

**BABERGH DISTRICT COUNCIL**

**FROM:** Head of Planning (Control)

**REPORT NUMBER** **E233**

**TO:** DEVELOPMENT COMMITTEE

**DATE OF MEETING** 4 January 2006

**S106 OBLIGATION RELATING TO PROVISION OF INCREASE IN NUMBER OF BERTHS  
AT ROYAL HARWICH YACHT CLUB, WOOLVERSTONE, APPLICATION FOR  
PLANNING PERMISSION B/04/01855/FUL**

1. **SUMMARY**

1.1 Development Committee resolved on 15 December 2004 that planning permission could be granted, subject to a prior S106 Obligation providing for existing swinging moorings to be relinquished. Although the Obligation has now been secured, it is only effective against the applicants and Ipswich Borough Council (as owners of the riverbed) and it is legally impossible to remove all risk of the re-use of the swinging moorings, so the Obligation could be of limited effect. In the circumstances, it is nevertheless recommended that planning permission should still be granted.

2. **RECOMMENDATIONS**

2.1 That the resolution of Development Committee of 15 December 2004, relating to planning application B/04/01855/FUL [minute 98 (d)] to authorise the Head of Planning (Control) to grant planning permission be confirmed.

The Committee is able to resolve this matter

3. **FINANCIAL IMPLICATIONS**

3.1 There are none

4. **KEY INFORMATION**

4.1 Attached as appendices are the report made by the Head of Planning (Control) in respect of the above application to the meeting of this committee on 15 December 2004 and the relevant minute.

4.2 The recommendation was based upon Local Plan policy LP129 which provides for only a very limited increase in the number of moorings and marina berths within this area; emerging policy RE19 tightens this approach by limiting any increase in the number of moorings on the Orwell to the area upstream of the Orwell Bridge. These policies exist in the interest of protecting the special landscape and ecological characteristics of the internationally important estuaries. In proposing an additional 14 berths the application was in conflict with these policies. However the applicants were able to offer to relinquish 11 swinging moorings in the estuary so that the net increase was only 3. It was on this basis that the resolution to grant planning permission was taken, with the purpose of the S106 Obligation being to secure the removal of those swinging moorings. The S106 has now been signed but the planning permission has not yet been granted.

- 4.3 It has emerged that the swinging moorings are within part of the estuary covered by the Ipswich Dock Act, 1950, which empowers Associated British Ports (ABP) to lay new moorings and license existing ones. ABP does not have any interest in the land affected (ie the bed of the river), and therefore could not have been a party to the S106. Although the S106 requires the applicants to give up the swinging moorings and is binding upon them and Ipswich BC (as owner of the river bed) it cannot prevent the moorings, once given up by the applicants, from being reinstated and reused by another party under the auspices of ABP.
- 4.4 ABP is part of the Stour and Orwell Estuaries Management Group and the sustainable management of the estuary is part of the remit of this group. It may therefore be that ABP would be reluctant to allow the moorings to be reused because of the potential clash with the wider objectives of the Group.
- 4.5 The choice is therefore for Development Committee either now to refuse permission, on the grounds that the increase in the number of moorings would be contrary to policy RE19, or to grant permission, notwithstanding the risk that an increase in the number of moorings could occur, contrary to the above policy. Given the history of the application, and the possible safeguard that exists through the Stour and Orwell Estuaries Management Group it is considered inequitable to refuse permission now because of the applicants' inability to prevent replacement swinging moorings.

5. **APPENDICES**

- (a) Paper D196, Item 4 (Development Committee 15.12.04)
- (b) An extract of the minutes of Development Committee 15.12.04

**CONTACT:** Richard Watson

**DIRECT LINE:** 01473 825851

WOOLVERSTONE – ROYAL HARWICH YACHT CLUB

Reconfiguration of existing marina pontoons together with localised capital dredging (4,000m<sup>3</sup>) and increase in number of marina berths from 40 to 54 in association with relinquishing 11 no. half tide and full tide river moorings.

Applicant: Royal Harwich Yacht Club

Case Officer: Martin Price

---

SITE

1. The Royal Harwich Yacht Club (RHYC) is located on the east bank of the River Orwell, immediately downstream of Woolverstone Marina. The RHYC marina basin, to which this application relates, was constructed in 1999. It lies within the Suffolk Coast and Heaths AONB and abuts the Woolverstone conservation area. It also lies outside, but immediately abuts the River Orwell SSSI, Special Protection Area (SPA) and Ramsar site which have been designated because of the bird life that they support.
2. The landward access to the RHYC is via the private access road leading from the B1456 (the main Shotley Peninsula road). A public footpath (Footpath 11 Woolverstone) runs along the river bank, but lies outside the application site boundary.

PROPOSAL

3. See report heading; the proposal is to reconfigure the existing pontoon layout to make a more efficient use of the existing marina basin, including further minor dredging (4,000 m<sup>3</sup>). This will allow the number of pontoon berths to be increased from 40 to 54. The applicants propose to relinquish the use of 11 no. half tide and full tide moorings. These are to be retained by the Club in title/control, but taken out of use.
4. The application is accompanied by a supporting statement and river sedimentation study. Members may view these by prior arrangement with the case officer. The salient points of these documents may be summarised as follows:

**The Club**

- The RHYC is one of the oldest in the British Isles.
- The Club's objectives are to encourage yachting and yacht racing on the east coast and to provide and maintain facilities for all members.
- The pontoon basin was constructed in 1999 and is now 5 years old.
- Its present capacity for 40 berths is now insufficient to meet the needs of its membership and a modest expansion is required.
- The Club has 1,000 members of all ages with over 600 members living within 30 miles of the Club.
- Members own boats of all shapes and sizes.
- The Club has an active Royal Yachting Association training school, taking children, cadets and adults through the different courses.

- It is successful at national and international level.
- All sections of the Club use the marina. It is very safe for children.
- The Club plays a large role in the community.
- There are many visiting yachtsmen who bring a lot of additional revenue to the local community.

### **The Proposals**

- The half tide/full tide moorings are river moorings beyond the marina basin and lie within the SSSI. They are marginal in that boats can become stranded at certain times. They may be considered unsightly in landscape terms, and access to and from them, mooring lines and buoys could have an adverse impact on the intertidal mud.
- An application has been submitted to DEFRA for a licence to undertake the capital dredging.
- The proposals will result in a total overall increase of 3 no. moorings. However the impact of 14 no. pontoon berths is no greater than the 11 no. half/full tide moorings that are to be relinquished. The small overall increase of 3 no. is insignificant.
- The additional berths will be outside the SSSI/SPA and Ramsar site and the removal of the moorings proposed will be wholly advantageous.
- Traffic generation from 3 additional berths will be insignificant.
- The proposed dredging will have no impact outside the immediate area, nor on the designated foreshore.

### **RELEVANT HISTORY**

5. There have been numerous planning permissions granted since the Club was established, including the erection of the club house and extensions to it. Numerous permission have been granted for various facilities associated with the operation of the Club. However, the following permissions are of direct relevance to the current application.
6. 1996 – permission granted for construction of floating landing stage to provide 36 full time yacht berths and associated dredging – B/95/01408.
7. 2001 – permission granted for variation of Condition 2 of PP B/95/01408 to allow increase in number of yacht berths from 36 to 40 – B/00/01390.

### **POLICY**

#### **PPG9 – “Nature Conservation”**

- 8.PPG9 sets out extensive Government guidance on all planning matters relating to nature conservation. It pays particular regard to development that is likely to have a material impact on designated sites and sites of international importance, such as SSSIs, SPAs and Ramsar sites. In such cases, legislation and Government guidance require Local Planning Authorities to have proper regard to the potential impact of development on such designated areas.

9.It points out that nature conservation can be a significant material consideration in determining many planning applications, especially in or near SSSIs, SPAs or Ramsar sites. PPG9 further advises that in such cases the views of English Nature must be sought, but local planning authorities should not refuse permission if development can be subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features, or if other material factors are sufficient to override nature conservation considerations.

### **PPG17 – “Sport & Recreation”**

10. PPG17 advises that:-

**27.** Designation of areas as National Parks or Areas of Outstanding Natural Beauty does not preclude the use of land for sporting and recreational activities, but noisy or other intrusive activities should be restricted to locations where they will have minimal or no impact on residents or other recreational users. National Park Authorities should work with other local authorities and with sports and recreational bodies with a view to securing new sports and recreational facilities in appropriate locations within National Parks.

**28.** In Areas of Outstanding Natural Beauty local planning authorities should look to meet the demands for sporting and recreational activities where the proposals are consistent with the primary objective of conservation of the natural beauty of the landscape, and the needs of agriculture, forestry and other uses.

**29.** Planning permission for development in or near a Site of Special Scientific Interest (SSSI) for temporary or permanent sporting and recreational activities, should be granted only if the permission is subject to conditions that will prevent damaging impacts on the SSSI, or if other material factors are sufficient to override nature conservation considerations.

**31.** ....In considering planning applications for development near water, local authorities should ensure that access for sport and recreation purposes is not restricted and should, where possible, be enhanced. The visual amenity, heritage and nature conservation value of water resources should also be protected.

**\* Please note that details or extracts of policies are no longer included in reports – see page 4 of these papers.**

11. The following policies provide the framework against which this application should be judged.

### **Suffolk Structure Plan 2001**

ENV1 (Protection of conservation areas)

ENV3 (high standards of layout and design in all developments)

ENV4 (Protection of landscape character of countryside and coast)

ENV7 (Protection of AsONB)

ENV18 (Protection of SSSIs, SPAs and Ramsar sites)

## **Adopted Babergh Local Plan Alteration No.1**

- LP79 (Protection of conservation areas and listed buildings)
- LP93 (Protection of landscape character)
- LP95 (Protection of AsONB)
- LP101 (Protection of important wildlife habitats)
- LP104 (Protection of character and ecology of Orwell and Stour Estuaries)
- LP109 (Support for sport and recreation)
- LP119 (Recreation facilities which are more than small scale)
- LP128 (Water-based recreation facilities on the Orwell and Stour Estuaries)
- LP129 (Mooring and marina berths on the Orwell between Deer Park Lodge and Clamp House)

## **Emerging Babergh Local Plan Alteration No.2**

- CN02a (Protection of conservation areas)
- CR01 (Protection of landscape character)
- CR02 (Protection of AsONB)
- CR12 (Protection of SSSIs, SPAs and Ramsar sites)
- CR16 (Mitigation of adverse impacts on biodiversity)
- CR19 (Protection of character and ecology of Orwell and Stour Estuaries)
- RE01 (Support for sport and recreation)
- RE08 (small and medium scale recreation facilities)
- RE18 (Water-based recreation facilities on the Orwell and Stour Estuaries)
- RE19 (Mooring and marina berths on the Orwell and Stour Estuaries)

## OBSERVATIONS

11. PC – To be reported if available.
12. CHA – Has no observations to make.
13. EA – To be reported if available.
14. English Nature – Views still awaited at the time of preparing this report. However, pre-application correspondence indicated that there would be no direct loss of designated habitat and the small amount of dredging involved is unlikely to be significant. Any further comments received will be reported to the meeting.
15. SWT – Development may have an impact on the Orwell Estuary SSSI/SPA/Ramsar site and the views of English Nature should be sought.
16. RSPB – Wishes to be assured that any negative impacts on wintering birds will be minimised. Recommends that capital and maintenance dredging should be timed outside the winter months.
17. Suffolk Coast and Heaths Project – to be reported if available.
18. Countryside Agency – Does not wish to comment.
19. SCC (Archaeology) – No objections, but requests a condition requiring programme of archaeological work to be undertaken prior to any development commencing.

20. Associated British Ports – to be reported if available.
21. Suffolk Coastal District Council – Does not wish to comment.
22. Letters – two received objecting for the following summarised reasons:
  - River Orwell already suffering pressure from too many pleasure craft due to the provision of pontoon berths at RHYC, Woolverstone and Ipswich Marinas. There has also been a large increase in the number of swinging moorings;
  - Further loss of mud flats to the detriment of wildlife;
  - Proposals will making launching and landing sailing dinghies extremely difficult; and
  - Will further obstruct view from the clubhouse and public footpath.

## ASSESSMENT

23. The Royal Harwich Yacht Club is a long-established sailing facility on the River Orwell. The site is located within a very sensitive area, particularly with regard to the landscape character of the AONB and the wildlife importance of the SSSI/SPA/Ramsar site, which is of international importance, because of the over-wintering wildfowl that it supports. The principal issues to be considered in this case may be summarised as follows:
  - Planning Policy
  - Impact on the AONB
  - Impact on the SSI/SPA/Ramsar site; and
  - Impact on the character of the Woolverstone conservation area.

### **Planning Policy**

24. Government guidance and adopted/emerging Development Plan policies would not preclude further recreation development taking place simply because the site lies within an AONB and immediately adjacent to the SSI/SPA/Ramsar site. The applicants' requirements are site specific and cannot be provided elsewhere. The issue in this case is whether the proposed development will cause any demonstrable harm in terms of landscape character, biodiversity and the character and appearance of the conservation area.
25. Policy LP129 of the adopted Local Plan advises that (inter alia) only a very limited increase in the number of moorings and marina berths on the Orwell Estuary, between Deer Park Lodge and Clamp House, will be permitted. The application site lies within this defined area. However, in granting planning permission in 1996 for the existing pontoons (see paragraph 6 above), the Committee concluded that the "very limited increase in the number of moorings and marina berths" between Deer Park Lodge and Clamp House will have been taken up. Accordingly, Policy LP129 has been replaced in the emerging Local Plan by Policy RE19. This deletes all reference to the area between Deer Park Lodge and Clamp house and states:

**“Only very limited increases in the number of moorings and marina berths on the Stour and Orwell Estuaries will be permitted, and only in the following areas:**

- **Brantham west of Imagedata; and**
- **Between Bourne Bridge and the Orwell Bridge;**

**Subject to there being no significant adverse impact on landscape characteristics, biodiversity, cultural heritage, road safety and residential amenity”.**

26. The application proposals are, therefore, contrary to emerging Policy RE19. However, given that the application site lies outside the designated SSSI/SPA/Ramsar site, and applicants are proposing to give up the use of 11 half/full tide moorings that lie within that designated area, the Local Planning Authority must decide whether there is a justifiable reason for setting emerging Policy RE19 aside in this case. This is particularly so given that the proposed development would result in a net increase of only 3 moorings/berths. Subject to the Local Planning Authority being satisfied that the proposed development will not cause any demonstrable environmental harm, it is concluded that this is a case where emerging Policy RE19 should be set aside.

#### **Impact on the AONB**

27. This immediate part of the Orwell east bank is to a great extent already dominated by moored boats. Woolverstone Marina lies immediately upstream, and the RHYC already has 40 pontoon berths. The application will result in the existing pontoons being extended downstream by approximately 25 metres. This will not have any significant additional impact on the landscape character of this part of the AONB, and there will be a material environmental improvement resulting from the loss of 11 existing river moorings.

#### **Impact on the SSSI/SPA/Ramsar Site**

28. Although the application site lies outside the designated SSSI/SPA/Ramsar site, it abuts it. The Local Planning Authority must, therefore, carefully consider whether the development will have any significant adverse impact on the designated area. The views of English Nature will be crucial in this respect.
29. The extent of the proposed development, including the dredging is small. Pre-application discussions between the applicants and English Nature suggest that the proposed development is unlikely to have any significant adverse impact on the ecological integrity of the designated area, subject to the imposition of appropriate controlling conditions. However, this issue will be the subject of a verbal update at the meeting when the formal response of English Nature has been received.

#### **Impact on the Character and Appearance of the Conservation Area**

30. The site lies outside of the designated conservation area which is approximately contiguous with the mean low water mark. Views out of and into the conservation area will not be significantly affected by the proposed development. It is concluded, therefore, that the proposed development will have a neutral impact on the character and appearance of the conservation area.

## **Other Issues**

31. The concerns expressed by a member of the RHYC about the ability to launch and land dinghies is not a material consideration that can reasonably be taken into account. The proposed development lies entirely within the area of the Club's control and this is a matter between the Club and its members.
33. Permission can only be considered if the applicants relinquish the use of the 11 half/full tide moorings referred to in this report. This can only be ensured by securing a Planning Obligation under Section 106 of the Town and Country Planning Act 1990.

## **RECOMMENDATION**

- A. That the Solicitor to the Council be authorised to secure a Planning Obligation under Section 106 of the Town & Country Planning Act 1990 to ensure that the applicants relinquish the use of the 11 half/full tide moorings identified in the application are relinquished and remain unused in perpetuity.
- B. Subject to the Planning Obligation referred to at A. above being secured, and to there being no planning obligations from outstanding consultations, the Head of Planning (Control) be authorised to grant planning permission, subject to such conditions as he considers appropriate, but including:
  - Number of full time yacht berths shall not exceed 54;
  - Design details of the pontoons to be agreed;
  - Details of the disposal of dredged material to be agreed;
  - Details of foul drainage to be agreed;
  - Details of timing of the dredging and construction of the development to be agreed; and
  - Archaeological condition.

### **C. Otherwise refuse planning permission.**

#### **Reasons:**

- Unacceptable increase in number of berths/moorings detrimental to character and ecology of the area, contrary to Policies ENV7, ENV18, LP95, LP101, LP104, LP129, CR02, CR12, CR19 and RE19.

## **DECISION**

---

---

EXTRACT OF MINUTES OF A MEETING OF THE DEVELOPMENT COMMITTEE HELD  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, CORKS LANE, HADLEIGH ON  
WEDNESDAY, 15<sup>TH</sup> DECEMBER 2004

PRESENT: Mr R W Thake – Chairman

Mr C W Arthey	Mr C D Kerr
Mrs E F Bates	Mr B L Lazenby
Mr P K Beer	Mr N MacMaster
Mr J C Brand	Mr A E Pearce
Ms J J Chapman	Mr J J Quinlan
Mr A J Hinton	Mr G S White
Mr D H Keane	

**(d) WOOLVERSTONE**

**Application No. B/04/01855  
Paper D196 – Item 4**

**Full application – reconfiguration of existing marina pontoons together with localised capital dredging (4,000m<sup>3</sup>) and increase in number of marina berths from 40 to 54 in association with relinquishing 11 no. half tide and full tide river moorings, Royal Harwich Yacht Club.**

**RESOLVED**

- (1) That the Solicitor to the Council be authorised to secure a planning obligation under Section 106 of the Town and Country Planning Act 1990 to ensure that the use of the 11 half/full tide moorings identified in the application are relinquished by the applicants and remain unused in perpetuity.**
- (2) That subject to the Planning Obligation referred to in resolution (1) above being secured, and to there being no planning obligations from outstanding consultations, the Head of Planning (Control) be authorised to grant planning permission subject to such conditions as he considers appropriate but including:**

**Number of full time yacht berths shall not exceed 54;**

**Design details of the pontoons to be agreed;**

**Details of the disposal of dredged material to be agreed;**

**Details of foul drainage to be agreed;**

**Details of timing of the dredging and construction of the development to be agreed; and**

**Archaeological condition.**