cottage and its private garden occupy the western part of the plot whilst the central section contains two detached stone outbuildings and a walled enclosure to a largely underground water treatment plant. In the south-east corner, and forming the highway boundary at this point, is The Old Reading Room, a detached stone and brick outbuilding recently converted and extended to provide additional living accommodation. Because of the number and disposition of the structures on the site, the undeveloped part of the land, apart from the garden to the main dwelling, is fragmentary in nature and provides the only space available for the parking and manoeuvring of motor vehicles associated with the property.
6. Although described as a dwellinghouse, Anchor Cottage appears to be used as self-catering holiday accommodation and, by reason of the disputed condition 6, The Old Reading Room can only be occupied in conjunction with that use. The appellant seeks the removal of this restriction, and retrospective permission for the installation of a kitchenette into the property, so that the two buildings can be occupied independently as separate self-catering units.
7. In support of the proposal, the appellant suggests that, even without condition 6, occupation of The Old Reading Room would remain incidental to the main dwelling and would be akin to a 'granny annex'. I do not, however, find this argument persuasive as, without the condition, and with a kitchen facility in The Old Reading Room, the two units could and probably would be occupied

entirely independently by unrelated families or other holiday groups, effectively giving the two properties equal status in occupancy terms.

Highway Safety

8. Notwithstanding the appellant's contrary suggestions, I am in no doubt that, most of the time, each unit would generate its own separate requirement for vehicle parking space and would necessarily share the space that presently serves only Anchor Cottage. From what I saw at the site visit, I am satisfied that, with two parked vehicles carefully positioned, it is possible for each of them separately to manoeuvre so that they can leave the site in forward gear. With more than two vehicles of normal family car size parked, however carefully, this would not be possible with the result that manoeuvring would necessarily take place on the highway.
9. It is inevitable, in my view, that creating a second independent holiday let would increase, if not double, the demand for parking spaces and the number of traffic movements onto and off the site. Whilst I have noted the appellant's suggestion of a condition prohibiting occupiers of The Old Reading Room from parking on site, such a condition would not be enforceable and would thus not satisfy the fourth of the six tests of validity for planning conditions set out in Circular 11/95 – *The Use of Condition in Planning Permissions*.
10. I therefore share the Council's concern with regard to highway safety. Whilst the entrance to the site has recently been widened, this does not appear to have materially improved sight lines along the highway. Because of physical constraints beyond the appellant's control, not least being the alignment and curvature of the road and the absence of footways, I saw that visibility in both directions, particularly towards the right, is extremely poor and well below Department for Transport recommendations in *Manual for Streets*.
11. The Highway Authority has undertaken a close examination of the safety implications of the restricted visibility and has concluded that any increase in the number of vehicle movements onto or off the site would be detrimental to highway safety and that the risks to highway users would be exacerbated by the need for vehicles either entering or leaving the site to do so in reverse gear. From all I have seen or read, I agree with that assessment.
12. For these reasons I am led to conclude, on this issue, that the removal of condition 6 and use of The Old Reading Room as an independent holiday let would result in an unacceptable increase in the risk to highway users, in conflict with criterion (a) of Policy DP11 of the adopted LDF Development Management Policies DPD which addresses the issue of highway safety.

Occupiers' Living Conditions

13. Whilst it is the case that The Old Reading Room would have no separate curtilage, this is not unusual with holiday accommodation and is not unduly harmful to the occupiers' amenity. Furthermore, the physical relationship between The Old Reading Room and Anchor Cottage is such that there is no direct overlooking between them. Windows in the east elevation of Anchor Cottage face towards the two outbuildings in the northern corner of the site, well away from windows in The Old Reading Room, whilst windows in the west elevation of The Old Reading Room face towards the publicly visible garden area of Anchor Cottage.

14. Because of the shared access and the particular arrangement of the buildings on the site, it is possible that the occupiers of The Old Reading Room would be aware of the comings and goings of their neighbours at Anchor Cottage. This is, however, a situation that often occurs between neighbouring dwellings and would not be sufficiently harmful to justify withholding planning permission. LDF Policy DP28 seeks to protect the amenity of neighbouring occupiers and I am satisfied that removal of condition 6 would accord with that objective.

Amendment to Condition 2

15. Key changes introduced during implementation of planning permission Ref: BA/2010/0004/CU were (a) the introduction of a small kitchen into the property, with associated changes to the internal layout of the unit, (b) relocation of the bathroom window from the north to the west elevation and the addition of a window in the entrance lobby area, (c) the construction of a protective wall around the water treatment plant and (d) deletion of the proposal to realign the front boundary wall and, instead, to increase the width of the opening in the existing wall.
16. In order to ensure that the building is not used as a separately occupied unit of holiday accommodation the Council finds the introduction of a kitchen unacceptable and, in view of my conclusion on the first main issue, I share that view. Whilst realigning the boundary wall as previously proposed would have marginally improved visibility distances at the site access, it would have also reduced manoeuvring space on the site and thus the opportunities for vehicles to turn on site and drive out in forward gear. On balance, therefore, I consider that omitting the realignment does not materially affect highway safety.
17. The low wall that has been erected around the largely underground water treatment plant is needed to protect the equipment from damage by motor vehicles and is, in any event, likely to be permitted development. As built, it reflects the character of the development as a whole and is visually acceptable.
18. My conclusion, therefore, on the third main issue, is that the introduction of a kitchen into The Old Reading Room would render that property capable of occupation as an independent dwelling, resulting in the harm to highway safety identified above. With this exception, the amendments introduced whilst carrying out the conversion works would not detract from the character and appearance of the property, or the functioning of the development as a whole, and are acceptable.

Conclusion

19. In light of the above, and having considered all other matters raised, it is my overall conclusion that removal of the disputed condition 6 would be detrimental to highway safety and is unacceptable. Subject to the exclusion of the kitchen, however, the amendment sought to condition 2 is acceptable and I therefore, to this extent, allow the appeal.

Conditions

20. Condition 4 of the original permission has been discharged and is no longer needed, whilst conditions 3, 5 and 6 impose ongoing obligations and remain necessary for the reasons previously given. I shall therefore carry them

forward to this permission, re-numbered as appropriate. The original condition 2, as amended by this decision, is also appropriate and necessary for the reason previously given.

21. The Council has suggested that the standard commencement condition required by section 91 of the Act should also be imposed as well as condition 4 from the original permission dealing with materials to be used in the construction of the extension and realigned boundary wall. However, as the works authorised by the permission have been both commenced and completed, and as the boundary wall is not now to be realigned, these conditions are no longer needed and should therefore not be re-imposed.

John G Millard

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS

- 1 The development hereby permitted shall not include for the provision of a kitchen or kitchenette in The Old Reading Room but, except as required by this decision and its associated conditions, shall otherwise be carried out in full accordance with the amended plan numbered 07/08.0119/Rev B received by the Local Planning Authority on 24 May 2011, and the Design & Access Statement and Flood Risk Assessment received by the Local Planning Authority on 6 April 2011.
- 2 The living room and bedroom windows in the east elevation of the annexe hereby permitted shall be fitted with obscured glazing having a degree of obscurity equivalent to Pilkington level 5 and shall thereafter be retained as such.
- 3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) Order 2008, or any Order revoking and re-enacting that Order with or without modifications, no building or structure permitted by Classes A, B, C, D or E of Schedule 2 Part 1 shall be erected on the site unless planning permission has first been granted by the Local Planning Authority.
- 4 The accommodation hereby permitted shall be for holiday use only and shall not be used as a second home or as a sole or main residence. No person shall occupy any part of the accommodation hereby permitted for a continuous period exceeding six weeks nor within three weeks of the end of a previous period of occupation of any part of the accommodation hereby permitted by that same person. A register of bookings of the accommodation hereby permitted shall be maintained at all times and shall be made available to an authorised officer of the local planning authority for inspection upon reasonable request to do so and shall be kept available for inspection for a period of twelve months following the first occupation of the accommodation hereby permitted.

END OF SCHEDULE OF PLANNING CONDITIONS



Appeal Decision

Site visit made on 6 June 2012

by Mike Moore BA(Hons) MRTPI CMILT MCIHT

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

Decision date: 5 July 2012

Appeal Ref: APP/E9505/A/12/2170219

Pinetree Cottage, 2 Lower Street, Horning, Norfolk, NR12 8PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs L & M Cooper-Smith against the decision of The Broads Planning Authority.
 - The application Ref BA/2011/0365/FUL, dated 31 October 2011, was refused by notice dated 23 December 2011.
 - The development proposed is the erection of a detached bungalow.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are 1.) the effect of the proposed development on the character and appearance of the area; 2.) whether the appeal proposals would make adequate provision for private amenity space; 3.) the effect of the proposed development on protected trees; and 4.) the effect of the proposed development on the living conditions of nearby residents in terms of outlook.

Reasons

3. Pinetree Cottage is a detached bungalow occupying an elevated site on Lower Street. It is positioned to the rear of the site so that there is a significant area of garden between the building and the road. The appeal proposal is for the construction of a 2-bedroom detached bungalow within this front garden area. The proposed dwelling would share the existing vehicular access to Lower Street with Pinetree Cottage.
4. The site is within the defined development boundary for Horning where Policy DP22 of the Broads Authority Development Management Policies Development Plan Document (DMP) allows new residential development provided that it is compatible with other development plan policies.
5. The area is mainly residential in character with properties on the nearby A1062 Ropes Hill comprising mostly substantial dwellings in large plots. However, the appeal site relates visually to Lower Street where the character is more mixed. The site would be similar in size to that of the residual plot for Pinetree Cottage. It would not be materially different to some others in Lower Street and would have a similar density or footprint. Nevertheless, a significant part of the site would be taken up with the shared drive, parking and turning area, banks and trees in a way that is not readily apparent with other properties in

- the locality. One dwelling set in front of another in this way is not in keeping with the pattern of development in the area. In this context, I consider that the proposed bungalow would have a cramped and contrived layout.
6. The proposed dwelling would have a simple and modest design. The external materials proposed would relate to the palette used generally in the surrounding area and, while the development plan seeks high quality designs, it would not be inappropriate to its context. However, on the basis of the layout considerations, I conclude that the proposed development would have a substantial adverse effect on the character and appearance of the area. As such, it would conflict with the objectives of DMP Policy DP4 and Policy CS4 of the Broads Authority Core Strategy.
 7. In its reasons for refusal the Authority has referred to the external amenities of future occupants of the proposed development being compromised by the constrained site. I have seen no evidence of local standards of private amenity space provision. While the garden area would be small, this could be the preference of future occupants. The Authority estimates the usable space to be about 176 sqm. In my view, this would provide an amenity area of adequate size. I therefore conclude that the proposals would make adequate provision for private amenity space. In that respect they would not conflict with the aims of DMP Policy DP28.
 8. There are a number of trees on the appeal site which give it a wooded, enclosed character and which contribute generally to the character of the wider area. In my view, these qualities would not be undermined by the removal of 4 small trees in order to construct the proposed dwelling. However, other site trees are more substantial. In particular, a Scots pine to the front of the site and an oak set further back are subject to a tree preservation order. On the basis of the recommendations in the appellants' Arboricultural Implications Assessment (AIA), I am satisfied that these trees could be afforded adequate protection during the period of construction of the dwelling. Nonetheless, I have already noted the limited extent of the private amenity area. While this would provide adequate space, it would be partly overshadowed by the trees and there would be leaf and needle fall. The protected trees would be close to proposed dwelling and could be considered overbearing. The AIA indicates that the property would be one for people who like trees and this should be made clear to prospective occupiers. This could not be assured in the longer term. In my view, there would be pressure from future occupiers to cut back or remove the trees which may prove difficult to resist. In that context, I conclude that the proposed development would have a significant adverse effect on the protected trees. In that regard it would not accord with the aims of DMP Policy DP2.
 9. The proposed bungalow would be positioned in line with the neighbouring dwelling, Weyland House, which has some side windows facing the appeal site. The appeal bungalow would be in a somewhat more elevated position than its neighbour and in close proximity. However, there is a retaining wall and a dense laurel hedge on the common boundary. The Authority considers that any adverse impact on residents at Weyland House would not be so significant as to justify refusal on this basis alone. In my view, the position of the wall and hedge and the modest proportions of the proposed dwelling would be such that it would not have an overbearing impact on the neighbouring occupants. My conclusion is that the appeal scheme would not cause material harm to the

living conditions of nearby residents in terms of outlook. To that extent it would not conflict with DMP Policy DP28.

10. The harm that I have identified to the character and appearance of the area and to protected trees on the site in my view would outweigh the absence of material harm in terms of private amenity space and the effect on the living conditions of neighbours. Overall, therefore, the appeal proposal would be in conflict with the development plan.
11. I have considered the policies in the National Planning Policy Framework, which was published after the appeal was made, but they do not change the weight that I attach to the relevant development plan policies nor, in the light of the facts in this case, do they alter my conclusions on the main issues.
12. The appellants' intention is to provide a modest, reasonably priced dwelling with sustainable features in an area where house prices are considered to be high. However, neither this nor any of the other matters raised are of such significance that they would outweigh the considerations that have led to my conclusions on the main issues. For the reasons given above I conclude that the appeal should be dismissed.

M J Moore

INSPECTOR