

Broads Local Plan: Broads Sites Specifics Policies
Development Plan Document (DPD)
Report by Planning Policy Officer

Summary: The report briefly reminds members of the progress on the Site Specifics DPD to date and proposes a detailed way forward to progress the document to submission to the Planning Inspectorate.

Recommendation: That the Authority:

- (i) endorses the Sites Specifics DPD and agrees public consultation (publication) on the Sites Specifics DPD for nine weeks (between 9am on Monday 15 July 2013 and 4pm on Friday 13 September 2013).
- (ii) agrees to delegate to the Chief Executive the decision to submit the Sites Specifics DPD to the Planning Inspectorate on assessment of the comments received after the public consultation (publication) ends subject to no new major issues being raised.

1 The Broads Site Specifics Development Plan Document

1.1 The Sites Specifics Development Plan Document is a formal part of the Authority's Planning Policy Framework and the policies within it will inform and guide the formation of applications and decisions by the Broads Authority. Sites are allocated in different areas of the Broads for different uses. The policies set certain requirements that future development proposals on these sites will need to address.

1.2 The DPD has completed the following stages:

- (i) **Initial Stage Consultation:** the consultation took place from 11 March to 3 May 2011. Consultees were asked to suggest what should be included in the DPD.
- (ii) **Draft Policies Stage:** the consultation took place from 23 February to 5 April 2012. Consultees were asked if they agreed or not with the choice and detail of the draft policies and the provisional rejection of other policies.
- (iii) **Additional Consultation for West Somerton:** 15 May to 31 May 2012. A simple survey was completed to provide the Authority with a broad measure of local support for amending the development boundary.
- (iv) **Pre-submission Consultation:** 1 November to 13 December 2012. The document was published for comments relating to its soundness.

- 1.3 The next stage of the process is to submit the DPD to the Planning Inspectorate for Examination. The submitted document would be accompanied by a statement setting out the minor changes that the LPA recommends to the Inspector, taking account of comments received as a result of the Pre-Submission Consultation. The DPD should only be submitted for Examination if the LPA considers it to be sound.
- 1.4 It was originally proposed to submit the DPD for Examination in February 2013. The DPD has not currently been submitted. Planning Committee has been regularly informed and kept up to date on the progress of the DPD.

2 The Reasons for the Delay

- 2.1 There are on-going enforcement issues at the western end of Thorpe Island, where an Enforcement Notice was issued in November 2011 and which was the subject of an appeal, heard at Public Inquiry in May 2012. The Inspector's appeal decision was issued in June 2012 and the effect of this was to vary the Enforcement Notice and to grant planning permission to allow for the mooring of 12 boats.
- 2.2 The adopted Broads Local Plan (1997) includes a policy specifically relating to the western part of Thorpe Island. This policy, TSA2, states:

Local Plan 1997 Policy TSA 2 Thorpe Island

- (a) *Development within the existing boatyard at the eastern end of Thorpe Island, which is needed to meet the essential operational requirements of the boatyard, will be permitted.*
- (b) *Other than that specified in (a), development will not be permitted on Thorpe Island.*

- 2.3 Both in determining the expediency of enforcement action and in considering the appeal Policy TSA2 was given considerable weight by the Authority. The Inspector noted that it would be tested as part of the local plan process, and considered that the limited private mooring use of the basin was acceptable in principle irrespective of the policy.
- 2.4 When the LPA first began the process of the Site Specifics DPD it was proposed to retain the original (1997) wording of TSA2 and this was proposed at the Draft Policies Stage (see 1.2.(ii) above). However, following the appeal decision in June 2012, it was proposed to amend the policy for the area in light of the Inspector's appeal decision. It was proposed that the Submission version of the Site Specifics DPD would incorporate this change. Accordingly, the intention to amend the policy was set out in the Pre-Submission Consultation (see 1.2(iv)) with the following wording:

Sites Specifics 2013 Policy TSA2 Thorpe Island

Development on and adjacent to the Island will be carefully controlled to:

- (a) *maintain and enhance:*
 - (i) *the character and appearance of the Conservation Area,*
 - (ii) *visual amenity and the residential amenity of neighbouring occupiers,*
 - (iii) *the contribution of the island to the wider landscape of the River Yare, and*
 - (iv) *the navigational value of the Yare and the New Cut; and*
- (b) *avoid any significant increase in:*
 - (i) *the intensity of mooring use, or*
 - (ii) *vehicular traffic using the bridge, or*
 - (iii) *dinghy access likely to lead to the mooring or storage of dinghies (or other small craft) on the Thorpe shore, unless specific accommodation has been provided for this, or*
 - (iv) *car parking in the Thorpe area, unless specific accommodation has been provided for this, or*
 - (v) *risk of groundwater or river water pollution,*
 - (vi) *flood risk, and reducing flood risk where practicable; and*
- (c) *support the authorised commercial and residential uses on the island.*

2.5 It should be noted that rival objections to the proposed revisions of the wording have been received suggesting that the revised wording is both too permissive and also too restrictive.

2.6 The Inspector's appeal decision, however, was challenged by the appellant and a High Court hearing date in June 2013 was set. As such, we have been awaiting the outcome of that challenge before proceeding with submission of the Sites Specifics DPD because clearly this will need to be reflected in the policy.

3 Latest Position

3.1 The challenge to the Inspector's appeal decision related to both the limited grant of planning permission and to the amendments he had made to the Enforcement Notice where it was said that he had gone beyond his powers.

3.2 On 20 May 2013 the Secretary of State conceded that the Inspector's appeal decision was technically flawed and should not stand. It has therefore been agreed that it be quashed and papers to this effect have been lodged in the High Court. This process is currently underway and is likely to take some weeks. After the decision has been formally quashed, the matter will need to be reconsidered by the Planning Inspectorate and a fresh decision made.

3.3 The outcome of this therefore is that the whole process of the appeal against the Enforcement Notice reverts back one stage – i.e. there is an appeal in progress, although, clearly the evidence has already been given. The Planning Inspectorate will need to reconsider the matter and a precise

timescale for this is not known. Clearly it will not be a matter which will be resolved within weeks.

4 Implications for the Site Specifics DPD

- 4.1 The process of the enforcement appeal is pertinent to the process of the Site Specifics DPD because policy TSA2 (Thorpe Island) forms part of the Sites Specifics DPD.
- 4.2 It is considered that currently TSA2 (Thorpe Island) would not be likely to pass the tests of soundness in so far as the policy may not be justified, effective or deliverable because there is uncertainty regarding the planning status of the land and the enforcement issue. This uncertainty relates to the final decision of the Planning Inspectorate in respect of the remitted appeal decision. If that is the case and if the DPD were submitted, the Inspector may choose to defer the Examination in Public or find the DPD not sound.
- 4.3 As a Local Planning Authority, the Broads Authority should only submit a DPD that it considers is sound and will stand up to these tests of soundness. At present, this is not likely to be the case.
- 4.4 It is considered that the remainder of the DPD is ready to progress. Whilst comments have been received on the DPD as part of the last round of consultation (the first publication of the DPD), it is not considered that any of these are fundamental or adversely affect soundness. The comments received at the first publication stage (held before Christmas) and the response to each comment is attached.

5 Proposed Way Forward

- 5.1 Clearly there are difficulties with considering the new policy TSA2 (Thorpe Island) ahead of any decision from the Planning Inspectorate in respect of the outstanding appeal. However, there are other policies within the Site Specifics DPD which are non-controversial and/or important for other reasons and these are being held up pending resolution of the Thorpe Island issue. The delay for these other policies is less justifiable and it is appropriate to look for a means to resolve this. Furthermore, an increasing number of queries expressing concern regarding the delay in submitting the DPD to the Planning Inspectorate have been received.
- 5.2 Accordingly, in order to allow the submission of the remainder of the Site Specifics DPD for examination, it is proposed that TSA2 in the Sites Specifics DPD is deleted and the TSA2 in the 1997 Local Plan is saved. The effect of this will be that the Sites Specifics DPD itself will not have a policy called TSA2 relating to the mooring basin. Instead, the 1997 Local Plan policy will continue to be applied in the light of national and local policies. When the Planning Inspectorate issue their decision on the enforcement notice appeal (as described previously), this decision will then determine the basis of what the landowner is able to do on that site.

- 5.3 It is considered that this deletion needs to be treated as a main modification to the DPD, although the Thorpe Island site is not a significant site allocation in the DPD in terms of new development. The Sustainability Appraisal will need to be amended and this deletion reflected in the Habitats Regulation Assessment. It will be therefore necessary for the DPD to go out to Pre-Submission Consultation again – i.e. the outcome of this is that the whole process reverts back one stage.
- 5.4 This, however, will also provide an opportunity to undertake a number of other minor corrections, some of which were in the responses received as part of the first Publication of the DPD (1 November to 13 December 2013) (see Appendix B which is enclosed). These include amendments to:
- (i) correct any spelling and grammar issues which have since been identified;
 - (ii) improve wording where, on hindsight, the DPD could be clearer;
 - (iii) correct minor mistakes or inconsistencies in the DPD which we have since identified;
 - (iv) update text to reflect changes over the last year or so (for example the East of England Plan has been abolished); and
 - (v) make some presentation improvements to the Policies Maps to make them more user friendly.
- 5.5 All amendments will be made clear to consultees. Changes to text will be presented as shown below (and are shown at Appendix A enclosed):
- Text to be removed will be struck through and highlighted in yellow: ~~removed text.~~
 - Text to be added will be red and highlighted in yellow: **added text**
- 5.6 Any responses received to the second round of Pre-Submission Consultation will be dealt with as part of the normal post publication process. Representations will be read, considered and a response drafted, as is required by regulations. Some of these representations could be taken on board in the form of minor modifications. The Broads Authority may not agree with some other representations. If there are representations made that are of a concern to the Broads Authority, the precise way forward will depend on the nature of the representation. If the Broads Authority, on reading the representations, still considers the DPD to be sound, it will then be submitted to the Planning Inspector with the required supporting documentation. It is recommended that the decision for submission of the Sites Specifics DPD be delegated to the Chief Executive (subject to no new major issues being raised) in order to avoid further delay to the process.
- 5.7 It should be noted that by adopting the recommended approach there will still be a delay in submitting the DPD to the Planning Inspectorate, however there are set dates which will give the public and members reassurance that the DPD is progressing. Also, this approach, notwithstanding any representations received as part of the second publication, will result in a DPD which the

Broads Authority considers sound and is confident it can submit to the Planning Inspector.

6 Changes Since Planning Committee

6.1 The Planning Committee, in their meeting on 21 June, agreed the proposed approach as set out in this report and endorsed the Sites Specifics as enclosed (Appendix A).

6.2 Following the Planning Committee there have been some changes to the Sites Specifics DPD. These are made obvious in the enclosed DPD by the use of comments. These changes can be summarised as follows:

- Addition of XNS9 – new clarification policy on Development Boundaries.
- Reflecting changes to the SA
- Updating some policies to reflect some recent planning permissions
- Other slight changes to text.

7 Taking Forward TSA2 Separately

7.1 It is appropriate to consider how TSA2 will be taken forward as, if the above approach is adopted, it will not be reviewed along with the other Site Specific Policies from the 1997 Local Plan.

7.2 It should be noted that there will not be a policy vacuum for Thorpe Island under this approach. The NPPF, Core Strategy and Development Management policies will continue to apply and the existing TSA2 in the Local Plan, which is adopted, covers the area in question. The new decision from the Planning Inspector will be made in the light of these policies, in a similar way to the previous appeal decision. The Authority will then take account of the appeal decision in considering any further planning applications that may be made on the island.

7.3 In the medium term, members will be aware that both the Core Strategy and Development Management Policies DPDs were produced and adopted prior to the change in the Planning System and the NPPF coming into force. Therefore the next piece of planning policy work (other than the Sites Specifics) is a review of those DPDs and the production of a new Local Plan. A revised Thorpe Island policy can form part of that process if necessary. There is currently no set timeline for this although one will be brought forward to members in due course when there is more certainty. It may be possible, however, for the adoption of the new Local Plan to be achieved by 2016.

8 Conclusion and Recommendation

8.1 For the above reasons it is recommended that:

- (i) the draft Site Specifics DPD is amended to delete draft TSA2 (Thorpe Island);
- (ii) modifications highlighted in Appendix A are agreed, and

- (iii) the decision for submission of the Sites Specifics DPD be delegated to the Chief Executive (subject to no new major issues being raised) in order to not add any undue delay to the process.

8.2 This approach is proposed for the following reasons:

- We have recently been informed of the decision of the Secretary of State to concede the legal challenge. We now know the issue will not be heard at the High Court in June.
- The rest of the DPD is ready to progress. Whilst we have received some comments on the DPD as part of the last round of consultation (the first publication of the DPD), we still believe that the rest of the DPD is sound. As mentioned previously, the opportunity will also be taken to make minor amendments to the DPD as stated at 4.3 to essentially 'tidy up' the document.
- We have been receiving an increasing number of queries expressing concern regarding the delay in submitting the DPD to the Planning Inspectorate.

8.3 Subject to approval by Full Authority it is proposed that the second publication of the DPD be between 9am on Monday 15 July 2013 and 4pm on Friday 13 September 2013. This period is nine weeks in total and allows three weeks either side of school summer holidays. This will give ample opportunity for the public to respond, despite the overlap with the summer holiday period.

9 Other Documents of Relevance

9.1 The following documents that accompany the Sites Specifics DPD have not been included in this document pack but can be found here <http://www.broads-authority.gov.uk/planning/future-planning-and-policies/site-specific-policies-dpd/full-authority-additional-documents.html>

- a. The updated Sustainability Appraisal
- b. The updated Habitats Regulation Assessment
- c. TSA2 Topic Paper – explaining the approach as set out in this report
- d. The Policies Maps

10 Financial Implications

10.1 Financial Implications could arise as follows:

- The cost of the Examination in Public and Programme Officer
- The cost of legal counsel
- The cost of issuing enforcement notices
- Officer time in dealing with the above.

Background papers: None

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Broads Plan Objectives: CC3, CC4, LC2, LC3, LC4, BD1, AL2, TR1, TR2, TR3

Enclosures: APPENDIX A - The Broads Sites Specifics Development Plan Document, Second Pre-Submission Version
APPENDIX B – Representations made to the last stage of public consultation and the Broads Authority’s response (Initial Pre-Submission Consultation)