

## **Application for Determination**

- Parishes:** Upton –w- Fishley
- Reference:** BA/2015/0364/FUL      **Target Date:** 2 February 2016
- Location:** Compartment 37 – South side of Upton Boat Dyke
- Proposal:** Driving / removal of piling along the southern bank of Upton Dyke, re-grading the dyke edge and the original bank, and crest raise existing bank with the material gained from the old bank.
- Applicant:** Environment Agency
- Reason for referral:** Major application
- Recommendation:** Approve with conditions

### **1 Background**

- 1.1 The planning application site is on the south side of the Upton Dyke which is located to the west of the River Bure and the proposed works extend along a length of the water edge of some 584 metres (see Appendix 1 – Location Plan). Upton Dyke has at present a piled edge on both sides and private long stay mooring exists on the northern piled edge.
- 1.2 Planning permission was granted in 2008 for flood defence improvements in Compartment 37 including on Upton Dyke. Within Upton Dyke, this included the rollback of existing floodbanks and some on line strengthening.
- 1.3 The 2008 application sought permission for flood defence works including pile removal (as this piling would no longer be required for erosion protection purposes). Whilst the principle of pile removal was established, a condition was placed on the planning permission requiring the submission of a separate planning application to detail the nature and technique for the piling removal. The purpose of this condition was to retain control over this as without proper safeguards pile removal could be detrimental to navigation interests (as a result of erosion) and the character and appearance of the Broads.
- 1.4 Planning permission for pile removal has been approved widely in the Broads linked to delivering sustainable flood defences. This has generally involved removing piles by extraction. However in this application, BESL is seeking to use an alternative technique to drive the piles below bed level (to secure their

'removal'). This technique is proposed by BESL as it would limit cost and provide a degree of stability to the new lengths of bank.

1.5 Pile driving is a relative new technique used for 'pile removal' and only used to date in the River Chet. This was permitted on this river following an initial successful trial.

1.6 Members visited the application site at Upton Dyke on 29 January 2016 to familiarise themselves of the site, its context to assist their understanding of the issues associated with the proposal.

## **2 Description of Site and Proposal**

2.1 Upton Dyke is over 600 metres in length and varies in width between 9 and 12 metres. As the rollback bank is fully settled and established, this application proposes to drive existing piles (some of which have been identified by BESL and Broads Officers as in a poor condition) into the dyke bed (provided ground conditions allow). If localised ground conditions prevent driving fully into the bed, the piles will be extracted.

2.2 In respect to pile driving, the application details submitted propose the following method / technique (generally mirroring the approach used in the River Chet)

- Before the piles are driven, any walings and tie rods are removed and a wedge of material is excavated from behind the piles
- The original floodbank will be re-graded prior to pile removal
- A 2.0m long "dolly" attachment is then placed over the exposed pile edge so that they can be driven vertically into the river bed, this leaves a new river edge from the river bed to the top of the old floodbank formed of a 1 in 1 slope (where the edge abuts clay) and 1 in 2 (where the edge abuts peaty material)
- Removal of the old bank down to mean high water spring level in order to form a reeded rond in front of the new rollback bank
- The excavated material will be used to top up (crest raise) the level of the new bank

2.3 BESL have confirmed that piles will be driven to a depth some 1.5 metres below mean water level springs – but the exact depth would be agreed with Broads Officers.

2.4 As outlined in paragraph 2.2, BESL is proposing in areas of more peaty material to install additional new erosion protection. This will be in the form of coir matting added to a shallower profiled edge (1 in 2) along some 239 metres of bank. In addition BESL proposes to install channel markers linked to this work until vegetation fully establishes to provide a satisfactory visual edge, using cone marker, to the edge of the channel.

2.5 As with other areas where pile removal has taken place, BESL recognise that some erosion may take place at the river edge following the driving of piles

into the river bed. Whilst previous experience of pile ‘removal’ has suggested that this has been limited, as it is not possible to predict accurately what erosion may take place associated with pile driving BESL propose monitoring techniques to measure the extent of any erosion. The monitoring is proposed to be linked to trigger points which identify when mitigation action will need to be taken due to significant erosion (based on the established ‘protocol’ which has been agreed as suitable to monitor erosion associated with other pile removal consents).

Time (after removal)	Photographic	Vegetation	Hydrographic
Year 1	Months 0, 3, 6, 9, 12	Annually	Months 0, 3, 6, 9, 12
Year 2	Months 6, 12	Annually	Annually
Year 3	Months 6, 12	Annually	Annually
Year 4 on	Annually*	-	Annually

*\* as part of the annual condition surveys*

- 2.6 In the River Chet, an element of sonar monitoring was required by BESL to ensure that the piles were driven to a sufficient depth to ensure they would not be a navigation hazard or impact on any routine or other dredging that may be required. This is again proposed by BESL as part of the process linked to works in Upton Dyke.
- 2.7 The application site is located outside any SSSI (with the nearest at Upton Broads and Marshes SSSI - some 500 metres to the north west). The flood bank on both sides of Upton Dyke is a public right of way (PROW). The south bank of the dyke is not heavily used for angling. BESL have confirmed that during the period of works this PROW will need to be closed (but alternative routes exist that link Upton with Acle village and Acle Bridge). There are no known features of archaeological interest close to the application site.
- 2.8 In relation to mooring, this is concentrated on the north bank and some rights exist at Upton Parish Staithe (on the south side of the Dyke). No change is proposed in this application to this provision on the northern bank or at the western end at Upton Parish Staithe. BESL is also exploring retaining an additional small length of piling adjacent to Upton Parish Staithe (also see paragraph 7.2).
- 2.9 Access to the site for plant delivery and workforce cars will be via Upton village and a temporary welfare unit is proposed on the existing car park adjacent to the boat dyke. Subject to planning permission, BESL propose the pile driving to take place outside any main boating season.

### **3 Planning History**

- 3.1 The following application is particularly relevant:

BA/2008/0089/FUL (Comp 37) - Flood defence works comprising of maintenance, strengthening, rollback and set back of flood bank, installation of erosion protection and piling, retention of existing piling, future removal of existing piling and provision of a temporary site compound. Permanent diversion of public footpath to remain on the crest of the new bank.  
Approved September 2008

## 4 Consultations

### 4.1 Upton –w- Fishley Parish Council: Objection

1. Without piling, the edge of the dyke will be unstable and will cause the dyke to silt up, making navigation impossible. The councillors believe that the peaty part of the dyke edge will be particularly unstable. The dyke is a vital part of the village, for residents and for tourists' alike, bringing trade and income to the village, but is also very important for leisure. The councillors do not have any confidence that BESL would carry out the necessary dredging, or that other agencies would have the funds to carry it out in their place in future years. The dyke was built by villagers to link the village to the river. There is a right in the Enclosure Act for villagers to load and unload at the parish staithe. The dyke must be kept clear for navigation to the staithe.
2. Despite requests to BESL, clear details of the extent of the proposed removal of the piling have not been received. The map of the site in the application is too small a scale to be clear which piling would remain at the basin end of the dyke. There are temporary moorings at this end, which are vital for the visitors who bring tourism and trade to the village.
3. The dyke is very narrow. It is anticipated that boats travelling at slow speeds would be very vulnerable to being blown away from the channel and on to the sloped edge, leading to vessels going aground, with no firm edge to push off against.

Overall the proposal appears to threaten a village's connection to the River Bure and the benefits of tourism for that village at a time when the Broads Authority is encouraging many more people to visit the area.

Broads Society: We notice that on drawing WNCFSH/720/001 there is mention of crest piling in phase 2, although this is not included elsewhere. If the crest piling is to be included we suggest that there should be a condition that the piling and all capping and fendering is to be in recycled plastic. There should also be a condition that if any of the piles are driven down rather than removed (as suggested), precautions should be taken to ensure that they are not a hazard to deep draught vessels when there is a very low tide. There should be a condition that the channel markers are maintained until there is a good growth of vegetation. There should be a condition that no work takes place on site on Sundays or Public Holidays.

NCC Highways: Support conditionally.

In highway terms only, I have no objection to the proposals outlined subject to an appropriate Traffic Management Plan being submitted and therefore I would recommend the following conditions being appended to any grant of permission your Authority is minded to make:

- Prior to the commencement of any works a Construction Traffic Management Plan and Access Route which shall incorporate adequate provision for addressing any abnormal wear and tear to the highway shall be submitted to and approved in writing with the Local Planning Authority in consultation with Norfolk County Council Highway Authority together with proposals to control and manage construction traffic using the 'Construction Traffic Access Route' and to ensure no other local roads are used by construction traffic
- For the duration of the construction period all traffic associated with the construction of the development will comply with the Construction Traffic Management Plan and use only the 'Construction Traffic Access Route' and no other local roads unless approved in writing with the Local Planning Authority in consultation with the Highway Authority
- No works shall commence on site until the details of wheel cleaning facilities for construction vehicles have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. For the duration of the construction period all traffic associated with the construction of the development permitted will use this approved wheel cleaning facilities

NCC PROW: Awaited

Environment Agency: No objection. Flood defence informative should be added to any decision notice.

Natural England: No objection

RSPB: Awaited

NCC Historic Environment Service: The proposed works are unlikely to have a significant impact on the historic environment therefore we will not be recommending a programme of archaeological work in this case.

Broadland DC Environment Health Officer: Awaited.

NSBA: The NSBA objects to the application on the following grounds. Risk of erosion - The southern bank of the dyke as far as the IDB, which goes under the dyke, is peat. Whichever of the two methods (driving down or removal of piles) described in the applicant's supporting document Broadland Environmental Services Ltd Piling removal works within Compartment 37 (Upton Boat Dyke) on the River Bure was used, the peat would be likely to erode rapidly with consequent siltation of the Dyke. This would not only reduce the depth of the Dyke but it would also restrict its navigable width. Neither in its supporting document, or elsewhere, has the applicant dealt with

this risk, save to propose erosion monitoring and remediation measures. Instead it refers to its experience following piling removal in other Compartments, where the geology is no doubt different. The risk of erosion of the peat and consequent siltation means that the application conflicts with the terms of core strategy policies CS3, protection and enhancement of navigable water space through avoidance of development detrimental to its use, and CS15, adequate water levels to be maintained for safe navigation, and with the terms of development management policy DP 13, bank protection. The remediation in the event of erosion, proposed in paragraph 6.4 of the supporting document, would not answer the NSBA's concerns. The Dyke is so narrow that dredging operations would seriously impede, or possibly prevent, navigation through the Dyke while they were undertaken.

Channel markers - The applicant proposes that, if its driving down/removal application is successful, there should be a system of channel marking – either 'cone' type buoys or red posts. 'Roll back' of a bank undoubtedly requires channel marking, at least pending the establishment of the reed vegetation. In a dyke as narrow as Upton Dyke, the wandering nature of 'cone' markers makes their use impractical. The narrowness of the Dyke also means that the NSBA objects to the use of posts. The applicants have used them as channel markers on the River Chet, a wider waterway than the Dyke, and there have been reports of craft hitting them and being damaged. Despite the fact that the reed vegetation has established itself on the Chet the applicant has so far refused to remove the posts. The channel markers are an additional reason why the NSBA objects to the application. The channel marking proposals conflict with the terms of core strategy policy CS3, protection and enhancement of navigable water space through avoidance of development detrimental to its use.

Grounding of craft - The current piled edge provides a defined line for craft down the narrow Dyke. Without piling there is a risk that even experienced helms could hit the soft bank. The problem of grounding is exacerbated by the fact that Upton Dyke is one of the relatively few stretches of water where the speed limit is 3 mph. At low speed a motor cruiser may have very little steerage and is liable to be pushed onto the bank by a cross wind or when manoeuvring round craft converging down the narrow Dyke. If a craft is driven, blown or pushed onto piles it is easy for her to be pushed off because she will not have grounded. If there is no piling, there is a risk that a boat will ground against the rolled back bank (even when reeded), as has happened elsewhere on the Broads where rollback has been employed), thereby increasing the risk of erosion. There is also a risk that the matting (coir blanket) which is to be used for erosion protection purposes will get caught up round the craft's propeller. If this happens (and it has elsewhere on the Broads where rollback has been employed), not only will the risk to navigation have eventuated but the re-profiled edge would be at risk (and the risk of erosion greatly increased). These risks are greater in the Dyke than elsewhere on the Broads because of its narrowness. For these reasons, the application conflicts with the terms of core strategy policy CS3, protection and enhancement of navigable water space through avoidance of development detrimental to its use, and with the terms of development

management policy DP 12, developments not to result in hazardous boat movements.

Reduction in moorings - Towards the top of the Dyke there is a stretch of quay heading, repaired by the Environment Agency some 10 years ago, which is used by visiting boats when the Parish Staithe and boatyard moorings are full. That stretch is not listed as 'retained piling' in the application. To deprive visiting craft of these casual moorings would run counter to one of the principles in core strategy policy CS9, supporting sustainable tourism, by protecting against the loss of existing facilities, and CS14, moorings.

Commercial impact - The negative aspects of the application mentioned above would, if the application was granted, be liable to act as a deterrent to use of the dyke and thereby have an adverse impact on the boatyard at the head of the Dyke and the public house and community shop in the village, contrary to core strategy policy CS9.

## **5 Representations**

5.1 The Navigation Committee considered the application proposal at their meeting on 10 December 2015.

5.2 The Draft Minutes of the Navigation Committee are set out below:

*The Committee received a report which provided them with a summary of Broadland Environmental Services Ltd (BESLs) planning application proposals for the removal of piling and installation of erosion protection in Upton Dyke situated in Compartment 37 on the true right bank of the River Bure.*

*The Senior Waterways and Recreation Officer highlighted that in the officers' view the narrow width of the dyke presented an increased risk of erosion of the bank and the deposition of that material in the bed of the dyke, which in turn, would require additional dredging to maintain access to the Parish Staithe and boatyard. He therefore suggested that conditions needed to be placed on any planning permission in order to gain more security.*

*The Chair mentioned the letter from Bryan Read received by all members expressing the concerns the Norfolk Heritage Fleet Trust had about the safety for the Hunter Boats relating to this planning application.*

*A further concern was expressed by the Vice-Chair of the Planning Committee who stressed she was talking on behalf of Upton Parish Council and not as a member of the Authority, stating the Parish also objected to the plans.*

*One member suggested whether it was worth looking into whether Upton Parish Council, which was collecting payment for moorings on the opposite bank, had enough funding to take on the responsibility for piling on both*

*banks of the river.*

*Another suggestion was to look into the possibility of widening the dyke. The Senior Waterways and Recreation Officer commented that although eating into the roll back bank for erosion protection would not be supported by the Environment Agency, it would be worth looking to see whether there was any scope for widening the dyke. Paul Mitchelmore added that BESL had discussed this option and said that he could explore to see whether this would be a possibility.*

*A further suggestion was, as there was a risk of erosion, to replace the peat with clay to prevent the dyke from closing up with sediment.*

*A member enquired whether BESL's actions would cause the need for dredging and so be a burden to the Authority. The Senior Waterways and Recreation Officer responded he didn't see this being an issue and assured the committee that the Authority had better mapping and sonar surveys in place which were included in the protocol. He continued that officers knew the work was being carried out and reports from BESL were being received.*

*Several other options were discussed including raising a green strip to walk on, using light weight timber staging which would be cheaper and installing additional piles next to the old ones. The majority of the Committee did not support the application.*

*RESOLVED by 8 to 0 (with 2 abstentions and as a member of the Planning Committee Peter Dixon did not vote)*

*that the Committee recommends that the Planning Committee refuses the planning application for the removal of piling and installation of erosion protection in Upton Dyke on the true right bank of the River Bure and request officers to discuss alternative options such as the widening of the Dyke with the applicant.*

- 5.3 In addition the objection has been received from Upton White Horse Community Pub, Restaurant and Upton Community Shop, Eastwood Whelpton Ltd (Boat builders and hirers) and the Broads Hire Boat Federation. They each state

*Object on behalf of the White Horse community pub and restaurant and the Upton community shop.*

*We are a community interest company (we invest our success in the community). We are an essential feature of the Broadland tourist scene and we are only able to balance our books (survive) on the basis of the summer tourist trade – most of which is river derived from tourists who moor in Upton dyke and patronise our business. Without this summer trade which subsidises the lean winter months this historic Broads business could not survive.*



*Our objections to the above application are based on the following grounds:*

- 1 Reduction in moorings - At the top of the dyke (south) there is a stretch of quay heading, repaired by the Environment Agency comparatively recently, which is used by visiting boats when the parish staithe moorings are full. This stretch is not listed as 'retained piling' in the application. Without it we would see reduced custom and our tourist business would be jeopardized. The removal of the quay heading in this vicinity would make public mooring more difficult and less likely to happen.*
- 2 Parish staithe maintenance - The extent of this is not defined in the application, and if this was reduced in any way we would again have a reduced overnight clientele. We wish to be reassured that the quay headed public/parish staithe is maintained at least, and if possible expanded,*
- 3 Channel markers, erosion and possible grounding - Upton dyke has always been a challenge to river tourists who are assisted by the existing clearly defined quay headed bank which ensures boats stay in deep water, and acts as a valuable reference. By removing this constant 'kerb' there is considerable potential for grounding, inadequate passing and an inability to accurately assess this particularly narrow channel. Marker buoys would add to the already existing impression that Upton dyke is not suitable for novices, and further undermine our trade. (A sign recently erected by the BA warning of the difficulties of navigating Upton dyke, which highlights the existing issues before any change, has dramatically reduced our trade).*

*While there are a good number of years left in the current pilling, we would ask that the status quo remains until a time in the future when there may be more money available to maintain it. The delicate balance between the work proposed and the potential effect on business such as ours has not been properly taken into account in this application, which is being considered as an expedient action while 'the team is in the area'.*

*The tourist infrastructure in the Broads is as delicate in places as the flora and fauna, and we are very concerned that any change such as that proposed could do serious damage to our business and consequently our whole community.*

*Objection by Eastwood Whelpton Ltd*

*Eastwood Whelpton Ltd thanks the Broads Authority for the opportunity to comment on the above planning application to remove piles on the south bank of Upton Dyke, which, we understand from previous reports still have a life of about 10 years. Clearly the ongoing condition of the dyke and any potential navigation issues will have a significant impact the operation of our*

*business which relies on easy navigation access to the Staithe at the end Upton Dyke. Consequently, objects on the following grounds:*

*Risk of erosion: The southern bank of the dyke as far as the culvert which goes under the dyke is peat. Whichever of the two methods (driving down or removal of piles) described in the applicant's supporting document Broadland Environmental Services Ltd Piling removal works within Compartment 37 (Upton Boat Dyke) on the River Bure was used, it is highly likely that the peat will erode rapidly with consequent siltation of the Dyke. This would not only reduce the depth of the Dyke but it would also restrict its navigable width. The applicant has failed in its supporting document to set out any clear mitigation for this very real risk, instead they refer to experiences following piling removal in other Compartments, where the geology and nature and width of the river are no doubt different. The risk of erosion of the peat and consequent siltation means that the application conflicts with the terms of core strategy policies CS3, protection and enhancement of navigable water space through avoidance of development detrimental to its use, and CS15, adequate water levels to be maintained for safe navigation, and with the terms of development management policy DP 13, bank protection.*

*Channel markers: The applicant proposes that, if its driving down/removal application is successful, there should be a system of channel marking - either 'cone' type buoys or red posts. 'Roll back' of a bank undoubtedly requires channel marking, at least pending the establishment of the reed vegetation. In a dyke as narrow as Upton Dyke, the wandering nature of 'cone' markers makes their use completely impractical. The narrowness of the Dyke also means that the use of posts is similarly impractical. The very slow speed of passage of boats along the dyke, cited by the applicant as a positive and showing their lack of understanding of navigation issues, in fact means that the use of posts will give rise to several other significant risks including injury to crew members of boats. This will result because at the low speeds that boats travel down the dyke, the prevailing and north of prevailing winds blow the boats onto the South Side bank. Currently they are able to use the hard bank as a means to stop this drift whilst still allowing slow progress along the dyke. The use of posts would result in boats blowing against the bank and possibly grounding (see below) and will result in collisions with the posts that crew members will try to mitigate with hands and feet with consequent risk of injury. The applicants have used posts as channel markers on the River Chet, a wider waterway than the Dyke, and even here there have been reports of craft hitting them and being damaged. Also it is of significant concern to us that despite the fact that the reed vegetation has established itself on the Chet the applicant has so far refused to remove the posts. We therefore object strongly to the use of channel posts for these reasons and because they appear to us to conflict with the terms of core strategy policy CS3, protection and enhancement of navigable water space through avoidance of development detrimental to its use.*

*Grounding of craft: The current piled edge provides a defined line for craft down the narrow Dyke. Without piling there is a significant risk that craft will*

*hit the soft bank. The problem of grounding is exacerbated by the fact that Upton Dyke is one of the relatively few stretches of water where the speed limit is 3 mph. At 3 mph a motor cruiser has very little steerage and is liable to be pushed onto the bank by the wind or when manoeuvring round craft converging down the narrow Dyke. If a craft is driven, blown or pushed onto piles it is easy for her to be pushed off because she will not have grounded. If there is no piling, there is a risk that a boat will ground against the rolled back bank (even when reeded), thereby increasing the risk of erosion. There is also a risk that the matting which is to be used will get caught up round the craft's propeller. These risks are not speculative; they have both occurred elsewhere on the Broads where rollback has been employed. The problem is that the risks here are greater because of the narrowness of the Dyke. For these reasons, we believe that the application conflicts with the terms of core strategy policy CS3, protection and enhancement of navigable water space through avoidance of development detrimental to its use, and with the terms of DP development management policy DP 12, developments not to result in hazardous boat movements.*

*Reduction in moorings: Towards the top of the Dyke there is a stretch of quay heading, repaired by the Environment Agency some 10 years ago, which is used by visiting boats when the Parish Staithe and boatyard moorings are full. That stretch is not listed as 'retained piling' in the application. The local community has recently taken ownership of the nearby pub and opened a community shop. The long term viability of this project will be damaged by the reduction in the number of available moorings in the basin at the end of the dyke. To deprive visiting craft of these casual moorings appears to us to run counter to one of the principles in core strategy policy CS 9, supporting sustainable tourism, by protecting against the loss of existing facilities, and CS 14, moorings.*

*Commercial impact: The negative aspects of the application mentioned above would, if the application was granted, be liable to act as a deterrent to use of the dyke and thereby have an adverse impact on our business at the head of the Dyke and the public house in the village, contrary to core strategy policy CS9.*

#### *Objection by Broads Hire Boat Federation*

*Representing 24 members operating almost all the Broads hire cruisers and including the charter yacht operator at the end of the Dyke, we object to this application on the following grounds:*

*Risk of Erosion and potential restriction of navigation: A large section of the southern bank is peat which, under the applicant's proposals could be at risk of erosion and siltation of the dyke bed. Whilst erosion monitoring and remediation measures are proposed, these and a probable requirement for more frequent dredging put at risk continuous safe navigation of the dyke with resulting restriction on the business of the boatyard and access for visiting craft using the various facilities and services at Upton village.*

*Navigable Channel Markers: The piled bank currently clearly defines the navigable width of this narrow dyke but, under the applicant's proposals for "roll back" of the bank, temporary buoys or marker posts are suggested. Both would appear to be unsatisfactory, the former being subject to movement from the line and the latter being a hazard to passing craft. Additionally, bearing in mind an earlier situation on the River Ant and the current position on the River Chet, the applicant appears able to ignore a planning condition requiring removal of temporary markers when the bank has become re-established.*

*Grounding: If "roll back" is employed without the dyke being substantially widened at the same time there is a future risk of boats grounding on the soft bank. Due to restricted speed in the narrow dyke a motor cruiser would have reduced steerage and could be pushed onto the bank by strong cross winds or when manoeuvring to avoid other craft. Matting used for erosion protection would then be more likely to be subject damage by boat propellers and its effectiveness reduced.*

5.4 In addition some 30 additional letters have been received from residents, mainly living in the village, objecting for the following concerns:

- Remove of piling will lead to difficulty for vessels navigating the Dyke
- Unacceptable reduction in amount of informal mooring
- Impact on number of visitors using key local businesses
- Piling still generally in good condition with several years before significant maintenance needed
- Removal of piling will reduce summer trade and seriously jeopardise the viability of the community shop and pub.
- Pile removal will increase silting up and harm water depth of the Dyke;
- Removal of piling will cause more problems for boats manoeuvring in the Dyke
- Concern this would be a precedent for removing piling on the north side of Upton Dyke

## **6 Planning Policy**

6.1 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 September 2007 pdf](#)

Policy CS1 – Landscape protection and enhancement

Policy CS3 - Navigation

Policy CS4 – Creation of new resources

Policy CS15 – Water space management

**Development Management Plan DPD (DMP) (2011)**  
[DEVELOPMENTPLANDOCUMENT](#)

Policy DP1 – Natural environment

- 6.2 The policy below has also been assessed for consistency with the NPPF and has been found not to be reflected in the NPPF; so full weight cannot be given in the consideration and determination of this application.

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

Policy DP13 – Bank protection

- 6.3 Material Planning Consideration

**National Planning Policy Framework (NPPF) (2012)**  
[NPPF](#)

**7 Assessment**

- 7.1 Whilst this application has raised significant objection, it is important to appreciate that the 2008 application granted planning consent for sustainable flood defence improvements in Compartment 37 and recognised the need for pile removal following completion of these works. The technique now proposed involves 'removal' through pile driving into the dyke bed, rather than extraction (generally used elsewhere in parts of the Broads). This technique has been used in the River Chet and raised no fundamental problems, suggesting the approach could be acceptable elsewhere provided it is delivered in an agreed manner and linked to necessary site specific safeguards (to be identified by planning condition).
- 7.2 As outlined in paragraph 5.1, Navigation Committee requested Officers discuss alternative options to pile removal with BESL. This has taken place and BESL have now formally responded in e-mail correspondence dated 19 January as follows

*We have concluded that given that the piles are reaching the end of their life expectancy and that no landowner or third party including the Parish Council (Parish Council meeting minutes 7th January 2016) are willing to take responsibility for these piles then they need to be removed. We believe the removal of the piles provide a significant improvement to safety and removes any long term liability for future maintenance.*

*The suggested option of widening the dyke is not an alternative to pile removal it is an item at additional cost and of no benefit to either ourselves or our client. More importantly we feel it will not make the dyke safer to navigate along. Measurements along Upton Dyke suggest that it is currently only wide enough for one way traffic, i.e. current dyke width is circa 9 m with 2.5 - 3 m taken up by moored boats on the northern side giving approximately 6 – 6.5 m of navigable width for vessels. Given a hire boat is circa 3.5 m wide this allows around 1.5 m of clearance either*

side, see photo below.

*Realistically, the dyke would need to be widened by over 5 m to provide safe two way navigation and this would still be narrower than the River Chet. Widening less than this would encourage two way traffic but increase the likelihood of incidents. With this in mind BESL feel that removing the piled hazard but not widening the dyke is the safest solution at this stage. Any increase in width would also encourage greater speeds along the dyke and generate greater wave action. This would impact both the adjacent moored boats and possibly increase erosion to the new reeded edge. A wider dyke may encourage larger boats into the dyke adding additional pressure.*

*Furthermore, the existing floodbank was re-aligned (setback) to provide a wider rond which improves the bank's stability allowing the piles to be safely removed without compromising the bank. Any reduction in width would reduce bank stability proportionate to the scale of widening. This profile was agreed as part of our previous planning application and in principal so was the pile removal.*

*(In addition, in response to point raised regarding the reduction in mooring provision BESL have stated)*

*When BESL met with the Parish Council and other stakeholder (including a representative of the White Horse Pub) at pre-consultation we agreed the extent of the piling that would be retained including a section which fell outside the Parish Staith. To avoid any misunderstanding of the extent of these piles we have installed a yellow post at the end of the section to be retained. At the time we suggested that an agreement be reached as to who would take long term liability for the maintenance and use of these piles for mooring. We are awaiting confirmation from the local stakeholders as to which third party this will be.*

- 7.3 The NPPF identifies the three key dimensions of sustainable development as economic, social and environmental. The comments received on the application address all three of these dimensions with the proposal to remove the hard engineered piled edge offering a strong environmental benefit but objection has highlighted potential impact on use of the water-space and access to village services with potential for an adverse effect on economic and social considerations.
- 7.4 Based on scheme design, site context, planning policy, consultee comments and further observations from BESL, the following represent the key issues for Members to consider.

#### Navigation and Recreation Considerations

- 7.5 It is clear from comments received (and from the Planning Officer's discussions with objectors and BESL) that there are conflicting views upon alternatives to the application proposal (i.e. maintaining the piling or widening

Upton Dyke). However BESL have clearly explained why the application is requested to be determined in its current form (and that they consider that this will safeguard navigation interests).

- 7.6 In relation to pile removal (in this case pile driving), the 2008 permission followed established practice by imposing a planning condition to retain control of works that could otherwise be detrimental to navigation interests (especially as a result of erosion) and / or the character and appearance of the Broads.
- 7.7 In this case, it is recognised that the existing piling is no longer required for erosion protection purposes and its removal (subject to safeguards) would deliver flood defences in a more sustainable manner (consistent with an aspiration of policy CS4). Whilst there are specific places where the piling is in a poor condition or there is damaged / missing capping and waling, much appears in a reasonable condition. However this will deteriorate without maintenance and as this is no longer required for erosion protection purposes, the Environment Agency no longer need to retain this for a flood defence purpose. In these circumstance, the Authority have contacted local stakeholders and interest groups to enquire if any would be willing to take on the maintenance responsibility of the piling proposed to be removed. However this has failed to identify any landowner or interest party who will take on this responsibility for this substantial length of piling.
- 7.8 Existing piling will deteriorate in the dyke. Therefore whether at this point or in the near future the piling will become more of a navigation hazard and its removal will be a navigation benefit, subject to the dyke edge being properly delineated and protected. The application recognises that navigation markers will be initially needed linked to pile removal until reed vegetation establishes. This should be a short term measure but concern has been raised that this should effectively mark the edge but not become a hazard to boat users. Therefore it is considered reasonable to require the exact design / nature and duration for the retention of channel markers to be controlled by planning condition (to be agreed by Broads Officer).
- 7.9 It is recognised that pile removal may increase risk of erosion and siltation and as highlighted by various consultees, including the NSBA, the risk may increase where the existing piling abuts peaty material. In the part of the site where this risk is greatest, BESL have changed their bank profile and erosion protection technique to seek to mitigate this greater risk by using a shallower profile and using coir matting to add stability to the bank. As with all pile removal there will remain a risk of erosion, it is considered that this approach should reduce risk of erosion of the more peaty area of bank.
- 7.10 Objectors have expressed concern regarding the suitability / robustness of coir matting as an initial erosion protection technique on the proposed shallower re-profiled bank in Upton Dyke and the potential for boats to damage this as a result of wind blowing slow moving vessels into the edge in the narrow dyke. BESL's view is that the straight alignment of Upton Dyke and its narrow nature will ensure boat speeds are low and this, coupled with

proposed profiles of banks, will reduce risk of collision (and associated damage) to the new edge.

- 7.11 BESL have highlighted that notwithstanding the limited risk of erosion, the proposal details how erosion will be monitored as detailed in paragraph 2.5 (with baseline information and subsequent findings being provided to the Broads Authority). In addition it is considered that there will also be a need for sonar monitoring to ensure that piling driven into the bed does not prove a navigation hazard (especially based on the narrow nature of the dyke). Whilst the technique worked successfully in the River Chet, there is a risk in another location that piles may not be successfully driven into the bed. Therefore details of the technique for removal of (part driven) piles will need to be submitted and agreed. Should significant erosion take place, the erosion monitoring protocol require for dredging to remove silt / eroded material. Member should note that despite the relatively narrow width of Upton Dyke, this dyke can be dredged successfully.
- 7.12 Whilst the navigation concerns expressed are appreciated, on balance, it is considered that provided planning conditions are imposed to secure temporary channel marking plus erosion monitoring and mitigation measures and safeguards, the proposal would meet the aims of development plan policies CS3, CS15 and DP13.
- 7.13 It is considered that impact on other recreation and leisure interests can be satisfactorily safeguarded. In relation to boat use, works are proposed in the winter on the south side of Upton Dyke and excludes the area of the Parish Staithe (this will remain unchanged). In relation to walking, whilst there is a PROW along the floodbank will need to be closed during the two months period of works, there are other footpath links available away from the floodbank to link the Upton to Acle village and Acle Bridge (and also fish elsewhere from other banks).

#### Flood risk

- 7.14 The permission granted in 2008 provided a sustainable form of flood defence that would not increase flood risk. The proposed pile driving will not alter the proposed flood risk.
- 7.15 The Environment Agency have raised no objection. Furthermore, it is considered that in the event that erosion rates are more significant than in areas where pile 'removal' has taken place elsewhere in the Broads, there are safeguards in place to ensure that action (in the form of dredging) will take place should monitoring show erosion / siltation exceeds agreed levels. In addition, it should be noted that the areas between the existing bank and roll back banks have provided an area for dredging disposal and some space still remains for this purpose. Based on these factors, there is no conflict with development plan policies CS4 and DP29 or the thrust of NPPF advice.



## Ecology

- 7.16 The proposal will have a very limited impact on ecological interests and is outside the Upton Broads and Marshes SSSI. In the 2008 planning application, Natural England were satisfied that the proposed development would not damage or destroy the interest features and their view remains unchanged.
- 7.17 Based on this, it is considered that the proposal will not conflict with development plan policies CS1, CS4 and DP1.

## Phasing / Timing

- 7.18 The works are proposed to undertaken to enable pile driving / removal to be completed outside the main boating season to minimise disruption to river users, walkers and landowners. The approach is welcomed and to secure the exact timing, a planning condition is proposed to be imposed to agree the exact timing. Also given the busy nature of the Dyke outside the main season, hours of working restriction is also justified by planning condition.

## Other Social and Economic Considerations

- 7.19 The Parish Council and other objectors have highlighted how important Upton Dyke is to the economic and social well-being of the village, notably how local business rely on the boat related trade and activity that the dyke generates. These are important considerations mirroring key considerations identified in the NPPF (as discussed in paragraph 7.3).
- 7.20 In this case, the piling on the south side of Dyke is no longer needed for erosion protection purposes and most on the south side is not capable of use for mooring purposes (given the narrow nature of the Dyke and mooring on its north bank). Furthermore BESL have confirmed removal will take place outside the main boating season (to be controlled by planning condition). In view of these considerations, whilst the concerns expressed are appreciated it is considered that the pile 'removal' technique (and mitigation measures) proposed will satisfactorily limit risk of erosion and ensure that there will not be an unacceptable impact on local businesses in the longer term.
- 7.21 In view of the concerns raised about the loss of the opportunity offered by the piling for informal mooring and the impact of this on the village, a number of organisations including local businesses, the Parish Council and the NSBA were approached to see if they would be willing to take them on, but none of them are willing to do this.

## **8 Conclusion**

- 8.1 This is a particularly contentious application. It proposes pile removal in the form of pile driving (unless ground conditions require their extraction). The piling to be removed was identified in the 2008 application and was part of

the proposal to deliver a more sustainable form of flood defences. Whilst the concerns raised locally are appreciated, on balance it is considered that the proposed techniques and safeguards are suitable based on the ground conditions and that subject to the imposition of planning conditions (see below), navigation and other interests can be protected and the proposal would meet the key tests of development plan policy and would be consistent with NPPF advice.

## **9 Recommendation**

9.1 Subject to no substantive representation/comment being raised from the outstanding consultees, this planning application be approved subject to the following conditions:

- (i) Approved list of plans;
- (ii) Traffic routing;
- (iii) Wheel cleaning;
- (iv) Erosion monitoring and mitigation;
- (v) Sonar monitoring;
- (vi) Navigation hazard markers;
- (vii) Minimum depth for pile driving;
- (viii) Remedial actions / mitigation where pile driving unsuccessful / fails;
- (ix) Timing of works;
- (x) No working on Sundays or Public Holidays.

9.2 The following informative be specified on the decision notice of the planning application:

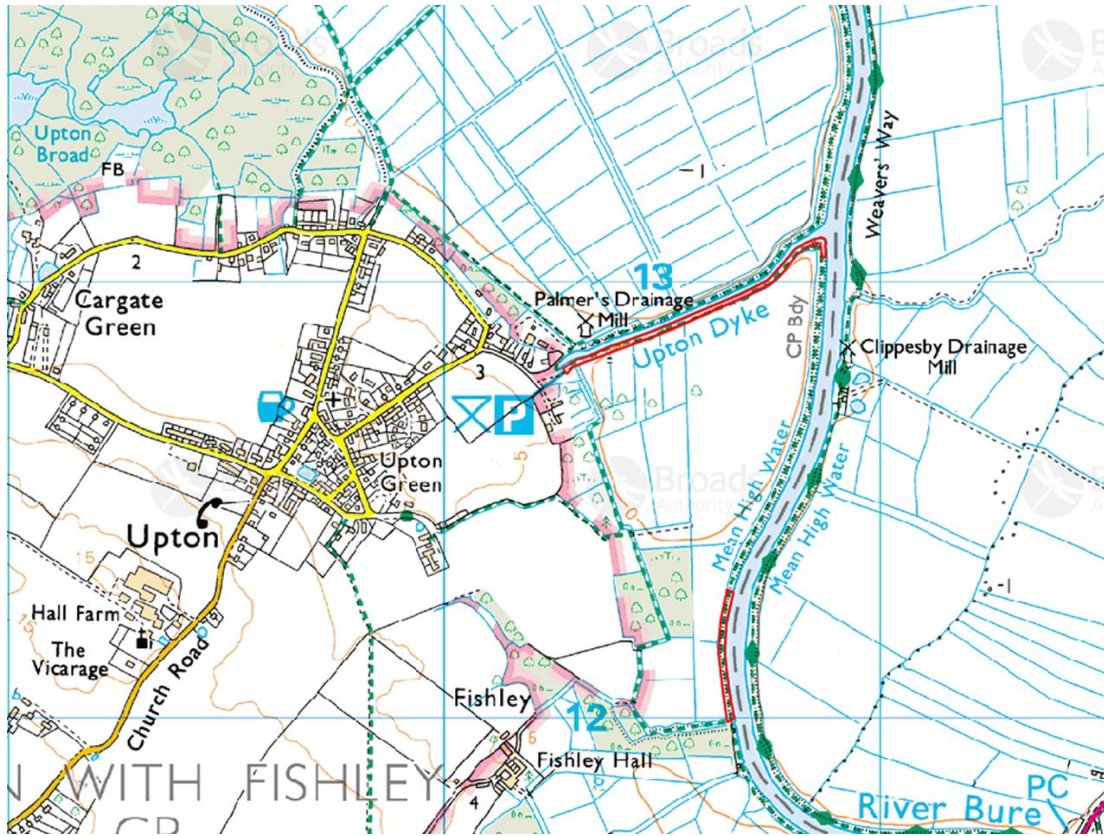
- The permission shall be granted in the context of the Memorandum of Understanding between the Broads Authority and the Environment Agency on 25 April 2003.

Background Papers: Planning File BA/2015/0364/FUL

Author: Andy Scales  
Date: 25 January 2016

Appendices: APPENDIX 1 – Location Plan  
APPENDIX 2 - Photograph of Upton Dyke  
APPENDIX 3 – Notes of Site Visit held on 29 January 2016

BA/2015/0364/FUL - Driving/removal of piling along the southern bank of Upton dyke, re-grading the dyke edge and the original bank, and crest raise existing bank with the material gained from the old bank.



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**PLANNING COMMITTEE**

5 February 2015

**Note of site visit held on Friday 29 January 2016**

**BA/2015/0364/FUL\_ Compartment 37 South Side of Upton Boat Dyke, Upton with Fishley**

**Proposed Development :** Driving / removal of piling along the southern bank of Upton Dyke, re-grading the dyke edge and the original bank, and crest raise existing bank with the material gained from the old bank.

**Applicant: Environment Agency**

Present:

Dr J M Gray – in the Chair

Mr M Barnard  
Miss S Blane  
Prof J Burgess  
Sir Peter Dixon

Mr G Jermany  
Mrs L Hemsall  
Mr V Thomson

In attendance:

Mrs Sandra A Beckett – Administrative Officer (BA)  
Ms Cally Smith – Head of Planning (BA)  
Mr Andy Scales – Planning Officer (NPS for BA)

Mr Paul Mitchelmore - Applicant (Environment Agency)  
Dr Kevin Marsh – For Applicant (BESL)

Mr Paul Savage – Broads Society  
Ms Virginia Pitchers – Upton with Fishley Parish Council  
Mr Frank O'Neill – Broadland District Council Member for Blofield and South Walsham Ward  
Mr Nicholas Crane – Landowner, former Chairman of Upton Parish Council  
Mr Paul Carrington – NSBA Committee Member and Upton Parish resident  
Mrs Anne Whelpton – Upton with Fishley Parish Council.

**Apologies for absence** were received from: Mr Nigel Dixon, Ms Gail Harris, Mr Paul Rice and Mr John Timewell

**Introduction**

The Chairman welcomed everyone and invited them to introduce themselves.

He reminded members of the procedures for the site visit emphasising that it was purely fact finding and no decisions would be made at this visit but the matter would be considered in detail at the next meeting of the Planning Committee on 5 February 2016. Members were on the visit to examine the context of the application, the impact on the surrounding area and to make sure that all the relevant factors of the site had been pointed out. He urged those present to stay within the group and non-members of the Committee not to lobby members. If they had any specific views they wished to impart, these would need to be put in writing for the appropriate discussion at the Committee meeting.

Following an explanation of the application, Members were given the opportunity to view the site from the Staithe and the first part of the south bank of the dyke and ask questions. They were also given the opportunity of viewing the south bank of the dyke from a boat.

## **The Proposal**

### *The Plans*

The Planning Officer introduced and gave a description of the application for the removal of piling along the southern bank of Upton Dyke, the re-grading of the dyke edge and the original bank and crest raising of the existing bank with the material gained from the old bank. He explained that planning permission had been granted in 2008 for flood defence improvements which included piling removal. Although the principle of piling removal was established, a condition was placed on that which required the submission of a separate planning application to provide details of the nature and techniques to be used for the piling removal. This was in order to ensure that there would be proper safeguards in place for navigation and amenity and the character and appearance of the Broads.

### *Site context*

Members were provided with two plans, one of which provided the location of the proposals in the context of the whole of Compartment 37, the other providing diagrams of the proposed works and their location showing the bank gradients and sections of the river's edge.

Members noted that at present the dyke was piled on both sides, the north side being used for private moorings. Some mooring rights existed on the south side of the dyke and the western end at Upton Parish staithe. In general the dyke was relatively narrow mostly being 9 metres wide, with it becoming wider at the western end of the dyke. It was noted that the slipway belonged to the parish. Members also noted the amount of activity taking place, and were made aware of the importance of the site for informal mooring, and summer trade that was of importance to local businesses. The Planning Officer informed members that an objection had been received from the community shop and pub.

It was emphasised that no change was proposed to the piling on the northern bank of the dyke or at the western end at the Staithe. In addition the area on the southern

bank of the dyke from the Staithe to just beyond the trees was not part of the application.

*Views on Site from beyond the Parish Staithe and line of trees*

Members noted the point of the beginning of the proposed works, marked by a yellow post. It was noted that the proposed works would extend some 580 metres along the length of the water's edge from this point. As the flood improvement works involving rollback agreed under the 2008 permission had now become established, BESL had identified that the piling was now no longer required as part of the flood defences. The proposals involved driving the existing piles into and below the dyke bed – to a depth of about 1.5 metres below mean water level springs, although details were still to be established. Due to the differing ground conditions changing from clay nearer the river Bure to being more peaty at the head of the dyke, two different techniques would be required. The original floodbanks would be re-graded. In the areas of more peaty material, coir matting would be added to a shallower profiled edge along some of the bank. Channel markers would be installed until the vegetation was fully established.

Dr Kevin Marsh explained that the proposed techniques had been used and tested successfully in the River Chet. Paul Mitchelmore confirmed that as part of the project, BESL would undertake sonar monitoring and if there were any problems, the piles would actually be removed in accordance with the Protocol that was in place with the Authority. By driving the piles into the dyke bed this would help to stabilise the edge and stop slippage. Dr Marsh considered that the reedbed would not encroach into the river particularly if the dyke was regularly dredged in the way it had been previously.

The Head of Planning stressed that if members had any further questions on the techniques having read the report to the Committee, they were requested to let officers know so that BESL could provide a response for the meeting.

Members noted that there were public rights of way on both sides of the dyke. Members also noted that there would be a fairly consistent 9 – 10 metres graded width adjacent to the dyke

In response to a member's question concerning potential amendments suggested by the Navigation Committee, the Planning officer confirmed that BESL had provided a response which was detailed in the report for the next Planning Committee meeting. However, they had also requested that the Authority determine the application before them at present.

With regard to the area immediately adjacent to the Staithe, it was clarified that if the piling was to be removed in this location, this would require a separate planning application. It was noted that the Parish Council would wish to retain the piling in this area but there was the question of the maintenance.

### *Views from boat east along the dyke*

Members embarked on a boat taking them down the length of the dyke to the River Bure and back. From this they were able to view the actual various widths of the dyke, noting the navigable width with the vessels moored on the north bank and the limited space available if two boats wished to pass each other. They were informed that during the summer months nearly all the private mooring berths were occupied. Members were also able to gain an impression of the condition of the piling along the south bank of the dyke, some of which was in a significant deteriorating condition, particularly nearer the junction with the River Bure where the ground conditions were of clay.

Members were provided with an impression of how well the reed bed could be established by viewing an area on the edge of the River Bure. Members also noted where the water level was much higher at the same level of the piling in the dyke nearer to the Staithe area.

### **Conclusion and Procedures**

The Chairman confirmed that the application would be considered by the Committee at the next scheduled meeting on 5 February 2016. If anyone had any further points of information they required, please could they let officers have these before the meeting. Those present were able to attend the meeting when the usual public speaking procedures would be in place and operated.

The Chairman thanked everyone for attending the site inspection.

The Chairman declared the meeting closed at 11.00am