

## **Application for Determination**

- Parish:** Hickling
- Reference:** BA 2012/0046/FUL      **Target Date:** 28 March 2012
- Location:** Land at Hill Common, Hickling
- Proposal:** Provision of access for boats and people following the installation of first time flood defences (earth banks and crest piling) under planning permission BA/2009/0300/FUL (Revised proposal following withdrawal of application BA 2011/0337/FUL)
- Applicant:** Environment Agency
- Recommendation:** Approve with conditions

### **1 Background / Description of Site and Proposal**

- 1.1 In February 2010, planning permission was granted for a 6.7 kilometre length of flood defence improvements in Compartment 6 (from Somerton to Hickling).
- 1.2 As part of the application, first time defences were proposed in the form of a combination of floodbanks and crest piling at Hill Common (crest piling was used where there was insufficient space to provide a floodbank which would act as an effective defence). Hill Common itself is informally surfaced and forms a restricted byway. The proposals included areas where access to the water over floodbanks was to be provided.
- 1.3 The works to implement the consent have been substantially completed. Despite the original proposal to provide access to the water in places along Hill Common, the flood defence works have resulted in problems with access to the edge of the Broad in some places for the recreational user.
- 1.4 As a result, in October 2011 an application was submitted to revise the application approved in February 2010 to provide new access in two specific locations over the defences and provide decked areas adjacent to water to help users. However this application was withdrawn in November 2011 following concerns raised, including with regard to the use of timber decking in some areas.
- 1.5 The current application shows the following works (see drawings provided as appendix 2):

- Towards the eastern end of Hill Common (close to Broad House) close to an existing boat dyke, two sets of timber steps recessed into the bank and a 32 m x 0.8 m wide timber post and decking jetty (linked to an existing 7m timber slab jetty) is proposed (NB. The withdrawn application showed 27m x 0.6 m wide timber post and decking jetty).
- More centrally on Hill Common (opposite to Watersedge and close to Timber Gables) in front of a second boat dyke, timber steps (with associated hand rail) over crest piling is proposed with the steps recessed into the sloping bank on the Hill Common side of the crest piling (NB. The withdrawn application proposed steps with a hand rail located closer to Timber Gables and an 8 m timber deck on the existing road up to the edge of the existing timber piling).

1.6 In support of the application BESL have stated the following (in their Design and Access Statement):

*At Broad House - the new flood defence is formed by an earth bank. The footprint of the new bank has severely reduced the width of level ground next to the quay heading. There is a 39m length of quay heading from the boat house that is leased to two users. The proposal is to install timber decking, supported by timber posts, along the whole length except for a 7m section where there is sufficient width. Two sets of simple steps will be incorporated into the bank. They will be timber edged with hoggin used for the treads. There is no need for a handrail at these locations.*

*At Watersedge - the new flood defence is formed by plastic sheet piling which is capped by timber. Due to the height of the structure, and the fact that there is limited room on the road side, the only practicable solution is to install steps. This arrangement will incorporate the timber capping as a step to link the structures on either side. There is also the need to have a handrail on the Broad side of the crest piling because of the height that people will be off the ground. The location of this crossing has been moved further south than was originally proposed in order to remove it from the sight line of the neighbouring property. Additionally, it is not now proposed to install timber decking at this location because it is accepted that there is sufficient room for safe access to the quay heading.*

*Timber has been chosen for the decking, step structures and handrail as this is the most appropriate material given the purpose, scale and location of the proposals. In the case of Watersedge it will also match the existing timber capping on the crest piling.*

1.7 Following its initial submission, the following clarification has been sought from the applicants' agent:

- an amended plan showing the precise location and nature of works close to Watersedge (and re-consultation has taken place);
- detail of local consultation undertaken by BESL; and
- the maintenance responsibility for steps and decking.

1.8 BESL have confirmed that the works are planned to start shortly after the grant of a planning permission and it is anticipated that this should be completed in a four week period.

## 2 Planning History

2.1 BA/2009/0300/FUL Flood defence improvements (Compartment 6 – Somerton – Hickling). Approved February 2010.

BA/2011/0337/FUL Provision of access for boats and people following first time flood defences. Withdrawn November 2011.

## 3 Consultations

3.1 *Hickling Parish Council* – Refuse. There appears to be some confusion regarding the exact position of where drawing 05/b is to be sited and would suggest a site visit with one of your representatives. Wooden steps set into the bank are acceptable. The steps close to Watersedge is not acceptable as:

- it is not clear where the exact location is;
- the steps encroach onto the road which reduces the width and as HGV's including refuse collection lorries use this road, NCC highways should be informed;
- there are concerns regarding pedestrian safety, as it appears to be positioned on a bend, this could visually impair the road users to the pedestrians;
- it is not in keeping with the surrounding area; the hand rail height detracts from the visual aspect and is not aesthetically pleasing;
- access and egress to wildlife has been impaired; and
- the original drawing 200/003 is more acceptable both visually and aesthetically. However this is still not clear as to the exact position.

*Broads Society* – No objection.

*NCC Highways* – No comments to make on this proposal from a highway perspective.

*NCC PROW* – The following observations advanced.

The steps, from the drawing supplied, appear to be within the bank and not therefore protruding any further into the restricted byway. If they are damaged by vehicles the owner of the steps would be ultimately responsible for the repair.

The land is not registered as common land under the Commons Registration Act 1965. The County can only comment on land over which we consider the restricted byway to run (i.e. between boundaries). The matter of the proposed installation of steps over the new piled edge does not impact onto the restricted byway. The steps are a private concern and the liability, as

with all structures, lies with the owner.

It has been suggested that the highway verge is in public ownership. The definition of a public right of way is the public right of passage over privately owned land. The public right is to pass and re-pass along the length of the restricted byway. The restricted byway designation means that the public have the right to use this way on foot, on horseback and/or leading a horse, with pedal cycles and with non motorised vehicles (i.e, with a horse and cart). Use is not limited solely to foot traffic. There is no public right in motorised vehicles but private rights may exist for people and businesses to access their properties/businesses. The County's responsibility is to ensure a minimum standard suitable for public passage and if the surface is damaged by vehicular use, would seek that those vehicular users of the restricted byway make good the damage.

*Natural England* – No objection.

#### **4 Representations**

4.1 Four representations in support have been received from local residents (up to 13 March 2012), one of which appears to be from the owners of Watersedge.

4.2 One letter of objection has been received from Mr S Mann (this 13 page representation is reproduced as Appendix 3). His objection relates purely to the proposals opposite Watersedge, close to his property (Timber Gables) which comprise timber steps over crest piling (with associated hand rail). In summary his letter states:

- The site has a history of international environmental, high landscape value and scenic importance; the proposal will unacceptably harm this;
- There is an existing design with low key environmental principle which the current proposals will compromise and which would not have been acceptable within the original application;
- There is no chance of a fair hearing because the Broads Authority is biased and has an interest in the application. This violates the rights of the objector;
- The current application represents an abuse of process since it aims to achieve approval of measures which would not have been acceptable when considered with the initial proposals and would have attracted objection
- The proposed development does not represent reasonable expense of public money
- There was a complete lack of proper consultation prior to the application being made
- The design of development with more timber will create a detrimental intrusion in the natural environment
- The proposed works will have an adverse visual impact on the environment;

- The application conflicts with the existing use, public rights and land ownership;
- There are alternative and better suited facilities / sites in the immediate vicinity in the form of ramps provided within the approved development and one within 20 metres of the area of proposed steps
- Highway issues have not been properly addressed and access steps are a hazard adjacent to a restricted byway used by residential, commercial and agricultural traffic
- Public safety issues have not been considered with steps and railing represent a hazard to vulnerable humans and animals
- The planning file is inadequate as it has no environmental statement or highway assessment

4.3 In addition a second letter from Mr Mann has been received (attached as Appendix 4) requesting the application not be considered at the 30 March Committee meeting as he will be unable to attend and speak at the meeting as he is working away. I have also received correspondence from the applicants' agent (BESL) requesting the application be considered at the earliest opportunity to ensure that if works are approved, the scheme can be implemented to allow early access to the bank / boathouses for users.

## **5 Planning Policy**

### **5.1 Broads Core Strategy DPD**

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

Policy CS3 – Access to Navigation  
Policy CS4 – Creation of new resources.

### **5.2 Broads Development Management Policies DPD (adopted November 2011)**

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

Policy DP4 – Design  
Policy DP12 – Access to water  
Policy DP 28 – Amenity.

5.3 The Development Management Policies DPD has effectively superseded the following policy key flood defence policy previously 'saved' in the Broads Local Plan:

Policy INF 5 – Broads flood alleviation strategy.

## **6 Assessment**

6.1 This application has been submitted by BESL on behalf of the Environment Agency. It highlights justification for the proposal and seeks consent for access enhancements to provide safe access to the water for users over the flood defences in two areas omitted from the original approved scheme. In

the original flood defence design, two ramps were provided to allow access to the boat sheds. BESL have indicated that *'once the new defences were completed it became clear that access had been compromised along two particular lengths where some residents have formal leases to moor their boats'*.

6.2 An objector (the occupier of Timber Gables) has raised various issues including regarding the role of the Broads Authority in flood defence applications, material considerations, the level of detail that supports the submission as well as the timing and legitimacy of the Broads Authority processing this application. The response to these comments is as follows:

- The Broads Authority has a duty to determine planning applications in a timely manner. The objector considers that they will be disadvantaged if the application is considered at a time when they are unable to take advantage of public speaking at the Committee meeting (as it will impact on their right to be heard, natural justice and therefore their human rights). However, the Committee report and its appendices have provided in full the objectors' representations to ensure Members can weigh these concerns fully in relation to other planning considerations associated with this proposal. In addition, a request has also been made for the application to be determined as soon as possible. As the period for representation will have expired before the Committee consider this matter and initial representations have already been received from consultees, there is no reason for the application not to be considered at this meeting.
- In this application, the Broads Authority is the Local Planning Authority (not applicant or agent). The Broads Authority in considering all planning applications ensures the considerations of the Human Rights legislation are properly weighed including the rights of individuals, protection of the environment and access to moorings and water.
- The manner of funding the proposed works is not a matter for the Broads Authority or a planning matter.
- Under the Norfolk and Suffolk Broads Act 1988, the Authority has a general duty to conserve the natural beauty, wildlife and natural beauty; promote understanding and enjoyment of the special qualities of the Broads by the public; and protect the interests of navigation. These duties are translated into planning policy in the Broad Authority development plan policies (including in the Core Strategy and Development Plan policies).
- Notwithstanding the decision made on any previous planning application in this area, a Local Planning Authority, the Broads Authority is required to consider the application in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. This states *'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'*.
- This application is minor proposal following the grant of consent for flood defence works approved under 2009/0300/FUL. Whilst that application

was for an extensive area of flood defence works (and was accompanied by an Environmental Statement), the nature of this scheme does not require such an environmental statement or extensive detailed supporting information. As outlined in paragraph 1.7, the agent (BESL) has now provided an amended plan.

- The Broads Authority has processed the application and undertaken consultation in a manner to meet their prescribed requirements. The objector is concerned regarding lack of consultation on this matter in the pre-application period. Whilst applicants and their agents are encouraged to engage with stakeholders before the application submission, there is no requirement for this to take place. BESL have provided detail of pre (and post) application consultation locally including with the objector and Parish Council. This dates back to the period before the submission of application BA/2009/0300/FUL.

- 6.3 Whilst objection has only been received to one part of the application - the portion opposite Watersedge (and close to Timber Gables), it is considered that both parts of the application raise the similar considerations that relate to justification, landscape impact, design, highway safety and amenity.

#### Justification

- 6.4 The character and appearance of the area at Hill Common has changed since spring 2010 when works commenced to deliver first time flood defences for properties in the area. The approved scheme met the key tests of development plan policy at that time, notably saved Local Plan policy INF5. This application proposes very limited further changes in two short areas.
- 6.5 Core Strategy policies CS3 and CS4 seek to protect and enhance navigable water space in flood alleviation project works and promote good quality design. These policies are echoed by the recently adopted detailed policies in the Development Management DPD policies DP4 and DP12. The agent has indicated that the proposal has been formulated to provide safe access to the waters edge and over the defences in two locations where the original consent failed to recognise such access is required. This involves stepped access over the floodbank (including in one location to a short length of decking). Such access would appear consistent with access to water policies, subject to acceptable siting, design and landscape impact.
- 6.6 The objector has highlighted an alternative manner to gain access to the land opposite Watersedge without the need for steps over the crest piling. This would involve using an existing sloped access bank - one of which is 20 metres to the west (almost opposite Timber Gables). However this is not considered to represent a realistic alternative, in view of the very narrow rond which exists (there is insufficient room to walk safely on the rond from this sloped access bank to the area proposed to be accessed by the steps). It is due to the limited width of the rond in this location why crest piling has been used in this part of the defences. Furthermore the current application has relocated the steps further to the south east of the initial siting (in the

withdrawn application). This represents a siting which should be less prominent to the objector (as it is located some 45 metres from the nearest part of Timber Gables itself). Therefore it is considered that the siting represents an acceptable location and an improvement on that proposed in the initial withdrawn application.

### Landscape Impact

- 6.7 It is recognised that Hill Common is an attractive area, close to Hickling Broad. The flood defence works now provide effective first time defences using mainly soft flood defence techniques where space permitted with limited crest piling in other areas (and this crest piling has been timber capped).
- 6.8 It is considered that significant further change to the area would be regrettable. However the proposal is for two small areas, very limited in scale and BESL have confirmed they are only sought to address omissions made in the original application (and no further works for access to water will be required). Whilst Hickling Broad forms a very large area of significant value (as recognised in the original application), it is considered that these proposals are minor and will have no unacceptable impact on the wider Broads landscape or its ecological value. Whilst concern has been expressed regarding crest piling restricting access for wildlife, the proposal will not change or further prejudice wildlife interest further. Therefore it is considered that the proposal represent limited additional changes to the approved scheme and is consistent with development plan policy of protecting and enhancing access to the water.

### Design

- 6.9 Concern has been expressed regarding the visual impact and choice of materials. In the proposed locations, it is considered that the wooden steps (set into the floodbank) and wooden decking, plus steps over the timber capping, set into the sloping bank on the land side of the crest piling, are acceptable. The approach is considered consistent with the visual character of the area and the timber capping on the crest piling. Also the uses of a timber rail rather than an alternative material, again represents an appropriate material appearance for this development. Whilst a hand rail will be visible, it is not considered that this would represent an unacceptable intrusion into the area (which already contains a number of tall wooden telegraph poles carrying overhead wires). The appearance of the area has inevitably changed with the first time defences (including timber capped crest piling) and it is considered that the steps and rail plus the limited area of decking proposed at the eastern end in this application will not unacceptably impact on the current appearance and character of the area and the design and material are acceptable and meet the requirements of Core Strategy policies CS3, CS4 and Development Management Policies DPD policy DP 4.
- 6.10 Clarification has been sought regarding the maintenance of the proposed steps and decking close to Broad House. BESL have now confirmed that the



decking will be maintained by the users and if no longer required will be removed by the landowner or Environment Agency. The steps will be annually inspected and maintained by BESL and ultimately the Environment Agency (or any successors). If there is no longer a need for access using any steps, they will be removed.

#### Highway / access

- 6.11 Concern has been expressed regarding highway safety and potential conflict between residential, commercial and agricultural traffic that uses Hill Common and recreational users accessing the Broad. Hill Common is a restricted byway and Norfolk County Council Highways Officer has advanced no highway or pedestrian safety issues or concerns regarding the location of steps or their relationship to or on highway land.
- 6.12 With regard to the proposal close to Watersedge, Norfolk County Council have highlighted that the steps appear to be within the bank and not therefore protruding any further into the restricted byway. The restricted byway designation means that the public have the right to use this way on foot, on horseback and/or leading a horse, with pedal cycles and with non motorised vehicles (i.e. with a horse and cart). There is no public right in motorised vehicles but private rights are likely to exist for people and businesses to access their properties/businesses. The County's responsibility is to ensure a minimum standard suitable for public passage exists. In this context, the proposal will not prejudice the use of the restricted byway. If steps are damaged by vehicles, BESL would be ultimately responsible for the repair (and ultimately the Environment Agency).

#### Amenity

- 6.13 It is recognised that the areas opposite Watersedge and Broad House have been historically used to provide access to the water. The use of these areas may have historically led to some disturbance from this activity. It is considered that the proposal will not alter any legal rights that exist.
- 6.14 Close to Broad House, the proposed narrow decked area may offer potential for more intensive use for seating / sitting out / barbeques. It is considered that could allow more intensive use for this range of uses that could give rise to additional noise and disturbance for nearby residents if used in this manner on a regular basis. Therefore it is considered reasonable to place a planning condition on the use of new decked areas to limit use to activity directly related to the access to the water and boats and for no other purpose. This would then protect the visual amenity and potential disturbance to nearby residents, consistent with the aims of policy DP28 of the Development Management Policies DPD.

## **7 Conclusion**

- 7.1 It is considered that the proposal would provide enhanced access to the water, would not represent an unacceptable intrusion or change into the

area, is acceptable in design terms and would not damage the first time flood defences recently provided to this area. Therefore it is considered that approval should be granted, subject to the imposition of planning conditions (see below), and this would meet the key tests of development plan policy.

## **8 Recommendation**

8.1 That, subject to no substantive representation/comment being raised from any outstanding consultees and local residents, this planning application be approved subject to the following conditions:

- Standard time limit condition.
- Approved list of plans.
- Use of decking ancillary to boat mooring only.

## **9 Reasons for Approval**

9.1 The proposal is accompanied by supporting information which justifies the proposed scheme.

9.2 It is considered that the scheme will have a very limited impact on the appearance of the area and will not unacceptably harm its landscape setting, especially when considered in relation to changes which have taken place locally to deliver first time defences. The proposed use of timber materials would provide an acceptable appearance, consistent with the timber appearance of crest piling in Hill Common.

9.3 The proposal will not unacceptably impact on highway safety and amenity can be protected by the imposition of planning condition to limit the use of decked areas created.

9.4 The proposal will not interfere with existing rights.

9.5 Therefore application is considered to meet the requirements of the development plan policy (notably Core Strategy policies CS3 and CS4 and Development Management Policies DPD policies DP4, DP12 and DP28) and would not materially conflict with other policies. The proposal is considered to represent an appropriate design of development associated with existing flood defence work in this location.

Background Papers: Application File BA 2012/0046/FUL

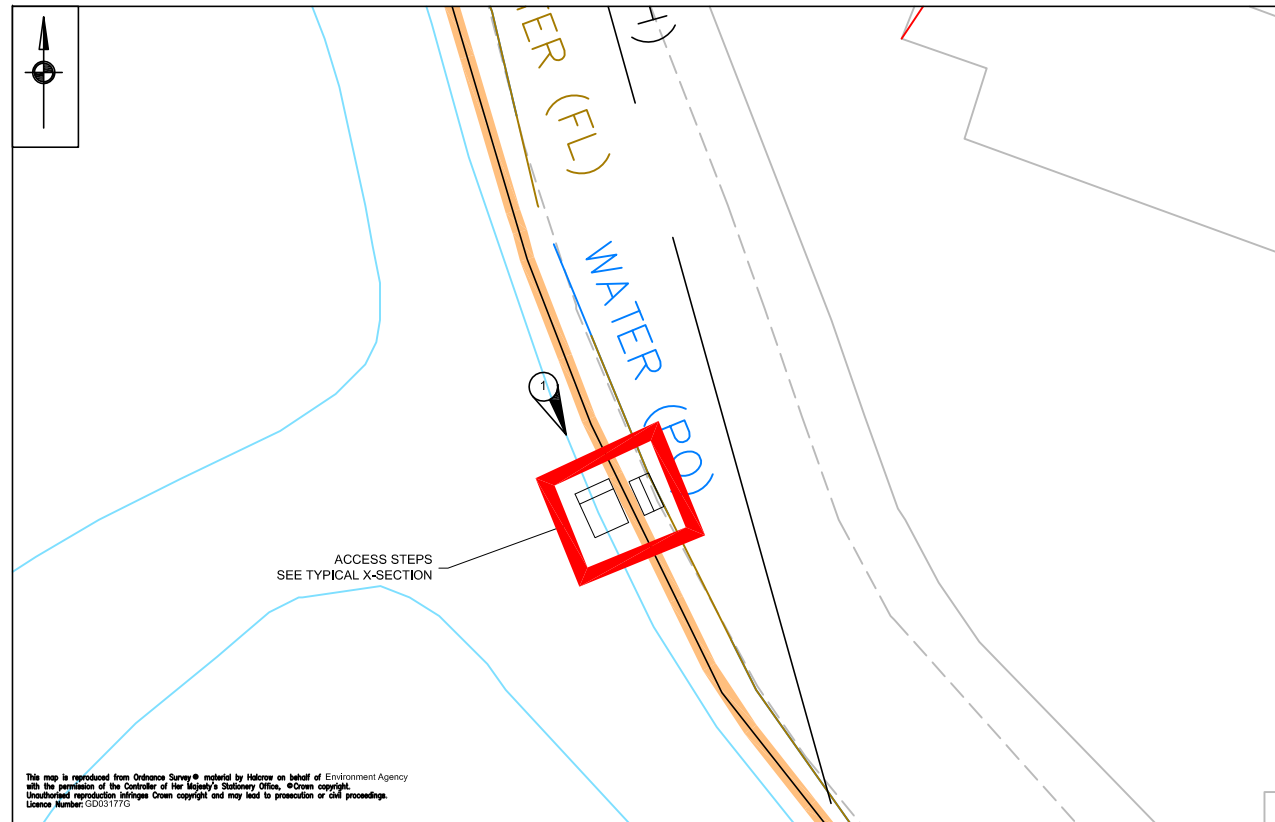
Author: Andy Scales  
Date of report: 13 March 2012

Appendices: APPENDIX 1 – Location Plan  
APPENDIX 2 – Application drawings  
APPENDIX 3 – Correspondence from Mr Mann (dated 20 February 2012)  
APPENDIX 4 – Letter from Mr Mann (dated 22 February 2012)

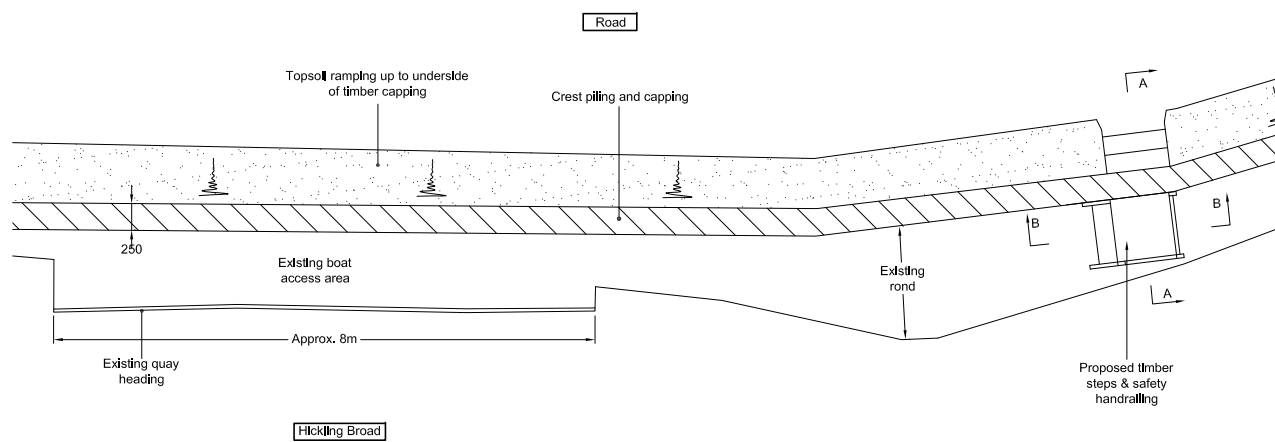
# APPENDIX 1

BA/2012/0046/FUL - Land Adjacent To Hill Common, Hickling  
Resubmission of withdrawn PP BA/2011/0337/FUL for the provision of access for boats and people following the installation of flood defences

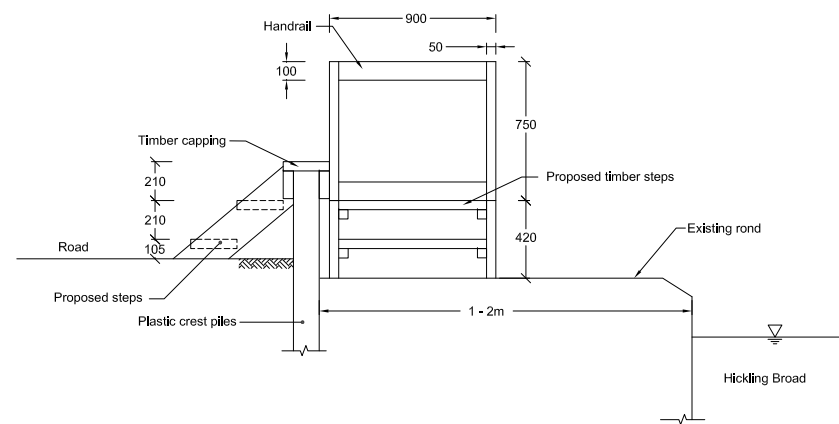




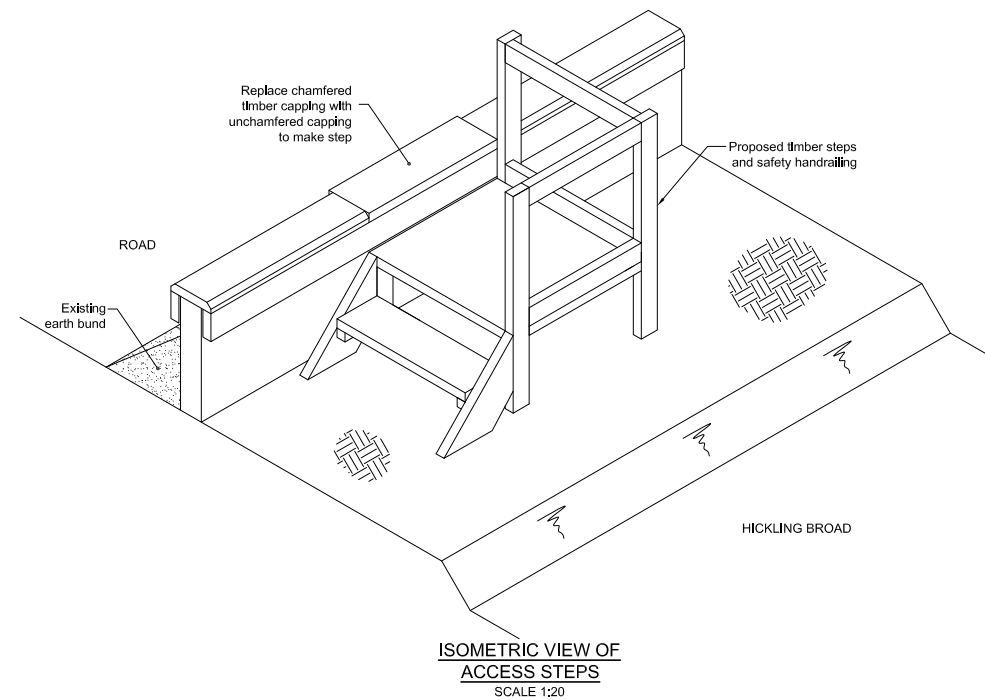
PLAN OF WORKS  
SCALE 1:500



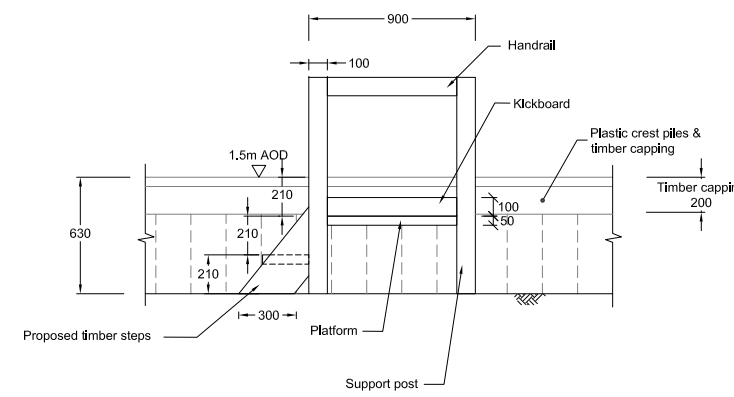
PLAN OF ACCESS STEPS  
DETAIL 1  
SCALE 1:50



TYPICAL X-SECTION A-A  
THROUGH ACCESS STEPS  
SCALE 1:20



ISOMETRIC VIEW OF  
ACCESS STEPS  
SCALE 1:20



TYPICAL X-SECTION B-B  
THROUGH ACCESS STEPS  
SCALE 1:20



PHOTO 1 ARTISTS IMPRESSION  
SHOWING PROPOSED STEPS (SEE  
PLAN FOR LOCATION)

Key:

- NEWLY INSTALLED CREST PILING
- PLANNING APPLICATION BOUNDARY
- PHOTO REF. AND LOCATION

Notes:

1. ALL DIMENSIONS IN MILLIMETRES UNLESS NOTED OTHERWISE.
2. ALL LEVELS IN METRES ABOVE ORDNANCE DATUM.
3. NO DIMENSIONS TO BE SCALED FROM THIS DRAWING.

**FOR  
PLANNING  
PURPOSES  
ONLY**

Rev	By	Chkd	Apprd	Date	Description
C	HH	HH	KM	20/01/12	TEXT ALTERED
B	HH	HH	KM	15/12/11	STEPS LOCATION CHANGED, DRAWING REMOVED
A	LH	HH	KM	06/10/11	X-SECTION THROUGH STEPS ADDED

Client: **Broadland Environmental Services Limited**  
A Joint Venture Company of  
Bam Nuttall Ltd and Halcrow  
Halcrow is a CH2M HILL company  
3rd Floor Grosvenor House, 112-114 Prince of Wales Road, Norwich, NR1 1NS  
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**Halcrow**  
A CH2M HILL COMPANY

**BROADLAND FLOOD ALLEVIATION PROJECT**

Drawing  
**COMPARTMENT 6A  
HILL COMMON  
PROPOSED STEPS  
AT 'WATERSEDGE'**

Drawn by: L. MERSEY Date: 19/09/11  
Checked by: K. MARSH Date: 19/09/11  
Approved by: K. MARSH Date: 19/09/11

Drawing No. **WNBHIC/400/015** Revision **C**

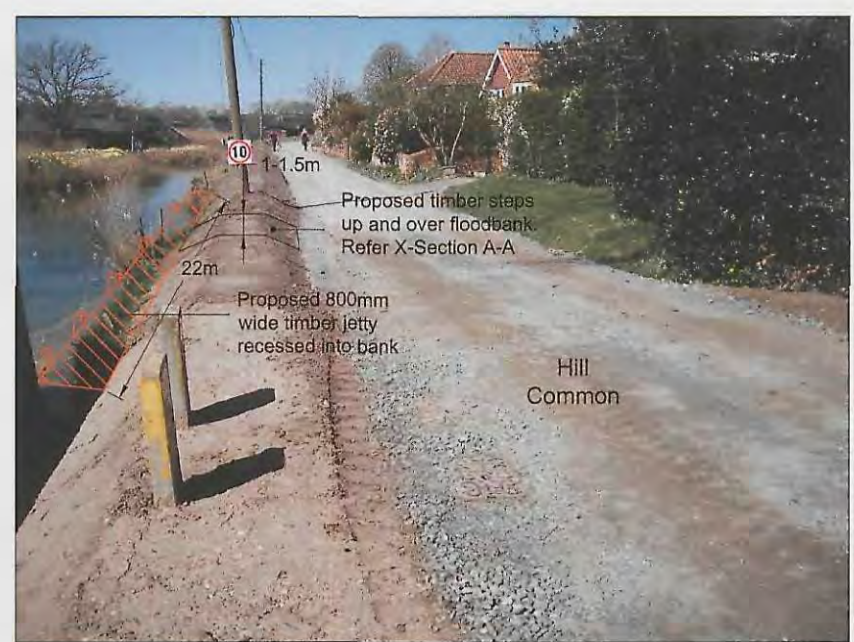
Drawing Scale: AS SHOWN AT A1

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 User and Plot Date : hmf/hub/ahs : 20/02/2012 : 11:2 am





DETAILED PLAN OF WORKS  
SCALE 1:200



PHOTOGRAPH 1 SHOWING PROPOSED JETTY AND STEPS

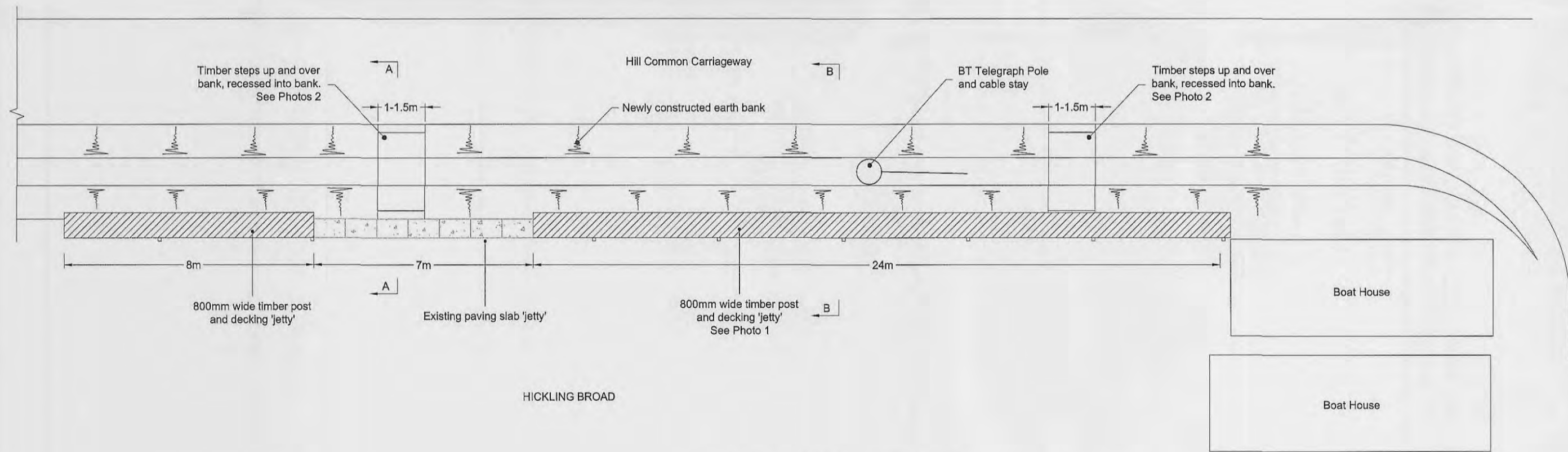


PHOTOGRAPH 2 SHOWING PROPOSED STEP DESIGN

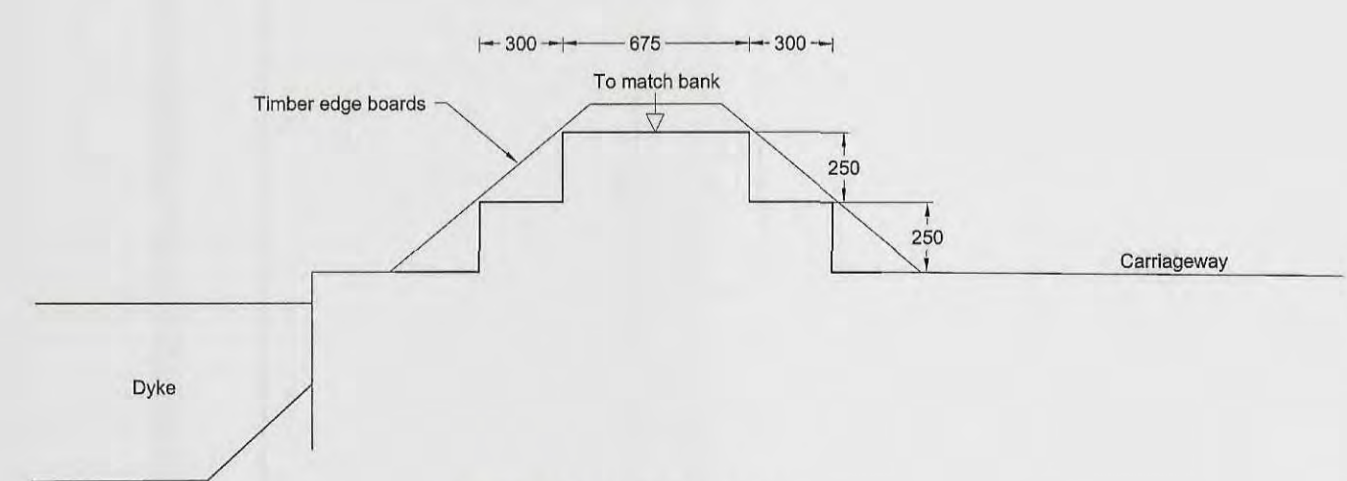
- Key:**
- NEWLY STRENGTHENED BANK
  - PLANNING APPLICATION BOUNDARY
  - OVERHEAD BT CABLES
  - POTABLE WATER PIPE
  - FOUL WATER PIPE
  - PROPOSED BOAT ACCESS DECKING
  - EXISTING JETTY
  - LINEAR DRAINAGE CHANNEL
  - PHOTO REF., LOCATION AND DIRECTION

- Notes:**
1. ALL DIMENSIONS IN MILLIMETRES UNLESS NOTED OTHERWISE.
  2. ALL LEVELS IN METRES ABOVE ORDNANCE DATUM.
  3. NO DIMENSIONS TO BE SCALED FROM THIS DRAWING.
  4. EXACT POSITION OF DRAINAGE CHANNEL TO BE CONFIRMED ON SITE TO SUIT CONDITIONS

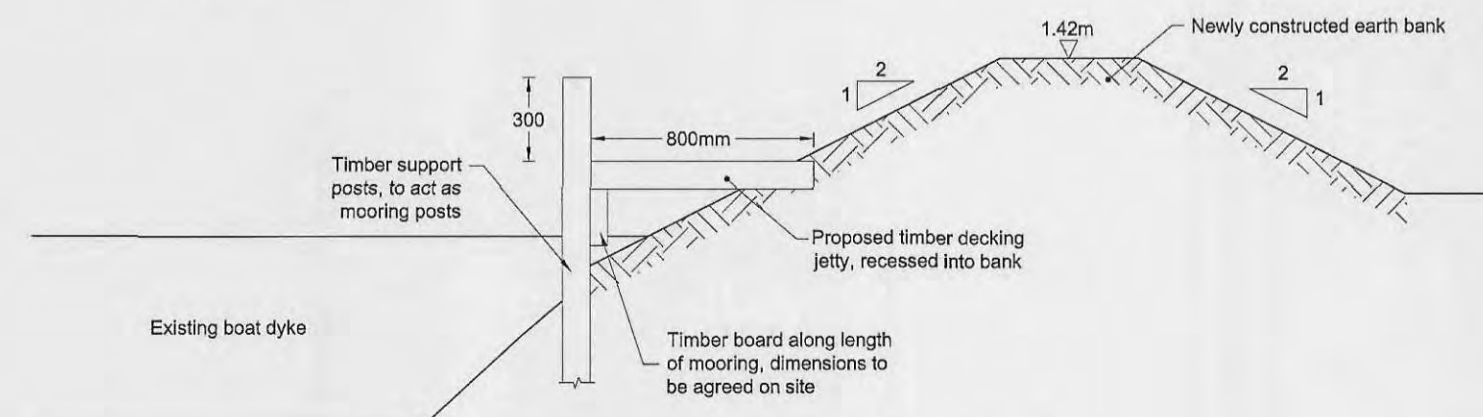
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PLAN OF PROPOSED ACCESS  
DETAIL A  
SCALE 1:100



TYPICAL X-SECTION A-A  
THROUGH STEPS  
SCALE 1:20



TYPICAL X-SECTION B-B  
BANK AND JETTY  
SCALE 1:20

**FOR  
PLANNING  
PURPOSES  
ONLY**

Rev	By	Chkd	Apprvd	Date	Description
C	HH	HH	KM	31/01/12	VARIOUS CHANGES MADE
B	HH	HH	KM	19/12/11	VARIOUS CHANGES MADE
A	LM	HH	KM	06/10/11	X-SECTION THROUGH STEPS ADDED

Client: Broadland Environmental Services Limited  
A Joint Venture Consisting of  
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Planning and Strategy  
01 FEB 2012

BROADLAND FLOOD ALLEVIATION PROJECT

COMPARTMENT 6A  
HILL COMMON  
PROPOSED JETTY AND STEPS

Drawn by: L MERSEY Date: 19/09/11  
Checked by: K MARSH Date: 19/09/11  
Approved by: K MARSH Date: 19/09/11

Drawing No. WNBHIC/400/014 Revision C

Drawing Scale: AS SHOWN at A1



The Planning Submission  
Of  
Mr S Mann LLB (Hons)  
Timber Gables,  
Hill Common  
Hickling  
NR12 OBT

Broads Authority Planning & Regeneration	
21 FEB 2012	
App No	Ack
Officer	

**In the form of objections to Application No BA/2012/0046/FUL**  
Resubmission of withdrawn PP BA/2011/0337/FUL  
Provision of access for boats and people  
following installation of first time flood defences (earth banks and crest piling)  
under planning permission BA/2009/0300  
Land forming part of  
Hill Common  
Hickling  
Norfolk

**Applicant: ENVIRONMENT AGENCY**



Illustration (1) : Hill Common – site of the works

**Illustration(2): Hill Common before the works commenced. Note the narrow verge between roadway and water.**



**Illustration (3) Destruction of the natural environment begins**





**Illustration (4) Public money starts to be wasted. Most of the piles wouldn't go in so were cut off.**

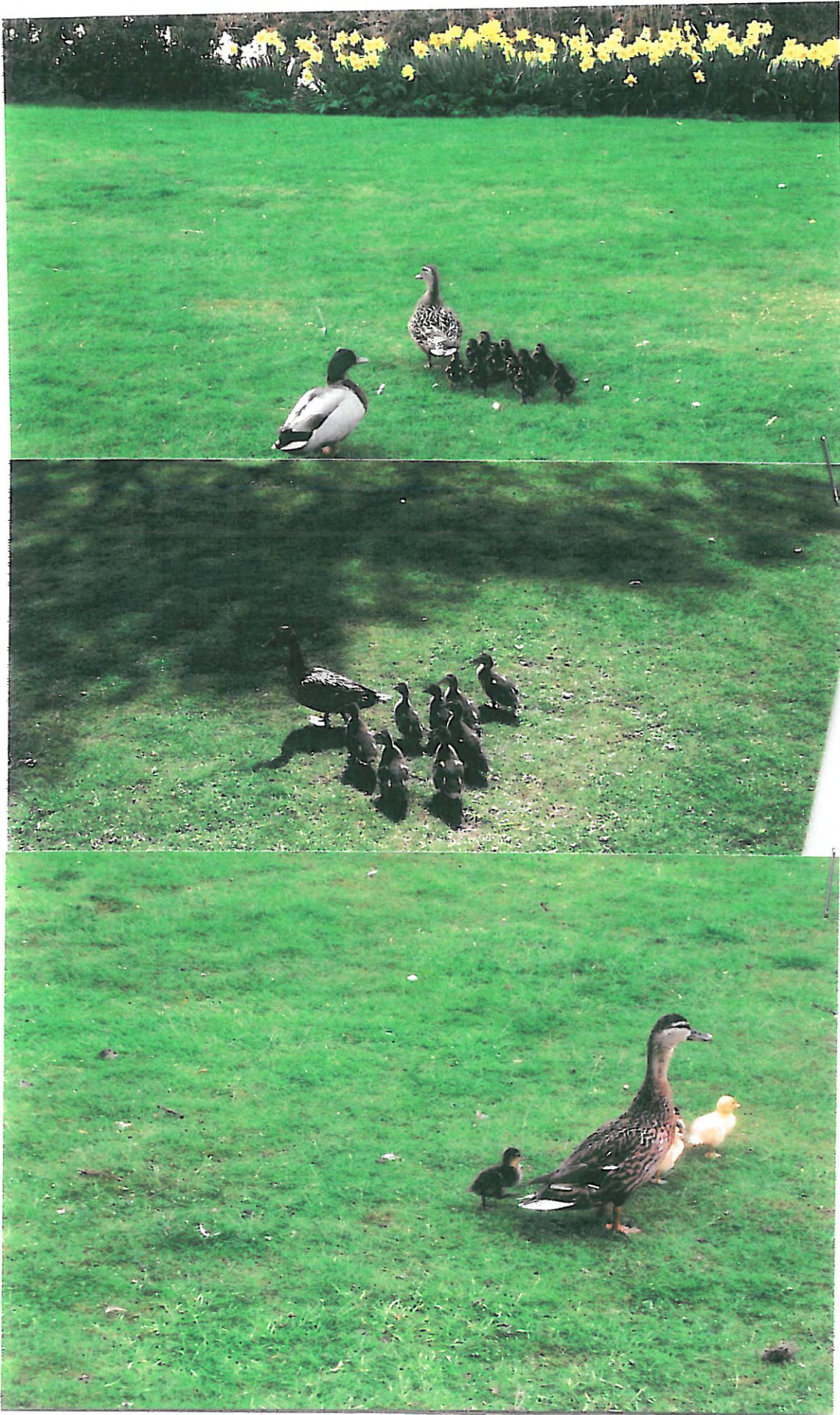


**Illustration (5) The natural environment has been compromised**





Illustrations 6,7 &8 – Design and planning failure – the ducklings cannot get over the timber capping.





**Illustration (9) The existing approved ramp giving access to boathouse and waterside bank. Note: wide enough to accommodate all classes of vehicles and pedestrians. A wheelchair or mobility scooter can ride over this ramp.**



## **1. History of the site:**

Hill Common falls within the Broads Authority area of specific planning responsibility to the northern end of Hickling Broad. It is adjacent to and inextricably linked with an established SSSI which also has significant international recognition. I submit that the Authority has a fundamental duty when considering planning matters to ensure conservation and preservation of the natural environment wherever possible

The site was subject of the construction of a section of the Broadland Flood Alleviation project in 2010/2011 under Planning Application BA 2009/0300 which was carried out by the Environment Agency/Broads Authority under the auspices of BESL and BAM.

Hill Common has been the subject of many photographs, books and paintings and has featured in many television articles and films. Specifically, the area in front of Watersedge featured on the front cover of a recent book illustrating East Anglian Landscapes. It has also appeared on various calendars which portray the natural environment. Significantly, the site has been used as access by a variety of wildfowl and their young entering and leaving the Broad on foot. It is part of my submission that the present application conflicts with the historic visual aspect and the natural environment both in design and proposed use of materials.

## **2. Existing design**

The flood alleviation project on Hill Common has two existing specific design features:

- (1) Clay bank topped with soil/turf
- (2) Plastic crest piling topped with timber capping

Of the two designs, the clay bank topped with soil/turf has achieved a less visually intrusive result since it enables the natural environment to re establish itself without the presence of timber capping.

The area in front of my home utilises plastic crest piling with timber capping.

The original design brief was to have a low impact on the natural environment and the current application conflicts with this.

## **3. The Limit to my objections:**

In making this submission I am not concerned with the proposals where they relate to the area outside Broad House since the constructional details and difficulties there are different.

My only reference to the area outside Broad House is that I do note that handrails are not proposed in that location but are apparently required outside Watersedge. This is rather odd as the same class/age/ability of user applies in each case. This presents a



conflicting case on necessity/need. In any event, handrails will have a detrimental visual impact all along Hill Common

I limit my objections to the issues raised below.

#### **4.No opportunity of having a fair hearing**

The relationship between BAM/BESSL, The Environment Agency and Broads Authority presents a factual matrix in which the Broads Authority has both an interest in the current application and had an interest in the original works under Planning reference BA/2009/0300. I therefore question the legality of the Broads Authority deciding the current application utilising the present process in place of a reference to an independent body. For the reasons of the obvious conflicts of interest the otherwise legitimate process is clearly corrupt.

It must be obvious that the Broads Authority will be considered judge in it's own cause, to be overwhelmingly bias in favour of the development and thereby unlikely to be able to deliver a decision that does not breach Article 6 of the Convention on Human Rights.

Bias is a matter that strikes to the heart of the credibility and moral decency of the decision maker. It can reflect very poorly on individual members of the Planning Committee if they continue to hear the matter once the perception of bias has been raised. They must stand alone and use their own conscience and stand apart from those who see no harm in the right of a fair hearing being corrupted for the sake of expediency.

There has been an indication from the Planning Officer that the Broads Authority will rely on a previously favourable case. One favourable judgment does not undo a perception of bias, it might excuse the one case at the time but leaves the same moral dilemma for decision makers thereafter.

It is my submission that there is abuse of the planning process by the Broads Authority in pursuit of the common interests of designer, developer, planning authority and Government Agency.

#### **5.Abuse of process**

In the original consultation process for the approved barrier we were assured by Mr Philpot (Besl/Bam representative) that the plastic crest piling topped with timber capping would eventually blend into the environment when the grass/reeds re-established themselves. I had reservations which I expressed at the time but accepted that some limited loss of the natural environment had to be finely balanced against the risk of flood which the barrier was supposed to alleviate. If decking, steps and handrails had been included in the original application I would have lodged substantive objections. There is a perception that adding decking steps and handrail at this late hour is an abuse of process. For this reason, I submit that the application should be rejected..



## **6. Lack of proper consultation**

I am listed as having been consulted. This misrepresents the true position. It is usual for an individual to be consulted prior to the application being made. I have not been consulted on the current application even though BESSL and BAM staff visited the site and walked past me on Hill Common on 12 December 2011. I have simply been treated as a noticed party with a considerable degree of contempt. I am not sure what motivates this level of contempt but it is undesirable in those being paid from the public purse.

## **7. The works will have an adverse visual impact**

My property lies adjacent to Watersedge and the proposed area of decking, steps and handrails will be in the direct view of my lounge window and highly visible on the Hill Common restricted byway. The detrimental effect is therefore private and public. The application in the area outside Watersedge presents as an undesirable addition to the approved plastic crest pile and timber capping which will make these engineered structures much more visually intrusive in a natural setting since the proposed handrail cannot be disguised and will be a prominent feature in any future view of the Broad. It is impossible to tell from the current submitted plans what the extent of steps and decking will be but it will both obscure and replace the natural grass surface lying a couple of inches below it. The decking will prevent the grass and reed from growing and thereby disguising the reverse of the plastic piling in an area where the soil bank has been purposely omitted to achieve the retention of the existing quay headed grass landing stage. The proposed timber structures will also present as a visual intrusion in the middle of most photographs taken by visitors to the area. I think it is fair comment that the area outside my home, and the reverse view inwards from the reed bed are the most common photographic scenes taken by visiting enthusiasts and professional photographers.

Prior to the construction of the barrier, the use and appearance of the area outside Watersedge was entirely natural save for a small area of quay heading which was constructed some years ago without relevant approval and remains to support the existing flat shelf of grass forming the bank from which access to all classes of boat is still entirely possible.

As a foreign physical structure to the environment, the decking and the framework of the steps will trap young wildfowl and hinder their access to and from the water. It is worth noting that the timber capping on the plastic sheet piles has already produced this problem and resulted in the loss of many ducklings in the last year.

It is my submission that if, which is not admitted, there is a true necessity for the provision of this type of access at this precise point then the appropriate design and materials should be two parallel sloping grass banks each side of the barrier and retention of the existing level grass shelf bank adjacent to the existing quay heading. A site visit would very rapidly convince any member of your committee that this is all that might be required. The use of gentle grass banks would alleviate the need for hand rails and might also improve access for wildlife. If you wish to visit the site I am happy to put a boat in the water and demonstrate that you can easily gain access to it without the proposed access facilities.



## 8. The application conflicts with the established/approved use of the land – public rights, the ordnance survey & apparent land owner consent

The majority of the site is classified by Norfolk County Council as roadside verge and the approved barrier sits on it. The status of BA 2009/0300 was that a number of approved ramps provided all the necessary access over the barrier. I have been told that the use of 8 metres of the roadside verge as moorings was approved within BA 2009/0300 although this aspect never appeared in the descriptive text and there was no distinction in the plans between “as existing” and additional mooring. I contest the apparent inference that approval for these mooring has ever been legitimately granted. In any event, no comment was raised that access facilities beyond those outlined in the approval were required.

I entirely dispute that my neighbours have ever had exclusive access to any part of the water side bank which lies in front of my home or Watersedge. If they did then where was the objection within BA 2009/0300 to the approved loss of it? Any claim to exclusive access is a complete sham and conflicts with past and present public usage.

I am aware that my neighbours lease a boathouse from the Mills Estate and have access in common with the public to part of the surrounding reed bed. The usage is shared with the public at large. I would suggest that much of the land has become subject to public access through long established foot paths across the reed beds which have yet to be formerly listed by prescription.

As stated above, the validity of the “moorings” which the proposed steps and decking will serve I entirely dispute. They amount to an area of former roadside verge used by the public on and off for many years. I would question by what right the Mills Estate or my neighbours regard them to be exclusively theirs or to be regarded as their “moorings”. It is a fact that the area has never been fenced, has been fished by the general public on a regular basis and the general public have used the edge of the restricted byway to moor their boats occasionally, feed the ducks and enjoy the ambience of the area. Although this is common land and the verge of a public byway I can see how non resident holiday home owners can be remiss and forget that people do live in the area and the public do use the roadside verge and the broad when they are absent.

In reality, the entire barrier at the point outside Watersedge sits on what was formerly the roadside verge used by the general public as an access point to the Broad from the restricted byway. If you check the original application you will see that Norfolk County Council expressed concern over possible loss of highway verge when the barrier was constructed. I am also aware that Norfolk County Council currently consider that that the entire highway verge each side of Hill Common stands in public ownership as defined in the ordnance survey. The Mills Estate, my neighbours and others therefore simply share rights to access the area occupied by the barrier at these points with the general public at large.

I believe the present proposals will lead to more extensive public access at a point where the existence of the flood alleviation barrier now provides a physical barrier for



young children and a safety feature for vehicles and pedestrians reducing the likelihood of either accidentally falling into the water. Any apparent approval of the 8 metres of mooring under BA 2009/0300 immediately adjacent to the original highway verge has effectively really created 8 metres of public mooring with a level grass bank adjacent to it. Throughout the river systems of the Broads there are miles of similar riverbank which provide similar public mooring. Decking, steps and handrails are not provided other than at Boatyards and some established public 24 hour moorings where access is not directly onto a highway. The waterway onto the Broad is regularly accessed by the public throughout the year and has not been marked as private. The only sign indicates that it is shallow water. Since the land at this point is and always has been part of the highway, I see no argument presented by Norfolk County Council as to why these steps and decking should be created on what was the former public roadside verge and no memorandum from them that they will accept the health and safety liabilities involved. They cannot deny their stance on public ownership of the former roadside verge since they served legal notice on me last year fully asserting such position and arguing a point of common law presumption. I walked the entire length of Hill Common with their representative and he confirmed their view that the same presumption of highway verge applied on both sides of the restricted byway and to the area occupied by the barrier. They have not, so far, retreated from this stance. Are the County Council saying that they need these steps, handrails and decking?

### **9. There are already alternative facilities/sites:**

I appreciate that arguments based on necessity are not always compelling planning considerations but the availability of an alternative site or alternative facility and, in the present fiscal climate, Government policy on curtailing waste quite definitely are.

The current proposals represent public money being spent on apparently private land and the Broads Authority/Environment Agency has to ensure both good legal reason and prudence before spending public money in this way. I would question whether the present application and the costs associated with it have been or will be a reasonable use of public funds.

They provide a completely unnecessary and expensive facility for a single holiday home owner who visits the area perhaps four times per year. Your indulgence as a ready source of the necessary power and endless supply of the necessary funds has been engaged simply to support a sham position of exclusivity and need. For the remainder of the year the wider community and the environment will have to suffer the physical and visual intrusion of the proposed structures. There are two alternative access points (designed for the purpose and without decking steps and handrails) less than 20 metres away in each direction from the site of the proposed works. One gives access to the water side bank subject of this application and to the boathouse rented by the owners of Watersedge. I submit there is no compelling argument that approval should be given on the basis that the works are necessary. The proposals simply represent public expenditure calculated to appease individual greed.

There has been absolutely no problem with access whatsoever all through last summer and to state otherwise could be viewed, at best, as economical with the truth. Clearly the current application is not really in the public interest and represents a very questionable use of public funds. There is no compelling reason on the file that the



application should be approved on the basis that it represents sensible spending of public money at a time of severe financial recession. I am sure that senior politicians at Westminster in the present financial climate would very much agree.

I would ask you to consider that many people in this Country are currently out of work, the poor and the elderly are struggling to survive, and within a few miles of Hickling there is real social deprivation and considerable financial hardship. This is not the time for the Broads Authority to be seen to waste public money on the design, planning and execution of this vexatious scheme.

This is a case of people who are simply too lazy to use the two access ramps already provided.

### **10. Highway issues have not been properly addressed**

Hill Common is a restricted byway with public access on foot. Residents have an established right to pass and repass with motor vehicles. The classification of the highway is almost completely ignored and the signage is insignificant. The road way is frequently used and abused by various classes of agricultural and commercial vehicles and very recently was traversed by nearly 40 articulated sugar beet wagons accessing a storage facility at a nearby farm. I am sure that Norfolk County Council have not carried out a recent survey as to the extent of highway usage and more particularly, the excessive speed of many vehicles. I have suggested that the road be made up as it has been a restricted byway for as long as many other fully maintained roads in the neighbourhood. Needless to say that nobody is interested. The proposed timber steps exit immediately onto the roadway and will present as a hazard more particularly for young children or the elderly. The road surface is very infrequently maintained by residents and as such is usually heavily pot holed. The County Council has never carried out any maintenance on the road surface which is sheer neglect on their part. They wish to assert authority over the road but will not carry out the maintenance in line with public use. As a result, an emergency stop by any vehicle is unlikely to achieve the desired result within normal stopping distances. The most likely result would be a lengthy and erratic skid resulting in substantive pedestrian injury. This is the type of access which you are being asked to approve without the submission of a positive supporting independent highway survey and full health and safety report.

In the last year, the owners of Watersedge have erected two temporary timber steps in the position of those proposed. We have witnessed several very young children accessing the top of the barrier by the temporary steps and trying to "walk the plank" along the top of the barrier with the road on one side and the full depth of water on the other. Recently other young people used the steps and then tried to walk out onto the ice covered Broad. One step has recently been squashed by a commercial vehicle. In my view the barrier, the proposed steps and the proposed decking and handrail also represent a previously unforeseen but very real risk of a drowning incident to a young, unsupervised child. Whilst not wishing to be alarmist, we have already witnessed a couple of very close incidents and this state of affairs is what you are also now being asked to approve



Mooring a boat in very close proximity to the barrier with immediate pedestrian access onto the highway is clearly potentially dangerous and all because the temporary residents of Watersedge are not prepared to use the proper access and facilities of their boathouse already available to them. The alternative existing access ramps have proper visibility splays and are sited in what has been approved as a safer position.

### **11. Public safety has not been adequately considered**

During this last summer an elderly holiday maker, suffering from Alzhiemers, disease stayed in a holiday home on Hill Common. She went missing for a couple of hours and was eventually found having wandered on her own out to Sea Palling. There was an extensive search by the Police and local residents in which we took part. It was indeed very fortunate that the presence of steps and decking and convenient hand rail did not encourage this elderly lady to take a closer look at the Broad.

Every year there are visiting groups of elderly, young and handicapped people and their carers staying at the various holiday homes on Hill Common. The barrier presently achieves a secondary function of a physical object between land and water. Steps and decking will encourage vulnerable groups to use them and increase the risk of a tragedy. Steps encourage a curious young child to explore what is beyond them and decking more often found on a domestic patio presents as an attractive place to play.

In general terms the various existing access ramps all have the distinction of having a reasonable area of land/reedbed through which one would have to walk before reaching water. I submit that these will have been assessed in relation to health and safety and the use to which they were to be put. The ramp opposite our home was supposed to have had the additional feature of two posts and a chain but the safety feature of the chain has yet to be installed and there is temporary site fencing in place.

### **12. The planning file is inadequate**

I have viewed the planning file. I note there is no proper detailed supporting environmental statement when clearly there are issues which are of concern. As previously stated, there is no independent highway report when new pedestrian access is being created. The statement attached to the application glosses over conservation and environment issues and is overly dismissive. The plans are distorted and the position of fixed features conflict with the true position of buildings and graphics such that it is not possible to fix the precise position of the proposed structures with any degree of certainty. This is highly unsatisfactory.

The significant role of the County Council in respect of the highway has not been clarified.

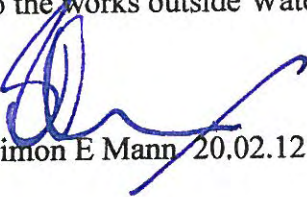
It is my submission that the effect of the approval of the flood barrier was to close off any former access onto the highway save for certain approved access ramps. Any new access in the form of steps would require specific highway approval and a highway survey.

Highway approval appears to fall outside the remit of the Broads Authority.

### 13. Brief summary

- (1) The site has a history of international environmental and scenic importance.
- (2) There is an existing design with low key environmental principle which the current proposals will compromise and which would not have been acceptable within the original application.
- (3) My planning objections to the application are limited to the area of the development opposite Watersedge and Timber Gables
- (4) There is no chance of a fair hearing because The Broads Authority is bias and has an interest in the application. This violates the human rights of the objector.
- (5) The current application represents abuse of process since it aims to achieve approval of measures which would not have been acceptable when considered with the initial proposals and would have attracted objections.
- (6) There has been a complete lack of proper consultation prior to the application being made.
- (7) The proposed works will have an adverse visual impact on the environment.
- (8) The application conflicts with the existing use, public rights, and land ownership
- (9) There are alternative and better suited facilities/sites in the immediate vicinity.
- (10) Highway issues have not been properly addressed.
- (11) Public safety issues have not been considered.
- (12) The Planning file is inadequate.

For all of the above reasons, I respectfully request that the application where it relates to the works outside Watersedge be refused.



Simon E Mann 20.02.12

Timber Gables  
Hill Common  
Hickling  
NR12 0BT

22 February 2012



Ms Andrea Long  
Director of Planning  
Broads Authority  
Dragonfly House  
2 Gilders Way  
Norwich

Dear Ms Long

**Re: Application BA/2012/0046/FUL Resubmission of withdrawn PP  
BA/2011/0337/FUL for provision of access for boats and people following  
installation of flood defences – Land adjacent to Hill Common Hickling – Applicant:  
Environment Agency**

I refer to my telephone conversation with Mr Andy Scales of today's date and my substantive filed objections to the above application. I called Mr Scales in response to the receipt of an amended plan Drawing No WNBHIC/400/015 which still continues to demonstrate inaccuracies as to scale and orientation such that it is still not possible to establish with any degree of certainty precisely where the structure will be sited. This is down to the use of a computer graphic, a portion of the ordnance survey plan and drawings by the design section of the Broadland Flood Alleviation Project all conflicting on the same document.

Mr Scales indicated to me that the application is due to be heard on 30<sup>th</sup> March 2012. On that date I am away working in the Isle of Man. I told Mr Scales that I wished to attend the hearing and address the Committee in person. Please accept this letter as confirmation of this request.

I indicated to Mr Scales that the applicant lists me as having been consulted. Whilst I am a noticed party I have never been consulted on the application before the Committee. This demonstrates but one element of how the legitimate process has been corrupted. If I had been consulted, the position of the structures might have been negotiated and an alternative grass sloping bank given some proper thought and consideration. Instead, I am now painted as someone who was consulted who then objected after the plans were drawn up.

I did ask Mr Scales if the matter could have been deferred to another planning meeting so that I could be given the opportunity to be heard and to address the Committee in person.



He seemed entirely reluctant to entertain any deferment from the 30<sup>th</sup> March 2012 despite the fact that this matter has been held in abeyance for months by the applicant.

Unfortunately, Mr Scales does seem to struggle with the concept of the legitimate process being corrupted through inherent bias with the decision maker, dishonesty by the applicant or the curtailment of the right to be heard. When I suggested that the legitimate process had been corrupted he chose to terminate the call rather than discuss the issues with me and how they might be rectified. He asked me to write to you.

I would now respectfully request that the proposed hearing of this matter or the hearing of my objection be deferred from the 30 March 2012 until the next available meeting. I would also request that you review the situation with regard to the true nature of the applicant and the very clear interest that the Broads Authority has in the Broadland Flood Alleviation Project. I would ask that the clear bias on the part of the decision maker be cured. I would ask that you accept that I have not been consulted and address the issue with the applicant who indicates that I have.

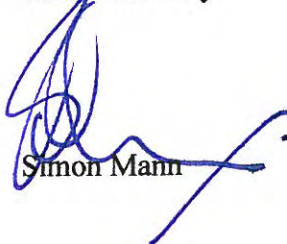
The right to be heard (*audi alteram partem*) is one of the main features of natural justice now enshrined in Human Rights legislation. Curtailing the right by allowing but three minutes to address the Committee or denying the right because the objector cannot attend or the cost of representation is unreasonably high simply represents a very poor position on the part of the decision maker.

I do wish the decision maker to hear the other side of the argument whilst also recognizing an equality of arms. If the legitimacy of the process is not to be tainted with corruption then the matter will be heard by an independent party, the application will be entirely honest as to consultation and free from inaccuracies between graphics, plans and drawings so that the decision maker is not misled and I will be afforded sufficient time to address the Committee.

It is unfortunate that Mr Scales does not share my view as how a legitimate process should operate.

I look forward to hearing further from you.

Yours sincerely



Simon Mann